

TITLE 1: GENERAL GOVERNMENT ADMINISTRATION

CHAPTER 1: GENERAL PROVISIONS: GENERAL GOVERNMENT ADMINISTRATION [RESERVED]

CHAPTER 2: ADMINISTRATIVE PROCEDURES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: PUBLIC REGULATION COMMISSION RULES OF PROCEDURE

1.2.2.1 ISSUING AGENCY:

Public Regulation Commission.

[1.2.2.1 NMAC - N, 9-1-08]

1.2.2.2 SCOPE:

This rule applies to all utility division, transportation division, fire marshal division, and corporations bureau proceedings other than rulemakings conducted by the commission. Other rules governing specialized proceedings or matters shall govern in the event of a conflict with this rule.

[1.2.2.2 NMAC - N, 9-1-08]

1.2.2.3 STATUTORY AUTHORITY:

Sections 8-8-4, 8-8-16, 53-18-1, 53-19-66, 59A-52-15, 59A-52-16, 60-2C-3, 62-8-3, 62-13-2, 62-14-9.1, 62-14-10, 63-7-23, 63-9-11, 63-9A-5.1, 63-9A-11, 63-9B-5, 63-9H-10, 65-2A-4, 65-2A-36, 65-6-4, and 70-3-13 NMSA 1978.

[1.2.2.3 NMAC - N, 9-1-08]

1.2.2.4 DURATION:

Permanent.

[1.2.2.4 NMAC - N, 9-1-08]

1.2.2.5 EFFECTIVE DATE:

September 1, 2008, unless a later date is cited at the end of a section.

[1.2.2.5 NMAC - N, 9-1-08]

1.2.2.6 OBJECTIVE:

The purpose of this rule is to establish procedures for handling matters before the commission concerning its regulation of utilities, telecommunications providers, motor carriers, railroads, fire marshal-regulated entities, corporations, owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems subject to the jurisdiction of the commission in New Mexico.

[1.2.2.6 NMAC - N, 9-1-08]

1.2.2.7 DEFINITIONS:

In addition to the definitions contained in Sections 3-29-2, 8-8-2, 53-4-1, 53-6-3, 53-8-2, 53-11-2, 53-19-2, 53-20-2, 60-2C-2, 62-3-3, 62-14-2, 63-9-2, 63-9A-3, 63-9H-3, 65-2A-3, 65-6-2, and 70-3-12 NMSA 1978, as used in this rule:

A. Definitions beginning with "A":

(1) **advisory staff** means persons hired by the commission pursuant to Section 8-8-13 NMSA 1978, but who do not represent staff in proceedings before the commission;

(2) **applicant** means any party on whose behalf an application is made for approval or authorization of the commission.

B. Definitions beginning with "B": [RESERVED]

C. Definitions beginning with "C":

(1) **chief clerk** means the person appointed by the chief of staff pursuant to Section 8-8-5 NMSA 1978 to serve as director of the administrative services division pursuant to Section 8-8-7 NMSA 1978 or the director of the administrative services division's designee;

(2) **chief of staff** means the person appointed by the commission pursuant to Section 8-8-5 NMSA 1978;

(3) **commenter** means a person who enters into the record of a proceeding before the commission or presiding officer a comment on the grounds of public or private interest, but who is not a party to the proceeding;

(4) **complainant** means a person who complains of anything done or omitted to be done in violation of any law, rule, or order administered or promulgated by the commission;

(5) **corporations** means domestic and foreign corporations, limited liability companies, cooperative associations, sanitary projects act associations, water users associations, waterworks corporations, and foreign business trusts as those terms are defined in Section 3-29-2 and Chapter 53, NMSA 1978, unless exempted by law from commission regulation.

D. Definitions beginning with "D":

(1) **date and time of filing** means, for an electronic filing, the date and time on the filing transmittal email delivered to the records bureau email address; electronic filings may be deemed filed at later date and time than the time on the filing transmittal email in accordance with the procedures set forth in Paragraph (1) of Subsection C of 1.2.2.10 NMAC. For a hard copy filing, the date and time of filing is the date of the date stamp affixed by the records bureau in accordance with Paragraph (2) of Subsection C 1.2.2.10 NMAC.

(2) **document** means, except as otherwise used in the provisions of this rule governing discovery, any submission in a formal proceeding, including pleadings, or which is required to be filed by commission rule or order outside a formal proceeding.

E. Definitions beginning with "E":

(1) **electronic** means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

(2) **electronic signature** means a full, printed name of the person responsible for the electronic version of the document by scanned or other electronic reproduction of the signature or by typing in the signature line the notation "/s/" followed by the name of the person signing the original document and including the email address of the person signing;

(3) **electronic filing** means the filing procedures for set forth in 1.2.2.10 NMAC.

F. Definitions beginning with "F":

(1) **file, filed, or filing** means filing by electronic mail to the records bureau email address, unless otherwise permitted by Subsections C and D of 1.2.2.10 NMAC, and acceptance by the chief clerk or the clerk's designee;

(2) **fire marshal-regulated entities** means persons whose activities are regulated by the provisions of Sections 59A-52-1 through 59A-52-25 NMSA 1978, or the

Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978; this Paragraph shall be effective until June 30, 2021 at which time it shall be deleted;

(3) formal proceedings means all matters other than rulemakings to which case numbers are assigned and which are entered on the commission's docket for decision by the commission.

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": hearing examiner means a person employed by the commission as a hearing examiner, or a commissioner or advisory staff member designated by the commission as the hearing examiner to conduct any hearing or investigation which the commission is authorized to conduct;

I. Definitions beginning with "I":

(1) informal proceedings means any matters handled outside a formal proceeding by the commission or its staff, including informal complaints;

(2) intervenor means a person permitted by the commission or presiding officer to participate as a party in a proceeding pursuant to 1.2.2.23 NMAC.

J. Definitions beginning with "J": [RESERVED]

K. Definitions beginning with "K": [RESERVED]

L. Definitions beginning with "L": [RESERVED]

M. Definitions beginning with "M": mediator means a person assigned by the commission to facilitate resolution of disputes pending informally or formally before the commission by assisting parties in their communications and meetings, identification and exploration of issues, and development of bases for agreements.

N. Definitions beginning with "N": [RESERVED]

O. Definitions beginning with "O": [RESERVED]

P. Definitions beginning with "P":

(1) party means a person who initiates a commission proceeding by filing an application, petition or complaint, or whom the commission or presiding officer names as a respondent, or whom the commission or presiding officer grants leave to intervene; unless the context indicates otherwise, the term "party" may also refer to counsel of record for a party; staff shall have the status of a party, without being required to file a motion to intervene, but shall not have a right to appeal;

(2) **petitioner** means any party on whose behalf a petition is made for approval, determination, consent, certification, or authorization of the commission;

(3) **pleading** means an application, petition, complaint, answer, motion, response to motion, exception, or other formal written statement filed in any formal proceeding;

(4) **presiding officer** means a commissioner taking such actions as are permitted under 1.2.2.29 NMAC and 1.2.2.30 NMAC or the hearing examiner designated to preside over a proceeding;

(5) **proceeding** means a formal proceeding;

(6) **public hearing** means a portion of a proceeding, open to the public and conducted by the commission or presiding officer, that affords an opportunity to present such evidence, argument, or other appropriate matters as the commission or presiding officer deems relevant or material to the issues.

Q. Definitions beginning with "Q.": [RESERVED]

R. Definitions beginning with "R":

(1) **records bureau email address** means prc.records@state.nm.us or another records bureau email address, as set out on the commission's webpage;

(2) **regular business hours** means 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m. prevailing mountain time Monday through Friday, excluding state holidays;

(3) **regulated entity** means a utility, telecommunications provider, motor carrier, fire marshal-regulated entity (to be deleted on June 30, 2021), railroad, or owner or operator of gas and hazardous liquid pipelines and underground facilities or one-call notification system subject to the jurisdiction of the commission;

(4) **respondent** means any party against whom any complaint is filed or any party subject to the jurisdiction of the commission to whom the commission issues notice instituting a proceeding, investigation, or inquiry of the commission;

S. Definitions beginning with "S": **staff** means all persons, other than hearing examiners and advisory staff, employed by the commission; and

T. Definitions beginning with "T": **telecommunications provider** shall have the meaning given in Paragraph (2) of Subsection A of Section 63-7-23 NMSA 1978.

U. Definitions beginning with "U": **unsworn affirmation** means an unsworn affirmation in lieu of a notarization pursuant to Paragraph (3) of Subsection A of 1.2.2.35 NMAC.

V. Definitions beginning with "V": [RESERVED]

W. Definitions beginning with "W": [RESERVED]

X. Definitions beginning with "X": [RESERVED]

Y. Definitions beginning with "Y": [RESERVED]

Z. Definitions beginning with "Z": [RESERVED]

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

1.2.2.8 GENERAL PROVISIONS:

A. Public records: The commission's policy is to allow full and complete access to public records in accordance with the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 *et seq.* Except when the commission or presiding officer directs otherwise, all pleadings, orders, communications, exhibits, or other documents shall become matters of public record as of the day and time of their filing. The commission shall permit any person to examine any such public record, unless subject to a protective order, or otherwise protectable under the Inspection of Public Records Act. Under no circumstances will any person be allowed to take original commission records from commission premises. Arrangements to examine records or to obtain copies of records must be made through the chief clerk or the chief clerk's designee.

B. Protective orders:

(1) Any person moving for an order to protect pleadings, documents or classes of documents from disclosure bears the burden of establishing their right, if any, to such protection. A motion for an order to protect documents or information from disclosure shall be supported by an affidavit. The affidavit shall:

(a) satisfy the claimant's burden of making a *prima facie* showing that protection is appropriate, and, if protection is sought for pleadings or documents that are to be filed, that protection is consistent with the Inspection of Public Records Act, including protectable trade secrets;

(b) be executed by the claimant or a person employed by the claimant who is sufficiently knowledgeable about the grounds on which protection is sought that they can defend such claim if it is challenged; and

(c) explain with particularity the injury which would result from disclosure of the information for which protection is sought.

(2) If the commission or presiding officer deems it necessary, or if any party files a motion to compel, the commission or presiding officer may require the party

seeking the protective order to file the documents or information which are the subject of the motion in a properly identified sealed container. The container may be opened by the commission or presiding officer prior to ruling on the motion for a protective order only for purposes of making an *in camera* inspection.

(3) The commission or presiding officer may, in ruling on the motion, provide that the documents or information not be disclosed or that they be disclosed only in a designated manner or to designated persons. Any order granting a motion for a protective order in whole or in part shall include clear and specific instructions to the chief clerk or chief clerk's designee regarding the limitations placed on disclosure of the documents or information subject to the order and a reminder that sanctions may be imposed under applicable laws for its violation. The protective order shall set forth the conditions for protection and disclosure of information subject to protection under the Inspection of Public Records Act to parties to the proceeding. The order shall be included in the appropriate publicly available file in lieu of the documents or information which are the subject of the protective order.

(4) The period of time during which disclosure is limited shall be two years from the date of the final order in the case, provided that the movant may request that the protective order specify a different period of protection. The movant may, prior to expiration of the protective order, move for an order extending the period of protection of the documents or information.

(5) Nothing in this rule shall be construed as waiving or altering any requirement placed upon the commission for timely disclosure and copying of public records under the Inspection of Public Records Act.

(6) In the event of a conflict between the terms of a protective order and the rules set forth in 1.2.2 NMAC the protective order controls;

C. Filing Fees:

(1) Filing fees for specific documents are:

(a) Applications, petitions, formal complaints, and all other filings requiring a new Case No.; a fee of \$25.00 each applies, and is required at time of filings;

(b) Advice Notices: a fee of \$1.00 per each proposed rate, rule, or form applies, and is required at time of filing.

(2) **Electronically filed documents that are required by law to be submitted with a filing fee:**

(a) the entity electronically filing documents that require a filing fee shall include as an attachment to the filing transmittal email a scan (pdf) or photograph (jpeg) of the filing fee (check or money order made payable to the commission) to show proof

of payment at time of filing. The scan or photograph of the check or money order shall be a separate electronic document from the document to be filed;

(b) the entity electronically filing documents shall promptly physically mail the check or money order to NMPRC, Attn: Records Bureau, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a copy of the cover page for the document that the fee is associated with to assist the chief clerk or designee with making sure the filing fee is properly applied;

(c) after receipt of the electronically filed document and the attached scan or photograph of the filing fee, the records chief clerk or designee will issue a case no. (if applicable) and will post the document into e-docket.

(3) All application fees or other charges required by law to be paid along with the filing of a document shall be paid to the commission by check or money order at the time of filing a hard copy by regular mail or in-person at the commission offices.

(4) No pleading or document will be accepted without payment of required fees and submission of the required number of copies by the filing party, unless the commission or presiding officer directs otherwise.

(5) Except as otherwise provided by Sections 53-2-1, 53-8-87 and 65-2A-36 NMSA 1978, and 12.3.1 NMAC, the fee for paper copies of papers, testimony, or records, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(6) The fee for copies of papers, testimony, or records on electronic storage media shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(7) The fee for cassette or CD-ROM copies of audio recordings of informal and formal proceedings, if available, shall be the charge set by the commission's inspection of public records policy posted on the commission's website.

(8) For paper copies of pleadings or documents that are not retrievable on electronic storage media maintained by the commission, the chief clerk or chief clerk's designee may charge in accordance with the commission's inspection of public records policy posted on the commission's website.

D. Waiver of rules: Upon the commission's or presiding officer's own motion or by motion of the staff or any party showing good cause and such notice as the commission or presiding officer may deem proper, the commission or presiding officer may waive the application of any procedural provision of this rule, except when precluded by law.

E. Construction and amendment: These rules, and any rules incorporated by reference, shall be so construed as to secure just and speedy determination of the issues.

F. Docket: The commission shall maintain a docket of all proceedings, and each new proceeding shall be assigned an appropriate docket number. The docket is open to public inspection.

G. Calendar of public hearings: The commission shall maintain a public hearing calendar. The public hearing calendar is open to public inspection.

H. Identification of communications: Communications shall contain the name, address, e-mail address, if available, and telephone number of the communicator and an appropriate reference to any commission cases pertaining to the subject of the communication.

I. Current information required: In all cases, persons shall keep the information required by Subsection H of this section current, and when updating the information, shall indicate the case numbers of all docketed cases in which the person is a party or otherwise included on the certificate of service.

J. Computation of time: The time within which an act is to be done as provided in any rule or order promulgated by the commission or order issued by the presiding officer, when expressed in days, shall be computed by excluding the day of the act or event from which the time begins to run and including the last, except that if the last day be Saturday, Sunday, or a legal holiday, the act may be done in the next succeeding business day.

K. Extensions of time: Except as otherwise provided by law, the time by which any person is required or allowed to act under any statute, rule, or order may be extended by the commission or presiding officer for good cause, upon a motion made before the expiration of the period prescribed or previously extended. The filing of the motion does not toll the running of the time period prescribed.

L. Classification of parties: Parties to proceedings before the commission shall be classified as applicants, petitioners, complainants, respondents, or intervenors.

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

1.2.2.9 PRACTICE BEFORE THE COMMISSION:

(See 18.60.4.11 NMAC for matters involving owners and operators of gas and hazardous liquid pipelines and underground facilities, excavators, and one-call notification systems.)

A. An individual may appear as a party in person or by an attorney licensed to practice law in New Mexico at either informal or formal proceedings.

B. Entities other than an individual may appear as a party at informal proceedings by an officer or employee of the entity.

C. Commenters may appear in person or by an attorney at any proceeding.

D. Except as provided in this section, entities other than an individual must be represented by an attorney licensed to practice law in New Mexico at all formal proceedings.

E. An attorney licensed in a jurisdiction other than New Mexico may appear at public hearings before the commission or presiding officer provided such non-resident attorney files a motion *pro hac vice* and is associated with and accompanied by an attorney licensed in New Mexico.

F. The following entities may be represented at all formal proceedings as provided:

(1) if the party is the United States, it may be represented as provided in 40 U.S.C. Section 481(a)(4) and 486(d);

(2) if the party is an association of residential customers of an investor-owned public utility or an association of residential members of a rural electric cooperative, it may be represented by an officer or employee thereof who has been authorized to appear on behalf of the association;

(3) if the party is a class C or class D water utility as defined in General Provisions for Water Utilities, 17.12.1 NMAC, or is a sewer utility subject to the requirements of procedures for review of rates proposed by sewer utilities having annual operating revenues averaging less than \$500,000 over any consecutive three-year period, 17.13.970 NMAC, and:

(a) if such a water or sewer utility is a corporation or LLC whose voting shares are held by a single shareholder or closely knit group of shareholders all of whom are natural persons active in the conduct of the business, it may be represented by an officer or general manager who has been authorized to appear on behalf of the corporation, or;

(b) if such a water or sewer utility is a general partnership; and the partnership has fewer than ten partners, whether limited or general, except that a husband and wife are treated as one partner for this purpose; and all partners, whether limited or general, are natural persons; it may be represented by a general partner who has been authorized to appear on behalf of the general partnership;

(4) if the party is a water and sanitation district governed by the Water and Sanitation District Act, Section 73-21-1 NMSA 1978 *et seq.*, it may be represented by an officer or employee of the water and sanitation district who has been authorized by the water and sanitation district to appear on its behalf;

(5) if the party is a utility submitting an application relating to securities pursuant to Subsection B of Section 62-6-8 NMSA 1978, it may be represented by an officer or employee of the utility who has been authorized by the utility to appear on its behalf; however, upon a finding by the commission or the presiding officer that there is good cause to hold a public hearing on such an application, the applying utility shall be represented in that proceeding by an attorney licensed to practice law in New Mexico.

G. The commission or presiding officer may require any person claiming to represent any other person or entity as allowed by this rule to provide such verification or corroboration of their claimed representational authority as the commission or presiding officer may deem necessary.

H. Nothing in this rule shall be construed to prohibit a party from being represented in a formal proceeding by an attorney licensed to practice law in New Mexico when such representation is desired by a party or is required by law.

[1.2.2.9 NMAC - Rp, 17 NMAC 1.2.9, 9/1/2008; A, 4/6/2021]

1.2.2.10 FILING AND SERVICE:

A. Service and contact emails: all regulated entities shall at all times keep a current email on file with the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission. All participants in open dockets shall provide a current email to the commission's chief clerk or designee at which they can receive service of pleadings, process and other communication from the commission, unless they do not have access to email.

B. Service generally:

(1) Except as otherwise provided by this rule or order of the commission or presiding officer, all pleadings, orders, notices, and documents filed in a proceeding shall be promptly served upon those persons described in Paragraph (4) of Subsection B of 1.2.2.10 NMAC by the person filing the orders, notices, pleadings, or documents. Service of electronic filings shall be made by electronic transmission. If a person does not have the ability to serve and be served electronically service on and by that person shall be made by depositing the pleading, order, notice, or document in the U.S. mail, postage prepaid, using first class or express mail, by delivering the pleading, order, notice, or document to a commercial courier service for delivery, by hand delivery. The date of service shall be the date of deposit in the mail, delivery to a commercial courier service, hand delivery, or electronic transmission.

(2) A certificate of service listing, by name, each person served and describing the manner and date of service shall be attached to the pleading, order, notice, or document being filed and all copies served or filed, unless otherwise directed by the commission or presiding officer.

(3) Service of pleadings, orders, notices, and documents on the staff's or a party's named attorney is valid service upon staff or the party for all purposes in the proceeding unless the commission or presiding officer directs otherwise.

(4) Service of pleadings, orders, notices, and documents shall be made upon all persons included on the official service list. The official service list is the most recent service list issued by the commission or presiding officer in the proceeding.

(a) A service list shall include parties and staff or their counsel of record and shall be issued by the commission or presiding officer in all proceedings after the deadline for intervention has passed in the proceeding, and may be revised from time to time.

(b) The commission or presiding officer shall serve all service lists upon staff and the parties to the proceeding promptly upon issuance of the list.

(c) Prior to the issuance of an official service list, all pleadings, orders, notices, and documents filed in a proceeding shall be served by the person filing the orders, notices, pleadings, or documents upon all other parties in the proceeding, persons who have pending motions to intervene, staff, and as otherwise required by commission rule or order.

(5) Orders or documents issued by the commission or presiding officer are effective on the date they are filed unless otherwise stated in the order or document;

(6) When serving documents electronically each document shall be identified in the following four segment format: case number-filing date-party name-pleading identifier. Each name segment shall be separated by a hyphen. Case number shall be in the form: xx-xxxxx-suffix (UT or TR). Filing date shall be in the form: four digit year-two digit month-two digit day of month. Party name shall utilize a single word or abbreviated form, e.g., party initials, acronym or other identifier. The pleading identifier shall identify the nature of the pleading by concise description, e.g., petition, application, complaint, answer, motion seeking xxxxxxxx, brief, response, reply, etcetera.

C. Date stamps on filed documents and pleadings:

(1) Electronic filings:

(a) the filing transmittal email for each filing, as received by the records bureau, shall be converted to a PDF and appended to every filed document or pleading before uploading to e-docket;

(b) the date and time on the filing transmittal email shall serve as the date stamp for the filed document or pleading;

(c) if the date and time on the filing transmittal email from a party or other person reflects a date or time that is outside of regular business hours, the filed document or pleading will be deemed to be filed the following business hour;

(d) if the date and time on the filing transmittal email from the commission or a presiding officer reflects a date or time that is outside of regular business hours, the filed document or order will be deemed to be filed as of the date and time on the filing transmittal email;

(e) filing transmittal emails shall be substantially in the format of the sample transmittal email attached as exhibit one to this rule;

(f) the filing transmittal email should be addressed to the records bureau email address only and should be a separate email from any service email;

(2) For a filings by mail or in person, the records bureau shall date stamp the original document or pleading with the date it is deemed filed, in accordance with the definition of date and time of filing provided in Paragraph (1) of Subsection D of 1.2.2.7 NMAC, before scanning and uploading to e-docket. The filer may request and provide to the records bureau any number of conformed copies of the filed document or pleading for the records bureau to stamp and return to them. If the filing is made by mail, the filer must provide a self-addressed stamped envelope for the return of the conformed copies.

D. Filings:

(1) Any complete, correctly filed document, order, notice or pleading will be accepted by the chief clerk or designee and will be uploaded in the .pdf format submitted in the appropriate identified case numbers locations in e-docket on a regular basis for the purpose of inspection of records.

(2) All filed documents shall be made available, upon reasonable demand, for inspection by the chief clerk or designee public, other parties or the commission.

(3) The filing party has the responsibility to make sure that the filed document or pleading is complete and accurate.

(4) The filing party shall ensure that all filed documents and pleadings do not contain or have properly redacted any confidential information or "protected personal identifier information" as defined by 1-079 NMRA and Section 14-2-6 NMSA 1978.

(5) The filing party shall ensure that all filed documents and pleadings do not contain or have properly redacted any protected information that is prohibited from disclosure by any state or federal law or regulation.

(6) When a party files a document that contains redacted confidential information or personal protective identifier information they shall deliver a non-redacted version to the records bureau in accordance with Paragraph (12) of Subsection E of 1.2.2.10 NMAC.

(7) A filing party who files any documents or pleadings that contain protected personal identifier information or information prohibited from disclosure by state or federal law or regulation shall be solely liable for any damages that result from filing such information with the commission.

(8) Except as provided in Paragraph (2) of Subsection C of 1.2.2.10 NMAC, persons exempted from the electronic filing requirement may physically file documents or pleadings by:

(a) sending one original of the document or pleading to be filed via regular postal mail to: NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504; or

(b) if the records bureau has a physical location that is open to the public, by delivery of one original of the document or pleading to the commission's chief clerk or designee during posted office hours.

E. Electronic filing:

(1) Electronic filing required:

(a) all regulated entities are required to make electronic filings;

(b) all persons should make electronic filings if they have the ability to do so;

(c) only persons who lack the ability to make electronic filings are permitted to make physical filings;

(2) electronically filed documents shall be emailed to the records bureau email address as .pdf documents;

(3) electronically filed documents shall be scanned with a regular signature or be electronically signed;

(4) electronically filed documents shall include the email address of the person signing the document in the signature block, and if filing on behalf of a regulated entity, the email address of the regulated entity;

(5) electronically filed documents shall be combined into one complete document, shall include accompanying consecutively numbered attachments, if any, except in cases where the .pdf exceeds size limit restrictions, and if so the document shall comply with Paragraph (8) of Subsection E of 1.2.2.10 NMAC herein;

(6) electronically filed documents shall include a certificate of service evidencing service upon which individuals or entities were served and by what manner of service;

(7) **Confidentiality agreements and non-disclosure agreements:** when filing nondisclosure agreements or confidentiality agreements, each confidentiality agreement or non-disclosure agreement shall be filed as a separate document;

(8) when emailing electronically filed documents to the records bureau email address there are size limit restrictions to the .pdf attachments of approx. 20MB but this may change as the commission's servers change. If a filer receives an "undeliverable" email due to attachment size limits, the filer shall re-send the .pdf as a single document using a download link that allows for it to be downloaded from a cloud service such as Dropbox, One Drive, etcetera. If it is impossible to re-send an oversized .pdf via a download link it is permissible to split the .pdf into multiple smaller sized files and email in batches with identifying numbers showing how the document should be combined (i.e. batch one of three, batch two of three, etcetera) so that the records chief clerk or designee may properly assemble for filing in e-docket;

(9) the filing date for an electronically filed document shall be the date the filing email is sent if emailed during regular business hours for the commission; if emailed outside of regular business hours the document will be considered received and filed on the next regular business day;

(10) no physical hard copies of electronically filed documents or multiple copies of physically filed documents are required to be submitted unless the commission or presiding officer directs the filer to do so. At the direction of the commission or presiding officer a designated number of copies of any filed document shall be mailed, by regular postal service mail, to the commission at any number of designated addresses.

(11) The commission or presiding officer may direct any filer to submit documents or pleadings to them in a native document format in addition to the PDF version filed with the records bureau if a native format exists;

(12) If for any reason physical electronic storage media must be presented to the commission, unless otherwise directed by the commission or presiding officer, the electronic storage media shall be a USB flash drive. All electronic storage media submitted pursuant to this rule shall be compatible with the commission's current computer capabilities. All physical electronic storage media filed shall have affixed

thereto a label containing the appropriate case number, the title of the pleading or document, the name of the party or staff making the filing;

(13) Confidential materials are an exception to the electronic filing requirement and shall be filed as follows:

(a) subject to the terms of any applicable protective order, confidential materials shall be filed by mailing hard copies to the NMPRC Records Bureau, PO Box 1269, Santa Fe, NM 87504 or by in-person delivery of hard copies to the commission's chief clerk or designee;

(b) when filing confidential materials they shall be submitted to the records bureau in a sealed envelope that is separate from any mailing envelope;

(c) the sealed envelope containing confidential materials shall list the case number, case caption, document name, name of filer and other non-confidential identifying information on the outside of the envelope;

(14) Parties are responsible for the timely filing of electronic documents to the same extent as with the filing of non-electronic documents, with the same consequences for missed deadlines;

F. Rejection:

(1) Pleadings and documents which are not in substantial compliance with these or other commission rules, orders of the commission or presiding officer, or applicable statutes may be rejected within thirty (30) days after filing.

(2) If rejected, such papers will be returned with an indication of the deficiencies therein. However, a copy of the rejected papers shall be retained by the chief clerk or designee as a public record. Acceptance of a pleading or document for filing is not a determination that the pleading or document complies with all requirements of the commission or presiding officer and is not a waiver of such requirements.

(3) The chief of staff of the commission is authorized to reject pleadings and documents under this rule and to sub-delegate such authority.

(4) Pleadings or documents that have been rejected shall not become part of the record proper used as a basis for the commission's decision.

G. Amendments and withdrawal of pleadings and supporting documents:

(1) Except in the case of formal complaints, pleadings may be amended or withdrawn only with leave of the commission or presiding officer and upon such conditions as the commission or presiding officer may deem appropriate.

(2) Formal complaints may be amended without leave at any time prior to the issuance of the probable cause determination required by this rule.

(3) Amendments to any pleading shall not broaden the scope of the issues originally filed unless the commission or presiding officer exercises the discretion to allow such an amendment.

(4) Upon any amendment or withdrawal of a pleading allowed, the commission or presiding officer may require a supplementary public notice.

(5) Direct testimony and exhibits filed may be amended or withdrawn only with leave of the commission or presiding officer, who may take into consideration, among other things, any delay or prejudice to the commission, its staff, or the parties which would result from the granting of the motion. The commission or presiding officer may grant or deny the motion or grant the motion only upon such conditions as are deemed appropriate. Upon any amendment or withdrawal allowed, the commission or presiding officer may require a supplementary public notice.

(6) A copy of any withdrawn filing shall be retained by the chief clerk or designee as a public record.

[1.2.2.10 NMAC - Rp, 17 NMAC 1.2.28, 9/1/2008; A, 4/6/2021]

1.2.2.11 PLEADINGS:

Pleadings shall be in writing, shall state their object, and shall be signed by the party or staff representative seeking authorization or relief from the commission or by their attorney.

A. Contents: All pleadings shall be paginated and shall contain:

(1) a clear and concise statement of the authorization or other relief sought;

(2) in the case of initial pleadings, the exact legal name, mailing address, and telephone number of each party or the staff representative seeking the authorization or relief; the address or principal place of business of such party or staff; and the name, mailing address, email address, and telephone number of the party's or staff's attorney, if any;

(3) a concise and explicit statement of the facts which said party or the staff is prepared to prove by competent evidence and upon which the commission is expected to rely in granting the authorization or other relief sought; and

(4) a table of contents, if more than ten pages.

B. Supporting exhibits: All pertinent and relevant data, exhibits, illustrations, and prepared testimony, if required by this or any other rule or order of the commission or presiding officer, must be filed along with the pleading.

(1) If supporting exhibits consist of tables or graphs, the specific formulae and equations used to derive the tables or graphs shall be attached as part of the supporting exhibit.

(2) Failure to submit all direct testimony and exhibits in support of a proposed tariff change, application, or petition at the time of filing, if required by rule or order of the commission or presiding officer, may result in a rejection of the pleading or document without prejudice.

(3) Likewise, failure to comply with an order of the presiding officer requiring the filing of testimony and exhibits may result in the rejection of the pleading or document without prejudice.

C. Form and size: All pleadings shall be typed or machine printed on paper eight and one-half (8-1/2) inches wide and eleven (11) inches long. The impression shall be on only one side of the paper and shall be double-spaced. Footnotes and quotations may be single-spaced. Pleadings shall be fastened only on the left side. Reproductions may be made by any process provided that all copies are clear and permanently legible.

D. Interrogatories: Written interrogatories and written answers to interrogatories, shall conform to the form and size requirements of this rule, except that they may be single-spaced unless the commission or presiding officer otherwise directs.

E. Title and docket number: All pleadings filed shall show the caption for the proceeding, the docket number, and the title of the pleading. Pleadings initiating new proceedings shall leave a space for the docket number.

F. Construction: All pleadings shall be liberally construed and errors or defects therein which do not mislead or affect the substantial rights of staff and the parties involved shall be disregarded.

[1.2.2.11 NMAC - Rp, 17 NMAC 1.2.10, 9/1/2008; A, 4/6/2021]

1.2.2.12 MOTIONS:

A. Motions generally:

(1) Motions may be made at any time during the course of a proceeding. Notwithstanding the foregoing, if the grounds for a motion are known to the movant prior to public hearing, the motion shall be made prior to public hearing except upon good cause shown. The commission discourages any delay in the filing of a motion once grounds for the motion are known to the movant.

(2) Any motion made prior to public hearing must be made in writing. Motions made orally during a public hearing must, if the commission or presiding officer requires, also be filed in writing.

(3) Motions must clearly state the relief sought, the grounds therefor, whether the motion is opposed, and if so, by whom.

(4) All motions not specifically acted upon shall be deemed disposed of consistent with the final order of the commission in the proceeding. Motions based on factual allegations that do not appear of record shall be supported by affidavit filed along with the motion.

B. Motions to dismiss: Staff or a party to a proceeding may at any time move to dismiss a portion or all of a proceeding for lack of jurisdiction, failure to meet the burden of proof, failure to comply with the rules of the commission, or for other good cause shown. The presiding officer may recommend dismissal or the commission may dismiss a proceeding on their own motion.

C. Responses to motions:

(1) Response times:

(a) On motions made thirteen (13) or more days prior to a public hearing, staff and parties wishing to respond must respond in writing within thirteen (13) days of service of the motion or before the public hearing commences, whichever occurs first.

(b) On motions made subsequent to a public hearing, unless the motion is a motion for rehearing filed pursuant to Subsection F of 1.2.2.37 NMAC, staff and parties wishing to respond must respond in writing within thirteen (13) days of service of the motion.

(c) On motions made within thirteen (13) days of or during a public hearing, responses shall be made within such time as directed by the commission or presiding officer.

(d) Replies to responses shall not be filed without leave of the commission or presiding officer. Replies to responses shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(e) Notwithstanding the foregoing, staff and parties wishing to respond to motions pertaining to discovery requests or the answers thereto, including but not limited to motions to compel, motions for sanctions and motions for protective orders, must respond to the motion within eight (8) days of service of the motion unless the commission or presiding officer directs otherwise.

(2) Failure to make a timely response shall be deemed a waiver of the right to respond.

(3) Written responses based on factual allegations that do not appear of record shall be supported by affidavit filed along with the response.

D. Briefs: Motions seeking extensions of time or continuances and like motions directed to the discretion of the commission or presiding officer in procedural matters need not be accompanied by briefs. Unless otherwise provided in this rule or waived by the commission or presiding officer, other motions must be accompanied by a brief, including points and authorities, addressed to the issues raised by the motion. Responses to a motion should similarly be accompanied by a brief, including points and authorities.

E. Opposed and unopposed motions:

(1) The movant shall make a good faith effort to determine whether a contemplated motion will be opposed.

(2) If a motion will not be opposed, the movant shall so state in the motion, shall accompany the motion with a proposed order, and need not file a brief in support of the motion. The proposed order must be signed by all parties and staff unless the motion seeks an extension of time or a continuance or is similarly directed to the discretion of the commission or presiding officer in procedural matters.

(3) Opposed motions shall state affirmatively that concurrence of other parties and staff has been requested but denied or shall state why no request for concurrence was made. Proposed orders need not be submitted with opposed motions unless the commission or presiding officer directs otherwise.

F. Oral argument:

(1) Motions will be decided without oral argument or public hearing unless the commission or presiding officer directs otherwise.

(2) Oral argument or public hearing may be conducted by telephone conference call at the discretion of the commission or presiding officer.

(3) Staff and parties waive the opportunity to request oral argument or an evidentiary public hearing on a motion unless the request is stated in the motion or response to the motion.

[1.2.2.12 NMAC - Rp, 17 NMAC 1.2.12, 9-1-08]

1.2.2.13 COMPLAINTS:

A. Complaints: The commission or staff shall not accept a complaint from a person until the person has made a good faith effort to resolve the complaint directly with the regulated entity, unless the complaint is health or safety related.

(1) For informal complaints, staff or any commissioner may waive this requirement.

(2) For formal complaints, the commission may waive this requirement for good cause.

B. In forma pauperis: Staff or the commission shall authorize the commencement, prosecution, defense, and investigation of any complaint filed by an individual without payment of fees and costs or security by the person if the individual makes an affidavit that they are unable to pay such costs or security, as may be provided by law.

C. Alternative dispute resolution: The commission may order the following mechanisms to resolve complaints or streamline matters before the commission:

(1) settlement conferences;

(2) mediation;

(3) arbitration;

(4) other dispute resolution means, including consent calendars; and

(5) the use of staff decisions.

[1.2.2.13 NMAC - Rp, 17 NMAC 1.2.16, 9-1-08]

1.2.2.14 INFORMAL COMPLAINTS:

Informal complaints are ordinarily handled by the consumer relations division through the informal complaint process outlined in this section, but from time to time, any and all commission employees or commissioners may receive complaints and inquiries from consumers and constituents and provide assistance to them consistent with their job duties and management direction. Any commission employee who receives an informal complaint should notify the consumer relations division. Informal complaints against owners and operators of gas and hazardous liquid pipelines and underground facilities and one-call notification systems, or fire marshal-regulated entities shall be submitted directly, as appropriate, to the transportation division or fire marshal division.

A. Initiation:

(1) A person may initiate an informal complaint by letter, facsimile transmission, electronic mail, or other writing, via the commission's web site at

www.nmprc.state.nm.us, by telephone, or in person at the offices of the consumer relations division of the commission.

(2) Staff shall assist persons making informal complaints by telephone or in person in creating a written record.

(3) The staff shall endeavor to resolve informal complaints by correspondence or conference with the persons affected.

(4) Informal complaints will not arrest the running of any limitations period.

B. Contents:

(1) A written informal complaint shall set forth:

- (a) the name, telephone number (if any), and address of the complainant;
- (b) the name and address of the person against whom such complaint is made;
- (c) the nature of the complaint in a clear and concise manner;
- (d) a brief statement of the facts forming the basis of such complaint; and
- (e) the relief requested.

(2) The complaint shall also state whether the complainant has pursued all remedies with the regulated entity.

(3) The written complaint need not be in affidavit form.

(4) If the informal complaint does not initially contain the information described in this paragraph, a member of the staff will contact the complainant to attempt to obtain the missing data.

C. Without prejudice: The filing of an informal complaint shall not preclude the complainant from filing a formal complaint at any time. The submission of an informal complaint is not a prerequisite to filing a formal complaint.

D. Commission investigation of complaint:

(1) Upon receipt of an informal complaint the commission shall, when appropriate, advise the regulated entity within a reasonable period of time that a complaint has been submitted against it. The commission shall provide the regulated entity with a copy of a written informal complaint prior to requiring a response from the regulated entity.

(2) The staff shall review and investigate the complaint and shall advise the complainant and the regulated entity of the results of the investigation within sixty (60) days. The commission may extend the time for good cause.

(3) If the complaint is against a motor carrier and is safety related, and the motor vehicle weighs 10,001 pounds or more, staff shall also refer the complaint to the motor transportation division.

E. Choice of procedure: If staff is unable to resolve an informal complaint to the satisfaction of the parties, either party may within five (5) days after receipt of the results of the investigation:

- (1) request mediation;
- (2) request arbitration; or
- (3) file a formal complaint.

[1.2.2.14 NMAC - Rp, 17 NMAC 1.2.17, 9-1-08]

1.2.2.15 FORMAL COMPLAINTS:

Formal complaints shall conform to the requirements of this rule governing pleadings, except that the requirements of this rule shall be liberally construed with respect to pro se parties. A formal complaint shall be accompanied by the \$25.00 filing fee required in Subsection B of Section 62-13-2 NMSA 1978. Pursuant to Section 62-13-2.1 NMSA 1978, the commission may order that the filing fee be refunded if the commission dismisses the complaint for lack of probable cause and determines that the complainant filed the complaint in good faith. The filing of a formal complaint shall commence a formal proceeding. A formal complaint shall allege that a regulated entity has violated a law, rule, order, tariff, certificate of public convenience and necessity, or operating authority promulgated or enforced by the commission. A formal complaint may be filed by e-mail or facsimile transmission pursuant to other rules of the commission governing electronic filing and service.

A. Contents: A formal complaint shall contain:

- (1) a clear and concise statement of the relief sought;
- (2) a concise and explicit statement of the facts which the complainant alleges show a violation;
- (3) a statement of any laws, rules, orders, tariffs, certificates of public convenience and necessity, or operating authorities alleged to have been violated;

(4) the exact legal and "doing business as" name, mailing address, and telephone number of the complainant and his or her attorney if any;

(5) the exact legal name, mailing address, and telephone number of the respondent, if known; and

(6) the following statement signed by the complainant, "The factual allegations in the complaint are true and correct to the best of my knowledge and belief," or an affidavit sworn by the complainant.

B. Discontinuance of service prohibited: A utility or telecommunications provider shall not discontinue service to a customer or issue a notice of discontinuance of service relative to the matter in dispute once a formal complaint has been filed, except as otherwise authorized by law or commission rule. Charges which are not in dispute must continue to be paid on time and in full by the complainant or be subject to other applicable commission rules regarding disconnection or discontinuance of service.

C. Service of complaints; answer:

(1) Upon receipt of a formal complaint that is in substantial compliance with this rule, within a reasonable period of time the commission shall cause a copy of the complaint to be served on the respondent accompanied by a notice from the commission calling upon the respondent to answer the complaint in writing within twenty (20) days of service of the complaint. For good cause, the commission or presiding officer may order the answer to be filed in a shorter or longer time. The notice shall also state that the commission may impose administrative fines or other sanctions if the commission finds merit to the complaint. The answer may contain an offer to satisfy the complaint as provided in Subsection D of 1.2.2.15 NMAC. The commission or presiding officer shall further serve the respondent with notice of any amendments to the complaint.

(2) Motions for an extension of time to answer a complaint shall comply with the requirements of this rule.

(3) If an amendment to a complaint is filed before the answer is filed, the respondent's time within which to answer shall be ten (10) days from the date of service of the amendment or the period set forth in the notice, whichever period is longer.

D. Satisfaction of complaint: If the respondent desires to satisfy the complaint, they shall submit to the commission in the answer a statement of the relief which they are willing to give, a copy of which shall be contemporaneously served upon the complainant. Upon acceptance of this offer by the complainant and notice to the commission, the complaint may be dismissed. If there is a partial settlement of the case with dismissal in part, the complainant may proceed with the remaining issues. If the commission dismisses a complaint in whole or in part because the complaint has been

satisfied, the commission may continue or initiate further proceedings if the issues raised in the complaint involve a general matter of public interest.

E. Contents of answers: The answer shall state in short and plain terms a respondent's defenses to each claim asserted and shall admit or deny the averments upon which the complainant relies. If the respondent is without knowledge or information sufficient to form a belief as to the truth of an averment, the answer shall so state and this shall have the effect of a denial. Respondent may challenge jurisdiction and address whether probable cause exists in the answer.

F. Disposition of complaint. Upon the filing of an answer, the commission shall evaluate jurisdiction and probable cause, and may, as appropriate:

- (1) grant the relief requested in whole or in part;
- (2) dismiss the complaint in whole or in part;
- (3) set further proceedings on the complaint or on the remaining issues in the complaint; or
- (4) designate a hearing examiner to preside over the complaint or over the remaining issues in the complaint.

G. Notice of public hearing: When a public hearing is required by law or commission rule, at least twenty (20) days prior to an initial public hearing on the merits of any complaint, a notice of such initial public hearing shall be mailed to the respondent and the complainant by the commission or presiding officer. No public hearing shall be held until after the commission has determined that probable cause exists for the complaint. If it is determined that the subject matter of the complaint involves a matter of general public interest, the commission or presiding officer may require that a notice of the public hearing:

- (1) be published at least twenty (20) days prior to the public hearing in a newspaper of general circulation available in the county where the complaint originated, or
- (2) be given in such other manner as the commission or presiding officer may deem proper under the circumstances; costs of publication shall be borne by the respondent.

H. Participation of staff: The commission or presiding officer may require that staff participate at any stage in the proceeding.

I. Dismissal at any time: The commission shall dismiss a complaint upon a finding of no jurisdiction or probable cause.

[1.2.2.15 NMAC - Rp, 17 NMAC 1.2.18, 9-1-08]

1.2.2.16 SETTLEMENT CONFERENCES:

A. Purpose:

(1) The purposes of a settlement conference are to provide a forum for the parties and staff to work together to informally resolve complaints and other matters in dispute, expedite the public hearing process, and assist parties and staff in reaching a settlement at the earliest possible stage.

(2) Nothing in this rule shall be construed to limit or discourage voluntary settlement negotiations among staff and the parties to any proceeding. When deemed appropriate, the commission may order a settlement conference.

(3) The parties and staff may at any time move for an order designating a mediator to assist in the resolution of issues in controversy, or if the commission deems it appropriate, the commission may on its own motion designate a mediator. If the commission designates a mediator, the mediator shall meet the criteria of Subsection B of 12.2.17 NMAC and shall have the powers and duties described in Subsections B through D of 1.2.2.16 NMAC, as well as the power to pursue other alternative dispute resolution techniques consistent with the objective of facilitating a voluntary resolution among staff and the parties of all or some of the issues in controversy.

B. Notice of mediated settlement conference:

(1) If a mediator is appointed, the mediator shall notify the parties and staff of the time and place of the settlement conference.

(a) The notice will direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the settlement conference.

(b) In addition the mediator may require counsel to have their clients present at the settlement conference or accessible by telephone.

(c) Settlement conferences will be held at commission offices unless otherwise directed by the mediator.

(d) The settlement conference shall be held within twenty (20) days of the date of the notice unless good cause is shown for an extension.

(2) Nothing in this rule shall be construed to limit additional settlement conferences. The commission or presiding officer may suspend the procedural schedule in the case until the settlement conference is complete.

C. Result of settlement conference:

(1) If the parties and staff have agreed upon a settlement, then a stipulation shall be issued in accordance with the provisions of this rule governing stipulations. The stipulation shall be submitted to the assigned hearing examiner to be certified or to the commission in accordance with this rule.

(2) If the parties and staff are unable to reach an agreement through mediation, then the mediator shall issue a statement that the settlement conference was held and the case shall proceed.

D. Inadmissibility of settlement offers: Offers of settlement and statements made in furtherance of them made in the course of a settlement conference are privileged and, except by agreement among all parties and staff, shall not be admissible as evidence in any formal public hearing before the commission or presiding officer nor disclosed by the mediator voluntarily or through compulsory process.

E. Proceeding not automatically stayed: Conducting a settlement conference or conferences shall not stay a formal proceeding unless the commission or presiding officer issues an order holding the procedural schedule in abeyance.

[1.2.2.16 NMAC - Rp, 17 NMAC 1.2.19, 9-1-08]

1.2.2.17 MEDIATION:

A. Designation of mediator: If any of the parties or staff makes a request for mediation, or on its own motion, the commission may, in its discretion, designate a mediator consistent with Subsection B of 1.2.2.17 NMAC.

B. Requirements:

(1) The mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is qualified in the matter to be mediated and is acceptable to the parties and staff. If the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services.

(2) The mediator shall not be the hearing examiner who is assigned to the case.

(3) The mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve.

(4) The mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding.

C. The mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner. The mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case.

D. The mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator. The notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint.

E. If the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution. If the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint.

[1.2.2.17 NMAC - Rp, 17 NMAC 1.2.20, 9-1-08]

1.2.2.18 ARBITRATION:

A. A complainant may request arbitration of any dispute. The complainant's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the complainant has read 1.2.2.19 NMAC and agrees to be bound by its terms.

B. A utility or telecommunications provider shall not discontinue service to a customer or issue a notice of discontinuance relating to the matter in dispute once the matter is in arbitration, except as otherwise authorized by law or commission rule. Charges which are not in dispute must continue to be paid on time and in full by the complainant or be subject to other applicable commission rules regarding disconnection or discontinuance of service.

C. The commission or its authorized representative shall forward the request for arbitration to the respondent together with a copy of Subsection A of 1.2.2.13 NMAC and 1.2.2.15 NMAC and require that the respondent submit a written response within ten (10) days of the date of the commission's letter forwarding the request.

D. If the respondent agrees to arbitration of the dispute, the respondent shall include in the response to the complainant's request a concise statement of respondent's position with regard to the merits of the complaint and an acknowledgment that the

respondent has read 1.2.2.19 NMAC and agrees to be bound by its terms. If the respondent will not agree to arbitration, the respondent shall so state in the response.

E. If the respondent either fails to respond to a request for arbitration or does not agree to arbitration, the complainant retains the right to proceed with a formal complaint.

F. Requirements: If both the complainant and the respondent agree to arbitration, the commission shall designate an arbitrator.

(1) The arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is qualified in the subject matter to be arbitrated and is acceptable to the parties to the complaint.

(2) The designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve.

(3) The parties shall be required to indicate their consent in writing to the designated arbitrator within ten (10) days of the date of the commission's letter of designation.

(4) If the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Section 8-8-4.

G. Any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding.

H. The commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding under this rule.

[1.2.2.18 NMAC - Rp, 17 NMAC 1.2.21, 9-1-08]

1.2.2.19 ARBITRATION PROCEDURES:

A. Timeline for resolution:

(1) Once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within a reasonable period of time, not to exceed ninety (90) days, unless otherwise ordered by the commission or presiding officer.

(2) If the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, the arbitrator may so inform the parties and staff and terminate the proceeding without prejudice to the complainant's right to file a formal complaint.

B. Arbitration procedures:

(1) A disinterested person qualified in the matter to be arbitrated may be appointed by the commission.

(2) The arbitrator shall fix a time and place for an informal public hearing and shall serve notice of the public hearing on both parties and on staff at least ten (10) days in advance of the public hearing.

(3) The arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths.

(4) The parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute.

(5) The arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to the rules of evidence contained in this rule is not necessary.

(6) No stenographic or electronic record will be made of the testimony at public hearing unless requested by a party, who shall bear the cost of the record, or by staff.

C. Discovery: Discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding.

D. Investigation: Whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, the arbitrator shall so advise the parties and staff, who may be present at the inspection or investigation. In the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment.

E. Decision: At the close of or soon after the public hearing, the arbitrator will issue a brief written decision. Findings of fact and conclusions of law are not necessary. The arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary. However, the decision will not be a decision of the commission and shall have no precedential effect.

F. Inadmissibility of settlement offers: Unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process. Nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing their conclusions and the bases for them.

G. Commission not bound: Nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[1.2.2.19 NMAC - Rp, 17 NMAC 1.2.22, 9-1-08]

1.2.2.20 FORMAL STIPULATIONS:

The commission recognizes that the parties to a proceeding and staff may reach compromises and settle some or all issues. Settlement stipulations shall be binding only if approved by the commission.

A. Uncontested stipulations:

(1) If the staff and all parties enter into a stipulation settling some or all of the issues in a proceeding, the stipulation shall be filed and a copy presented to the presiding officer. If the proceeding is before the commission *en banc*, the commission may in its discretion assign a hearing examiner to preside over any public hearing to be conducted on the stipulation.

(2) When filed and presented, the stipulation must be accompanied in rate cases by a reconciliation statement showing the dollar impact of the settlement and the resulting rates. This statement shall contain the information listed in Subsection F of 1.2.2.36 NMAC.

(3) Upon receipt of a stipulation which would settle substantive issues, the commission or presiding officer shall conduct a public hearing to determine whether the stipulation should be approved by the commission, provided that in extraordinary cases, for good cause shown, the commission or presiding officer may forego a public hearing. The proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the commission to approve it.

(4) In the event the parties and staff enter into a settlement of one or more issues but not of the entire case, the commission or presiding officer may in their discretion combine the public hearing on the settlement stipulation with the public hearing on the contested issues.

(5) In cases heard by a hearing examiner rather than the commission, the hearing examiner may:

(a) decide that the settlement stipulation should not be certified to the commission at all, in which event the hearing examiner may indicate to the parties and staff whether additional evidence or legal argument in support of the stipulation or amendments to the stipulation might meet the hearing examiner's reservations about the stipulation; or

(b) certify the settlement stipulation to the commission for its review; the certification shall include a recommended disposition of the stipulation, whether the recommendation be positive or negative or otherwise suggest a manner of disposition; exceptions to the certification may be filed within ten (10) days after the date the settlement stipulation is certified to the commission, unless the commission or presiding officer directs otherwise.

B. Contested stipulations:

(1) If some, but not all, of the parties to a proceeding, including staff, enter into a stipulation seeking to dispose of some or all of the issues in the proceeding, the stipulation shall be filed and copies presented to the presiding officer and served on the parties or staff opposing the stipulation. If the proceeding is before the commission *en banc*, the commission may in its discretion assign a hearing examiner to preside over any public hearing to be conducted on the stipulation. When filed and presented, the stipulation must be accompanied in rate cases by a reconciliation statement showing the dollar impact of the settlement and the resulting rates. This statement shall contain the information listed in Subsection F of 1.2.2.36 NMAC.

(2) Parties or staff opposing the stipulation shall file statements briefly setting forth the grounds upon which they oppose the stipulation in writing within five (5) days after the stipulation is served, or orally at the public hearing, whichever occurs first. Responses by staff or parties supporting the stipulation shall be made as directed by the commission or presiding officer.

(3) The commission or presiding officer shall schedule the stipulation for public hearing and review unless it is determined that the nature and extent of the opposition is such that hearing the stipulation will not materially conserve commission, staff, and party resources. In the event this determination is made, the commission or presiding officer may refuse to entertain the stipulation. The commission or presiding officer also has the discretion to combine a public hearing on a contested stipulation with the public hearing on the merits of any substantive issues not addressed by the stipulation.

(4) A public hearing shall be conducted to determine whether the stipulation shall be approved by the commission. The proponents of the stipulation have the burden of supporting the stipulation with sufficient evidence and legal argument to allow the commission to approve it. At the public hearing all parties and staff shall be allowed an opportunity to present evidence and cross-examine opposing witnesses on the stipulation.

(5) In cases heard by a hearing examiner rather than the commission the hearing examiner may:

(a) decide that the settlement stipulation should not be certified to the commission at all, in which event the hearing examiner may indicate to the parties and staff whether additional evidence or legal argument in support of the stipulation or amendments to the stipulation might meet the hearing examiner's reservations about the stipulation; or

(b) certify the settlement stipulation to the commission for its review; the certification shall include a recommended disposition of the stipulation, whether the recommendation be positive or negative or otherwise suggest a manner of disposition; exceptions to the certification may be filed within ten (10) days after the date the settlement stipulation is certified to the commission, unless the commission or presiding officer directs otherwise.

C. Inadmissibility of settlement offers and rejected settlements: Statements, admissions, or offers of settlement made during the course of negotiations of settlements are privileged. No such statements, admissions, or offers of settlement shall be admissible as evidence in any formal public hearing, nor disclosed by any mediator designated pursuant to this rule either voluntarily or through compulsory process, unless agreed to by all the parties and staff. If a stipulation is not approved by the commission, the terms of the proposed settlement are also inadmissible unless their admission is agreed to by all the parties and staff. Nothing in this subsection shall preclude proponents of a contested settlement stipulation from offering that stipulation into the record for purposes of its consideration by the commission or presiding officer.

D. Precedential effect: Unless the commission explicitly provides otherwise in the order approving the stipulation, approval of a stipulation does not constitute commission approval of or precedent regarding any principle or issue in the proceeding.

[1.2.2.20 NMAC - Rp, 17 NMAC 1.2.23, 9-1-08]

1.2.2.21 PETITIONS FOR DECLARATORY ORDERS:

A. Petition: Any person may petition the commission for a declaratory order to terminate a controversy or to remove an uncertainty with respect to the applicability to the petitioner of any statute or rule administered by the commission or any commission order. Petitions for declaratory orders shall comply with the requirements for pleadings set forth in this rule and shall further set forth:

- (1) the statute, rule, or order of which an interpretation is requested;
- (2) the nature of the controversy or uncertainty which is the subject of the petition;

- (3) the manner in which the controversy or uncertainty affects the petitioner;
- (4) a complete statement of the facts and grounds prompting the petition; and
- (5) the names and addresses of any other persons directly involved in the controversy or directly affected by the uncertainty.

B. Brief and affidavits:

(1) A petition for a declaratory order shall be accompanied by a brief in which the petitioner sets forth their position and all facts and arguments known in support of and in opposition to that position.

(2) The petition shall also be accompanied by affidavits attesting to the facts alleged in the petition or brief.

(3) Failure to comply with these requirements will be grounds for summary dismissal of the petition.

C. Commission procedure:

(1) Upon the filing of a petition for a declaratory order, the commission shall decide whether it will, in its absolute discretion, entertain the petition in whole or in part. If the commission decides to entertain the petition in whole or in part, the commission or the presiding officer shall order the petitioner to give such notice of the proceeding as is deemed appropriate and will proceed to consider the matter with or without public hearing.

(2) The commission may at any time during the proceeding, in its absolute discretion, determine not to issue a declaratory order, in which case the commission shall so notify the parties and staff.

[1.2.2.21 NMAC - Rp, 17 NMAC 1.2.24, 9-1-08]

1.2.2.22 INVESTIGATIONS BY COMMISSION:

A. Investigations by the commission: The commission may at any time investigate any matter within its jurisdiction.

B. Proceedings filed by the commission of its own motion: Formal proceedings may be initiated by the commission to consider any matter within its jurisdiction against any person either by notice, order to show cause, order to cease and desist, or other process. In such cases the notice, order to show cause, or other appropriate process shall contain:

(1) specifications of all the matters to be considered and such specifications shall fairly indicate what the respondent is to meet;

(2) a demand for such information and disclosures as the commission may deem necessary to the question under investigation;

(3) notice of the time within which such information and disclosures must be filed;

(4) the time and place set for public hearing; and

(5) if the commission deems necessary, the manner of notice to the public or to ratepayers.

[1.2.2.22 NMAC - Rp, 17 NMAC 1.2.25, 9-1-08]

1.2.2.23 INTERVENORS AND COMMENTERS:

A. Intervention: Any person other than staff and the original parties to a proceeding who desires to become a party to the proceeding may move in writing for leave to intervene in the proceeding.

(1) The motion for leave to intervene shall indicate the nature of the movant's interest in the proceeding.

(2) The motion shall also comply with the provisions of this rule governing pleadings except that the motion shall indicate the facts relied upon as grounds for intervention.

(3) Motions for leave to intervene shall be served on all existing parties and other proposed intervenors of record.

B. Deadline for filing motions to intervene: In proceedings concerning applications relating to securities, unless the commission or presiding officer orders otherwise, the motion must be filed before the commencement of the public hearing. In all other proceedings motions to intervene must be filed as directed by the commission or presiding officer in the proceeding.

C. Objections to intervention: Objections to motions for leave to intervene must be in writing and filed within thirteen (13) days after the service of the motion or at the time of public hearing, whichever is earlier.

D. Disposition of motions to intervene:

(1) Unless the commission or presiding officer, on their own motion, denies a motion for leave to intervene, all timely motions for leave to intervene not objected to by

any party or by staff within thirteen (13) days of service of the motion for leave to intervene shall be deemed allowed, provided that the commission or presiding officer, on their own motion after notice and public hearing, may thereafter terminate the party status of any intervenor.

(2) Where a timely motion for leave to intervene is contested, the commission or presiding officer may grant the intervention if it appears after consideration that the motion discloses that:

(a) the movant possesses a substantial interest in the subject matter of the public hearing;

(b) participation of the movant is substantially in the public interest; or

(c) the intervention presents no undue prejudice to the other parties.

(3) Whenever a motion to intervene is permitted to be filed out of time, the commission or presiding officer may deny the motion or grant the motion with limitations on grounds including, but not limited to:

(a) failure to set forth sufficient grounds for intervention;

(b) disruption of the proceeding resulting from the intervention;

(c) prejudice or hardship to existing parties or staff; or

(d) undue broadening of the issues.

(4) Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant of the motion.

(5) Intervenors who are granted party status are bound by the agreements reached and orders entered in the proceeding prior to their intervention. The commission and the presiding officer will not allow the broadening of issues unless the public interest requires it or no undue prejudice or hardship will result to other parties to the proceeding or to staff.

(6) Notwithstanding the provisions of Paragraphs (1) through (3) of Subsection D of 1.2.2.23 NMAC, where there are two (2) or more intervenors or proposed intervenors having substantially like interests and positions the commission or presiding officer may, to avoid unnecessary delay or duplication of effort and expense, limit the number of intervenors in the proceeding.

(7) A proposed intervenor shall become party to the proceeding once the motion to intervene is deemed allowed or otherwise granted under this rule. Intervenors shall have the same rights as other parties to the proceeding.

E. Withdrawal of intervenors: An intervenor can withdraw by filing notice and must serve the withdrawal on all parties and staff.

F. Commenters: Commenters shall be entitled to make an oral statement or submit a written statement for the record, but such statement shall not be considered by the commission as evidence. All interested persons are afforded the opportunity to have input into cases which affect them. The commission encourages ratepayer input and the purpose of this rule is to facilitate participation. However, commenters are not parties and shall not have the right to introduce evidence, to examine or cross-examine witnesses, to receive copies of pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than making their comments.

[1.2.2.23 NMAC - Rp, 17 NMAC 1.2.26, 9-1-08]

1.2.2.24 PROCEDURAL ORDERS:

A. Contents: In rate cases and in other proceedings as may be appropriate, the commission or presiding officer shall issue a procedural order or orders setting forth:

(1) any deadlines the commission or presiding officer may set for the completion of discovery;

(2) deadlines for the filing of staff and intervenor testimony;

(3) any requirements for the filing, service, or presentation of pleadings, discovery requests, discovery responses, testimony, exhibits, or other documents in electronic form; in all instances written or electronic submissions shall be filed in accordance with the requirements of this rule and other applicable commission rules, unless otherwise ordered by the commission or presiding officer;

(4) procedures for the prompt argument and disposition of procedural and discovery motions appropriate to the proceeding; these procedures may, notwithstanding the provisions of this rule governing motions, include a shortened time for written responses to motions, the use of oral argument in lieu of written responses, or other mechanisms to expedite the decision-making process;

(5) the date, time, and place of any pre-hearing conference;

(6) the date, time, and place of the public hearing on the merits; and

(7) any other relevant dates.

B. Modification of procedural orders: The commission or presiding officer may modify procedural orders on their own motion or on motion of staff or a party when necessary.

C. Notice of public hearing:

(1) Reasonable notice shall be given to all parties of the time and place of every public hearing scheduled by the commission or presiding officer.

(2) The commission or presiding officer may require that public notice also be given. When public notice is required, it shall be published in a newspaper having general circulation in the area affected by the filed pleadings at least twenty (20) days prior to the date of the public hearing, unless otherwise provided by rule, or if the commission or presiding officer finds that circumstances warrant shorter notice. The party who is required to publish notice shall cause to be filed, on or before the date of public hearing, an affidavit of publication of a responsible officer of the newspaper making such publication. The party required by the commission or presiding officer to publish the notice shall bear the cost of such publication.

[1.2.2.24 NMAC - Rp, 17 NMAC 1.2.27, 9-1-08]

1.2.2.25 DISCOVERY:

A. Commission policy: The commission favors prompt and complete disclosure and exchange of information and encourages informal arrangements among the parties and staff for this exchange. It is further the commission's policy to encourage the timely use of discovery as a means toward effective presentations at public hearing and avoidance of the use of cross-examination at public hearing for discovery purposes.

B. Discovery procedures: Techniques of pre-hearing discovery permitted in state civil actions, such as interrogatories, requests for admissions, depositions, and requests for production of documents may be employed by staff or by any party. Upon experiencing any difficulties in obtaining discovery, staff and the parties may seek relief from the commission or presiding officer by filing a proper motion. Nothing in this rule shall preclude the commission or the presiding officer from obtaining information by order or preclude staff from obtaining information in any lawful manner.

C. Applicability of rules of civil procedure: Discovery in commission proceedings shall be governed by the New Mexico rules of civil procedure for the district courts applicable to discovery, except where such rules are inconsistent with this rule. Any references to "the court" in those rules shall be deemed to mean "the commission or presiding officer" for purposes of commission proceedings.

D. Depositions:

(1) The commission, the presiding officer, staff, and parties shall have the right to take the testimony of any witnesses by deposition and compel through the commission's subpoena powers the attendance of witnesses and the production of books, documents, papers, and accounts.

(2) Depositions may be taken and on-site inspections may be performed upon commencement of the proceeding and without prior approval of the commission or presiding officer.

(3) Notices or requests for depositions or on-site inspections shall be served on staff and on all parties unless the commission or presiding officer directs otherwise.

(4) All parties and staff may participate in any depositions, or in any on-site inspections requested by a party or staff under Subsection F of 1.2.2.25 NMAC, unless the commission or presiding officer directs otherwise.

E. Interrogatories: The staff and parties may serve upon staff or any party written interrogatories to be answered by staff or the party served, or if the party served is a public or private corporation, by any officer or agent who shall furnish such information as is available to the party.

(1) Interrogatories may be served after commencement of any proceeding and without leave of the commission or presiding officer.

(2) The interrogatories shall be answered separately and fully in writing under oath and each answer shall be signed by the person or persons making it unless otherwise ordered by the commission or presiding officer.

(3) Unless objected to, answers to interrogatories shall be served in the manner provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days after the service of the interrogatories unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the interrogatories and the party or staff to which the interrogatories are directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(4) Within fifteen (15) days after service of interrogatories, staff or a party may make written objections, duly served as provided in Subsection H of 1.2.2.25 NMAC. Written objections shall:

(a) identify the interrogatory or subject matter objected to and stating with particularity the reasons for the objections; and

(b) include copies or complete restatements of the interrogatory or interrogatories objected to, and a description of the facts and circumstances and the legal authority purporting to justify the objection.

(5) The service of objections shall not excuse the answering party or staff from answering remaining interrogatories or subparts of interrogatories to which no objection is stated.

(6) Answers to interrogatories to which objection is made shall be deferred until a determination has been made on such objections.

F. Production of documents and things and entry upon land for inspection and other purposes: The commission, the presiding officer, staff, and parties may serve upon any party or upon staff requests for the production or inspection of documents or things within staff's or that party's possession, custody, or control, either consolidated with interrogatories or alone. The commission, presiding officer, staff, and parties may serve on any other party a request to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, either consolidated with the interrogatories or alone.

(1) A request may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) The request shall specify a reasonable time, place, and manner of making the inspection and performing related acts, or of copying the documents, or specify that copies of the designated documents be sent to the requesting party or staff in lieu of an inspection.

(3) The request shall set forth the property or items to be inspected, either by individual item or by category, and shall describe each item and category with reasonable particularity.

(4) The requestor shall specify a date for the production or inspection, which date shall be not less than fifteen (15) days after the date the request is served unless the commission or presiding officer enlarges or shortens the time or unless the party or staff submitting the request for production of documents and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law. If no time is specified production shall be due fifteen (15) days after service of the request.

(5) Within fifteen (15) days after service of a request for production staff or a party may serve written objections in the form and manner provided in Subsections E

and H of 1.2.2.25 NMAC. The objector shall produce as requested all documents or things which are not the subject of an objection.

G. Requests for admissions: The commission, presiding officer, staff, or parties may serve upon any party or upon staff requests for the admission of facts or the genuineness of documents. Copies of documents shall be served with the request.

(1) Requests may be served upon commencement of the proceeding and without leave of the commission or presiding officer.

(2) Answers to requests for admissions shall be served within fifteen (15) days after service of the request unless the commission or presiding officer enlarges or shortens the time, or unless the party or staff submitting the request for admissions and the party or staff to which the request is directed agree to a different period of time, notice of which agreement shall be filed and served on staff and all other parties. Any such agreements shall not affect the authority of the commission or presiding officer to govern commission proceedings as provided by law.

(3) Written objections to a request prepared in the form and manner provided in Subsection E of 1.2.2.25 NMAC shall be filed and served as provided in Subsection H of 1.2.2.25 NMAC within fifteen (15) days of service of the requests. The filing and service of objections shall not excuse the answering party or staff from answering the remaining requests to which no objection is stated.

H. Filing and service: Interrogatories, requests for production or inspection of documents and things or entry upon lands for inspection and other purposes, and requests for admissions and other written discovery requests shall be served upon the party or staff to which such discovery is directed. Written answers, responses or objections to discovery requests shall be served on the party or staff making such requests.

(1) Discovery requests and responses, or objections thereto, and deposition transcripts, shall not be routinely filed. However, the party or staff making a discovery request shall file a certificate indicating the date of service.

(2) Unless the commission or presiding officer directs otherwise, interrogatories, requests for production or inspection of documents and things or entry upon lands for inspection and other purposes, requests for admissions and other written discovery requests or notices, as well as written responses or objections thereto, shall be served on any other party, or staff, which requests copies of such discovery requests, notices, responses or objections.

(3) Parties or staff desiring copies of the written discovery materials of other parties or of staff may request copies either in one blanket request for all discovery materials throughout the proceeding or by request specific to the discovery activity in question.

(4) At the option of the party or staff making a discovery request or response, any such request or response including objections may additionally be presented in electronic form. Discovery requests or responses, including objections, shall be presented in electronic form in addition to or in lieu of other applicable service or filing requirements of this rule if the commission or presiding officer so orders pursuant to Subsection A of 1.2.2.24 NMAC, or pursuant to other commission rules governing electronic filing and service. The commission or presiding officer shall not require electronic filing or service by any party who does not have such capability.

I. Supplementation of responses to discovery requests: A party or staff who has responded to a request for discovery is under a duty reasonably and promptly to amend or supplement their previous response if they obtain information which they would have been required to provide in such response if the information had been available to them at the time they served the response.

J. Motions to compel or for sanctions:

(1) Staff or a party may move for an order compelling discovery or for sanctions for failure to comply with an order directing that discovery be had as provided in the New Mexico rules of civil procedure for the district courts. In addition to the sanctions provided in those rules, the commission may impose the penalties set forth in applicable law, for failure to comply with an order of the commission or presiding officer.

(2) Any motion for an order compelling discovery shall include copies or complete restatements of the discovery requests or notices to which the movant seeks compelled responses or related relief, along with copies of any responses or objections to the subject discovery requests or notices, and any other pertinent materials. An original and four (4) copies of motions to compel shall be filed and copies shall be served on staff and all other parties to the proceeding.

(3) No motion to compel, or any other motion regarding any discovery dispute, shall be considered unless accompanied by a statement that the participants made a good faith effort to resolve the dispute and were unable to do so.

K. Order for protection of staff, parties, or witnesses: The commission or presiding officer may issue such orders for the protection of staff, parties, or witnesses from annoyances, embarrassment, or oppression as may be just and proper under the circumstances.

[1.2.2.25 NMAC - Rp, 17 NMAC 1.2.28, 9-1-08]

1.2.2.26 PRE-HEARING CONFERENCES:

A. General:

(1) It is the policy of the commission to encourage the use of pre-hearing conferences as a means of making more effective use of hearing time and to otherwise aid in the disposition of the proceeding or the settlement thereof. Having the issues clearly delineated in advance of public hearing and the ground rules for the conduct of the public hearing well understood may be particularly beneficial in cases heard by the commission *en banc* and in such complex or multi-party proceedings as the rate cases of the major utilities, motor carriers, and telecommunications providers.

(2) The commission or presiding officer may, with reasonable written notice, require that all parties and staff attend one or more pre-hearing conferences for the purpose of formulating and simplifying the issues in the proceeding or addressing other matters that may expedite orderly conduct and disposition of the proceeding. Such matters may include but are not limited to:

- (a) details of the procedural schedule;
- (b) the necessity or desirability of amendments to the pleadings;
- (c) the possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
- (d) limitations on the number of witnesses or time allocated to particular witnesses or issues at public hearing;
- (e) procedures at the public hearing;
- (f) the distribution of written testimony and exhibits to staff and the parties prior to the public hearing;
- (g) the consideration of any outstanding motions; or
- (h) the status of any settlement negotiations and, if appropriate, identification of any interest in and resources to support professional assistance therewith or other alternative means of dispute resolution.

B. Attendance:

(1) All parties and staff shall attend a pre-hearing conference fully prepared for a productive discussion of all matters noticed for the conference and motions outstanding at the time of the conference and fully authorized to make commitments with respect thereto or take positions thereon. Preparation should include advance study of all materials filed and materials obtained through formal and informal discovery and, if feasible, advance informal communication among the parties and staff to ascertain the extent to which the parties and staff will be able to agree on the matters which have been noticed for conference and on any pending motions.

(2) Failure of any party or staff to attend or be prepared for a pre-hearing conference without good cause shown shall constitute a waiver of any objection to any agreement reached or to any order or ruling made as a result of the conference.

(3) Offers of settlement and statements made in furtherance thereof, made in the course of a pre-hearing conference or at any other time, are privileged and, except by agreement among all the parties and staff, shall not be used against participating parties or staff before the commission.

C. Submission of proposed pre-hearing orders: The commission or presiding officer may, in the order convening a pre-hearing conference, direct that each party and the staff file and serve on all other parties and staff a proposed pre-hearing order which shall identify all issues the party or staff proposes to address at public hearing, whether in their case in chief or on cross-examination, set forth the party's or staff's position on each issue and identify the witnesses who will address each such issue. The commission or presiding officer may also require the parties and staff to address in their proposed pre-hearing orders any matters designated in the order convening the conference, such as:

(1) all factual stipulations to which the parties and staff have agreed or which the party or staff submitting the statement proposes for consideration by the parties and staff;

(2) all procedural questions or problems the party or staff desires to raise at the pre-hearing conference and the resolution proposed;

(3) any proposal the party or staff wishes to make for the scheduling of testimony at public hearing; or

(4) the amount of time the party or staff desires for the cross-examination of the different witnesses at public hearing.

D. Pre-hearing orders:

(1) Subsequent to a pre-hearing conference the commission or presiding officer may issue a pre-hearing order reciting the action taken and agreements reached at the conference. The order may also identify the issues to be tried at public hearing.

(2) The commission or presiding officer may direct one or more of the parties or staff to prepare the form of pre-hearing order. If so directed the preparer shall serve it on the remaining parties and staff at the time they file it. Objections to the proposed form of order shall be filed within thirteen (13) days of service of the form unless the commission or presiding officer directs otherwise.

(3) The pre-hearing order shall control the subsequent course of the proceeding and may by its terms limit the issues to be heard to those designated

therein, provided that the commission or presiding officer may enlarge or modify the issues or otherwise amend the pre-hearing order when the public interest or justice so requires.

E. Recessing public hearing for conference: In any proceeding, the commission or presiding officer may in their discretion call the parties and staff together for a conference prior to the taking of testimony or may recess the public hearing for such a conference. The results of the conference shall be stated on the record.

[1.2.2.26 NMAC - Rp, 17 NMAC 1.2.29, 9-1-08]

1.2.2.27 INTERIM RELIEF:

Requests for interim relief may be included in a complaint, petition, application, or other pleading filed by any party. The title of the pleading must clearly indicate that such relief is requested.

A. Contents: Except as provided in Sections 65-2A-11 and 70-3-16 NMSA 1978, in addition to the usual contents of a pleading, the pleading must allege such extraordinary facts of immediate and irreparable injury as would justify the commission's exercise of discretion by granting interim relief prior to a final decision.

B. Affidavits or testimony and exhibits: Any pleading requesting interim relief shall be accompanied by affidavit or testimony in support of the request. Any relevant exhibits in the possession of the party making the request should be appended to the affidavit or affidavits or testimony.

C. Notice: Copies of the pleading in which interim relief is requested and the testimony, affidavits, and exhibits filed in support thereof shall be served upon staff and upon all parties.

D. Public Hearing: Except as provided in Section 70-3-16 NMSA 1978, requests for interim relief other than interim rate relief may be acted upon with or without public hearing.

E. Bond: Interim relief may be granted subject to refund and conditioned upon a bond or other adequate protection.

[1.2.2.27 NMAC - Rp, 17 NMAC 1.2.30, 9-1-08]

1.2.2.28 SUBPOENAS:

A. Subpoena for witnesses and documents:

(1) Any party or staff requiring the attendance of a witness from any place in the state to any designated place for the purpose of taking testimony of such witness at

a deposition or public hearing in a proceeding before the commission shall make written application to the commission or presiding officer requesting that a subpoena be issued to compel attendance of such witness.

(2) Likewise a written application requesting the issuance of a subpoena *duces tecum* to compel production of specific books, papers, accounts, or other documents must also be made to the commission or presiding officer if production at deposition or public hearing is desired.

(3) Such written application must set forth reasons supporting the issuance of the subpoena for the production of specific books, papers, and other documents as the case may be.

(4) All applications for the issuance of subpoenas shall be accompanied by the proposed subpoena, a form for which is available from the commission upon request.

B. Who may issue: Subpoenas shall be signed and issued by the presiding officer or by any commissioner, unless the issuance would be an abuse of process. A copy of the signed and issued subpoena shall be filed.

C. Service; fees:

(1) Subpoenas may be served by any person authorized to serve process under the New Mexico rules of civil procedure for the district courts. The return of service shall be filed promptly after service. The return shall be by certificate if service is made by a county sheriff or the county sheriff's deputy. Otherwise the return shall be by affidavit. The form for the return of service is included with the form of subpoena, available from the commission upon request.

(2) The witness being subpoenaed shall receive fees in the amount and in the manner as provided in civil cases in the district courts of this state.

(3) Whenever a subpoena is issued at the request of a party the cost of service thereof and the fee of the witness shall be borne by the requesting party.

D. Enforcement: The commission, any commissioner, staff, or any party may seek enforcement of the subpoena pursuant to Sections 62-10-9, 63-7-1.1, 63-9-19, 63-9A-20, 63-9B-14, 63-9H-14, 65-3A-34, and 70-3-19 NMSA 1978, or other applicable law.

E. Order for protection of staff, parties, or witnesses: The commission or presiding officer may issue such orders to protect staff, parties, or witnesses from annoyances, embarrassment, or oppression as may be just and proper under the circumstances.

1.2.2.29 PRESIDING OFFICER:

A. General: The functions of a presiding officer, as the term is used in this rule, may be performed by a hearing examiner, who may be a commissioner appointed by the commission to hear the case to the same extent as would a commission employee appointed as "hearing examiner," unless otherwise provided by statute or commission rule or order. Nothing contained in this rule shall be deemed a waiver of the commission's power of superintending control over the activities or decisions of the hearing examiner.

B. Designation of hearing examiner:

(1) In all proceedings, the commission may designate a hearing examiner, including a commissioner, to preside over the proceeding. The commission shall designate what cases and to what extent the hearing examiner shall preside over such cases, and such designation may be made by memorandum from the commission or as otherwise directed by the commission.

(2) If, after public hearing, the designated hearing examiner becomes unavailable to the commission, the commission will designate another qualified hearing examiner to report and recommend the decision or will otherwise proceed with the case as it may deem appropriate, giving notice to staff and the parties.

C. Powers of hearing examiners: Hearing examiners shall have the duty to conduct full, fair, and impartial public hearings and to take appropriate action to avoid unnecessary delay in the disposition of proceedings and to maintain order. They shall possess all powers necessary to that end, including the following:

- (1) to administer oaths and affirmations;
- (2) to order subpoenas issued and to provide for other methods of discovery;
- (3) to issue orders to show cause regarding proceedings before the hearing examiner;
- (4) to receive evidence and rule upon all objections and motions which do not involve final dispositions of proceedings, and to recommend to the commission rulings on objections and motions which do involve final dispositions of proceedings;
- (5) within their discretion, or upon direction of the commission, to certify any question to the commission for its consideration and disposition, although the commission has the discretion to refuse to review a question so certified;
- (6) to order parties and staff to hold appropriate conferences before or during the public hearing or investigation, provided that the presiding officer shall not take part

in any settlement conference unless their participation is agreed to by all parties and by staff;

(7) to regulate the course of public hearings or investigations, including the scheduling, recessing, reconvening, and adjournment thereof, unless otherwise provided by the commission;

(8) to apply the procedures of this rule subject to waivers granted pursuant to this rule;

(9) to take such other action as may be necessary and appropriate to the discharge of their duties, consistent with the statutory authority or other authorities under which the commission functions and with the rules and policies of the commission.

D. Duties of hearing examiner: Hearing examiners shall have the following duties:

(1) to follow and apply the policies of the commission as enunciated in previous orders and rules, and to comply with the Public Utility Act, the Telephone and Telegraph Company Certification Act, the New Mexico Telecommunications Act, the Rural Telecommunications Act, the Public Regulation Commission Act, the Motor Carrier Act, the Pipeline Safety Act, Chapter 62, Article 14 NMSA 1978, the Motor Vehicle Act, the Ambulance Standards Act, the Cooperative Association Act, the Corporate Reports Act, the Professional Corporation Act, the Economic Development Corporation Act, the Nonprofit Corporation Act, the Business Corporation Act, the Limited Liability Company Act, the Foreign Business Trust Registration Act, Chapter 59A, Article 52, the Fireworks Licensing and Safety Act, the Conflict of Interest Act, and other applicable law;

(2) to disqualify themselves at any point where their impartiality might be or is reasonably questioned;

(3) in all rate cases, to render a recommended decision as soon as practicable before the termination of the suspension period;

(4) to submit final recommended decisions subject to commission review and treatment as provided in this rule; the hearing examiner shall file the final recommended decision and provide copies to all parties, staff, each commissioner, and the advisory staff;

(5) except as to *ex parte* matters authorized by law and commission rules, no hearing examiner shall, in any proceeding to which they have been assigned, consult with any party on any substantive issue unless notice is given and an opportunity afforded all parties and staff to participate and respond.

1.2.2.30 PROCEDURAL AUTHORITY OF A SINGLE COMMISSIONER:

A. The chairman of the commission or any other commissioner shall preside at public hearings conducted by more than one commissioner.

B. The chairman of the commission or any other commissioner may issue any procedural orders prior to, during, or after a public hearing, including but not limited to orders or notices:

(1) designating a hearing examiner to preside in a proceeding;

(2) scheduling public hearings;

(3) clarifying the issues to be considered during a proceeding;

(4) in the absence of a quorum of commissioners and when prompt action is necessary to avoid the effectiveness of rate increases for customers of utilities or telecommunications providers by operation of law, suspending the operation of a rate increase request, provided that such procedural order is consistent with law and does not involve the final determination of the proceeding; and

(5) issuing orders temporarily suspending operating authorities pursuant to 18.3.2.30 NMAC.

C. The delegation to one commissioner of procedural authority shall not narrow the authority of the hearing examiner pursuant to this rule or to other rules or orders of the commission, unless the order by the hearing examiner is inconsistent with and superseded by the procedural order of the one commissioner.

D. A party may appeal, pursuant to 1.2.2.31 NMAC, a procedural order of a single commissioner.

[1.2.2.30 NMAC - N, 9-1-08]

1.2.2.31 INTERLOCUTORY APPEALS FROM RULINGS OF THE PRESIDING OFFICER:

A. General:

(1) Rulings of the presiding officer during the course of a proceeding may only be appealed as provided in this rule.

(2) The commission does not favor interlocutory appeals from the rulings of a presiding officer and expects that appeals will be taken only in extraordinary circumstances. The movant in any such appeal bears the burden of establishing

grounds for review and reversal of a ruling of the presiding officer made in the course of the proceeding.

B. Motion to presiding officer to permit appeal:

(1) Any party or the staff may, during a proceeding, move that the presiding officer permit appeal to the commission from a ruling of the presiding officer. The motion must demonstrate that:

(a) the ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion and that an immediate appeal to the commission from the ruling may materially advance the ultimate disposition of the proceeding; or

(b) circumstances exist which make prompt commission review of the contested ruling necessary to prevent irreparable harm to any person.

(2) The motion must be filed in writing within three (3) days of the date of an oral ruling or service of a written ruling.

(3) Upon receipt of a motion to permit appeal, the presiding officer shall determine according to the standards of Paragraph (1) of Subsection B of 1.2.2.31 NMAC whether to permit appeal of the ruling to the commission. The presiding officer need not consider any response to the motion.

(4) If the presiding officer permits appeal the presiding officer shall transmit to the commission copies of the ruling being appealed, if written, or a summary of the ruling being appealed, if oral, and any findings of fact, conclusions of law, or opinion relating thereto together with the moving party's motion under Paragraph (1) of Subsection B of 1.2.2.31 NMAC and any response permitted to the motion. The presiding officer may also, but is not required to, transmit to the commission a memorandum setting forth the relevant issues and an explanation of the rulings on the issues.

(5) If the presiding officer does not issue an order under Paragraph (3) of Subsection B of 1.2.2.31 NMAC within fifteen (15) days after the motion is filed, the motion is deemed denied. The movant may appeal denial to the commission within three (3) days of:

(a) the date the motion is deemed denied;

(b) the date the motion is denied by oral ruling; or

(c) the date a written order denying the motion is served, appeal the denial to the commission.

C. Commission action:

(1) Unless the commission acts upon an appeal permitted by a presiding officer under Paragraph (4) of Subsection B of 1.2.2.31 NMAC or upon an appeal taken from the presiding officer's denial of a motion to permit appeal under Paragraph (5) of Subsection B of 1.2.2.31 NMAC within fifteen (15) days after the date the appeal is permitted under Paragraph (4) of Subsection B of 1.2.2.31 NMAC or an appeal is taken under Paragraph (5) of Subsection B of 1.2.2.31 NMAC, the ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if an appeal had not been made.

(2) In the event the commission decides in its discretion to hear an appeal, it may also in its discretion:

(a) review the motions, briefs, and other documents which were before the presiding officer when the presiding officer issued the order being appealed;

(b) require that the presiding officer transmit to the commission a memorandum explaining the ruling being appealed;

(c) require submission of briefs by staff and the parties; or

(d) direct such other submissions as will assist in its consideration of the issues.

D. Appeal not to suspend proceeding: Any decision by a presiding officer to permit appeal or by the commission to hear an appeal under the provisions of this rule governing interlocutory appeals from rulings of the presiding officer will not suspend the proceeding unless otherwise ordered by the presiding officer or the commission.

[1.2.2.31 NMAC - Rp, 17 NMAC 1.2.33, 9-1-08]

1.2.2.32 PUBLIC HEARINGS:

A. Rights of staff, parties, and commenters:

(1) At any public hearing all parties and staff shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

(2) Commenters shall be entitled to make an oral or written statement for the record but such statement shall not be considered by the commission as evidence. Commenters are not parties and shall not have the right to introduce evidence or examine or cross-examine witnesses, to receive copies of pleadings and documents, to appeal from any decisions or orders, or to otherwise participate in the proceeding other than by making their comments.

B. Duty to participate: Except as otherwise provided in this rule or directed by the commission or presiding officer, parties or staff who fail to attend meetings, conferences, or public hearings scheduled or who otherwise fail to participate in the proceeding are deemed to have notice of, and waive their right to object to, all matters addressed, resolved, or determined in their absence.

C. Continuance:

(1) Staff or any party who desires a continuance shall move for a continuance immediately upon receipt of notice of public hearing or as soon thereafter as facts requiring such continuance come to their knowledge, stating in detail the reasons why a continuance is necessary and describing when the need for a continuance came to their knowledge.

(2) The commission or presiding officer, in passing upon a motion for a continuance, shall consider whether such motion was promptly made.

(3) The commission or presiding officer may grant such a continuance and may at any time order a continuance upon their own motion.

D. Appearances:

(1) **General:** Staff, parties, and commenters shall enter their appearances at the beginning of the public hearing by giving their names and addresses in writing to the reporter who will include the same in the record of public hearing. The presiding officer conducting the public hearing may in addition require appearances to be stated orally so that the identity and interest of all parties, staff, and others present will be known to those at the public hearing.

(2) **Termination of party status:** Notwithstanding any other provision of this rule pertaining to party status, the party status of any person failing to enter a written appearance, and if requested by the presiding officer, an oral appearance terminates at the close of the period for taking such appearances at the public hearing unless otherwise ordered by the commission or presiding officer. After entering an appearance neither staff nor a party shall be unrepresented at the public hearing unless excused by the presiding officer. The commission or presiding officer may impose appropriate sanctions for violation of this provision up to and including termination of party status.

E. Service of notice: Following the entry of appearances at the public hearing, all notices, pleadings, and orders thereafter served shall be served upon such attorneys or parties of record as defined in this rule entering an appearance, and such service shall be considered valid service for all purposes upon the party represented. Persons who have not appeared as parties may request to the commission to be mailed a copy of any final order at their own expense in any proceeding contemplated by this rule at which these persons have appeared as witnesses or commenters or have given written notification to the commission of their interest in the proceedings.

F. Failure to appear:

(1) At the time and place set for public hearing, if an applicant, petitioner, or complainant fails to appear without having obtained a continuance in the manner specified in Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may dismiss or recommend dismissal of the petition, application, or complaint with or without prejudice or may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said applicant, petitioner, or complainant to attend.

(2) At the time and place set for public hearing, if a respondent fails to appear without having obtained a continuance in the manner specified Subsection C of 1.2.2.32 NMAC, the commission or presiding officer may proceed with the public hearing as scheduled and enter such orders disposing of the case as may be proper according to the evidence adduced, and the respondent failing to appear will be presumed to have waived the right to refute or rebut such evidence and otherwise present further evidence. The commission or presiding officer may upon good cause shown recess such public hearing for a further period to be set by the commission or presiding officer to enable said respondent to attend.

G. Conduct at public hearings:

(1) All parties, staff, counsel, commenters, and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind at public hearings shall not be permitted. Any disregard by parties, staff, attorneys, or other persons of the rulings of the commission or presiding officer on matters of order and procedure may be noted on the record and treated as provided in Sections 59A-52-24, 62-10-9, 62-12-4, 63-7-23, 63-9-19, 63-9A-20, 63-9B-14, 65-2A-32, 65-2A-34, 63-9H-14 or 70-3-19 NMSA 1978, or as provided in the New Mexico rules of civil procedure for the district courts.

(2) The commission or presiding officer may at their discretion adjourn, recess, or continue any public hearing in case the conduct of witnesses, spectators, or other persons interferes with the proper and orderly holding of such public hearing and for any other cause or circumstance which may prevent the proper conduct of such public hearing.

(3) The commission or presiding officer may at their discretion limit the time for providing direct testimony or cross-examination at any public hearing if necessary to promote the proper and orderly management of such public hearing.

H. Consolidated public hearings: The commission, upon its own motion or upon motion of staff or a party, may order two or more proceedings involving a similar question of law or fact to be consolidated for public hearing where rights of staff, the parties, or the public interest will not be prejudiced by such procedure and where such consolidation will not confuse the issues.

I. Joint public hearings: To the extent authorized by law, the commission may participate jointly in any hearing with any federal, state, or other regulatory agency. In joint formal proceedings the participating agencies shall agree upon the rules of procedure to be followed. Any person entitled to appear in a representative capacity before either agency involved in the joint public hearing may appear in a joint public hearing.

J. Telephonic public hearings. Public hearings may be conducted by telephone or video conference at the discretion of the commission or presiding officer.

[1.2.2.32 NMAC - Rp, 17 NMAC 1.2.34, 9-1-08]

1.2.2.33 ORDER OF PRESENTATION AND RECEIPT OF EVIDENCE:

Evidence will ordinarily be received in the order prescribed in this section unless otherwise directed by the commission or presiding officer. In hearing several proceedings upon a consolidated record, the presiding officer shall designate the order of presentation.

A. Investigation on motion of the commission:

- (1) respondent;
- (2) intervenors;
- (3) staff; and
- (4) rebuttal by respondent.

B. Applications and petitions:

- (1) applicant or petitioner;
- (2) intervenors;
- (3) staff; and
- (4) rebuttal by applicant and petitioner.

C. Formal complaints:

- (1) complainant;
- (2) respondent;
- (3) intervenors;

- (4) staff; and
- (5) rebuttal by complainant.

D. Order to show cause:

- (1) staff;
- (2) intervenors;
- (3) respondent; and
- (4) rebuttal by staff;

E. Order to cease and desist.

- (1) staff,
- (2) respondent, and
- (3) rebuttal by staff.

F. In other public hearings, at the discretion of the presiding officer.

[1.2.2.33 NMAC - Rp, 17 NMAC 1.2.35, 9-1-08]

1.2.2.34 TRANSCRIPTS:

A. Record of proceedings and testimony:

(1) A full and complete record of all proceedings before the commission or presiding officer in any formal public hearing and all testimony shall be made by either audio recording by a commission employee or shall be taken down and transcribed by a certified court reporter at the discretion of the presiding officer.

(2) If the commission or presiding officer intends to have a transcript made by audio recording they will state this in the notice or order of hearing or proceeding.

(3) Upon receiving notice that the commission or presiding officer intends to have a transcript made by audio recording, any party can file a request to have the hearing or proceeding transcribed by a certified court reporter and the commission will arrange a court reporter. A party requesting a court reporter for a hearing or proceeding that would otherwise be made by audio recording shall be responsible for the full cost of the court reporter's fees. A request by any party to have a hearing or proceeding transcribed by a certified court reporter shall be filed as soon as practicable before the hearing or proceeding. If a request by any party to have a hearing or proceeding

transcribed by a certified court reporter is not made at least seven days prior to the hearing the commission may be unable to accommodate the request.

B. Copies of transcripts: The commission shall file in e-docket a pdf version of any transcript it receives on the date the transcript is created or the date it is filed with the commission or the presiding officer.

C. Corrections: Suggested corrections to the transcript or record must be offered within 13 days after the transcript is filed in the proceeding except for good cause shown, and such suggestion shall be in writing and served upon each party, staff, the official reporter, and the presiding officer. Failure to timely file suggested corrections without good cause shown constitutes a waiver of objections to the transcript.

(1) Objections to the suggested corrections shall be made in writing within 13 days from the filing of the suggestions. The commission or presiding officer shall, with or without public hearing, determine what changes, if any, shall be made in the record.

(2) If no objection is made to the suggested corrections, the presiding officer may in their discretion direct that the corrections be made and the manner of making them.

D. Citation form: When referring to the record in briefs and other documents, staff and the parties shall cite to the transcript using the reporter's pagination, e.g., Tr. (transcript page number). If a transcript is made by audio recording staff and the parties shall cite to the transcript using time markers.

[1.2.2.34 NMAC - Rp, 17 NMAC 1.2.36, 9/1/2008; A, 4/6/2021]

1.2.2.35 RULES OF EVIDENCE:

A. General:

(1) Subject to the other provisions of this rule, all relevant evidence is admissible which, in the opinion of the presiding officer, is the best evidence most reasonably obtainable, having due regard to its necessity, competence, availability, and trustworthiness.

(2) In passing upon the admissibility of evidence the presiding officer shall give consideration to, but shall not be bound by, the New Mexico rules of evidence which govern proceedings in the courts of this state. The presiding officer shall also give consideration to the legal requirement that any final decision on the merits be supported by competent evidence.

(3) Unless otherwise directed by the commission or the presiding officer, documents that require sworn verification by notarization under commission

rules may be supported by unsworn affirmation in compliance with rule of civil procedure 1-011(B) NMRA.

B. Testimony under oath: All testimony to be considered by the commission or presiding officer in formal public hearings except matters officially noticed or entered by stipulation shall be made under oath.

C. Stipulation as to facts:

(1) The parties and staff in any proceeding before the commission or presiding officer may, by stipulation in writing filed or entered in the record, agree upon the facts or any portion thereof involved in the controversy, which stipulation shall be binding upon the parties and staff entering into the stipulation and may be regarded and used by the commission or presiding officer as evidence at the public hearing. It is desirable that the facts be thus agreed upon wherever practical. The commission or presiding officer may, however, require proof or evidence of the facts stipulated to, notwithstanding the stipulation of the parties and staff.

(2) In the event the parties and staff stipulate to certain facts as part of a proposed settlement of the case, and the settlement is rejected, the stipulations of fact entered for purposes of the settlement will not be binding upon the parties or used as evidence in any subsequent public hearing on the merits unless all signatories thereto agree to refile the stipulations of fact.

D. Administrative notice:

(1) The commission or presiding officer may take administrative notice of the following matters if otherwise admissible under Subsection A of 1.2.2.35 NMAC:

(a) rules, regulations, administrative rulings, published reports, licenses, and orders of the commission and other governmental agencies;

(b) contents of certificates, permits, and licenses issued by the commission;

(c) tariffs, classifications, schedules, and periodic reports regularly established by or filed as required or authorized by law or order of the commission;

(d) decisions, records, and transcripts in other commission proceedings;

(e) state and federal statutes;

(f) decisions of state and federal courts;

(g) generally recognized technical and scientific facts; and

(h) matters of which the courts of this state may take judicial notice.

(2) In addition the commission or presiding officer may take administrative notice of the results of their own inspection of any physical location or condition involved in the proceeding, and may take administrative notice on the record of the results of the commission's previous experience in similar situations and general information concerning a subject within the commission's expert knowledge.

(3) Parties and staff requesting that administrative notice be taken of documents or portions of documents or of the contents thereof must submit those documents or portions of documents to the commission or presiding officer in the form of exhibits except as may otherwise be provided in this rule.

(4) The commission or presiding officer may take administrative notice whether requested or not subject to appropriate objection under Subsection L of 1.2.2.35 NMAC. If staff or a party requests that administrative notice be taken, the commission or presiding officer must be provided the necessary information.

(5) Matters noticed are admitted into evidence to the same extent as other relevant evidence.

E. Resolutions: Resolutions, properly authenticated, of the governing bodies of cities, towns, counties and other municipal corporations, and of chambers of commerce, commercial or mercantile boards of trade, agricultural or manufacturing societies, and other civic organizations will be received in evidence if relevant. Such resolution shall be received subject to rebuttal by adversely affected staff or parties as to the authenticity of the resolution. Recitals of fact contained in resolutions shall not be deemed proof of those facts.

F. Official records: An official rule, report, order, record, or other document prepared and issued by any governmental authority may be introduced into evidence. In cases where such official records, otherwise admissible, are contained in official publications or publications by nationally recognized reporting services and are in general circulation and readily accessible to all parties and staff, they may be introduced by reference unless the presiding officer directs otherwise, provided that proper and definite reference to the record in question is made by the party or staff offering the same.

G. Commission files: Papers and documents on file relevant to the proceeding may be introduced into evidence by reference to number or date or by any other method of identification satisfactory to the presiding officer unless the presiding officer directs that the paper or document or a summary thereof be presented for the record in the form of an exhibit. If only a portion of any such paper or document is offered in evidence, the part so offered shall be presented for the record in the form of an exhibit.

H. Records in other proceedings: In case any portion of the record in any other proceeding before the commission or presiding officer is admissible for any purpose and

is offered in evidence, a true copy of such portion may be presented for the record in the form of an exhibit.

I. Prepared testimony:

(1) Prepared written testimony shall be received in evidence as exhibits with the same force and effect as though it were stated orally by the witness. All witnesses must be present at the public hearing and shall adopt, under oath, their prepared written testimony, subject to cross-examination and motions to strike unless the witness's presence at public hearing is waived by the commissioner or presiding officer upon notice to and without objection from staff and the parties.

(2) Unless the commission or presiding officer directs otherwise, testimony in written form shall be prepared in accordance with the following guidelines:

(a) the cover page shall contain the case caption and number and the name of the witness;

(b) all pages are to be typed or machine printed and double-spaced;

(c) the top, bottom, and left-hand margins shall be at least one and one-half inches;

(d) the name of the witness and the case number, if then known, shall be typed at the top center of each page two inches from the edge;

(e) the page number for each page shall be typed at the bottom center one inch from the edge;

(f) a square of approximately one and one-half inches in the upper right-hand corner of each page shall be left clear for commission use;

(g) testimony shall contain line numbers on the left-hand side of the page; and

(h) testimony shall be filed in question and answer format and be supported by affidavit.

(3) Unless the commission or presiding officer directs otherwise no documents other than pre-filed testimony shall be admitted into evidence on direct examination of a witness.

J. Exhibits:

(1) **Use of data in exhibits:**

(a) When supporting exhibits consist of tables of data or graphs, all formulae, equations, or other methodology used to derive the data shall be included as part of the supporting exhibit.

(b) If data used in supporting exhibits are derived from or supported by complex computerized analyses, working copies of the computer models may be included on a diskette compatible with the commission's current computer capabilities, in lieu of printed material.

(2) **Size of exhibits:** Except by special permission of the presiding officer, no specially prepared exhibits offered as evidence shall be of greater size, when folded, than eight and one-half (8-1/2) inches by eleven (11) inches.

(3) **Marking of exhibits:** All exhibits shall be marked numerically in the order of introduction by the moving party or staff. To the extent practicable all exhibits, including those to be introduced on cross-examination, shall be marked before the start of public hearings on the day the witness will be examined thereon.

(4) **Designation of part of document as evidence:**

(a) When relevant and material matter offered in evidence by any party or staff is embraced in a book, paper, or document containing other matter not material or relevant, the party or staff offering the same must plainly designate the matter so offered.

(b) If other matter is in such volume as would unnecessarily encumber the record, such book, paper, or document will not be received in evidence but may be marked for identification, and, if properly authenticated, the relevant or material matter may be read into the record, or, if the presiding officer so directs, a true copy of such matter in proper form shall be received as an exhibit and like copies delivered by the party or staff offering the same to all other parties and staff appearing at the public hearing.

(c) All parties and staff shall be afforded an opportunity to examine the book, paper, or documents and to offer in evidence in like manner other portions thereof if found to be material and relevant.

(5) **Abstracts of documents:** When documents are numerous and it is desired to offer in evidence more than a limited number of such documents as typical of the others, an abstract shall be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable opportunity to examine the abstract and the documents.

(6) **Summaries of documents:** Where a document being offered into evidence is voluminous, the presiding officer may direct that a summary be prepared and offered as an exhibit giving other parties to and staff in the proceeding reasonable

opportunity to examine the summary and the document. The presiding officer may require that the summary be offered as an exhibit in addition to the summarized document or in lieu thereof.

(7) Copies of exhibits:

(a) When exhibits not attached to pleadings as required by this rule are offered in evidence, the original shall be furnished to the reporter.

(b) The party or staff offering exhibits shall also furnish a copy to each commissioner or hearing examiner sitting, advisory staff if in attendance, each party, and the staff unless such copies have previously been furnished or the presiding officer directs otherwise.

(c) The proponent shall, to the extent practicable, furnish the required copies to the reporter, the commissioners or hearing examiner, advisory staff, parties, and staff before the start of the public hearings on the day said proponent intends to offer the exhibits into evidence.

K. Additional evidence: At any stage of the proceeding the commission or presiding officer may require the production of further evidence upon any issue. Such evidence may, at the discretion of the commission or presiding officer, be in writing or presented orally. All parties and the staff will be given an opportunity to reply to such evidence submitted and cross-examine the witness under oath.

L. Objections:

(1) Any evidence offered in whatever form shall be subject to appropriate and timely

objection. When objection is made to the admissibility of evidence, such evidence may be received subject to later ruling by the commission or presiding officer.

(2) The commission or presiding officer their discretion either with or without objection may exclude inadmissible, incompetent, cumulative, or irrelevant evidence or order the presentation of such evidence discontinued.

(3) Parties or staff objecting to the introduction of evidence shall briefly state the grounds of objection at the time such evidence is offered.

(4) The evidence to be admitted at public hearing shall be material and relevant to the issue. Formal exceptions to rulings are not necessary and need not be taken.

M. Offers of proof: An offer of proof for the record may be made and shall consist of a statement of the substance of the evidence to which objection has been

sustained. The commission or presiding officer may require offers of proof to be submitted in writing in question and answer form.

N. Rebuttal evidence:

(1) Rebuttal evidence is evidence which tends to explain, counteract, repel, or disprove evidence submitted by another party or by staff. Evidence which is merely cumulative or could have been more properly offered in the case in chief is not proper rebuttal evidence.

(2) Staff or a party wishing to offer rebuttal testimony shall at the close of their opponent's direct case move the commission or presiding officer to allow introduction of rebuttal testimony. The movant shall indicate the nature of the evidence sought to be adduced and demonstrate why it is proper rebuttal testimony.

(3) The commission or presiding officer may permit or require rebuttal evidence to be submitted in prepared form in accordance with this rule prior to its introduction.

[1.2.2.35 NMAC - Rp, 17 NMAC 1.2.37, 9/1/2008; A, 4/6/2021]

1.2.2.36 PROPOSED FINDINGS AND CONCLUSIONS AND BRIEFS:

A. Proposed findings and conclusions:

(1) **Notice:** The presiding officer may require all parties of record and the staff to file proposed forms of order, including proposed findings and conclusions, at the close of testimony in the proceeding. The presiding officer shall immediately fix the time in which the proposed order shall be filed.

(2) Contents:

(a) The party or staff submitting a proposed order shall clearly identify themselves on the first page of the order.

(b) Each proposed finding of fact and conclusion of law shall be clearly and concisely stated and numbered.

(c) Each proposed finding of fact shall show specifically, by appropriate transcript reference, the evidence which supports the proposed finding unless otherwise permitted by the presiding officer.

(d) Proposed findings and conclusions should be kept to the minimum needed and may reflect the party's or staff's position but shall not be used to argue that position.

(3) Failure to file; dismissal: The commission may dismiss with or without prejudice any proceeding where the staff or the party who initiated such proceeding fails to comply with this rule.

B. Briefs and oral argument; right to file or argue:

(1) The presiding officer may require the filing of briefs or the presentation of oral argument or both by staff and the parties. Requests for filing of briefs or oral argument shall be made before or at the close of the public hearing and may be made in writing or orally on the record.

(2) The parties and staff shall be given an opportunity to make argument, upon request, but the manner of presentation, whether written, oral, or both shall be at the discretion of the presiding officer.

(3) Presiding officers may also at their discretion set page limits for briefs, limit the time allocated to each party and to staff for oral argument, or conduct an oral argument by telephone conference call.

(4) Any issues raised in a contested public hearing that are not argued in a post-hearing brief will not be considered unless consideration will not prejudice the due process rights of other parties and the commission or presiding officer in their discretion decides to consider such issues.

C. Time of filing:

(1) Proposed orders and briefs:

(a) Unless otherwise ordered by the presiding officer, parties and the staff shall have twenty (20) days after the date the complete transcript of the public hearing is filed with the commission to file whatever proposed orders and briefs are required by the presiding officer.

(b) Response briefs may be filed thirteen (13) days after service of the opening briefs unless otherwise ordered by the presiding officer.

(c) Replies to response briefs shall not be filed without leave of the commission or presiding officer. Replies to response briefs shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(2) Enlargement: A motion for enlargement of time to file a proposed order or brief must be filed no later than three (3) days prior to that time as set out in Paragraph (1) of Subsection C of 1.2.2.36 NMAC except for good cause shown.

D. Filing and service of proposed orders and briefs: All proposed orders and briefs shall be filed and must be accompanied by a certificate of service. The original and five (5) copies shall be filed unless otherwise ordered by the commission or presiding officer.

E. Briefs, contents generally:

(1) Briefs shall be concise and shall include transcript citations for each statement of fact or transcript reference in the form required by Subsection D of 1.2.2.34 NMAC.

(2) Briefs shall contain a table of contents with page references and a list of authorities cited.

(3) Argument regarding an issue shall include a brief statement of the position of each party and of staff regarding that issue.

F. Reconciliation statements:

(1) Unless the commission or presiding officer directs otherwise, each brief filed in a rate case shall contain a reconciliation statement setting forth in dollars the final position of the staff or party filing the brief. The reconciliation statement shall be in a simple and concise form and, to the extent necessary for the type of rate regulation applicable, shall set forth:

(a) the claimed rate base for the regulated entity showing test year figures per book, adjustments, and adjusted test year figures (if rate base items are at issue the statement shall set forth on a separate sheet the contested items and their dollar effect on rate base);

(b) an income statement showing operating revenues and expenses with test year figures per book, adjustments, and adjusted test year figures (if any expense items are at issue the statement shall set forth on a separate sheet the contested expense or revenue items in detail and the dollar effect on total company expenses or revenues of their allowance);

(c) the capital structure of the company (if there is no actual capital structure, any proposed imputed capital structure, the ratio of each type of capital to total capital, and the cost and weighted cost of each shall be shown; this schedule shall show the dollar effects of the requested return upon revenue requirements);

(d) a computation of projected state and federal taxes on adjusted figures based on statutory rates or other applicable rates; and

(e) a computation of the claimed revenue deficiency.

(2) If the information required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC is clearly set forth in schedules in evidence, such schedules may be appended to the brief in lieu of a separate reconciliation statement. If staff or a party adopts the position of another party or of staff, the party or staff may state whose position is adopted rather than file a separate duplicative reconciliation statement.

(3) The company must provide a proof of revenue statement.

(4) The parties or staff may, on sheets separate from those needed for the reconciliation statement required by Paragraph (1) of Subsection F of 1.2.2.36 NMAC, show details of adjustments by account numbers, give short explanations or reasons for the adjustments, and show where these adjustments require adjustments elsewhere. The parties and staff may also give citations to the transcript to show where the requested adjustment is supported by the record.

[1.2.2.36 NMAC - Rp, 17 NMAC 1.2.38, 9-1-08]

1.2.2.37 COMMISSION ORDERS, EXCEPTIONS, AND REHEARINGS:

A. Commission orders:

(1) The commission will issue its order in writing in every proceeding. The order shall contain separately stated findings of fact and, in the commission's discretion, conclusions of law, or combined findings and conclusions. The commission may in its discretion issue an oral decision prior to the issuance of its written order. The timeliness of applications for rehearing and notices of appeal shall be calculated from the date the commission issues its written order. The date a written order is issued is the date when the written order, signed under the seal of the commission, has been filed with the chief clerk or the chief clerk's designee.

(2) The commission may adopt a hearing examiner's recommended decision. If a recommended decision is adopted in its entirety the commission's order shall so state. Where the only changes between the commission order and the hearing examiner's decision are those to correct grammatical or typographical errors, the commission's order shall so state.

(3) The commission may issue an order which makes reference to the recommended decision and indicate disagreements with the hearing examiner and the commission may make further or modified findings and conclusions based on the record.

B. Issuance of recommended decisions: A hearing examiner shall issue a recommended decision. The recommended decision shall be served on all parties to and the staff in the proceeding and shall contain separately stated findings of fact and conclusions of law.

C. Exceptions to recommended decisions:

(1) Filing requirements:

(a) Unless otherwise ordered by the commission or presiding officer exceptions may be filed by staff or by any party within thirteen (13) days after the recommended decision is issued.

(b) Except by prior written approval of the commission or presiding officer, exceptions shall be no longer than forty (40) pages. A summary of argument identifying with particularity and numbering the points excepted to of no more than five (5) pages shall be included with the exceptions and does not count toward the forty (40) page limit.

(c) Unless otherwise ordered by the commission or presiding officer, responses to exceptions may be filed within eight (8) days after the exceptions have been filed. Except by prior written approval of the commission or presiding officer, responses to exceptions shall be no longer than thirty-five (35) pages. A summary of argument of no more than three (3) pages shall be included with a response and does not count toward the thirty-five (35) page limit.

(d) Replies to responses to exceptions shall not be filed without leave of the commission or presiding officer. Except by prior written approval of the commission or presiding officer, replies to responses shall be no longer than fifteen (15) pages. A summary of argument of no more than two (2) pages shall be included with a reply and does not count toward the fifteen (15) page limit. Replies to responses to exceptions shall be filed within thirteen (13) days of service of the response, or such other time period as the commission or presiding officer may prescribe.

(e) Any exception, response, or reply ten (10) pages long or longer shall include a table of contents listing the points made and authorities relied on. A table of contents shall not count toward any page limitation.

(2) Contents: Responses shall not raise for the first time matters which were not raised in the exceptions of a party or the staff. Exceptions and any responses must specifically set forth:

(a) the precise portions of the proposed decision to which the exception is taken or response to exception is made;

(b) the reason for the exception or response;

(c) authorities on which the party or staff relies and specific citations to the record in the form required by Subsection D of 1.2.2.34 NMAC.

(d) In rate cases, reconciliation statements containing the information listed in Subsection F of 1.2.2.36 NMAC.

(3) **Copies:** Exceptions and responses shall be filed and be accompanied by a certificate of service. The original and five (5) copies shall be filed unless otherwise ordered by the commission or presiding officer.

D. Oral argument to commission after recommended decision: Any party or staff may petition the commission for oral argument after the issuance of a recommended decision. Such request may be included in a brief on exceptions or a response but must be filed no later than the last day to file responses. The commission in its discretion may allow oral argument. If it allows oral argument, it may in its discretion conduct the argument by telephone conference call.

E. Reopening proceedings:

(1) **Motion to reopen:** Before the issuance of a commission order or after the issuance of a recommended decision, staff or a party to a proceeding may file a motion to reopen the proceeding for the taking of additional evidence.

(2) **Allegations:** Such motion shall specify those facts claimed to constitute grounds in justification thereof, including material changes of fact or law alleged to have occurred since the conclusion of the public hearing, and shall contain a brief statement of proposed additional evidence and an explanation as to why such evidence was not previously produced.

(3) **Responses:** Within thirteen (13) days following the service of any motion to reopen staff or any other party may file responses thereto.

(4) **Commission may reopen:** The commission on its own motion may at any time reopen any proceeding when it has reason to believe that conditions of fact or law have so changed as to require, or that the public interest requires, the reopening of such proceeding.

F. Rehearing:

(1) **Motion for rehearing:**

(a) Except as otherwise provided in Sections 62-10-16 and 62-11-1 NMSA 1978, after an order has been issued by the commission in a proceeding staff or any party to the proceeding may within ten (10) days after the issuance of the order move for rehearing of the order with respect to any matter determined in the proceeding.

(b) The motion shall specify the matters upon which the movant requests rehearing and the ground or grounds on which the movant considers the order to be unlawful, unjust, or unreasonable with regard to each such matter.

(2) Responses: Any party or staff may file a response in writing within five (5) days, or within thirteen (13) days if Sections 62-10-16 and 62-11-1 NMSA 1978 apply, which opposes or supports the motion for rehearing. Replies to responses shall not be permitted without leave of the commission or presiding officer.

(3) New evidence: A motion for rehearing may seek modification of the order without introduction of additional evidence. If the movant or any party or staff who opposes or supports the motion seeks to introduce additional evidence on any matter, the new evidence must be specified and must be supported by affidavit and a statement of the reasons why the new evidence was not previously introduced. Any new evidence furnished in support of the motion or response shall be considered by the commission only for purposes of the commission's decision on the motion and shall not be considered as evidence pertaining to the order that the commission previously had issued.

(4) Effect of filing motion: The filing of a motion for rehearing shall not excuse staff or a party from complying with or obeying any order or any requirement of an order of the commission, nor shall it operate in any manner to stay or postpone the enforcement thereof except as the commission may by order direct as provided by law.

(5) Oral argument: If the commission in its discretion grants oral argument on a motion for rehearing of the commission's order, said order shall not thereby be vacated.

(6) Disposition of motion for rehearing:

(a) Except as otherwise provided in Section 62-10-16 NMSA 1978, the commission may grant or deny the motion at any time within twenty (20) days after the final order has been issued and prior to the expiration of the period prescribed for filing of responses. If the commission does not act on a motion for rehearing within twenty (20) days after the final order has been issued, the motion shall be deemed denied.

(b) The commission may limit the rehearing to some or all of the matters raised in the motion or may expand the rehearing to include other matters determined in the proceeding.

(c) On rehearing the commission in its discretion may receive some or all of the new evidence specified in the motions or responses subject to cross-examination, may expand the rehearing to include additional evidence, or may restrict the rehearing to modification of its order without introduction of new evidence.

(d) If the rehearing is limited to modification of the order without introduction of new evidence, all parties and staff will have an opportunity to oppose or support the proposed modification, but the rehearing will be decided without oral argument or public hearing unless the commission directs otherwise.

(e) If the commission grants the motion for rehearing in whole or in part, the order being reheard shall be deemed vacated and no order or decision at that time shall exist in the proceeding.

(7) **New order:** After any rehearing the commission shall enter a new order which may incorporate by reference any portion of the previously issued order which the commission had vacated.

G. Errata notice:

(1) The commission, the commission chairman, or, in the absence of the chairman any other commissioner, may correct typographical errors, omissions, or other non-substantial errors in commission orders through the issuance of errata notices. A presiding officer may also correct typographical errors, omissions, or other non-substantial errors in their orders through the issuance of errata notices. The issuance of an errata notice shall not affect the finality of the decision or order corrected.

(2) A party to a formal proceeding or staff may correct typographical errors, omissions, or other non-substantial errors in its pleadings or documents through the filing of an errata notice, which shall conform to the rule governing pleadings.

H. Notice of appeal: Notices of appeal of commission decisions shall be filed pursuant to applicable statutes, including but not limited to Section 53-13-2 NMSA 1978, Section 59A-52-22 NMSA 1978, Section 62-11-1 NMSA 1978, Section 63-9-16 NMSA 1978, Section 63-9A-14 NMSA 1978, Section 63-9B- 9 NMSA 1978, Section 63-9H-12 NMSA 1978, Section 70-3-15 NMSA 1978, Section 65-2A-35 NMSA 1978, and Section 63-7-1.1 NMSA 1978.

I. Docketing of submissions in compliance with and motions for variances from final orders:

(1) Submissions in compliance with and motions for variances from commission final orders shall be filed under the same case number as that of the final order. A certificate of filing and service stating that the compliance submission has been filed shall be filed and served on staff and all other parties to that case. Motions for variances shall be served on staff and all parties to the case.

(2) Requests for extensions of time to meet compliance provisions contained in final orders of the commission must be in writing and must explain why an extension of time is being requested. Requests shall be filed under the same case number as that of the final order. The chief of staff has the authority to grant such requests.

[1.2.2.37 NMAC - Rp, 17 NMAC 1.2.39, 9-1-08]

1.2.2.38 DISQUALIFICATION:

A. Disqualification of hearing examiner:

(1) A hearing examiner, other than a commissioner, designated by the commission to preside in a proceeding, may, upon his or her own motion under Paragraph (2) of Subsection E of 1.2.2.29 NMAC or upon written request and approval of the commission, disqualify himself or herself.

(2) Any party or staff may file a motion to disqualify and remove a hearing examiner other than a commissioner. Such motion shall be supported by an affidavit setting forth the alleged grounds for disqualification. A copy of the motion and affidavit shall be served by the movant on the hearing examiner whose removal is sought and the hearing examiner shall respond within ten (10) days from such service. If the hearing examiner does not disqualify himself or herself or respond to the motion within ten (10) days, then the commission shall promptly determine the validity of the grounds alleged and take appropriate action.

(3) A hearing examiner, other than a commissioner, may be disqualified for violation of the code of conduct adopted by the commission.

B. Disqualification of commissioner:

(1) A commissioner may, upon their own motion or upon written request, disqualify themselves from participating in any proceeding.

(2) Any party or staff may file a motion to disqualify and remove a commissioner from participating in a proceeding.

(a) Such motion shall be supported by an affidavit setting forth the alleged grounds for disqualification.

(b) A copy of the motion and affidavit shall be served by the movant on the commissioner whose removal is sought and the commissioner shall respond within ten (10) days from such service.

(c) The response shall be considered a final order for purposes of appeal. Until otherwise provided by law, no commissioner shall rule on a motion to disqualify any other commissioner.

(3) A commissioner may be disqualified for violation of the code of conduct adopted by the commission.

[1.2.2.38 NMAC - Rp, 17 NMAC 1.2.40, 9-1-08]

1.2.2.39 COMMISSION CODE OF CONDUCT:

The conduct of commissioners and all employees of the commission shall be governed by the code of conduct adopted by the commission pursuant to Section 10-16-11 NMSA 1978 of the Governmental Conduct Act unless inconsistent with Sections 8-8-17, 8-8-18 and 8-8-19 NMSA 1978.

[1.2.2.39 NMAC - Rp, 17 NMAC 1.2.41, 9-1-08]

1.2.2.40 VARIANCE:

A. An petitioner may request a variance from a requirement of any commission rule or order.

B. A petition for variance shall be supported by an affidavit signed by an officer of the applicant or person with authority to sign for the applicant.

C. Such petition may include a motion that the commission stay the affected portion of the rule or order for the transaction specified in the motion.

D. The commission may, at its discretion, require an informal conference or formal evidentiary public hearing prior to making its determination.

E. A petition for variance shall:

- (1)** identify the section of the rule or order from which the variance is requested;
- (2)** describe the situation that necessitates the variance;
- (3)** describe the effect of complying with the rule or order on the applicant if the variance is not granted;
- (4)** describe the result the variance will have if granted; and
- (5)** describe how the proposed alternative will achieve the purpose of the rule, and why it is in the public interest.

[1.2.2.40 NMAC - Rp, 17 NMAC 1.2.39-Subsection I, 9-1-08]

PART 3: PUBLIC REGULATION COMMISSION EX PARTE COMMUNICATIONS

1.2.3.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[1.2.3.1 NMAC - N, 7-15-04]

1.2.3.2 SCOPE:

This rule applies to commissioners, hearing examiners, advisory staff, and any party to a commission proceeding.

[1.2.3.2 NMAC - N, 7-15-04]

1.2.3.3 STATUTORY AUTHORITY:

NMSA 1978 Section 8-8-17.

[1.2.3.3 NMAC - N, 7-15-04]

1.2.3.4 DURATION:

Permanent.

[1.2.3.4 NMAC - N, 7-15-04]

1.2.3.5 EFFECTIVE DATE:

July 15, 2004, unless a later date is cited at the end of a section.

[1.2.3.5 NMAC - N, 7-15-04]

1.2.3.6 OBJECTIVE:

The purpose of this rule is to implement NMSA 1978 Section 8-8-17 by regulating ex parte communications concerning commission proceedings so as to ensure the fairness and integrity of the commission's decision-making process.

[1.2.3.6 NMAC - N, 7-15-04]

1.2.3.7 DEFINITIONS:

As used in this rule:

A. advisory staff means a person hired by the chief of staff, with the consent of the commission, with expertise in regulatory law, engineering, economics or other professional or technical disciplines, to advise the commission on any matter before the commission, including a member of the commission's office of general counsel or an expert or staff hired by the chief of staff on a temporary, term or contract basis for a particular case, but not including persons hired by an individual commissioner who serve at the pleasure of that commissioner;

B. ex parte communication means a direct or indirect communication with a party or his representative, outside the presence of the other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication, that deals with substantive matters or issues on the merits of the proceeding, including any attachments to a written communication or documents shown in connection with an oral presentation that deals with substantive matters or issues on the merits of the proceeding;

(1) ex parte communications do not include:

(a) statements made by commissioners, hearing examiners, or advisory staff that are limited to providing publicly available information about a pending adjudication or rulemaking after the record has been closed; or

(b) inquiries relating solely to the status of a proceeding, including inquiries as to the approximate time that action in a proceeding may be taken;

(2) ex parte communications include a status inquiry which states or implies:

(a) a view as to the merits or outcome of a rulemaking after the record has been closed or a pending adjudication;

(b) a preference for a particular party, or a reason why timing is important to a particular party;

(c) a view as to the date by which a proceeding should be resolved; or

(d) a view which is otherwise intended to address the merits or outcome, or to influence the timing, of a pending adjudication or rulemaking after the record has been closed;

C. hearing examiner means a person appointed by the commission pursuant to NMSA 1978 Section 8-8-14 to preside over any matter before the commission, including rulemakings, adjudicatory hearings and administrative matters, and provide the commission with findings of fact, conclusions of law, and a recommended decision on the matter assigned;

D. non-adjudicatory notice of inquiry means a proceeding commenced by the commission's issuance of a notice entitled "non-adjudicatory notice of inquiry" for the purpose of inquiring into issues of broad applicability to consumers or regulated entities, or to a class or type of consumers or regulated entities, with a view toward possible future rulemaking or other procedures where the proceeding does not directly concern a dispute between particular parties or company-specific regulatory issues;

E. party, unless otherwise ordered by the commission, means:

- (1) a person who has been given formal party status;
- (2) a person who has submitted to the commission a filing seeking affirmative relief, including, but not limited to, an application, waiver, motion, tariff change or petition;
- (3) a person who has filed a formal complaint, petition for order to show cause, petition for investigation or petition for notice of inquiry;
- (4) the subject of a formal complaint, order to show cause, investigation or notice of inquiry;
- (5) members of the general public, after the issuance of an order closing the record in a rulemaking proceeding; and
- (6) staff of the commission's utility division, transportation division, or insurance division directed by statute to represent the public interest in a proceeding before the commission;

F. pending adjudication means any matter docketed, or, in the case of a party represented by counsel, any matter that an attorney representing such party reasonably believes will be docketed, before the commission, including, but not limited to, formal complaint proceedings, show cause proceedings, investigations, notices of inquiry other than non-adjudicatory notices of inquiry, application proceedings, petitions, and any matter other than a rulemaking or a non-adjudicatory notice of inquiry requiring decision or action by the commission.

[1.2.3.7 NMAC - N, 7-15-04; A, 9-1-08]

1.2.3.8 EX PARTE COMMUNICATIONS PROHIBITED:

A. A commissioner shall not initiate, permit, or consider a communication directly or indirectly with a party or his or her representative, outside the presence of other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or his or her representative, outside the presence of other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication.

C. Advisory staff shall not initiate, permit, or consider a communication directly or indirectly with a party or his or her representative, outside the presence of other parties, concerning a pending rulemaking after the record has been closed or a pending adjudication.

[1.2.3.8 NMAC - N, 7-15-04]

1.2.3.9 EX PARTE COMMUNICATIONS PERMITTED:

A. Procedural or administrative purposes. Where circumstances require, ex parte communications for procedural or administrative purposes or emergencies, that do not deal with substantive matters or issues on the merits, may be permitted if the commissioner, hearing examiner, or advisory staff reasonably believes that no party will gain an advantage as a result of the ex parte communication and the commissioner, hearing examiner, or advisory staff makes provisions promptly to notify all other parties of the substance of the ex parte communication.

B. Uncontested proceedings. Ex parte communications may be permitted concerning pending adjudications in which the matter is ripe for decision and no party to the proceeding, including staff, is in opposition to the relief requested.

C. Internal commission communications. Commissioners, hearing examiners and advisory staff may consult with each other.

D. Nonparty expert. A commissioner or hearing examiner may obtain the advice of a nonparty expert on an issue raised in the rulemaking or adjudication if the commissioner or hearing examiner gives notice to the parties of the person consulted and the substance of the advice and affords the parties reasonable opportunity to respond.

[1.2.3.9 NMAC - N, 7-15-04]

1.2.3.10 DISCLOSURE REQUIRED:

A commissioner, hearing examiner, or advisory staff member who receives, makes, or knowingly causes to be made a communication prohibited by this rule shall disclose it to all parties and give other parties an opportunity to respond. The person to whom the prohibited communication was made shall:

A. disclose the prohibited communication by filing a copy of a written communication or a summary of an oral communication in the record of the proceeding within five (5) calendar days of the communication; and

B. serve the disclosure on all parties to the proceeding in accordance with Subsection C of 17.1.2.10 NMAC, except in proceedings involving numerous parties where the commission or hearing examiner determines that disclosure by publication would better serve administrative economy.

[1.2.3.10 NMAC - N, 7-15-04]

1.2.3.11 SANCTIONS:

Upon receipt of a communication knowingly made or caused to be made by a party to a commissioner, hearing examiner, or advisory staff member in violation of NMSA 1978 Section 8-8-17 or this rule, the commissioner or hearing examiner may, pursuant to Subsection E of that section, require the party to demonstrate that no unfair advantage was gained from the communication, may permit other parties the opportunity to respond, and may dismiss, deny, disregard, or otherwise take adverse action on the claim or interest in the proceeding.

[1.2.3.11 NMAC - N, 7-15-04]

CHAPTER 3: JOINT POWERS AGREEMENTS AND COMPACTS [RESERVED]

CHAPTER 4: STATE PROCUREMENT

PART 1: PROCUREMENT CODE REGULATIONS

1.4.1.1 ISSUING AGENCY:

General Services Department - State Purchasing Division.

[1.4.1.1 NMAC - Rp, 1.4.1.1 NMAC, 6/21/2022]

1.4.1.2 SCOPE:

All executive branch state agencies.

A. Except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, the code applies to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction.

B. General: Except as otherwise provided in this section, this rule applies to every agency and to every transaction to which the Procurement Code applies except the following:

- (1) procurement of highway construction or reconstruction by the department of transportation;
- (2) procurement by the judicial branch of state government;
- (3) procurement by the legislative branch of state government;
- (4) procurement by the boards of regents of state educational institutions named in Article 12 Section 11 of the constitution of New Mexico;

(5) procurement by the state fair commission of tangible personal property, services and construction under twenty thousand dollars (\$20,000);

(6) purchases from the instructional material fund;

(7) procurement by all local public bodies;

(8) procurement by regional education cooperatives;

(9) procurement by charter schools;

(10) procurement by each state health care institution that provides direct patient care and that is, or a part of which is, medicaid certified and participating in the New Mexico medicaid program; and

(11) procurement by the public school facilities authority.

[1.4.1.2 NMAC - Rp, 1.4.1.2 NMAC, 6/21/2022]

1.4.1.3 STATUTORY AUTHORITY:

Section 9-17-5 NMSA 1978, Laws of 1983, Chapter 301, Section 5; and 13-1-95, Laws of 1984, Chapter 65, Section 68 (Repl. Pamp. 1997). Subject to the authority of the secretary of the general services department, Section 13-1-95 NMSA 1978 designates the state purchasing agent as both the administrator and chief executive of the state purchasing division. The cite further designates the state purchasing agent and purchasing division shall be responsible for the procurement of items of tangible personal property, services and construction for all state agencies except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, and shall administer the code for those state agencies not excluded from the requirement of procurement through the state purchasing agent. Among the statutory duties and responsibilities afforded the state purchasing agent is to recommend procurement regulations to the secretary of the general services department.

[1.4.1.3 NMAC - Rp, 1.4.1.3 NMAC, 6/21/2022]

1.4.1.4 DURATION:

Permanent.

[1.4.1.4 NMAC - Rp, 1.4.1.4 NMAC, 6/21/2022]

1.4.1.5 EFFECTIVE DATE:

June 21, 2022, unless a later date is cited at the end of a section.

[1.4.1.5 NMAC - Rp, 1.4.1.5 NMAC, 6/21/2022]

1.4.1.6 OBJECTIVE:

Subsection C of Section 13-1-29 NMSA 1978 states that, the purposes of the Procurement Code are to provide for the fair and equal treatment of all persons involved in public procurement, to maximize the purchasing value of public funds and to provide safeguards for maintaining a procurement system of quality and integrity. The objective of this rule is to have the force and effect of law to implement, interpret or make statute specific as it applies to the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978 and the purposes stated therein.

[1.4.1.6 NMAC - Rp, 1.4.1.6 NMAC, 6/21/2022]

1.4.1.7 DEFINITIONS:

A. Most of the terms which appear in this rule are defined in the Procurement Code.

B. In these rules and regulations the following definitions apply.

(1) "Anti-poverty program businesses" means small businesses, cooperatives, community self-determination corporations or other such enterprises designed and operated to alleviate poverty conditions and aided by state or federal antipoverty programs or through private philanthropy.

(2) "Best obtainable price" means that price at which services or goods can be purchased which is most advantageous to the purchasing entity; best obtainable price can be found by obtaining quotes or other appropriate methods; where there is only one vendor available for such a purchase utilizing a direct purchase order in accordance with statute (such as an entity requiring dues, for example), the price would be the best obtainable price since it is the only possible price for that particular procurement.

(3) "Bidding time" means the period of time between the date the invitation to bid notice is published and the date and time set for receipt of bids.

(4) "Bidder" means one who submits a bid in response to an invitation for bid.

(5) "Competitive process" means an invitation for bid or request for proposals. Three quotes does not constitute a competitive process as the vendors from whom the quotes are received are singled out and specifically chosen. Increasing the number of quotes does not invalidate this lack of fairness, transparency, and competitiveness.

(6) "Competitive sealed bid" means the response from a bidder to an invitation to bid (ITB).

(7) **"Competitive sealed proposal"** means the response from an offeror to a request for proposals (RFP).

(8) **"Contract"** means any written, binding agreement for the procurement of items of tangible personal property, services or construction. A purchase order alone can be a binding contract.

(9) **"Invitation for bid (IFB)"** means all documents, including those attached or incorporated by reference, used for soliciting competitive sealed bids. Also sometimes referred to as an invitation to bid (ITB).

(10) **"Offeror"** means one who submits a proposal in response to a request for proposals.

(11) **"Sealed"** means, in terms of a non-electronic submission, that the bid or proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The state reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the procurement manager of any particular procurement. In terms of electronic submission, the entire required information and accompanying documents for the bid or proposal must be submitted via the electronic system being used by the state and by the deadline specified in the procurement. The deadline is that minute as stated in the procurement. That is, if a submission is due by 3:00 p.m., on a particular day, that deadline means 3:00:00 p.m., and does not mean 3:00:59 p.m.

[1.4.1.7 NMAC - Rp, 1.4.1.7 NMAC, 6/21/2022]

1.4.1.8 CENTRALIZATION OF PROCUREMENT ACTIVITY (1.4.1.8 - 1.4.1.13):

A. State purchasing agent. All procurement for state agencies shall be performed by the state purchasing agent except the following:

- (1) professional services;
- (2) small purchases having a value not exceeding one thousand five hundred dollars (\$1,500);
- (3) emergency procurements; and
- (4) the types of procurement specified in Subsection B of 1.4.1.2 NMAC.

B. Central purchasing offices. All procurement for state agencies excluded from the requirement of procurement through the state purchasing agent shall be performed by a central purchasing office designated by statute, the governing authority of that state agency or as otherwise provided in the Procurement Code.

C. Cooperative procurement. Nothing in this section should be interpreted as limiting the ability of state agencies to make procurements under existing contracts or enter into cooperative procurement agreements in accordance with Sections 13-1-29, 13-1-135 and 13-1-136 NMSA 1978.

[1.4.1.8 NMAC - Rp, 1.4.1.8 NMAC, 6/21/2022]

1.4.1.9 INSPECTION OF PUBLIC RECORDS:

The inspection of public records is governed by the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. To the extent that any provision of this rule conflicts with the Inspection of Public Records Act, as interpreted by the courts of this state, that act shall control. Furthermore, no obligation to keep data confidential which is contained in this rule is intended to create any liability that would not otherwise exist under state law.

[1.4.1.9 NMAC - Rp, 1.4.1.9 NMAC, 6/21/2022]

1.4.1.10 DOLLAR AMOUNTS:

Whenever a dollar amount appears in this rule, such amount is exclusive of applicable gross receipts and local option taxes as the term is defined in Subsection Q of Section 7-9-3 NMSA 1978.

[1.4.1.10 NMAC - Rp, 1.4.1.10 NMAC, 6/21/2022]

1.4.1.11 INDEMNIFICATION AND INSURANCE:

A. Tort liability. Except as provided for in the Tort Claims Act, Section 41-4-1 through 41-4-27 NMSA 1978, no contract governed by this rule shall contain any provision whereby a state agency agrees to indemnify or provide tort liability insurance for any contractor.

B. Other risks. No contract governed by this rule shall contain any provision whereby a state agency agrees to indemnify a contractor or provide a contractor with a limitation of liability or provide a contractor with insurance for non-tort risks.

C. Contract provisions void. Any indemnification or insurance provision in any contract executed in violation of this section shall be void and of no effect.

[1.4.1.11 NMAC - Rp, 1.4.1.11 NMAC, 6/21/2022]

1.4.1.12 [RESERVED]

1.4.1.13 SEVERABILITY:

If any provision of this rule, or any application thereof, to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application.

[1.4.1.13 NMAC - Rp, 1.4.1.13 NMAC, 6/21/2022]

1.4.1.14 APPLICATION (COMPETITIVE SEALED BIDS; 1.4.1.14 -1.4.1.28):

The provisions of 1.4.1.14 through 1.4.1.28 NMAC apply to every procurement made by competitive sealed bids.

[1.4.1.14 NMAC - Rp, 1.4.1.14 NMAC, 6/21/2022]

1.4.1.15 COMPETITIVE SEALED BIDS REQUIRED:

All procurement performed pursuant to the procurement code shall be achieved by competitive sealed bids except procurement achieved pursuant to the following methods:

- A.** competitive sealed proposals;
- B.** small purchases;
- C.** sole source procurement;
- D.** emergency procurement;
- E.** procurement under existing contracts; and
- F.** purchases from anti-poverty program businesses.

[1.4.1.15 NMAC - Rp, 1.4.1.15 NMAC, 6/21/2022]

1.4.1.16 INVITATION FOR BIDS ("IFB"):

A. General: The invitation for bids ("IFB"), also sometimes referred to as the invitation to bid (ITB), is used to initiate a competitive sealed bid procurement. The IFB shall include the following:

- (1) the specifications for the services, construction or items of tangible personal property to be procured, except that professional services and a design and

build project delivery system cannot be procured with an IFB pursuant to Section 13-1-111 NMSA 1978;

(2) all contractual terms and conditions applicable to the procurement including any requirements for complying with applicable preferences provided in law;

(3) the term of the contract and conditions of renewal or extension, if any;

(4) instructions and information to bidders, including the location where bids are to be received and the date, time and place of the bid opening;

(5) a notice that the IFB may be canceled and that any and all bids may be rejected in whole or in part when it is in the best interest of the state of New Mexico; and

(6) a notice that reads substantially as follows: The Procurement Code, Section 13-1-28 through Section 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

B. Incorporation by reference: The IFB may incorporate documents by reference, provided that the IFB specifies where such documents can be obtained.

C. Evaluation criteria: The IFB shall set forth the evaluation criteria that will be used to determine acceptability such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose. Those criteria such as discounts, transportation costs and total or life-cycle costs that will affect the bid price shall be objectively measurable. No criteria may be used in bid evaluation that are not set forth in the IFB.

D. Bid form: The IFB shall provide a form which shall include space in which the bid price shall be inserted and which the bidder shall affirm, certify, or sign and submit along with all other necessary submissions. This may be an entirely electronic process if required by the procurement.

E. Bid samples and descriptive literature:

(1) "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item.

(2) "Bid sample" means a sample furnished by a bidder that shows the characteristics of an item offered in the bid.

(3) Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the item bid.

(4) Bid samples, when required, shall be furnished free of expense to the state and prior to the time set for the opening of bids. Samples not destroyed or

mutilated in testing will be returned upon request by mail, express or freight, collect. Each sample must be labeled to clearly show the bid number and the bidder's name.

F. Bidding time: Bidding time is the period of time between the date of distribution of the IFB and the time and date set for receipt of bids. In each case bidding time shall be set to provide bidders a reasonable time to prepare their bids. In no case shall the bidding time be shorter than the time required for publication under 1.4.1.17 NMAC of this rule.

[1.4.1.16 NMAC - Rp, 1.4.1.16 NMAC, 6/21/2022]

1.4.1.17 PUBLIC NOTICE INVITATION FOR BID:

Publication. The IFB or notice thereof shall be published not less than ten calendar days prior to the date set for the opening of bids. The IFB or notice must be published in accordance with statute.

A. These requirements of publication are in addition to any other procedures that may be adopted by the state purchasing agent to notify prospective bidders that bids will be received, including but not limited to publication in trade journals, if available.

B. Bidder lists. The state purchasing agent shall send copies of the notice or IFB to those businesses which have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction and services and which have paid any required fees. This may be done through electronic means. (Section 13-1-104 NMSA 1978). Reference is also given to 1.4.1.48 NMAC of this rule.

C. Public availability. A copy of the IFB shall be made available for public inspection on the state purchasing agent's website.

[1.4.1.17 NMAC - Rp, 1.4.1.17 NMAC, 6/21/2022]

1.4.1.18 PRE-BID CONFERENCES:

Pre-bid conferences may be conducted to explain the procurement requirements. If a pre-bid conference is to be held it shall be noticed in the IFB. The conference should be held long enough after the IFB has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the IFB. An IFB shall only be changed by written amendment as provided in this rule.

[1.4.1.18 NMAC - Rp, 1.4.1.18 NMAC, 6/21/2022]

1.4.1.19 AMENDMENTS TO THE INVITATION FOR BIDS:

A. Form. An amendment to the IFB shall be identified as such and shall require that bidders acknowledge its receipt. The amendment shall refer to the portions of the IFB it amends.

B. Distribution. Amendments shall be sent to all prospective bidders known to have received the IFB.

C. Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by other electronic means and confirmed in the amendment.

D. Use of amendments: Amendments should be used to:

(1) make any changes in the IFB such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(2) correct defects or ambiguities; or

(3) furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

[1.4.1.19 NMAC - Rp, 1.4.1.19 NMAC, 6/21/2022]

1.4.1.20 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS:

A. Procedure: A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or electronic notice to the location designated in the IFB as the place where bids are to be received.

B. Disposition of bid security: If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

C. Records: All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

[1.4.1.20 NMAC - Rp, 1.4.1.20 NMAC, 6/21/2022]

1.4.1.21 LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS:

A. Definition: Any bid or any withdrawal or modification of a bid received after the time and date for opening of bids at the place designated for opening is late. (NOTE: if the time a bid is due is listed as "3 p.m." this means 3:00:00 and not 3:00:59.)

B. General rule: No late bid, late modification, or late withdrawal will be considered unless received before contract award, and the bid, modification, or withdrawal would have been timely but for the action or inaction of state personnel directly serving the procurement activity.

C. Records: All documents relating to late bids, late modifications, or late withdrawals shall be made a part of the appropriate procurement file.

[1.4.1.21 NMAC - Rp, 1.4.1.21 NMAC, 6/21/2022]

1.4.1.22 BID OPENING:

A. Receipt: Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place until the time and date set for bid opening. This may be done entirely electronically.

B. No bids received: Except as provided in 1.4.1.68 through 1.4.1.72 NMAC of this rule, if no bids are received or if all bids received are rejected in accordance with the provisions of 1.4.1.68 through 1.4.1.72 NMAC of this rule, a new IFB shall be issued. If upon re-bidding with no change in specifications from the first IFB, the bids received are unacceptable, or if no bids are secured, the state purchasing agent may purchase (i.e., as opposed to procure) the items of tangible personal property, construction or services in the open market at the best obtainable price.

C. Opening and recording: Bids and modifications shall be opened publicly in the presence of one or more witnesses at the time and place designated in the IFB. Presence in this context may include virtual presence. The name of each bidder, the amount of each bid and each bid item, if appropriate, the names and addresses of the required witnesses, and such other relevant information as may be specified by the state purchasing agent shall be recorded. The record shall be open for public inspection. Each bid, except those portions for which a bidder has made a written request for confidentiality, shall also be open to public inspection. Any data, which a bidder believes should be kept confidential shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Prices and makes and models or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary.

[1.4.1.22 NMAC - Rp, 1.4.1.22 NMAC, 6/21/2022]

1.4.1.23 MISTAKES IN BIDS:

A. Consideration for award: Bids shall be unconditionally accepted for consideration for award without alteration or correction, except as authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.

B. General principles: Correction or withdrawal of a bid because of an inadvertent, nonjudgmental mistake in the bid requires careful consideration to protect the integrity of the competitive bidding system, and to assure fairness. If the mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of a nonjudgmental mistake is permissible but only to the extent authorized in 1.4.1.14 through 1.4.1.28 NMAC of this rule.

C. Mistakes discovered before opening: A bidder may correct mistakes discovered before bid opening by withdrawing or correcting the bid as provided in 1.4.1.20 NMAC of this rule.

D. Confirmation of bid: When the procurement officer knows or has reason to conclude that a mistake has been made in the low bid, the procurement officer should request the low bidder to confirm the bid. Situations in which confirmation should be requested include obvious, apparent errors on the face of the low bid or a bid unreasonably lower than the other bids submitted. If the low bidder alleges mistake, the bid may be corrected or withdrawn if the conditions set forth in Subsection E of this section are met.

E. Mistakes discovered after opening: This subsection sets forth procedures to be applied in three situations in which mistakes in bids are discovered after the time and date set for bid opening.

(1) **Technical irregularities:** Technical irregularities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, when there is no effect on price, quality or quantity. The procurement officer may waive such irregularities or allow the low bidder to correct them if either is in the best interest of the state. Examples include the failure of the low bidder to:

(a) return the number of signed bids required by the IFB;

(b) sign the bid, but only if the unsigned bid is accompanied by other material indicating the low bidder's intent to be bound; or

(c) acknowledge receipt of an amendment to the IFB, but only if:

(i) it is clear from the bid that the low bidder received the amendment and intended to be bound by its terms; or

(ii) the amendment involved had no effect on price, quality or quantity.

(2) **Mistakes where intended correct bid is evident:** If the mistake and the intended correct bid are clearly evident on the face of a bid document, the bid shall be corrected to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of a bid document are typographical errors,

errors in extending unit prices, transposition errors, and arithmetical errors. It is emphasized that mistakes in unit prices cannot be corrected.

(3) Mistakes where intended correct bid is not evident: A low bidder alleging a material mistake of fact which makes the bid non-responsive may be permitted to withdraw the bid if:

(a) a mistake is clearly evident on the face of the bid document but the intended correct bid is not; or

(b) the low bidder submits evidence which clearly and convincingly demonstrates that a mistake was made.

(4) Written determination: When a bid is corrected or withdrawn, or a correction or withdrawal is denied, the procurement officer shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

[1.4.1.23 NMAC - Rp, 1.4.1.23 NMAC, 6/21/2022]

1.4.1.24 BID EVALUATION AND AWARD:

A. General: A contract solicited by competitive sealed bids shall be awarded with reasonable promptness by written notice to the lowest responsible bidder. The IFB shall set forth the requirements and criteria that will be used to determine the lowest responsive bid. No bid shall be evaluated for any requirement or criterion that is not disclosed in the IFB. Contracts solicited by competitive sealed bids shall require that the bid amount exclude the applicable state gross receipts tax or local option tax but that the contracting agency shall be required to pay the tax including any increase in the tax becoming effective after the contract is entered into. The tax shall be shown as a separate amount on each billing or request for payment made under the contract.

B. Product acceptability: The IFB shall set forth all evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for accomplishing any or all of the following prior to award:

(1) inspection or testing of a product for such characteristics as quality or workmanship;

(2) examination of such elements as appearance, finish, taste or feel; or

(3) other examinations to determine whether it conforms with other purchase description requirements.

C. Purpose of acceptability evaluation: An acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another's but only to determine that a bidder's offering is acceptable as set forth in the IFB. Any bidder's offering which does not meet the acceptability requirements shall be rejected as non-responsive.

D. Brand-name or equal specification: Where a brand-name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition. When bidding an "or equal" the burden of persuasion is on the supplier or manufacturer who has not been specified to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgement for making a final determination on whether a proposed substitution is an "or equal".

E. Determination of lowest bidder: Following determination of product acceptability as set forth in Subsections B, C and D of this section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the IFB. Only objectively measurable criteria that are set forth in the IFB shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, discounts, transportation costs and ownership or life-cycle formulas. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the state has available concerning future use.

(1) Prompt payment discounts. Prompt payment discounts shall not be considered in computing the low bid. Such discounts may be considered after award of the contract.

(2) Trade discounts. Trade discounts shall be considered in computing the low bid. Such discounts may be shown separately, but must be deducted by the bidder in calculating the unit price quoted.

(3) Quantity discounts. Quantity discounts shall be included in the price of an item. Such discounts may not be considered where set out separately unless the IFB so specifies.

(4) Transportation costs. Transportation costs shall be considered in computing the low bid. Such costs may be computed into the bid price or be listed as a separate item.

(5) Total or life-cycle costs. Award may be determined by total or life-cycle costing if so indicated in the IFB. Life-cycle cost evaluation may take into account operative, maintenance, and money costs, other costs of ownership and usage and

resale or residual value, in addition to acquisition price, in determining the lowest bid cost over the period the item will be used.

(6) Energy efficiency. Award may be determined by an evaluation consisting of acquisition price plus the cost of energy consumed over a projected period of use.

F. Restrictions: Nothing in 1.4.1.24 NMAC of this rule shall be deemed to permit contract award to a bidder submitting a higher quality item than designated in the IFB unless the bidder is also the lowest bidder as determined under Subsection E of this section. Further, except as provided in this Subsection F of 1.4.1.24 NMAC, 1.4.1.24 NMAC of this rule does not permit negotiations with any bidder. If the lowest responsive bid has otherwise qualified, and if there is no change in the original terms and conditions, the lowest responsible bidder may negotiate with the purchaser (i.e., this exception applies only to purchases and does not apply to procurements generally) for a lower total bid to avoid rejection of all bids for the reason that the lowest bid was up to ten percent higher than budgeted project funds. Such negotiation shall not be allowed if the lowest bid was more than ten percent over budgeted project funds.

G. Documentation of award: Following award, a record showing the basis for determining the successful bidder shall be made a part of the procurement file. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

H. Publicizing awards: Written notice of award shall be sent to the successful bidder. Notice of award shall also be posted on the state purchasing website.

[1.4.1.24 NMAC - Rn 1.4.1.24 NMAC, 6/21/2022]

1.4.1.25 STATUTORY PREFERENCES:

Statutory preferences to be applied in determining low bidder or successful offeror. New Mexico law provides certain statutory preferences for several categories of bidders and offerors as well as for recycled content goods (Sections 13-1-21 and 13-1-22 NMSA 1978). These preferences must be applied in regard to invitations for bids and requests for proposals in accordance with statute in determining the lowest bidder or successful offeror.

[1.4.1.25 NMAC - Rp, 1.4.1.25 NMAC, 6/21/2022]

1.4.1.26 IDENTICAL LOW BIDS:

A. Definition: Identical low bids are low responsive bids, from responsible bidders, which are identical in price after the application of the preferences referred to in 1.4.1.25 NMAC of this rule and which meet all the requirements and criteria set forth in the IFB.

B. Award: When two or more identical low bids are received, the state purchasing agent may:

(1) award pursuant to the multiple source award provisions of Sections 13-1-153 and 13-1-154 NMSA 1978;

(2) award to a bidder with a statutory preference if the identical low bids are submitted by a bidder with a statutory preference and a nonresident business or nonresident contractor;

(3) award to a bidder offering recycled content goods if the identical low bids are for recycled content goods and virgin goods;

(4) award by lottery to one of the identical low bidders; or

(5) reject all bids and re-solicit bids or proposals for the required services, construction or items of tangible personal property.

[1.4.1.26 NMAC - Rp, 1.4.1.26 NMAC, 6/21/2022]

1.4.1.27 MULTI-STEP SEALED BIDS:

A. General: Multi-step bidding is a variant of the competitive sealed bidding method. This method may be utilized when the state purchasing agent or a central purchasing office makes a determination that it is impractical initially to prepare specifications to support an award based on price, or that specifications are inadequate or are too general to permit full and free competition without technical evaluation and discussion.

B. Phased process: Multi-step bidding is a phased process which combines elements of both the competitive sealed proposal method, seeking necessary information or unpriced technical offers in the initial phase; and regular competitive sealed bidding, inviting bidders who submitted technically acceptable offers in the initial phase, to submit competitive sealed price bids on the technical offers in the final phase. The contract shall be awarded to the lowest responsible bidder. If time is a factor, the state purchasing agent or a central purchasing office may require bidders to submit a separate sealed bid during the initial phase to be opened after the technical evaluation.

C. Public notice: Whenever multi-step sealed bids are used, public notice for the first phase shall be given in accordance with 1.4.1.17 NMAC of this rule. Public notice is not required for the second phase.

[1.4.1.27 NMAC - Rp, 1.4.1.27 NMAC, 6/21/2022]

1.4.1.28 PAYMENTS FOR PURCHASES:

Contract clause. All contracts resulting from an invitation for bids shall contain a clause allowing for late payment charges against the state agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

[1.4.1.28 NMAC - Rp, 1.4.1.28 NMAC, 6/21/2022]

1.4.1.29 APPLICATION (COMPETITIVE SEALED PROPOSALS; 1.4.1.29-1.4.1.47):

A. General: Except as provided in Subsections B and C of this section, the provisions of 1.4.1.29 through 1.4.1.47 NMAC of this rule apply to every procurement made by competitive sealed proposals.

B. Architects, engineers, landscape architects and surveyors: The provisions of 1.4.1.29 through 1.4.1.47 NMAC of this rule do not apply to the procurement of professional services of architects, engineers, landscape architects and surveyors for state public works projects or local public works projects. Except that when procuring such professional services for state public works projects or local public works projects state agencies and local public bodies shall comply with Section 13-1-120 through 13-1-124 NMSA 1978, competitive sealed qualifications-based proposals.

C. Procurement of professional services by state agencies with rulemaking authority: A state agency with rule making authority may adopt its own regulations for the procurement of professional services by competitive sealed proposals under the following conditions:

(1) the state agency must receive prior written authorization from the general services department secretary;

(2) the state agency's proposed regulations must provide that RFPs or notices thereof having a value exceeding sixty thousand dollars (\$60,000) will be provided to the state purchasing agent for distribution to prospective offerors who have registered with the state purchasing agent's office in accordance with the terms of Subsection B of 1.4.1.17 NMAC and Subsection A of 1.4.1.32 NMAC of this rule.

D. "Professional services" are defined in Section 13-1-76 NMSA 1978: The section of statute acknowledges the difficulty of any attempt made to recognize and list each and every service that could conceivably fall within the definition of "professional services". Instead, the statute provides in relevant part that "...other persons or businesses providing similar professional services to those listed may be designated as such by a determination issued by the state purchasing agent or a central purchasing office." In instances where "...other persons or businesses providing similar professional services...", as cited in Section 13-1-76, NMSA 1978, is not clearly defined, state agencies shall submit a written request to the state purchasing agent for issuance of a determination and a finding that the service is to be designated as a professional

service. State agencies shall not make such a determination independent of the state purchasing agent.

[1.4.1.29 NMAC - Rp, 1.4.1.29 NMAC, 6/21/2022]

1.4.1.30 GENERAL DISCUSSION:

A. Use of competitive sealed proposals: When a state agency procures professional services that are not related to a design and build project delivery system in accordance with Section 13-1-119.1 NMSA 1978, or when the state purchasing agent or a designee makes a determination that the use of competitive sealed bids is either not practicable or not advantageous to the state, a procurement shall be effected by competitive sealed proposals. Note well: Section 13-1-111 NMSA 1978 only authorizes state agencies other than the state purchasing agent to procure professional services by means of competitive sealed proposals. Section 13-1-111 NMSA 1978 does not authorize state agencies to avoid centralized purchasing through the state purchasing agent by issuing RFPs for items of tangible personal property, or nonprofessional services.

B. Definitions: The words "practicable" and "advantageous" are to be given ordinary dictionary meanings. The term "practicable" denotes what may be accomplished or put into practical application. "Advantageous" denotes a judgmental assessment of what is in the state's best interest. The use of competitive sealed bids may be practicable, that is, reasonably possible, but not necessarily advantageous, that is, in the state's best interest.

C. Proposals offer flexibility: The key element in determining advantageousness is the need for flexibility. The competitive sealed proposal method differs from the competitive sealed bid method in two important ways:

(1) it permits discussions with competing offerors and changes in their proposals including price; and;

(2) it allows more subjective evaluations to be made in comparing acceptable offerors' proposals with stated evaluation criteria when selecting among acceptable proposals for award of a contract.

D. Determinations by category: The state purchasing agent may make determinations by category of services or items of tangible personal property that it is either not practicable or not advantageous to procure specified types of service or items of tangible personal property by competitive sealed bids in which case competitive sealed proposals shall be utilized. The state purchasing agent may modify or revoke such determinations at any time.

[1.4.1.30 NMAC - Rp, 1.4.1.30 NMAC, 6/21/2022]

1.4.1.31 REQUEST FOR PROPOSALS ("RFP"):

A. Initiation: The request for proposals ("RFP") is used to initiate a competitive sealed proposal procurement. All state agencies shall follow published guidelines and procedures issued by the state purchasing agent from development stage through award of RFP-based procurements. At a minimum the RFP shall include the following:

- (1) the specifications for the services or items of tangible personal property to be procured;
- (2) all contractual terms and conditions applicable to the procurement;
- (3) instructions concerning the submission and response to questions;
- (4) the term of the contract and conditions of renewal or extension, if any;
- (5) instructions and information to offerors, including the location where proposals are to be received and the date, time and place where proposals are to be received and reviewed;
- (6) all of the evaluation factors, and the relative weights to be given to the factors in evaluating proposals;
- (7) a statement that discussions may be conducted with offerors who submit proposals determined to be potentially acceptable of being selected for award, but that proposals may be accepted without such discussions;
- (8) a notice that the RFP may be canceled and that any and all proposals may be rejected in whole or in part when it is in the best interest of the state of New Mexico; and
- (9) a statement of how proposed costs should be submitted;
- (10) a notice that reads substantially as follows: The Procurement Code, Section 13-1-28 through 13-1-199 NMSA 1978, imposes civil, misdemeanor and felony criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

B. Incorporation by reference: The RFP may incorporate documents by reference, provided that the RFP specifies where such documents can be obtained.

C. Form of proposal: The manner in which proposals are to be submitted, including any forms for that purpose, must be designated in the RFP.

D. Proposal preparation time: 30 calendar days between the date of issue and the proposal due date is the recommended minimum proposal preparation time. A longer

preparation time may be required for complex procurements or for procurements that require substantial offeror resources to prepare an acceptable proposal.

[1.4.1.31 NMAC - Rp, 1.4.1.31 NMAC, 6/21/2022]

1.4.1.32 PUBLIC NOTICE REQUEST FOR PROPOSAL:

A. Procurements by the state purchasing agent: The state purchasing agent shall give public notice of the RFP in the same manner as provided in 1.4.1.17 NMAC of this rule. However, an RFP or a notice shall be published not less than 20 days prior to the date set for receipt of proposals unless a shorter time frame is requested and approval granted by the state purchasing agent.

B. Procurements of all tangible personal property or services: The procurement manager shall deliver to the state purchasing agent or designee the following listed items no later than 15 calendar days prior to the proposed issue date (this requirement may be waived by the state purchasing agent at the state purchasing agent's discretion):

- (1) the RFP authorization and plan document, if required;
- (2) a state of New Mexico requisition completed according to state purchasing division processes;
- (3) a list containing the names and addresses of suggested vendors, if any;
- (4) a copy of the complete RFP document; for large or complex procurements, the draft RFP document shall be delivered to the state purchasing agent for review at least thirty days prior to the proposed issue date (this requirement may be waived by the state purchasing agent at the state purchasing agent's discretion).

C. Procurements of professional services by other central purchasing offices: When procuring professional services, central purchasing offices other than the state purchasing agent shall provide the following notice:

- (1) the RFP or a notice thereof shall be published not less than 10 calendar days prior to the date set for the receipt of proposals; it is recommended, however, that the time period between the published date and the date set for receipt of proposals be no less than 20 days; the RFP or notice shall be published at least once in a newspaper of general circulation in the area in which the central purchasing office is located; if there is no newspaper of general circulation in the area, such other notice may be given as is commercially reasonable; and
- (2) a copy of the RFP and notice may be delivered to the state purchasing agent not less than 15 calendar days prior to the date set for the issuance; if so received, the state purchasing agent shall distribute the RFP or notice to prospective

offerors who have registered with the state purchasing agent's office in accordance with the terms of Subsection B of 1.4.1.17 NMAC of this rule and Subsection A of this section; and

(3) a copy of the RFP shall be made available for public inspection at the central purchasing office or electronically or online.

D. Additional notice: The requirements of Subsections A, B and C of this section are in addition to any other procedures which may be adopted by the state purchasing agent or central purchasing offices to notify prospective offerors that proposals will be received, including but not limited to publication in professional journals, if available.

[1.4.1.32 NMAC - Rp 1.4.1.32 NMAC, 6/21/2022]

1.4.1.33 PRE-PROPOSAL CONFERENCES:

Pre-proposal conferences may be conducted in accordance with 1.4.1.18 NMAC of this rule. Any such conference should be held prior to submission of initial proposals. Other than for particular procurements where an agency feels a pre-proposal conference is necessary (such as for construction procurements where building walk-throughs or similar activities would be required or other like procurements), it is strongly recommended that pre-proposal conferences not be made mandatory so as to not eliminate potential vendors prior to receiving bids or proposals.

[1.4.1.33 NMAC - Rp, 1.4.1.33 NMAC, 6/21/2022]

1.4.1.34 AMENDMENTS TO THE REQUEST FOR PROPOSALS:

A. Prior to submission of proposals: Prior to submission of proposals, amendments to the RFP may be made in accordance with 1.4.1.19 NMAC of this rule.

B. After submission of proposals: After submission of proposals, amendments to the RFP shall be distributed only to short-listed offerors. The short-listed offerors shall be permitted to submit new proposals or to amend those submitted. If in the opinion of the procurement officer or procurement manager, a contemplated amendment will significantly change the nature of the procurement, the RFP shall be canceled in accordance with 1.4.1.68 through 1.4.1.72 NMAC of this rule, and a new RFP issued.

[1.4.1.34 NMAC - Rp, 1.4.1.34 NMAC, 6/21/2022]

1.4.1.35 MODIFICATION OR WITHDRAWAL OF PROPOSALS:

Proposals may be modified or withdrawn prior to the established due date in accordance with 1.4.1.20 NMAC of this rule. The established due date is either the time and date announced for receipt of proposals or receipt of modifications to proposals, if any; or, if discussions have begun, it is the time and date by which best and final offers

must be submitted by short-listed offerors. (NOTE: if the time a proposal is due is listed as "3 p.m. " this means 3:00:00 and not 3:00:59.)

[1.4.1.35 NMAC - Rp, 1.4.1.35 NMAC, 6/21/2022]

1.4.1.36 LATE PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS:

Any proposal, withdrawal, or modification received after the established due date at the place designated for receipt of proposals is late. (See 1.4.1.35 NMAC of this rule for the definition of "established due date.") They may be considered only in accordance with 1.4.1.21 NMAC of this rule.

[1.4.1.36 NMAC - Rp, 1.4.1.36 NMAC, 6/21/2022]

1.4.1.37 RECEIPT AND OPENING OF PROPOSALS:

A. Receipt: Proposals and modifications shall be time-stamped upon receipt and held in a secure place until the established due date. This may be done entirely electronically. (See 1.4.1.35 NMAC of this rule for the definition of "established due date.")

B. Opening: Proposals shall not be opened publicly and shall not be open to public inspection until after award of a contract. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement. An offeror may request in writing nondisclosure of confidential data. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the nonconfidential portion of the proposal.

[1.4.1.37 NMAC - Rp, 1.4.1.37 NMAC, 6/21/2022]

1.4.1.38 EVALUATION OF PROPOSALS:

A. Evaluation factors: The evaluation shall be based on the evaluation factors and the relative weights set forth in the RFP. Appropriate rating systems (numerical, point-based, pass/fail, etc.) are required for requests for proposals-based procurements.

B. Evaluation committee: The state agency management shall appoint an evaluation committee prior to the due date for receipt of proposals. The size of the committee should be manageable and include both user and technical support representatives. Contractor subject matter experts may be used to advise the committee but cannot evaluate proposals.

C. Classified proposals: For the purpose of conducting discussions under 1.4.1.39 NMAC of this rule, proposals shall be initially classified as:

- (1) responsive;
- (2) potentially responsive, that is, reasonably susceptible of being made responsive; or
- (3) non-responsive.

D. Disqualification: Non-responsive proposals are disqualified and eliminated from further consideration. A written determination in the form of a letter shall be sent to the disqualified offeror setting forth the grounds for the disqualification, and made a part of procurement file.

[1.4.1.38 NMAC - Rp, 1.4.1.38 NMAC, 6/21/2022]

1.4.1.39 PROPOSAL DISCUSSIONS AND NEGOTIATIONS WITH INDIVIDUAL OFFERORS:

A. Discussions authorized: Discussions may be conducted with responsible offerors who submit acceptable or responsive, potentially acceptable or potentially responsive proposals.

B. Purposes of discussions: Discussions are held to clarify technical or other aspects of the proposals.

C. Conduct of discussions: If during discussions there is a need for any substantial clarification or change in the request for proposals, the request for proposals shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the offeror. Proposals may be accepted and evaluated without such discussion. This is not an opportunity for the offerors to amend the substance of their proposals.

D. Short list: All responsible offerors who submit acceptable proposals are eligible for the short list. If numerous acceptable proposals have been submitted, however, the procurement officer or procurement manager may rank the proposals and select the highest ranked proposals for the short list. Those responsible offerors who are selected for the short list are the "short-listed offerors" or "finalist offerors".

E. Competitive negotiations: Competitive negotiations may be held among the short-listed offerors to:

- (1) promote understanding of a state agency's requirements and short-listed offerors' proposal; and
- (2) facilitate arriving at a contract that will be most advantageous to a state agency taking into consideration the evaluation factors set forth in the RFP;

(3) except for circumstances and situations otherwise approved by the state purchasing agent, negotiations of the relevant terms and conditions as well as any other important factors in an RFP and proposed contract are negotiated prior to award of a contract, not after award.

F. Conduct of competitive negotiations: Short-listed offerors shall be accorded fair and equal treatment with respect to any negotiations and revisions of proposals. The procurement officer should establish procedures and schedules for conducting negotiations. If during discussions there is a need for any substantial clarification of or change in the RFP, the RFP shall be amended to incorporate such clarification or change. Any substantial oral clarification of a proposal shall be reduced to writing by the short-listed offeror.

[1.4.1.39 NMAC - Rp, 1.4.1.39 NMAC, 6/21/2022]

1.4.1.40 DISCLOSURE:

The contents of any proposal shall not be disclosed so as to be available to competing offerors during the negotiation process and prior to award. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.40 NMAC - Rp, 1.4.1.40 NMAC, 6/21/2022]

1.4.1.41 BEST AND FINAL OFFERS:

Best and final offers in a request for proposals are sometimes appropriate and helpful. An offeror's best offer should be included in that offeror's original proposal and no discussion or changes to that offer should be allowed prior to selection of the offeror as the successful offeror unless negotiations are undertaken pursuant to 1.4.1.39 NMAC of this rule. After such selection of a successful offeror or offerors (for a multiple award procurement) and before final award, an agency may negotiate with the selected successful offeror(s) for the best possible terms for the state but such negotiations shall not change the successful offeror's or offerors' (for a multiple award procurement) proposal(s) to the detriment of the state. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.41 NMAC - Rp, 1.4.1.41 NMAC, 6/21/2022]

1.4.1.42 MISTAKES IN PROPOSALS:

A. Modification or withdrawal of proposals: Proposals may be modified or withdrawn as provided in 1.4.1.35 NMAC of this rule.

B. Mistakes discovered after receipt of proposals: This subsection sets forth procedures to be applied in several situations in which mistakes in proposals are discovered after receipt of proposals.

(1) Confirmation of proposal. When the procurement officer or procurement manager knows or has reason to conclude before award that a mistake has been made, the procurement officer or procurement manager should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in Subsection C of this section are met.

(2) During negotiations. If best and final offers are requested in the RFP, between the period of selecting short-listed/finalist offerors and the date set for best and final offers, any short-listed or finalist offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

C. Technical irregularities: Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other offerors; that is, when there is no effect on price, quality or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the procurement officer or procurement manager may waive such irregularities or allow an offeror to correct them if either is in the best interest of the state. Examples include, but are not limited to, the failure of an offeror to:

(1) return the number of signed proposals required by the RFP;

(2) sign the appropriate forms where called for, but only if the unsigned forms are accompanied by other material indicating the offeror's intent to be bound; or

(3) acknowledge receipt of an amendment to the RFP, but only if:

(a) it is clear from the proposal that the offeror received the amendment and intended to be bound by its terms; or

(b) the amendment involved had no effect on price, quality or quantity.

D. Correction of mistakes: If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident to the evaluation committee members or the procurement officer or the procurement manager on the face of the proposal, in which event the proposal may not be withdrawn.

E. Withdrawal of proposals: If discussions are not held, or if the best and final offers upon which award will be made have been received, an offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if:

(1) the mistake is clearly evident to the evaluation committee members or the procurement officer or the procurement manager on the face of the proposal but the intended correct offer of the offeror is not; or

(2) the offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.

F. Determination required: When a proposal is corrected or withdrawn, or correction or withdrawal is denied under Subsections C through E of this section, the procurement officer or procurement manager shall prepare a written determination showing that the relief was granted or denied in accordance with this section.

[1.4.1.42 NMAC - Rp, 1.4.1.42 NMAC, 6/21/2022]

1.4.1.43 AWARD: PROFESSIONAL SERVICES:

A. Procedure: An award shall be made to the responsible offeror whose proposal is most advantageous to a state agency, taking into consideration the evaluation factors set forth in the RFP. The procurement officer shall make a written determination in the form of an evaluation committee report showing the basis on which an award was found to be most advantageous to a state agency based on the factors set forth in the RFP. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. Publicizing awards: The procurement manager or procurement officer shall promptly provide all offerors who submitted proposals written notice of the award. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

C. Publicizing awards: The procurement manager or procurement officer shall promptly provide all offerors who submitted proposals written notice of the award which notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

[1.4.1.43 NMAC - Rp, 1.4.1.43 NMAC, 6/21/2022]

1.4.1.44 AWARD: ALL TANGIBLE PERSONAL PROPERTY OR SERVICES: (INCLUDES SOFTWARE, HARDWARE, NON-PROFESSIONAL SERVICES, etc):

A. Procedure: The award shall be made by the state purchasing agent or designee to the responsible offeror whose proposal is most advantageous to the state agency, taking into consideration the evaluation factors set forth in the RFP. The procurement manager shall make a written determination in the form of an evaluation committee report showing the basis on which the recommended award was found to be most advantageous to the state agency based on the factors set forth in the RFP.

B. Publicizing awards: The procurement manager shall promptly provide all offerors who submitted responsive proposals written notice of the award. The written notice shall be sent via certified mail, return receipt requested, and shall include the expiration date and time of the protest period, if there was a change from the date and time published in the RFP.

[1.4.1.44 NMAC - Rp, 1.4.1.44 NMAC, 6/21/2022]

1.4.1.45 PUBLIC INSPECTION:

A. General: After award, any written determinations made pursuant to these rules, the evaluation committee report and each proposal, except those portions for which the offeror has made a written request for confidentiality, shall be open to public inspection. Confidential data is normally restricted to confidential financial information concerning the offeror's organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, Sections 57-3A-1 to 57-3A-7 NMSA 1978. The price of products offered or the cost of services proposed may not be designated as confidential information. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. Confidential data: If a request is received for disclosure of data, for which an offeror has made a written request for confidentiality, the state purchasing agent or central purchasing office shall examine the offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. If it is determined that an offeror's requested confidential data should be disclosed, that offeror will receive reasonable notice in order to afford the offeror the opportunity to take legal action to prevent the disclosure. Unless the offeror takes legal action to prevent the disclosure, the data will be so disclosed. After award the proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.45 NMAC - Rp, 1.4.1.45 NMAC, 6/21/2022]

1.4.1.46 PAYMENTS FOR PURCHASES:

Contract clause. All contracts resulting from a request for proposals shall contain a clause allowing for late payment charges against the state agency in the amount and under the conditions set forth in Section 13-1-158 NMSA 1978.

[1.4.1.46 NMAC - Rp, 1.4.1.46 NMAC, 6/21/2022]

1.4.1.47 GSD CONTRACT REVIEW:

All contracts for professional services with state agencies shall be reviewed as to all requirements as set forth in statute and rule by the general services department, if such review is required by the general services department or subsequent general services department rules.

[1.4.1.47 NMAC - Rp, 1.4.1.47 NMAC, 6/21/2022]

1.4.1.48 APPLICATION (SMALL PURCHASES; 1.4.1.48 - 1.4.1.52):

The provisions of 1.4.1.48 through 1.4.1.52 NMAC of this rule apply to the procurement of nonprofessional services, construction or items of tangible personal property having a value not exceeding the value set forth in statute for small purchases and to the procurement of professional services having a value not exceeding the value set forth in statute for small purchases of professional services, the use of a statewide price agreement, an existing contract or the methods of procurement set forth in 1.4.1.50 through 1.4.1.52 NMAC of this rule provide alternatives to the competitive sealed bid and competitive sealed proposal methods of procurement. If an existing statewide price agreement, an existing contract or, the procurement methods set forth in 1.4.1.50 through 1.4.1.52 NMAC of this rule are not used, the competitive sealed bid or competitive sealed proposal methods shall apply.

[1.4.1.48 NMAC - Rp, 1.4.1.48 NMAC, 6/21/2022]

1.4.1.49 DIVISION OF REQUIREMENTS:

Procurement requirements shall not be artificially divided so as to constitute a small purchase under 1.4.1.48 through 1.4.1.52 NMAC of this rule.

[1.4.1.49 NMAC - Rp, 1.4.1.49 NMAC, 6/21/2022]

1.4.1.50 SMALL PURCHASES OF \$20,000 OR LESS:

A state agency may procure services, construction or items of tangible personal property having a value not exceeding twenty thousand dollars (\$20,000) by issuing a direct purchase order to a contractor based upon the best obtainable price and in accordance with any procedures or processes set forth by the state purchasing agent and the state controller.

[1.4.1.50 NMAC - Rp, 1.4.1.50 NMAC, 6/21/2022]

1.4.1.51 SMALL PURCHASES OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

A. Quotation to be obtained: Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property having a value exceeding twenty thousand dollars (\$20,000) but not exceeding the value set forth in statute for small purchases, and in accordance with any procedures or processes set forth by the state purchasing agent and the state controller, no fewer than three businesses shall be solicited via written requests containing the specifications for the procurement to submit written quotations that are recorded and placed in the procurement file. Such notations as “does not carry” or “did not return my phone call” do not qualify as a valid quotation. The central nonprofit agency’s declining to offer to perform a particular service does not qualify as a valid quotation; it is, in fact, the refusal to provide a quotation. If the lowest quotation is not acceptable, the central purchasing office must issue a written determination as to the reasons for such a decision. These reasons must not be arbitrary or capricious. The written determination becomes a part of the procurement file.

B. Disclosure: Prior to award, the contents of any response to a quotation shall not be disclosed to any other business from which the same request for quotation is also being solicited. Award in this context means the final required state agency signature on the contract(s) or purchase order resulting from the procurement.

C. Award: Award shall be made to the responsible and responsive business offering the lowest acceptable quotation.

D. Records: The names of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

[1.4.1.51 NMAC - Rp, 1.4.1.51 NMAC, 6/21/2022]

1.4.1.52 SMALL PURCHASES OF PROFESSIONAL SERVICES:

A. Application: A central purchasing office may procure professional services having a value not to exceed the value set forth in statute for small purchases of professional services, except for the services of architects, engineers, landscape architects, or surveyors for state public works projects, as that term is defined in Section 13-1-91 NMSA 1978, in accordance with Subsections B, C, and D of this section and 1.4.10 NMAC.

B. Examination of offeror list: Before contacting any business, a central purchasing office is encouraged to examine the state purchasing agent's current list of registered offerors, if any. Central purchasing offices are encouraged to contact at least three businesses for written offers before selecting a contractor.

C. Negotiations: A central purchasing office shall negotiate a contract for the required services at a fair and reasonable price to the state agency.

D. Disclosure: If more than one business is contacted, the contents of the written or oral offer of one business shall not be disclosed to another business until award is made. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

[1.4.1.52 NMAC - Rp, 1.4.1.52 NMAC, 6/21/2022]

1.4.1.53 APPLICATION (SOLE SOURCE PROCUREMENTS, 1.4.1.53 - 1.4.1.57):

The provisions of 1.4.1.53 through 1.4.1.57 NMAC of this rule apply to all sole source procurements unless emergency conditions exist as defined in 1.4.1.59 NMAC of this rule.

[1.4.1.53 NMAC - Rp, 1.4.1.53 NMAC, 6/21/2022]

1.4.1.54 SOLE SOURCE PROCUREMENT OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

A. Conditions for use: A contract may be awarded without competitive sealed bids or competitive sealed proposals, regardless of the estimated cost, when the state purchasing agent or a central purchasing office, employing due diligence, determines, in writing, that:

- (1) there is only one source for the required service, construction or item of tangible personal property;
- (2) the service, construction or item of tangible personal property is unique and this uniqueness is substantially related to the intended purpose of the contract; and
- (3) other similar services, construction or items of tangible personal property cannot meet the intended purpose of the contract.

B. Request by using agency: Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by a written explanation as to why no other will be suitable or acceptable to meet the need. The written explanation shall be made upon a form provided by the state purchasing agent and available on-line.

C. Posting: Prior to the award of a sole source procurement contract, the state purchasing agent or central purchasing office shall:

- (1) provide the information set forth in statute and listed upon the form made available by the state purchasing agent on the state purchasing agent's website to the department of information technology for posting on the sunshine portal; and
- (2) forward the same information to the legislative finance committee.

D. A local public body central purchasing office, prior to award of a sole source contract, shall post the information required by statute on the local public body website, if one exists, and post the information required by statute on the state purchasing agent's website.

E. Negotiations: The state purchasing agent or a central purchasing office shall conduct negotiations, as appropriate, as to price, delivery and quantity, in order to obtain the price most advantageous to the state.

F. Notice; protest: At least 30 days before a sole source contract is awarded, the state purchasing agent, a central purchasing office, a local public body, or a designee of any of these entities shall post notice of the intent to award a sole source contract on its website if one exists, and post the information required by statute on the state purchasing agent's website. Any qualified potential contractor who was not awarded a sole source contract may protest to the state purchasing agent or a central purchasing office. The protest shall be submitted:

(1) in writing; and

(2) within 15 calendar days of the notice of intent to award a contract being posted on the state purchasing agent's website or a central purchasing office's website, if it maintains one, or on a local public body's website, if it maintains one. (NOTE: the posting date should be the same on all websites upon which it is posted. If this is not the case, however, the 15 calendar period runs from the latest posted date.)

G. Specifications: The state purchasing agent or a central purchasing office shall not circumvent the sole source request and posting and award process by narrowly drafting specifications so that only one predetermined source would satisfy those specifications.

[1.4.1.54 NMAC - Rp, 1.4.1.54 NMAC, 6/21/2022]

1.4.1.55 [RESERVED]

1.4.1.56 [RESERVED]

1.4.1.57 RECORDS OF SOLE SOURCE PROCUREMENTS:

The state purchasing agent or central purchasing office shall maintain records of sole source procurements for a period as required by the commission of public records, state records center and archives statutes and rules. The party responsible for the procurement must retain the records. Posting such procurements on the state purchasing agent's website does not remove the central purchasing office's or a local public body's responsibility to maintain these records if the central purchasing office or a local public body was responsible for the procurement. The record of each such procurement shall be a public record and shall contain:

A. the contractor's name and address;

B. the amount and term of the contract;

C. a listing of the services, construction, or items of tangible personal property procured under the contract; and

D. the justification for the procurement method which shall include any written determinations and written approvals required by any provision of 1.4.1.53 through 1.4.1.57 NMAC of this rule.

[1.4.1.57 NMAC - Rp, 1.4.1.57 NMAC, 6/21/2022]

1.4.1.58 APPLICATION (EMERGENCY PROCUREMENTS, 1.4.1.58 - 1.4.1.64):

The provisions of 1.4.1.58 through 1.4.1.64 NMAC of this rule apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

[1.4.1.58 NMAC - Rp, 1.4.1.58 NMAC, 6/21/2022]

1.4.1.59 DEFINITION OF EMERGENCY CONDITIONS:

Refer to Section 13-1-127 NMSA 1978 for conditions allowing for the use of an emergency procurement.

[1.4.1.59 NMAC - Rp, 1.4.1.59 NMAC, 6/21/2022]

1.4.1.60 SCOPE OF EMERGENCY PROCUREMENTS:

Emergency procurements shall be limited to those services, construction, or items of tangible personal property necessary to meet the emergency. Such procurement shall not include the purchase or lease-purchase of heavy road equipment.

[1.4.1.60 NMAC - Rp, 1.4.1.60 NMAC, 6/21/2022]

1.4.1.61 AUTHORITY TO MAKE EMERGENCY PROCUREMENTS:

The state purchasing agent or a central purchasing office, employing due diligence, may make emergency procurements when an emergency condition arises; provided that emergency procurements shall be made with such competition as is practicable under the circumstances.

[1.4.1.61 NMAC - Rp, 1.4.1.61 NMAC, 6/21/2022]

1.4.1.62 PROCEDURE:

The procedure used shall be selected to assure that the required services, construction, or items of tangible personal property are procured in time to meet the emergency. Given this constraint, such competition as is practicable shall be obtained.

[1.4.1.62 NMAC - Rp, 1.4.1.62 NMAC, 6/21/2022]

1.4.1.63 WRITTEN DETERMINATION AND POSTING REQUIRED:

A written determination of the basis for the emergency procurement shall be made containing the information set forth in statute and listed on the form issued by the state purchasing agent and available on the state purchasing agent's website. Within three business days of awarding an emergency procurement, the awarding central purchasing office within a state agency shall:

A. provide the information required by statute to the department of information technology for posting on the sunshine portal; and

B. forward the same information to the legislative finance committee.

[1.4.1.63 NMAC - Rp, 1.4.1.63 NMAC, 6/21/2022]

1.4.1.64 RECORDS OF EMERGENCY PROCUREMENTS:

The state purchasing agent or central purchasing office shall maintain records of emergency procurements for a period as required by the commission of public records, state records center and archives statutes and rules. The party responsible for the procurement must retain the records. Posting such procurements on the state purchasing agent's website does not remove the central purchasing office's responsibility to maintain these records if the central purchasing office was responsible for the procurement. The record of each such procurement shall be a public record and shall contain:

A. the contractor's name and address;

B. the amount and term of the contract;

C. a listing of the services, construction, or items of tangible personal property procured under the contract; and

D. the justification for the procurement method.

[1.4.1.64 NMAC - Rp, 1.4.1.64 NMAC, 6/21/2022]

1.4.1.65 PROCUREMENT UNDER EXISTING CONTRACTS AUTHORIZED:

The state purchasing agent or a central purchasing office may contract for services, professional services, construction, or items of tangible personal property without the use of competitive sealed bids or competitive sealed proposals as follows:

A. at a price equal to or less than the contractor's current federal supply contract (GSA), providing the contractor has indicated in writing a willingness to extend the contract's pricing, terms and conditions to the state agency and the purchase order adequately identifies the contract relied upon; or

B. with a business which has a current price agreement with the state purchasing agent or a central purchasing office for the item, services, or construction meeting the same standards and specifications as the items to be procured, if the following conditions are met:

(1) the total quantity purchased does not exceed the quantity which may be purchased under the applicable price agreement; and

(2) the purchase order adequately identifies the price agreement relied upon;

C. other than Subsection A and B of this section and cooperative procurements as authorized by statute (and described in Section 13-1-135 NMSA 1978) or the state procurement card program (described in Section 6-5-9.1 NMSA 1978), no other procurement under existing contracts is authorized; no central purchasing office of a state agency or any other governmental entity may utilize a contract entered into by a different state agency or other governmental entity if not involved in the procurement itself (i.e., so-called "piggybacking" of contracts; the practice of "piggybacking" is not allowed under the Procurement Code); purchases under contracts developed through cooperative procurement authorized under Section 13-1-135 NMSA 1978 or contracts which qualify under Section 13-1-129 NMSA 1978 is permitted and does not constitute "piggybacking."

[1.4.1.65 NMAC - Rp, 1.4.1.65 NMAC, 6/21/2022]

1.4.1.66 LIMITATION ON SUBSECTION A OF 1.4.1.65 OF THIS RULE RELATING TO GSA CONTRACTS:

It should be understood, the state is not authorized to utilize a GSA contract per se. It is imperative, therefore, that the contractor, not a dealer or distributor, who has a current GSA contract indicate in writing a willingness to extend the contract's pricing, terms and conditions to the state of New Mexico. Therefore, a state agency shall not procure services, construction or items of tangible personal property directly under a general services administration (GSA) contract. Rather, a state agency must procure pursuant to a state purchasing agent price agreement which reflects the prices, terms and conditions of the respective GSA contract. If no such state purchasing agent price agreement exists, a state agency may make a written request to the state purchasing agent for the issuance of one. The request must be accompanied by a current copy of

the applicable GSA contract, a letter from the contractor expressing a willingness to extend the contract's pricing, terms and conditions to the state of New Mexico and a letter from the state agency indicating a commitment to utilize the price agreement. The state purchasing agent will ascertain whether it is current and whether the proposed price is equal to or less than the federal supply contract price. If everything is in order, the state purchasing agent will issue a price agreement or purchase order reflecting the prices, terms and conditions of the GSA contract. A state agency shall make no procurements from the GSA contractor until a state purchasing agent price agreement has been issued.

[1.4.1.66 NMAC - Rp, 1.4.1.66 NMAC, 6/21/2022]

1.4.1.67 COPIES OF CONTRACTS AND PRICE AGREEMENTS:

A central purchasing office shall retain for public inspection and for the use of auditors a copy of each state purchasing agent contract or current price agreement relied upon to make purchases without seeking competitive bids.

[1.4.1.67 NMAC - Rp, 1.4.1.67 NMAC, 6/21/2022]

1.4.1.68 APPLICATION (CANCELLATION OF SOLICITATIONS OR REJECTION OF BIDS OR PROPOSALS; 1.4.1.68 - 1.4.1.72):

The provisions of 1.4.1.68 through 1.4.1.72 NMAC of this rule shall govern the cancellation of any solicitations whether issued by the state purchasing agent under competitive sealed bids, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

[1.4.1.68 NMAC - Rp, 1.4.1.68 NMAC, 6/21/2022]

1.4.1.69 POLICY:

Any solicitation may be canceled or any or all bids or proposals may be rejected in whole or in part when it is in the best interest of the state of New Mexico.

[1.4.1.69 NMAC - Rp, 1.4.1.69 NMAC, 6/21/2022]

1.4.1.70 CANCELLATION OF SOLICITATIONS OR REJECTION OF ALL BIDS OR PROPOSALS:

A. Prior to opening:

(1) As used in this section, "opening" means the date set for opening of bids or receipt of proposals.

(2) Prior to opening, a solicitation may be canceled in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:

(a) the services, construction, or items of tangible personal property are no longer required;

(b) the using agency no longer can reasonably expect to fund the procurement; or

(c) proposed amendments to the solicitation would significantly change the nature of the procurement.

(3) When a solicitation is canceled prior to opening, notice shall be sent to all businesses solicited. The notice shall:

(a) identify the solicitation;

(b) briefly explain the reason for cancellation; and

(c) where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurements of similar services, construction, or items of tangible personal property.

B. After opening:

(1) After opening but prior to award, all bids or proposals may be rejected in whole or in part when the state purchasing agent or central purchasing office makes a written determination that such action is in the state's best interest for reasons including but not limited to:

(a) all of the bids and proposals are nonresponsive;

(b) the services, construction, or items of tangible personal property are no longer required;

(c) ambiguous or otherwise inadequate specifications were part of the solicitation;

(d) the solicitation did not provide for consideration of all factors of significance to the using agency;

(e) prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;

(f) all otherwise acceptable bids or proposals received are at clearly unreasonable prices; or

(g) there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

(2) A notice of rejection should be sent to all businesses that submitted bids or proposals, and it shall conform to Paragraph (3) of Subsection A of this section.

[1.4.1.70 NMAC - Rp, 1.4.1.70 NMAC, 6/21/2022]

1.4.1.71 REJECTION OF INDIVIDUAL BIDS OR PROPOSALS:

A. Reasons for rejection:

(1) Bids. As used in this section, "bid" means competitive sealed bids. Reasons for rejecting a bid shall include but are not limited to:

(a) the business that submitted the bid is nonresponsible as determined under 1.4.1.73 NMAC of this rule;

(b) the bid is not responsive; or

(c) the service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the IFB.

(2) Proposals. As used in this section, "proposal" means competitive sealed proposals. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and a using agency's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

(a) the business that submitted the proposal is nonresponsible as determined under 1.4.1.75 through 1.4.1.79 NMAC of this rule;

(b) the proposal is not responsive; or

(c) the proposed price is clearly unreasonable; or

(d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.

B. Written determination required: A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the state purchasing agent or central purchasing office and made a part of the procurement file.

[1.4.1.71 NMAC - Rp, 1.4.1.71 NMAC, 6/21/2022]

1.4.1.72 "ALL OR NONE" BIDS:

When the term "all or none" is used:

A. By the purchaser in a solicitation: A solicitation may require bidders to submit bids or offers on all items listed in the solicitation, or may identify certain groups of items in which all items must be bid. If the solicitation is properly so limited, a bidder's failure to bid all items identified as "all or none" items may render the bid nonresponsive.

B. By the bidder or offeror, and not the purchaser: If the bidder restricts acceptance of the bid, or a portion thereof, by such a statement as "all or none", the bidder has "qualified" the offer which may render the bid as nonresponsive.

C. In instances as stated in both Subsections A and B of this section such a bid or offer may be accepted only if the state purchasing agent or a central purchasing office issues a determination setting forth the basis for accepting the bid or offer as being in the best interest of the state. Also in both instances, the bid or offer is only eligible for award if it is the overall low bid for the item or items so restricted.

[1.4.1.72 NMAC - Rp, 1.4.1.72 NMAC, 6/21/2022]

1.4.1.73 APPLICATION (RECEIPT; INSPECTION; ACCEPTANCE OR REJECTION OF DELIVERIES; 1.4.1.73 - 1.4.1.74):

The using agency is responsible for inspecting and accepting or rejecting deliveries.

A. The using agency shall determine whether the quantity is as specified in the purchase order or contract.

B. The using agency shall determine whether the quality conforms to the specifications referred to or included in the purchase order or contract.

C. If inspection reveals that the delivery does not meet or conform to the quantity or quality specified in the purchase order or contract, the using agency shall notify the vendor that the delivery has been rejected and shall order the vendor to promptly make a satisfactory replacement or supplementary delivery.

D. In case the vendor fails to comply, the using agency shall promptly file a purchasing complaint with the state purchasing agent.

E. Also, in case the vendor fails to comply, the using agency shall have no obligation to pay for the nonconforming delivery.

F. If the delivery does conform to the quantity and quality specified in the purchase order or contract, the using agency shall certify that delivery has been completed and is satisfactory.

[1.4.1.73 NMAC - Rp, 1.4.1.73 NMAC, 6/21/2022]

1.4.1.74 SUMMARY:

Notwithstanding the requirements of 1.4.1.73 NMAC, if, after delivery and acceptance of the delivery, the delivery or a portion thereof is later found to be non-conforming to the specifications referred to or included in the purchase order or contract, such acceptance does not waive any rights or remedies which are otherwise granted to the buyer in accordance with other applicable sections of laws of New Mexico.

[1.4.1.74 NMAC - Rp, 1.4.1.74 NMAC, 6/21/2022]

1.4.1.75 APPLICATION (RESPONSIBILITY OF BIDDERS AND OFFERORS; 1.4.1.75 - 1.4.1.79):

A determination of responsibility or non-responsibility shall be governed by 1.4.1 75 through 1.4.1.79 NMAC.

[1.4.1.75 NMAC - Rp, 1.4.1.75 NMAC, 6/21/2022]

1.4.1.76 STANDARDS OF RESPONSIBILITY:

A. Standards for bidders: Factors to be considered in determining whether the standard of responsibility has been met include whether a bidder has:

- (1) submitted a responsive bid;
- (2) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services, construction, or items of tangible personal property described in the IFB;
- (3) a satisfactory record of performance;
- (4) a satisfactory record of integrity;
- (5) qualified legally to contract with the state; and
- (6) supplied all necessary information and data in connection with any inquiry concerning responsibility.

B. Standards for offerors: Factors to be considered in determining whether the standard of responsibility has been met include whether an offeror has:

- (1) submitted a responsive proposal;
- (2) adequate financial resources, production or service facilities, personnel, service reputation and experience to make satisfactory delivery of the services or items of tangible personal property described in the proposal;
- (3) a satisfactory record of performance;
- (4) a satisfactory record of integrity;
- (5) qualified legally to contract with the state; and
- (6) supplied all necessary information and data in connection with any inquiry concerning responsibility.

[1.4.1.76 NMAC -Rp, 1.4.1.76 NMAC, 6/21/2022]

1.4.1.77 ABILITY TO MEET STANDARDS:

A bidder or offeror may demonstrate the availability of adequate financial resources, production or service facilities, personnel and experience by submitting, upon request:

- A.** evidence that the bidder or offeror possesses the necessary items;
- B.** acceptable plans to subcontract for the necessary items; or
- C.** a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

[1.4.1.77 NMAC - Rp, 1.4.1.77 NMAC, 6/21/2022]

1.4.1.78 INQUIRY BY PROCUREMENT OFFICER:

Before awarding a contract, the procurement officer or procurement manager must be satisfied that the bidder or offeror is responsible. Therefore, a bidder or offeror shall supply information and data requested by the procurement officer concerning the responsibility of the bidder or offeror. The unreasonable failure of a bidder or offeror to promptly supply information or data in connection with such an inquiry is grounds for a determination that the bidder or offeror is not responsible.

[1.4.1.78 NMAC - Rp, 1.4.1.78 NMAC, 6/21/2022]

1.4.1.79 DETERMINATION REQUIRED:

If a bidder or offeror who otherwise would have been awarded a contract is found to be non-responsible, a written determination, setting forth the basis of the finding, shall be prepared by the state purchasing agent or central purchasing office. The written determination shall be made part of the procurement file, and a copy of the determination shall be sent to the non-responsible bidder or offeror.

[1.4.1.79 NMAC - Rp, 1.4.1.79 NMAC, 6/21/2022]

1.4.1.80 APPLICABILITY (PROTESTS; 1.4.1.80 - 1.4.1.93):

The provisions of 1.4.1.80 through 1.4.1.93 NMAC of this rule apply to all protests filed with the state purchasing agent and all central purchasing offices that have not adopted regulations for resolving protests. Central purchasing offices with rulemaking authority, other than the state purchasing agent, may adopt regulations for resolving protests filed within their jurisdictions.

[1.4.1.80 NMAC - Rp, 1.4.1.80 NMAC, 6/21/2022]

1.4.1.81 RIGHT TO PROTEST:

Any bidder or offeror who is aggrieved in connection with a solicitation or award of a contract, including a sole source procurement, may protest to the state purchasing agent or central purchasing office.

[1.4.1.81 NMAC - Rp, 1.4.1.81 NMAC, 6/21/2022]

1.4.1.82 FILING OF PROTEST:

A. Protest must be written: Protests must be in writing and addressed to the state purchasing agent or central purchasing office, whichever has control and administration over the procurement.

B. Contents: The protest shall:

- (1) include the name and address of the protestant;
- (2) include the solicitation number;
- (3) contain a statement of the grounds for protest;
- (4) include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and
- (5) specify the ruling requested from the state purchasing agent or central purchasing office.

C. Pleadings: No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.

D. Time limit: Protests shall be submitted within 15 calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence. Posting on the state purchasing division's website is considered public notice in this regard as well.

[1.4.1.82 NMAC - Rp, 1.4.1.82 NMAC, 6/21/2022]

1.4.1.83 PROCUREMENTS AFTER PROTEST:

A. In the event of a timely protest, as defined in Subsection D of 1.4.1.82 NMAC of this rule, the state purchasing agent or central purchasing office shall not proceed further with the procurement unless the state purchasing agent or central purchasing office makes a written determination that the award of the contract is necessary to protect substantial interests of a state agency. Such written determination should set forth the basis for the determination. As used in 1.4.1.80 through 1.4.1.93 NMAC of this rule, the point in time in which a contract is awarded is that point at which a legally enforceable contract is created unless the context clearly requires a different meaning. Award in this context means the final required state agency signature on the contract(s) resulting from the procurement.

B. A procurement shall not be halted after a contract has been awarded merely because a protest has been filed. After a contract has been awarded, the state purchasing agent or central purchasing office may, in its sole discretion, halt a procurement in exceptional circumstances or for good cause shown.

[1.4.1.83 NMAC - Rp, 1.4.1.83 NMAC, 6/21/2022]

1.4.1.84 PROCEDURE:

A. Upon the filing of a timely protest, the state purchasing agent or central purchasing office shall give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

B. The protestant and every business that receives notice pursuant to Subsection A of this section will automatically be parties to any further proceedings before the state purchasing agent or central purchasing office. In addition, any other person or business may move to intervene at any time during the course of the proceedings. Intervention will be granted upon a showing of a substantial interest in the outcome of the proceedings. Interveners shall accept the status of the proceedings at the time of their intervention; in particular, they must abide by all prior rulings and accept all previously

established time schedules. The state purchasing agent or central purchasing office, and all employees thereof, are not parties to the proceedings.

C. The state purchasing agent or central purchasing office may take any action reasonably necessary to resolve a protest. Such actions include, but are not limited to, the following:

- (1) issue a final written determination summarily dismissing the protest;
- (2) obtain information from the staff of the state purchasing agent or central purchasing office;
- (3) require parties to produce for examination information or witnesses under their control;
- (4) require parties to express their positions on any issues in the proceedings;
- (5) require parties to submit legal briefs on any issues in the proceeding;
- (6) establish procedural schedules;
- (7) regulate the course of the proceedings and the conduct of any participants;
- (8) receive, rule on, exclude or limit evidence;
- (9) take official notice of any fact that is among the traditional matters of official or administrative notice;
- (10) conduct hearings; and
- (11) take any action reasonably necessary to compel discovery or control the conduct of parties or witnesses.

[1.4.1.84 NMAC - Rp, 1.4.1.84 NMAC, 6/21/2022]

1.4.1.85 DISCOVERY:

Upon written request of any party, or upon its own motion, the state purchasing agent or central purchasing office may require parties to comply with discovery requests.

[1.4.1.85 NMAC - Rp, 1.4.1.85 NMAC, 6/21/2022]

1.4.1.86 HEARINGS:

A. Hearings will be held only when the state purchasing agent or central purchasing office determines that substantial material factual issues are present that cannot be resolved satisfactorily through an examination of written documents in the record. Any party may request a hearing, but such requests shall be deemed denied unless specifically granted.

B. Hearings, when held, should be as informal as practicable under the circumstances, but the state purchasing agent or central purchasing office has absolute discretion in establishing the degree of formality for any particular hearing. In no event is the state purchasing agent or central purchasing office required to adhere to formal rules of evidence or procedure.

[1.4.1.86 NMAC - Rp, 1.4.1.86 NMAC, 6/21/2022]

1.4.1.87 RESOLUTION:

A. The state purchasing agent or central purchasing office shall promptly issue a written determination relating to the protest. The determination shall:

(1) state the reasons for the action taken; and

(2) inform the protestant of the right to judicial review of the determination pursuant to Section 13-1-183 NMSA 1978.

B. A copy of the written determination shall be sent immediately by certified mail, return receipt requested, to each of the contractors, if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

[1.4.1.87 NMAC - Rp, 1.4.1.87 NMAC, 6/21/2022]

1.4.1.88 RELIEF:

A. Prior to award: If, prior to award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be canceled.

B. After award:

(1) No fraud or bad faith. If, after an award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has not acted fraudulently or in bad faith:

(a) the contract may be ratified, affirmed or revised to comply with law, provided that a written determination is made that doing so is in the best interest of the state; or

(b) the contract may be terminated, and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract plus a reasonable profit prior to termination.

(2) Fraud or bad faith. If, after an award, the state purchasing agent or central purchasing office makes a written determination that a solicitation or award of a contract is in violation of law and that the business awarded the contract has acted fraudulently or in bad faith, the contract shall be canceled.

C. Relief not allowed: Except as provided in Subparagraph (b) of Paragraph (1) of Subsection B of this section, the state purchasing agent or central purchasing office shall not award money damages or attorneys' fees.

[1.4.1.88 NMAC - Rp, 1.4.1.88 NMAC, 6/21/2022]

1.4.1.89 MOTION FOR RECONSIDERATION:

A. Motion: A motion for reconsideration of a written determination issued pursuant to 1.4.1.87 NMAC of this rule may be filed by any party or by any using agency involved in the procurement. The motion for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification of the determination is deemed warranted, specifying any errors of law made, or information not previously considered.

B. When to file: A motion for reconsideration shall be filed not later than seven calendar days after receipt of the written determination.

C. Response to motion: The state purchasing agent or central purchasing office shall promptly issue a written response to the motion for reconsideration. A copy of the written response shall be sent immediately by certified mail, return receipt requested, to each of the contractors, if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied.

[1.4.1.89 NMAC - Rp, 1.4.1.89 NMAC, 6/21/2022]

1.4.1.90 DESIGNEE:

A. Designation: At any point during a protest proceeding, the state purchasing agent or central purchasing office may appoint a designee as defined in Section 13-1-51 NMSA 1978 to preside over the proceeding. The designee will have all of the powers described in 1.4.1.80 through 1.4.1.93 NMAC of this rule except the power to issue a

written determination under 1.4.1.87 NMAC of this rule. The designee only has authority to recommend a resolution to the state purchasing agent or central purchasing office under 1.4.1.87 NMAC of this rule.

B. Who may be designated: Any person, other than the procurement officer, procurement manager or other person not directly involved in the procurement, may serve as a designee.

C. Recommended written determination: A designee shall present a recommended written resolution to the state purchasing agent or central purchasing office. No party may appeal from the recommended resolution of the designee.

D. Action by state purchasing agent or central purchasing office: The state purchasing agent or central purchasing office shall approve, disapprove or modify the recommended resolution of the designee in writing. Such approval, disapproval or modification shall be the written determination required by 1.4.1.87 NMAC of this rule. Any party may file a motion for reconsideration of the written determination pursuant to 1.4.1.89 NMAC of this rule.

[1.4.1.90 NMAC - Rp, 1.4.1.90 NMAC, 6/21/2022]

1.4.1.91 FINAL DETERMINATION:

A. No motion for reconsideration: In those proceedings in which no motion for reconsideration is filed, the written determination issued pursuant to 1.4.1.87 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978.

B. Motion for reconsideration: In those proceedings in which a motion for reconsideration is filed, the written response to the motion issued pursuant to 1.4.1.89 NMAC of this rule shall be the final determination for purposes of the time limits for seeking judicial review under Section 13-1-183 NMSA 1978.

[1.4.1.91 NMAC - Rp, 1.4.1.91 NMAC, 6/21/2022]

1.4.1.92 COPIES OF COMMUNICATIONS:

A. Copies to be provided to parties: Each party to a protest proceeding shall certify that it has provided every other party with copies of all documents or correspondence addressed or delivered to the state purchasing agent or central purchasing office.

B. Ex parte communications: No party shall submit to the state purchasing agent or central purchasing office, ex parte, any material, evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in a protest.

[1.4.1.92 NMAC - Rp, 1.4.1.92 NMAC, 6/21/2022]

1.4.1.93 COUNTING DAYS:

In computing any period of time prescribed in 1.4.1.80 through 1.4.1.93 NMAC of this rule, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run to the end of the next business day.

[1.4.1.93 NMAC - Rp, 1.4.1.93 NMAC, 6/21/2022]

1.4.1.94 CHIEF PROCUREMENT OFFICER REGISTRATION AND CERTIFICATION:

A. Overview: This section applies to chief procurement officers in all state agencies and local public bodies.

(1) **Statutory Authority.** Under Section 9-17-5 NMSA 1978 and the Procurement Code, Sections 13-1-1 et seq NMSA 1978, the general services secretary has authority to promulgate rules and regulations relating to this program.

(2) **Scope.** The chief procurement officer registration, certification and recertification training program is a state wide program administered by the state purchasing agent. Each state agency and local public body shall provide to the state purchasing agent the name of and all changes to the name of the state agency's or local public body's chief procurement officer and information identifying the state agency's or local public body's central purchasing office. The state purchasing agent shall maintain a list of the names of chief procurement officers reported to the state purchasing agent by state agencies and local public bodies. The state purchasing agent shall make the list of approved chief procurement officers available to the public through the web site of the purchasing division of the general services department and in any other appropriate form. It is a violation of statute if state agencies and local public bodies do not have a chief procurement officer listed on the state purchasing agent list before performing procurements. Section 13-1-98 NMSA 1978 shall not reduce the scope of duties, responsibilities or authority of the state purchasing agent, nor shall such exemptions exclude state agencies and local public bodies from the duties and responsibilities of providing the state purchasing agent the name of its certified chief procurement officer. All state agencies and local public bodies and their certified chief procurement officers are required to comply with all requirements under Sections 13-1-28 through 13-1-199 NMSA 1978 (amended 2013).

B. Definitions:

(1) "Approves" or "approved" means a chief procurement officer has successfully completed the certification or recertification training program administered by the state purchasing agent and attested to by the issuance of a certificate signed by the state purchasing agent.

(2) "Conduct" or "conducting" procurements means the act of preparing, advertising, processing, and awarding procurements of any kind, including, but not limited to, sole source, invitation to bid, request for proposals, and contracts under state price agreements.

(3) "Certification program" means the initial certification process through passing an exam after completing course material and a test approved by the general services secretary.

(4) "Recertification program" means training that will include affirmation of successfully completing course material approved by the general services secretary.

C. Mandatory identification of certified chief procurement officer: Each state agency and local public body shall annually, on or before January 1st of each year, and within 15 calendar days every time thereafter upon a vacancy or extended absence of a certified chief procurement officer for more than two weeks, provide to the state purchasing agent the name of the state agency or local public body certified chief procurement officer and, if applicable, information identifying the state agency or local public body central purchasing office. Every state agency or local public body shall have a certified chief procurement officer on the state purchasing agent list to perform procurements. No agency shall conduct procurements until a certified chief procurement officer is approved by the state purchasing agent. Upon a vacancy or absence, the state agency or local public body shall have 90 days to replace its certified chief procurement officer. In the event the initial 90 day period is to be exceeded, and upon good cause shown, to the satisfaction of the state purchasing agent, an additional 90 days may be granted to the state agency or local public body by the state purchasing agent to replace its certified chief procurement officer. Examples of good cause would include vacancies due to emergencies, death or resignation of a certified chief procurement officer. Until a certified chief procurement officer is reported to the state purchasing agent no procurements may be conducted and no duties, responsibilities, and obligations may be performed as detailed in Subsection F of 1.4.1.94 NMAC unless granted temporary authority by the state purchasing agent.

D. Registration of chief procurement officer with state purchasing agent: Each state agency or local public body is responsible for registering its chief procurement officer and ensuring the information on the state purchasing division website is current and correct. The certified chief procurement officer, that has been reported by the state agency or local public body to the state purchasing agent as provided in Subsection C of 1.4.1.94 NMAC above, shall register with the state purchasing agent through the state purchasing division's website. The state agency or local public body shall provide all the required identification information, including:

(1) certified chief procurement officer name with title, phone number and email address;

(2) agency or entity name with full address and registration date.

At the time of registering for the certification or recertification program, the applicant shall execute a statement of personal responsibility affirming:

(a) the applicant is a current employee of a state agency or local public body and not employed as an independent contractor;

(b) the applicant has not been convicted of a felony unless pardoned by the governor; and

(c) any additional required information specified by the state purchasing agent.

E. Chief procurement officer certification: The state purchasing agent shall establish a certification and recertification program for all chief procurement officers including the initial certification, and recertification every two years, on or before the certification anniversary date for each certified chief procurement officer. In order to be certified or recertified, a chief procurement officer shall remain an employee of the state agency or local public body, must not be convicted of a felony or behavior unbecoming of a chief procurement officer with a record of performance that establishes good moral character and competency, and shall obtain such training as deemed appropriate by the secretary of the general services department and pass a certification or recertification program, as appropriate, approved by the secretary of the general services department. Subject to the provisions of subsection J, the state purchasing agent may revoke a certification if shown that the chief procurement officer has not maintained the standards for a chief procurement officer. The secretary of the general services department reserves the right to add separate certifications and recertifications of specialized acquisitions under the procurement code as are deemed necessary or useful by the secretary.

F. Certified chief procurement officer duties, responsibilities and obligations: On and after July 1, 2015, only certified chief procurement officers may do the following, except that persons using procurement cards may continue to issue purchase orders and authorize small purchases:

(1) make determinations, including determinations regarding exemptions, pursuant to the Procurement Code;

(2) issue purchase orders and authorize small purchases pursuant to the Procurement Code; and

(3) approve procurement pursuant to the Procurement Code.

G. Failure to identify and register a certified chief procurement officer: In the event that the state agency or local public body does not have a certified chief procurement officer identified and registered in conformance with Section 13-1-95.2 NMSA 1978,

pursuant to Section 13-1-97 NMSA 1978, procurement acts by that state agency or local public body may be suspended at the discretion of the state purchasing agent.

H. Identification, registration and certification violations: Any procurement act performed by a state agency or local public body under the New Mexico procurement code that has not identified and registered its certified chief procurement officer in conformance with Section 13-1-95.2 NMSA 1978, may be deemed a procurement violation. For state agencies, such procurement violation(s) may also result in a violation of the department of finance and administration's Model Accounting Practices.

I. Delegation or sharing of certified chief procurement officer duties: The sharing of a certified chief procurement officer through mutual execution of a memorandum of agreement by the state agency (agencies) or local public body (bodies) is allowed. A state agency or local public body wanting to delegate or share a certified chief procurement officer with another state agency or local public body shall: provide to the state purchasing agent for such sharing arrangement, information identifying the state agency or local public body central purchasing office, the name of the state agency or local public body shared certified chief procurement officer and the intergovernmental agreement supporting the arrangement. Chief procurement officers may only be employees of the state or a local public body and may not be third parties or temporary employees except as otherwise provided in this subsection.

J. Revocation or suspension of certification:

(1) The state purchasing agent may suspend or revoke certified chief procurement officer certification in whole or in part, based on any action or conduct deemed improper of a certified chief procurement officer, including but not limited to severity or frequency of procurement violations, non-compliance with the Governmental Conduct Act (Sections 10-16-1 through 10-16-18 NMSA 1978), lack of verification that the chief procurement officer has successfully completed the certification or recertification program established by the state purchasing agent; lack of verification of current employment by the reporting state agency or local public body and not employed as an independent contractor; lack of verification that the person has not been convicted of a felony and behavior unbecoming of a chief procurement officer with a record of performance that establishes competency.

(2) Due process procedures shall be initiated by the state purchasing agent after reasonable notice to the certified chief procurement officer involved as follows in this section. The state purchasing agent or his designee shall cause written notice of the proposed revocation or suspension of certification (the Action) to be sent by certified mail, return receipt requested, to the certified chief procurement officer involved. The notice shall contain the following statements:

(a) the action contemplated is for revocation or suspension of certified chief procurement officer certification;

(b) the reasons for the action, which shall include a summary of the certified chief procurement officer's conduct or performance/nonperformance of his duties to which the action relates;

(c) the action is brought pursuant to the provisions contained in Section 13-1-95.2 NMSA 1978 and the regulations promulgated thereunder;

(d) sufficient facts exist, unless rebutted, to support the proposed revocation or suspension of certification and that the state purchasing agent shall proceed to suspend or revoke certified chief procurement officer certification in whole or in part unless the certified chief procurement officer requests, in writing, a hearing within 15 consecutive calendar days from the day the certified chief procurement officer receives the notice of the proposed action;

(e) the address where the certified chief procurement officer's request for hearing shall be sent, and the name of the person to whom the request shall be sent; and

(f) that if the certified chief procurement officer fails to deliver a written request for a hearing to the person designated within the 15 days required in Subparagraph (d) of this Section, a final determination shall be made by the state purchasing agent;

(g) upon receipt of a timely request for hearing, the state purchasing agent will appoint a neutral hearing officer and any such hearing officer so appointed will conduct the hearing and recommend a final decision to the state purchasing agent. If no hearing officer can be appointed in timely fashion, the state purchasing agent shall then act as the hearing officer.

(3) If a hearing is requested, the hearing officer shall send written notice to the certified chief procurement officer of the time and the place of the hearing.

(4) Hearings, and any subsequent appeals, shall conform to the standards, requirements, and process set forth for protests under the procurement code, Sections 13-1-28 thru 13-1-199 NMSA 1978, and be as informal as may be reasonable and appropriate under the circumstances. However, in no event shall the hearing officer be required to adhere to formal rules of evidence or procedure. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the participants may be regarded and used as evidence at the hearing. The participants may stipulate the testimony that would be given by a witness as if the witness were present. The hearing officer may require evidence in addition to that offered by the participants. The state purchasing agent shall issue a written determination regarding revocation or suspension of certification following the hearing.

K. Reinstatement of certification:

(1) The state purchasing agent may reinstate the certified chief procurement officer certification:

(a) in whole or in part;

(b) temporarily or permanently; or

(c) may limit the scope of duties as the state purchasing agent deems appropriate.

(2) The state purchasing agent may require successful completion of re-certification or proof of eligibility as a pre-condition for reinstatement. This may include successful completion of the certification program or recertification program.

(3) The state purchasing agent reserves the right to adopt additional remedies into the program as deemed appropriate.

L. Coordination by the state purchasing agent: The state purchasing agent may coordinate with the department of finance and administration regarding the reporting of decisions and actions under this section for state agencies, and with the local government division of the department of finance and administration for local public bodies.

M. Policies from the state purchasing agent: The state purchasing agent reserves the right to implement further policies to give full effect to the certified chief procurement officer statutes and this rule as required and necessary.

N. Limitations: Nothing in these rules shall be deemed to be a limit on the authority of the state purchasing agent to enact the purpose of these rules, nor a limit on other legal liability of certified chief procurement officer for their action or conduct.

[1.4.1.94 NMAC - Rp, 1.4.1.94 NMAC, 6/21/2022]

1.4.1.95 STATE USE ACT:

A. Procurement of services: In regard to the procurement of services, before utilizing any other procurement method allowed under the Procurement Code, a state agency or local public body shall first offer the procurement to the central non-profit agency under contract with the state. The central non-profit agency has the right of first refusal for any procurement of services provided that the service is stated on a list provided and published by the central non-profit agency and provided that the provider can meet the time requirements of the state agency.

B. Central non-profit agency: The central non-profit agency shall:

(1) publish the list of services available through the central non-profit agency on a website available to all state agencies and local public bodies;

(2) ensure that all service providers on this list meet the eligibility requirements to offer services under Section 13-1C-1 et. seq., NMSA 1978; and

(3) ensure that the prices offered to state agencies and local public bodies reflect the fair market value of such services in accordance with Section 13-1C-5 NMSA 1978;

(4) provided that, under Section 13-1C-6 NMSA 1978, services provided pursuant to and facilities covered by Section 22-14-27 NMSA 1978 are excluded from procurement through the central non-profit agency.

C. Procurement of services pursuant to Section 13-1C-1 et. seq., NMSA 1978 are exempt from the Procurement Code.

[1.4.1.95 NMAC - Rp, 1.4.1.95 NMAC, 6/21/2022]

PART 2: RESIDENT BUSINESS AND MANUFACTURER PREFERENCES

1.4.2.1 ISSUING AGENCY:

General Services Department, State Purchasing Division.

[01-15-98; Recompiled 11/30/01]

1.4.2.2 SCOPE:

All executive branch state agencies.

A. Applicability. Except as provided in Subsection 2.2 [now Subsection B of 1.4.2.2 NMAC], this rule applies to all competitive-sealed-bid procurements and all competitive-price-quote small purchases by state agencies and local public bodies.

B. Inapplicability. This rule does not apply in the following situations:

(1) when a procurement method other than competitive sealed bids (or competitive price quotes for small purchases) is used; or

(2) when a public works construction contract is being procured; or

(3) when the expenditure of federal funds designated for a specific purchase is involved; or

(4) for any bid price greater than five million dollars (\$5,000,000).

[01-15-98; Recompiled 11/30/01]

1.4.2.3 STATUTORY AUTHORITY:

1978 Comp., Section 13-1-21, enacted by Laws 1979, Chapter 72, Section 1, amended by Laws 1981, Chapter 104, Section 1; Laws 1988, Chapter 84, Section 1; Laws 1989, Chapter 310, Section 1; Laws 1995, Chapter 60, Section 1; Laws 1997, Chapter 1, Section 2; Laws 1997, Chapter 2, Section 2; Laws 1997, Chapter 3, Section 1.

[01-15-98; Recompiled 11/30/01]

1.4.2.4 DURATION:

Permanent.

[01-15-98; Recompiled 11/30/01]

1.4.2.5 EFFECTIVE DATE:

January 15, 1998 unless a later date is cited at the end of a section or paragraph.

[01-15-98; Recompiled 11/30/01]

1.4.2.6 OBJECTIVE:

Section 13-1-22 NMSA 1978 is titled "resident business and manufacturer certification; application; information" and states in relevant part, "no resident business or resident manufacturer, as those terms are defined in Section 13-1-21 NMSA 1978, shall be given any preference in the awarding of contracts for furnishing materials or services to a state agency, unless the resident business or resident manufacturer shall have qualified with the state purchasing agent as a resident business or resident manufacturer, or both, by making application to the state purchasing agent and receiving from him a certification number." Therefore, the objective of this rule is to establish a process for a resident business or resident manufacturer to attain a certification number.

[01-15-98; Recompiled 11/30/01]

1.4.2.7 DEFINITIONS:

A. "Affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the qualifying business through ownership of voting securities representing a majority of the total voting power of the entity.

B. "Principal place of business" means the place in which a business:

- (1) earns the largest percentage of its revenues; and
- (2) owns the largest percentage of its capital assets; and
- (3) employs the largest percentage of its full-time equivalent employees. A business can have only one principal place of business.

C. "Resident business" means a New Mexico resident business or a New York state business enterprise.

D. "New Mexico resident business" means a business which, at the time a contract is awarded, is authorized to do and is doing business under the laws of this state and:

- (1) maintains its principal place of business in this state; or
- (2) has staffed an office in this state and has paid applicable state taxes for two years prior to the awarding of the contract and has five or more employees who are residents of this state; or
- (3) is an affiliate of a business which meets the requirements of Paragraph 7.4.1. or Paragraph 7.4.2 [now Paragraph (1) or (2) of Subsection D of 1.4.2.7 NMAC] above.

E. "New York state business enterprise" means a business enterprise, including sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state.

F. "Resident manufacturer" means a person who offers materials grown, produced, processed or manufactured wholly in the state; provided, however, that a New York state business enterprise shall be deemed to be a resident manufacturer solely for the purpose of evaluating the New York state business enterprise's bid against the bid of a resident manufacturer that is not a New York state business enterprise.

G. "Recycled content goods" means supplies and materials composed in whole or in part of recycled materials; provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications.

H. "Virgin content goods" means supplies and materials that are wholly composed of nonrecycled materials or do not meet minimum recycled content standards required by bid specifications.

[01-15-98; Recompiled 11/30/01]

1.4.2.8 APPLICATION OF PREFERENCES:

A. Bids from nonresident businesses and resident businesses. When bids are received only from nonresident businesses and resident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident bidder is made lower than the bid price of the nonresident business when multiplied by a factor [sic] of 0.95.

B. Bids from nonresident businesses and resident manufacturers. When bids are received only from nonresident businesses and resident manufacturers and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the nonresident business when multiplied by a factor of 0.95.

C. Bids from resident businesses and resident manufacturers. When bids are received only from resident businesses and resident manufacturers and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of 0.95.

D. Bids from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business. When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a resident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low resident business bidder if the bid price of the resident manufacturer is made lower than the bid price of the resident business when multiplied by a factor of 0.95.

E. Bids from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business. When bids are received from resident manufacturers, resident businesses and nonresident businesses and the lowest responsible bid is from a nonresident business, the contract shall be awarded to the resident manufacturer whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident manufacturer is evaluated as lower than the bid price of the nonresident business when multiplied by a factor of 0.95. If there is no resident manufacturer eligible for award under this provision, then the contract shall be awarded to the resident business whose bid is nearest to the bid price of the otherwise low nonresident business bidder if the bid price of the resident business is made lower than the bid price of the nonresident business when multiplied by a factor of 0.95.

(1) When bids are received for virgin content goods only or for recycled content goods only, Subsections 8.3 and 8.4 [now Subsections C and D of 1.4.2.8 NMAC] shall apply.

(2) When bids are received for both recycled content goods and virgin content goods and the lowest responsible bid is for virgin content goods, the contract shall be awarded to:

(a) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price;

(b) a resident business offering a bid on recycled content goods of equal quality if:

(i) the bid price of no resident manufacturer following application of the preference allowed in 8.5.2.1 of this subsection [now Subparagraph (a) of Paragraph (2) of Subsection E of 1.4.1.8 NMAC] can be made sufficiently low; and

(ii) the lowest bid price of the resident business when multiplied by a factor of .90 is made lower than the otherwise low virgin content goods bid price; or

(c) a nonresident business or nonresident manufacturer offering recycled content goods of equal quality if:

(i) the bid price of no resident business or resident manufacturer following application of the preference allowed in 8.5.2.1 or 8.5.2.2 of this subsection [now Subparagraph (a) or (b) of Paragraph (2) of Subsection E of 1.4.2.8 NMAC] can be made sufficiently low; and

(ii) the lowest bid price of a nonresident offering recycled content goods when multiplied by a factor of .95 is made lower than the otherwise low virgin content bid price.

(3) When bids are received for both recycled content goods and virgin content goods, and the lowest responsible bid is for recycled content goods offered by a nonresident business or nonresident manufacturer, the contract shall be awarded to:

(a) a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price; or

(b) a resident business offering a bid on recycled content goods of equal quality if:

(i) the bid price of no resident manufacturer following application of the preference allowed in 8.5.3.1 of this subsection can be made sufficiently low; and

(ii) the lowest bid price of the resident business when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price offered by a nonresident business or manufacturer.

(4) When bids are received for both recycled content goods and virgin content goods, and the lowest responsible bid is for recycled content goods offered by a resident business, the contract shall be awarded to a resident manufacturer offering the lowest bid on recycled content goods of equal quality if the bid price of the resident manufacturer when multiplied by a factor of .95 is made lower than the otherwise low recycled content goods bid price.

[01-15-98; Recompiled 11/30/01]

1.4.2.9 PREQUALIFICATION:

A. Resident business. No business shall be given any preference in the awarding of contracts by a state agency or local public body unless the business has prequalified a resident business by making application to the state purchasing agent and receiving from him a certification number. The procedure for application and certification shall be as follows:

(1) the state purchasing agent shall prepare an application form for certification as a resident business requiring such information and proof as he deems necessary to prequalify the applicant under the terms of this rule;

(2) a prospective resident business shall complete the application form and submit it to the state purchasing agent prior to the awarding of any contract in which the business desires to be given a preference;

(3) the state purchasing agent shall examine the application and if necessary may seek additional information or proof so as to be assured that the applicant is indeed entitled to certification as a resident business. If the state purchasing agent is so assured, he shall issue the applicant a distinctive certification number which is valid until revoked and which, when used on bids and other purchasing documents for state agencies or local public bodies, entitles the holder of the number to the resident business preference.

B. Resident manufacturers. Since a resident manufacturer is a person who offers materials grown, produced, processed or manufactured wholly in this state, the state purchasing agent will not prequalify any person as a resident manufacturer. Rather, a person must establish that each item bid on which he desires to be given a preference is for materials grown, produced, processed or manufactured wholly in this state.

[01-15-98; Recompiled 11/30/01]

1.4.2.10 REVOCATION OF CERTIFICATION NUMBERS:

A. General. All certification numbers are subject to revocation in accordance with this rule. A certification number does not establish conclusively that the holder of the number is a resident business. Rather, a certification number merely establishes that the state purchasing agent believed, as of the date of issuance, the holder was entitled to treatment as a resident business by state agencies and local public bodies. Whenever a certification number is challenged, the holder of the number has the burden of persuasion on the issue of whether the holder is actually a resident business.

B. Revocation. A certification number shall be revoked by the state purchasing agent upon making a determination that the holder of the number no longer qualifies as a resident business.

(1) A revocation shall be effective immediately and shall apply to all subsequent contract awards. A revocation shall not affect any previously awarded contracts, though, in the absence of fraud or bad faith.

(2) At any time, the state purchasing agent may request information or proof from the holder of a certification number as to whether the holder continues to qualify as a resident business. If the holder fails to provide any requested information or proof, this certification number may be revoked.

[01-15-98; Recompiled 11/30/01]

1.4.2.11 PROTESTS:

A. Right to protest. A bidder who is aggrieved in the award of a contract to another bidder, who is relying on a resident business or manufacturer preference, may protest to the central purchasing office responsible for the procurement in accordance with Section 13-1-172 NMSA 1978.

B. Resident businesses. If a protest presents the issue of whether the holder of a certification number is actually a resident business, the central purchasing office responsible for the procurement shall refer the issue to the state purchasing agent for resolution in accordance with 1 NMAC 5.2 [now 1.4.1 NMAC] or succeeding regulations. If a protest governed by Subsection 11.2 [now this subsection - Subsection B of 1.4.2.11 NMAC] presents additional issues, the central purchasing office responsible for the procurement shall remain responsible for resolution of the additional issues.

C. Resident manufacturers. If a protest presents the issue of whether a person is entitled to a resident manufacturer preference on a particular bid, the central purchasing office responsible for the procurement shall resolve the protest.

[01-15-98; Recompiled 11/30/01]

PART 3: RESIDENT CONTRACTOR PREFERENCE

1.4.3.1 ISSUING AGENCY:

General Services Department - State Purchasing Division.

[1.4.3.1 NMAC - Rp, 1 NMAC 5.4.1, 11-15-01]

1.4.3.2 SCOPE:

All executive Branch State Agencies.

A. General applicability. This rule applies to all public works construction procurements by state agencies and local public bodies.

B. Federal funds. This rule does not apply to federal aid construction projects or when federal funds designated for a specific contract are expended.

[1.4.3.2 NMAC - Rp, 1 NMAC 5.4.2, 11-15-01]

1.4.3.3 STATUTORY AUTHORITY:

1978 Comp., Section 13-4-2, enacted by Laws 1984, Chapter 66, Section 2, amended by Laws 1988, Chapter 84, Section 3; Laws 1989, Chapter 310, Section 2; Laws 1997, Chapter 2, Section 3; Laws 2001, Chapter 174, Section 1.

[1.4.3.3 NMAC - Rp, 1 NMAC 5.4.3, 11-15-01]

1.4.3.4 DURATION:

Permanent.

[1.4.3.4 NMAC - Rp, 1 NMAC 5.4.4, 11-15-01]

1.4.3.5 EFFECTIVE DATE:

11-15-01 unless a later date is cited at the end of a Section.

[1.4.3.5 NMAC - Rp, 1 NMAC 5.4.5, 11-15-01]

1.4.3.6 OBJECTIVE:

Section 13-4-1 NMSA 1978 is titled "Public Works Contracts" and states in relevant part that, "it is the duty of every office department, institution, board, commission or other governing body or officer thereof of this state or of any political subdivision thereof to award all contracts for the construction of public works or for the repair, reconstruction, including highway reconstruction, demolition or alteration thereof, to a resident contractor whenever practicable. The objective of this rule is to establish a process for a contractor to attain certification as a "resident contractor".

1.4.3.7 DEFINITIONS:

A. "Affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a telecommunications company through ownership of voting securities representing a majority of the total voting power of that entity.

B. "Individual citizen" means a citizen of New Mexico who is an actual human person, as opposed to a corporate person or other legal entity.

C. "Principal office" means the headquarters of a business or the place where the principal affairs of a business are transacted. A business can have only one principal office.

D. "Principal place of business" means the place in which a business:

- (1) earns the largest percentage of its revenues;
- (2) owns the largest percentage of its capital assets; and
- (3) employs the largest percentage of its full-time equivalent employees. A business can have only one principal place of business.

E. "Resident Contractor" means a New Mexico resident contractor or a New York state business enterprise.

F. "New Mexico resident contractor" means a construction contractor which, at the time a public works construction contract is advertised for bids and at the time bids are opened, has all required licenses and meets the following requirements:

- (1) if the contractor is a corporation, it shall be incorporated in new Mexico, and maintain its principal office and place of business in New Mexico.
- (2) if the contractor is a partnership, general or limited, or other legal entity, it shall maintain its principal office and place of business in New Mexico.
- (3) if the contractor is an individual, he shall maintain his principal office and place of business in New Mexico; or
- (4) if the contractor is a public telecommunications company as defined by Section 63-9A-3 (M) NMSA 1978 or an affiliate of a telecommunications company and has paid unemployment compensation to the Employment Security Division of the Labor Department at the applicable experience rate for that employer pursuant to the New Mexico Unemployment Compensation Law on no fewer than ten employees who

have performed services subject to contributions for the two-year period prior to issuance of notice to bid, the contractor will be considered to have fulfilled the requirements of paragraphs (1), (2), or (3) of this subSection. A successor to a previously qualified New Mexico contractor or resident contractor, where the creation of the successor resulted from a court order, is entitled to credit for qualifying contributions paid by the previously qualified new Mexico contractor or resident contractor.

G. "New York state business enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise, including sole proprietorship, partnership or corporation, that has its principal place of business in New York state.

[1.4.3.7 NMAC - Rp, 1 NMAC 5.4.7 NMAC, 11-15-01]

1.4.3.8 APPLICATION OF PREFERENCES:

A. Bids from nonresident contractors and resident contractors. When bids are received only from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the bid price of the otherwise low nonresident contractor if the bid price of the resident contractor is made lower than the bid price of the nonresident contractor when multiplied by a factor of 0.95. Any contract executed in violation of this subSection shall be void and of no effect.

B. Resident business and resident manufacturer preferences inapplicable. The resident contractor preference is the only bidding preference that applies to the awarding of public works construction contracts. The resident business preference and the resident manufacturer preference shall not be considered in the awarding of such contracts under any circumstances.

[1.4.3.8 NMAC - Rp, 1 NMAC 5.4.8, 11-15-01]

1.4.3.9 PREQUALIFICATION:

A. Prequalification required. No contractor shall be treated as a resident contractor in the awarding of public works by a state agency or local public body unless the contractor has prequalified as a resident contractor by making application to the state purchasing agent and receiving from him a certification number.

B. Procedure. The prequalification procedure shall be as follows:

(1) the state purchasing agent shall prepare an application form for certification as a resident contractor requiring such information and proof as he deems necessary to prequalify the applicant under the terms of this rule;

(2) a prospective resident contractor shall complete the application form and submit it to the state purchasing agent prior to the submission of a bid on which the contractor desires to be given a preference;

(3) the state purchasing agent shall examine the application and if necessary may seek additional information or proof so as to be assured that the applicant is indeed entitled to certification as a resident contractor. If the state purchasing agent is so assured, he shall issue the applicant a distinctive certification number which is valid until revoked and which, when used on bids and other purchasing documents for state agencies or local public bodies, entitles the holder of the number to treatment as a resident contractor under Section 1.4.3.8 of this rule.

[1.4.3.9 NMAC - Rp, 1 NMAC 5.4.9, 11-15-01]

1.4.3.10 REVOCATION OF CERTIFICATION NUMBERS:

A. General. All certification numbers are subject to revocation in accordance with this rule. A certification number does not establish conclusively that the holder of the number is a resident contractor. Rather, a certification number merely establishes that the state purchasing agent believed, as of the date of issuance, the holder was entitled to treatment as a resident contractor by state agencies and local public bodies. Whenever a certification number is challenged, the holder of the number has the burden of persuasion on the issue of whether the holder is actually a resident contractor.

B. Revocation. A certification number shall be revoked by the state purchasing agent upon making a determination that the holder of the number no longer qualifies as a resident contractor.

(1) a revocation shall be effective immediately and shall apply to all subsequent contract awards. A revocation shall not affect any previously-awarded contracts, through, in the absence of fraud or bad faith.

(2) at any time, the state purchasing agent may request information or proof from the holder of a certification number as to whether the holder continues to qualify as a resident contractor. If the holder fails to provide any requested information or proof, his certification number may be revoked.

[1.4.3.10 NMAC - Rp, 1 NMAC 5.4.10, 11-15-01]

1.4.3.11 PROTESTS:

A. Right to protest. A bidder who is aggrieved in the award of a contract to another bidder, who is relying on the resident contractor preference, may protest to the central purchasing office responsible for the procurement in accordance with Section 13-1-172 NMSA 1978.

B. Resident businesses and resident contractors. If a protest presents the issue of whether the holder of a certification number is actually a resident contractor, the central purchasing office responsible for the procurement shall refer the issue to the state purchasing agent for resolution in accordance with Procurement Code Rule 1.4.1 NMAC or succeeding rules.

C. If a protest governed by SubSection B of this Section presents additional issues, the central purchasing office responsible for the procurement shall remain responsible for resolution of the additional issues.

[1.4.3.11 NMAC - Rp, 1 NMAC 5.4.11, 11-15-01]

PART 4: GOVERNMENTAL ADVERTISING RATES

1.4.4.1 ISSUING AGENCY:

General Services Department - State Purchasing Division.

[2/15/1999; 1.4.4.1 NMAC - Rn, 1 NMAC 1.1.1 & A, 11/15/2005]

1.4.4.2 SCOPE:

All legal notices or advertisements that a governmental entity is required by law, or by the order of any court of record in this state, to publish in newspapers.

[2/15/1999; 1.4.4.2 NMAC - Rn, 1 NMAC 1.1.2, 11/15/2005]

1.4.4.3 STATUTORY AUTHORITY:

Section 14-11-7 NMSA 1978 was amended by Laws of 1993, Chapter 25, to legalize all notices or advertisements that a governmental entity is required by law, or by the order of any court of record in this state, to publish in newspapers.

[2/15/1999; 1.4.4.3 NMAC - Rn, 1 NMAC 1.1.3, 11/15/2005]

1.4.4.4 DURATION:

Permanent.

[2/15/1999; 1.4.4.4 NMAC - Rn, 1 NMAC 1.1.4, 11/15/2005]

1.4.4.5 EFFECTIVE DATE:

February 15, 1999 unless a later date is cited at the end of a section.

[2/15/1999; 1.4.4.5 NMAC - Rn, 1 NMAC 1.1.5 & A, 11/15/2005]

1.4.4.6 OBJECTIVE:

The rule authorizes the general services department to establish a reasonable rate or rates to be paid to newspaper publishers for publication.

[2/15/1999; 1.4.4.6 NMAC - Rn, 1 NMAC 1.1.6, 11/15/2005]

1.4.4.7 DEFINITIONS:

[RESERVED]

1.4.4.8 PURPOSE:

This rule implements the mandated requirements of Section 14-11-7 NMSA 1978, as amended, and as outlined in 1.4.4.3 NMAC of this rule, the newspaper publisher is entitled to receive no more than:

A. \$.68 cents (\$.68) for each column line of eight point or smaller type for the first insertion; and

B. \$.52 cents (\$.52) per line of each subsequent insertion;

C. all emblems, display headings, rule work and necessary blank spaces shall be calculated as solid type and shall be counted and paid for as such.

[2/15/1999; 1.4.4.8 NMAC - Rn, 1 NMAC 1.1.8 & A, 11/15/2005; A, 5/14/2009; A, 6/15/2009; A, 8/27/2019]

1.4.4.9 RATE REVIEW:

For the purpose of addressing changes in economic conditions within the newspaper industry, as well as the general economy and inflation, the rate or rates set forth in 1.4.4.3 NMAC of this rule shall be reviewed annually by the secretary of the general services department. If necessary, the rate or rates shall be adjusted annually to reflect and maintain a current and reasonable rate to be paid to newspaper publishers.

[2/15/1999; 1.4.4.9 NMAC - Repealed, 11/15/2005 & Rn, 1 NMAC 1.1.10, 11/15/2005]

PART 5: PAYMENT VOUCHERS [RESERVED]

PART 6: PURCHASING COMPLAINT REPORT [RESERVED]

PART 7: SUSPENSION OR DEBARMENT OF BIDDERS, OFFERORS OR CONTRACTORS

1.4.7.1 ISSUING AGENCY:

General Services Department - State Purchasing Division.

[1.4.7.1 NMAC - N, 08-30-13]

1.4.7.2 SCOPE:

Applicability. This regulation affects all user agencies procuring contracts, other than professional services, through the state purchasing agent, all contractors obtaining or attempting to obtain contracts through the state purchasing agent and all suspensions or debarments by the secretary of contractors from consideration for award of contracts.

[1.4.7.2 NMAC - Rp, GSD 87-602.2.0, 08-30-13]

1.4.7.3 STATUTORY AUTHORITY:

This regulation is based on 13-1-177 through 13-1-180 NMSA 1978.

[1.4.7.3 NMAC - N, 08-30-13]

1.4.7.4 DURATION:

Permanent.

[1.4.7.4 NMAC - N, 08-30-13]

1.4.7.5 EFFECTIVE DATE:

August 30, 2013, unless a later date is cited at the end of a section.

[1.4.7.5 NMAC - N, 08-30-13]

1.4.7.6 OBJECTIVE:

Purpose. The purpose of this regulation is to protect the state from risks associated with awarding contracts to persons having exhibited an inability or unwillingness to perform faithfully contracts awarded to them by the state; and protect substantial state interests and the integrity of the state's procurement process by establishing a procedure whereby persons determined to have displayed improper conduct can be suspended or debarred from doing business with the state. It is not the purpose of the regulation to

impose punishment upon persons for any acts or omissions. There shall be no suspension, debarment, or discrimination of any kind against any person because that person has complained or protested, formally or informally, the state's procurement processes or decisions.

[1.4.7.6 NMAC - Rp, GSD 87-602.1.0, 08-30-13]

1.4.7.7 DEFINITIONS:

A. "Contractor" means any bidder, offeror or construction contractor, excluding contractors for professional services, who have been awarded or are seeking award of one or more contracts through the state purchasing agent under the provisions of the Procurement Code. "Contractor" includes individuals, joint ventures, corporations and all other business entities.

B. "Debarment" means a final order of the secretary that denies a contractor the right to bid or offer to enter into a contract, other than a contract for professional services, with the state purchasing agent. The period of debarment specified in an order of debarment shall be for no less than three months and for no more than three years. A debarment period shall begin on the day the contractor receives notice of the final order of debarment and shall automatically expire no later than the end of the term specified in the order.

C. "Hearing" means an examination (proceeding) of the issue before the hearing officer, whether the issues are of law or fact. When the hearing officer determines that the contested issues are only of law, the examination need not include oral argument of the parties or their counsel or an evidentiary proceeding.

D. "Participants to a debarment or suspension proceeding" means the state purchasing agent, user agency (if any) and contractor.

E. "Party" means the contractor who is the subject of a determination under Subsection A of 1.4.7.9 NMAC.

F. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or other legal or commercial entity. As used in this rule, the terms "person", "bidder", "offeror" and "contractor" include principals, officers, directors, owners, partners and managers of the person, bidder, offeror or contractor.

G. "Procurement Code" means 13-1-28 through 13-1-199 NMSA 1978.

H. "Professional services" means the services of architects, archeologists, engineers, land surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public

accountants, lawyers, psychologists, planners, and researchers and persons and businesses providing similar services.

I. "Secretary" means the secretary of the general services department. The secretary is the governing authority of the state purchasing agent.

J. "State purchasing agent" means the director of the state purchasing division, general services department.

K. "Suspension" means a final order of the secretary that denies a contractor the right to bid or offer to enter into a contract, other than a contract for professional services, with the state purchasing agent. An order of suspension shall not exceed three months, provided that the suspension may be longer pursuant to Paragraph (3) of Subsection D of 1.4.7.9 NMAC. A period of suspension shall begin on the day the contractor receives notice of the final order of suspension and shall automatically expire no later than the end of the suspension specified in the order.

L. "Unsatisfactory performance" means a record of poor performance or default on one or more contracts for construction, services (other than professional services) or tangible personal property including, but not limited to, overshipments, undershipments, providing damaged or defective goods, making unauthorized substitutions, billing errors or service deficiencies. The term includes negligent or intentional failure, without good cause, to perform in accordance with the specifications or time limits provided in a contract, or a history of failure to perform or of poor performance in accordance with the terms of one or more contracts unless the failure to perform or the poor performance was caused by acts beyond the control of the contractor.

M. "User agency" means any state agency or agencies, including, but not limited to, departments, divisions, bureaus, boards, commissions and any other subdivision of the state of New Mexico that:

(1) received or were designated to receive any benefit, including, but not limited to, supplies, services or construction, pursuant to a contract which is the basis of any proposed suspension or debarment action; and

(2) initiated the grievance that led to issuance of a determination of probable cause under Subsection A of 1.4.7.9 NMAC or is determined to have had an integral role in the events which form the basis for the suspension or debarment action; such determination shall be made by the hearing officer or state purchasing agent; no agency of state government shall be a participant to a suspension or debarment proceeding unless designated as a participant pursuant to this section; only a user agency designated as a participant shall be entitled to notices required by this regulation.

[1.4.7.7 NMAC - Rp, GSD 87-602.5.0, 08-30-13]

1.4.7.8 POLICY:

The policy of this regulation is to provide reasonable notice and require a fair hearing prior to any debarment of any contractor from consideration for award of contracts.

[1.4.7.8 NMAC - Rp, GSD 87-602.4.0, 08-30-13]

1.4.7.9 DEBARMENT OR SUSPENSION - PROCEDURES:

A. Initiation: The state purchasing agent or a central purchasing agent or a central purchasing office, after reasonable notice to the person involved, shall have authority to recommend to the governing authority of a state agency or a local public body the debarment of a person for cause from consideration for award of contracts, other than contracts for professional services. The debarment shall not be for a period of more than three years. The authority to debar shall be exercised by the governing authority of a state agency or a local public body in accordance with the following rules. The state purchasing agent and user agency and all employees thereof are not parties to the proceedings, but shall be participants as set forth in Subsection D of 1.4.7.7 NMAC.

B. Debarment procedures.

(1) Notice to the contractor: The state purchasing agent or his designee shall cause written notice of the proposed debarment to be sent by certified mail, return receipt requested, to the contractor. The notice shall contain the following statements:

(a) the action contemplated is for debarment;

(b) the maximum time period of the debarment is three years (also give the recommended maximum time of debarment, if less than three years);

(c) the reasons for the action, which shall include a summary of the contractor's conduct to which the action relates and a listing of any contracts related to such conduct;

(d) the action is brought pursuant to the provisions contained in 13-1-177 through 13-1-180 NMSA 1978 and the regulations promulgated thereunder;

(e) sufficient facts exist, unless rebutted, to support the proposed debarment and that the GSD secretary shall proceed to debar unless contractor requests, in writing, a hearing within 15 consecutive calendar days from the day contractor receives the notice of the proposed action;

(f) the address where contractor's request for hearing shall be sent, and the name of the person to whom the request shall be sent; and

(g) the contractor may be represented throughout the proceeding by an attorney licensed to practice law in the state of New Mexico.

(2) Failure to request hearing on debarment: If the contractor fails to deliver a written request for a hearing to the person designated pursuant to Subparagraph (f) of Paragraph (1) of Subsection B of 1.4.7.9 NMAC within the 15 days required in Subparagraph (e) of Paragraph (1) of Subsection B of 1.4.7.9 NMAC, a final determination shall be made, pursuant to the requirements of Subsection E of 1.4.7.9 NMAC.

(3) Hearing officer appointment: Where a timely request for hearing is received, the state purchasing agent may appoint a hearing officer to conduct the hearing and recommend a final decision to the state purchasing agent. If no hearing officer is appointed, the state purchasing agent shall act as the hearing officer. In such instance, the hearing officer's recommendation and the state purchasing agent's recommendation to the secretary shall be one and the same.

(4) Notice of hearing: When hearing is requested under Subparagraph (e) of Paragraph (1) of Subsection B of 1.4.7.9 NMAC, the hearing officer shall send written notice to the contractor of the time and the place of the hearing. The hearing shall be held within no sooner than five days and no later than 60 days after the contractor receives notice of the hearing unless continued by the hearing officer for good cause. Failure to hold a timely hearing shall result in dismissal of the contemplated action. The state purchasing officer may renew the proposed action against the contractor by following all procedures of 1.4.7.9 NMAC of these regulations if such refiling is otherwise timely.

(5) Debarment hearing procedures.

(a) Hearings shall be as informal as may be reasonable and appropriate under the circumstances and in accordance with applicable due process requirements. However, in no event shall the hearing officer be required to adhere to formal rules of evidence or procedure. The weight to be attached to evidence presented in any particular form will be within the discretion of the hearing officer. Stipulations of fact agreed upon by the participants may be regarded and used as evidence at the hearing. The participants may stipulate the testimony that would be given by a witness as if the witness were present. The hearing officer may require evidence in addition to that offered by the participants.

(b) A hearing shall be recorded but need not be transcribed except at the request and expense of the party or participant requesting the transcription. In the event of multiple requests for transcriptions, cost of transcription shall be borne equally by those making the requests. In addition to the recording, a record of those present, identification of any written evidence presented, and copies of all written statements and a summary of the hearing shall be sufficient record.

(c) Opening and closing statements may be made by the participants at the discretion of the hearing officer.

(d) Witnesses shall testify under oath or affirmation. All witnesses may be cross-examined.

(e) Hearing requirement. The hearing officer and the parties may require a final hearing before the hearing officer. The hearing officer may define the scope of such hearing and limit presentation to evidentiary, legal matter or summation of the case.

(f) The hearing officer shall make a final recommendation to the state purchasing agent within 30 days after the record is closed in the examination.

(g) A copy of the determination of debarment shall be mailed to the last known address on file with the state purchasing agent or central purchasing office, by first class mail, within three business days after issuance of the written determination or transmitted electronically within three business days after issuance of the written determination.

C. Authority of the hearing officer in a debarment procedure: the hearing officer may, among other things:

(1) conduct hearings and hold informal conferences in person or by telephone, to settle, simplify or establish the issues in a proceeding or to consider other matters that may aid in the expeditious disposition of the proceeding either by request of the participants or as required by the hearing officer;

(2) require participants to state their positions with respect to the various issues in the proceeding, including requiring the submission of briefs on any issues in the proceedings;

(3) require participants to produce for examination those relevant witnesses and documents under their control and permit or prohibit discovery;

(4) rule on motions and other procedural matters;

(5) regulate the course of the proceedings, procedural schedules and the conduct of participants therein;

(6) receive, rule on, exclude, or limit evidence and limit lines of questioning or testimony which are irrelevant, immaterial, or repetitious;

(7) fix time limits for submission of written documents;

(8) impose appropriate sanctions against any participant or person failing to obey a directive under these procedures, which sanctions may include, but not be limited to:

(a) refusing to allow the non-complying participant to support or oppose designated claims or defenses, or prohibiting that participant from introducing evidence when such evidence is the subject of or related to the non-compliance;

(b) excluding all testimony of an unresponsive or evasive witness; and

(c) expelling any participant or person from further participation in the hearing;

(9) take official notice of any material fact not appearing in evidence in the record, if such fact is among the traditional matters of official or administrative notice.

D. Suspension procedures.

(1) The state purchasing agent or a central purchasing office, after consultation with the using agency, may suspend a person from consideration for award of contracts if the state purchasing agent or central purchasing office, after reasonable investigation, finds that a person has engaged in conduct that constitutes cause for debarment pursuant to 13-1-178 NMSA 1978.

(2) The state purchasing agent or his designee shall cause written notice of the determination of suspension to be sent by certified mail, return receipt requested, to the contractor. The notice of suspension shall contain the following statements:

(a) the action is a suspension of the contractor;

(b) the maximum time period of the suspension is three months (also give the recommended maximum time of suspension if less than three months), provided that the suspension may be longer pursuant to Paragraph (3) of Subsection D of 1.4.7.9 NMAC in which case the notice of suspension will state this condition;

(c) the reasons for the action, which shall include a summary of the contractor's conduct to which the action relates and a listing of any contracts related to such conduct;

(d) the action is brought pursuant to the provisions contained in 13-1-177 through 13-1-180 NMSA 1978 and the regulations promulgated thereunder; and

(e) the sufficient facts that exist to support the suspension, and that the GSD secretary has suspended the person.

(3) Suspension based upon a criminal offense. If a person has been charged with a criminal offense that would be a cause for debarment pursuant to 13-1-178 NMSA 1978, the suspension shall remain in effect until the criminal charge is resolved and the person is debarred or the reason for the suspension no longer exists.

E. Recommendation of state purchasing agent and comment period. Final order. Appeal. The state purchasing agent shall prepare a written recommendation on whether to suspend or debar. The recommendation shall be sent to the secretary, contractor, and the user agency. When the contractor has submitted a timely response pursuant to Subparagraph (e) of Paragraph (1) of Subsection B of 1.4.7.9 NMAC, the contractor and the user agency shall have 10 days from the date of receiving the recommendation to file comments with the secretary. There shall be no administrative appeal from the recommendation to the secretary. The secretary shall issue a final order after expiration of the 10 day comment period. If the comment period does not apply, the secretary shall issue a final order after receipt of the recommendation. Both the state purchasing agent's recommendation and the secretary's final order shall recite the reasons for debarment and shall recite the evidence relied upon in making the determination for debarment. When the secretary's final order adopts all aspects of the state purchasing agent's recommendation, the final order may incorporate the recommendation by reference and attach it to the order. When suspension or debarment is recommended or ordered, the length of the suspension (not to exceed three months, unless suspension is made pursuant to 13-1-178 NMSA 1978 and Paragraph (3) of Section D of 1.4.7.9 of this regulation) or debarment (not to exceed three years) and the reasons for such action shall be set forth. The final order shall inform the debarred contractor of the contractor's right to judicial review pursuant to 13-1-179 and 13-1-183 NMSA 1978. The secretary's final order shall be the final determination for purposes of the time limits for seeking judicial review under 13-1-183 NMSA 1978. Notice of debarment or suspension shall be mailed by certified mail, return receipt requested, to contractor upon issuance of the secretary's final order. The state purchasing agent and user agency shall be given a copy of the final order upon its issuance by the secretary.

F. Effect of suspension or debarment decision.

(1) A debarment or suspension shall take effect upon receipt of the final order by the contractor. The contractor shall remain suspended or debarred until a court of competent jurisdiction or the secretary orders otherwise, or until the debarment or suspension period, as specified in the final order, expires. The secretary may order the suspension or debarment reduced or ended only as provided in Subsection I of 1.4.7.9 NMAC.

(2) Any business entity which must hold a state license as a prerequisite for award of a contract (which is subject to the provisions of this regulation) shall also be suspended or debarred, as the case may be, if the holder of such license is a suspended or debarred contractor and the business entity holds no other license.

(3) Debarments and suspensions shall apply to all contracts subject to the authority of the state purchasing agent, regardless of the subject matter of future contracts.

G. Causes for debarment or suspension.

(1) The causes for debarment or suspension must occur within three years of the date final action on a procurement is taken. For purposes of this section, Subsection G of 1.4.7.9 NMAC, the date final action is taken on a procurement is the date the contract with the contractor is fully executed and contractor is authorized to proceed with his performance of the contract, in accordance with the terms of the contract.

(2) Those causes include, but are not limited to, the following:

(a) criminal conviction of a bidder, offeror or contractor for commission of a criminal offense related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(b) civil judgment against a bidder, offeror or contractor for a civil violation related to obtaining unlawfully or attempting to obtain a public or private contract or subcontract, or related to the unlawful performance of such contract or subcontract;

(c) conviction of a bidder, offeror or contractor under state or federal statutes related to embezzlement, theft, forgery, bribery, fraud, falsification or destruction of records, making false statements or receiving stolen property or for violation of federal or state tax laws;

(d) conviction of a bidder, offeror or contractor under state or federal antitrust statutes relating to the submission of offers;

(e) criminal conviction against a bidder, offeror or contractor for any other offense related to honesty, integrity or business ethics;

(f) civil judgment against a bidder, offeror or contractor for a civil violation related to honesty, integrity or business ethics;

(g) civil judgment against a bidder, offeror or contractor pursuant to the Unfair Practices Act;

(h) violation by a bidder, offeror or contractor of contract provisions, as set forth in this paragraph, of a character that is reasonably regarded by the state purchasing agent or a central purchasing office to be so serious as to justify suspension or debarment action, including:

(i) willful failure to perform in accordance with one or more contracts;
or

(ii) a history of failure to perform or of unsatisfactory performance of one or more contracts; provided that this failure or unsatisfactory performance has occurred within a reasonable time preceding the decision to impose debarment; and provided further that failure to perform or unsatisfactory performance caused by acts

beyond the control of the contractor shall not be considered to be a basis for debarment;

(i) any other cause that the state purchasing agent or a central purchasing office determines to be so serious and compelling as to affect responsibility as a contractor; or

(j) for a willful violation by a bidder, offeror or contractor of the provisions of the Procurement Code.

H. Deferment of proceedings: The hearing officer may defer debarment proceedings pending final disposition of a related claim or dispute if he finds:

(1) that the cause of the action brought against the contractor is related to a good faith claim or dispute pending before a state agency, the state purchasing agent, or on judicial appeal; and

(2) a delay in the proceedings will not be prejudicial to the public interest.

I. Termination or modification of suspension or debarment.

(1) Any contractor suspended or debarred under this regulation may petition the state purchasing agent to shorten or terminate the suspension or debarment. The petition shall show good cause for the requested relief.

(2) A contractor's request for modification or termination of a suspension or debarment must be supported by good cause shown, including documentation providing reasons for such modification or termination, including, but not limited to:

(a) bona fide change in ownership and management of the business; or

(b) elimination or mitigation of cause for which the suspension or debarment was imposed; or

(c) compliance with terms that were set forth in the suspension or debarment order.

(3) Procedure: The state purchasing agent shall admit or deny review of the petition. If review is allowed, the petition shall be reviewed pursuant to the procedures described in Subsection C of 1.4.7.9 NMAC.

(4) Upon termination of a suspension or debarment, a contractor suspended or debarred under this regulation shall automatically be reinstated with full contracting rights without further written notice by the secretary, hearing officer or state purchasing agent.

(5) Appeal: A petition for termination or modification of a final order of debarment shall not be treated as a motion for reconsideration and shall not stay the running of time in which a contractor has to appeal, under the provisions of 13-1-183 NMSA 1978, a final order issued pursuant to Subsection E of 1.4.7.9 NMAC. The secretary's final order on the petition for termination or modification of an order of debarment shall be the final determination for purposes of the time limits for seeking judicial review under 13-1-183 NMSA 1978, where there is a denial or partial denial of such petition.

J. Maintenance of list of suspended and debarred contractors: The state purchasing agent shall maintain and update a list of debarred and suspended contractors. The list shall reflect all modifications and terminations of debarments and suspensions. All purchasing agencies, political subdivisions of the state and the public shall be supplied with this list upon request. The state purchasing agent may charge a reasonable fee for the expense of copying and mailing such list. The state purchasing agent shall send updates of this list to all user agencies and political subdivisions of the state as the state purchasing agent deems necessary.

[1.4.7.9 NMAC - Rp, GSD 87-602.6.0, 08-30-13]

1.4.7.10 CONTINUATION OF CURRENT CONTRACTS - RESTRICTIONS ON SUBCONTRACTING:

A. Notwithstanding the debarment, suspension or proposed debarment of a person, a state agency or local public body may continue contracts or subcontracts in existence at the time that the person is debarred, suspended or proposed for debarment unless the governing authority of the state agency or local public body directs otherwise.

B. Unless the governing authority of a state agency or local public body issues a written determination based on compelling reasons holding otherwise, a person that has been debarred or suspended or whose debarment has been proposed shall not, after the date that the person is debarred, suspended or proposed for debarment:

(1) incur financial obligations, including those for materials, services and facilities, unless the person is specifically authorized to do so under the terms and conditions of the person's contract; or

(2) extend the duration of the person's contract by adding new work, by exercising options or by taking other action.

C. Unless pursuant to a written authorization based on the compelling reasons of the governing authority of a state agency or local public body, the state purchasing agent or a central purchasing office shall not consent to enter into a subcontract subject to the Procurement Code with a person that has been debarred, suspended or proposed for debarment.

D. A person that has entered into a contract subject to the Procurement Code shall not subcontract with another person that has been debarred, suspended or proposed for debarment without the written authorization of the state purchasing agent or a central purchasing office. A person that wishes to subcontract with another person that has been debarred, suspended or proposed for debarment shall make a request to the applicable state agency or local public body that includes the following information:

- (1) the name of the proposed subcontractor;
- (2) information about the proposed subcontractor's debarment, suspension or proposed debarment;
- (3) the requester's compelling reasons for seeking a subcontract with the proposed subcontractor; and
- (4) a statement of how the person will protect the interests of the state agency or local public body considering the proposed subcontractor's debarment, suspension or proposed debarment.

[1.4.7.10 NMAC - N, 08-30-13]

PART 8: USE OF COMPETITIVE SEALED PROPOSALS FOR CONSTRUCTION AND FACILITY MAINTENANCE, SERVICES AND REPAIRS

1.4.8.1 ISSUING AGENCY:

General Services Department State Purchasing Division.

[1.4.8.1 NMAC - N, 09-30-05]

1.4.8.2 SCOPE:

All executive branch state agencies.

[1.4.8.2 NMAC - N, 09-30-05]

1.4.8.3 STATUTORY AUTHORITY:

Sections 13-1-67, 13-1-111 NMSA (2003 Amendments).

[1.4.8.3 NMAC - N, 09-30-05]

1.4.8.4 DURATION:

Permanent.

[1.4.8.4 NMAC - N, 09-30-05]

1.4.8.5 EFFECTIVE DATE:

September 30, 2005, unless a later date is cited at the end of a section.

[1.4.8.5 NMAC - N, 09-30-05]

1.4.8.6 OBJECTIVE:

The purpose of this rule is to establish uniform procedures for the use of competitive sealed proposals that will promote the delivery of high quality projects in a timely, safe and cost-effective manner.

[1.4.8.6 NMAC - N, 09-30-05]

1.4.8.7 DEFINITIONS:

Most of the terms in this rule are defined in the Procurement Code and prior Procurement Code regulations. In 1.4.8 NMAC, the following definitions apply:

A. "firm" means the company or other business entity referenced under 1.4.8 NMAC for the purpose of identifying, individually or collectively: a general contractor, a prime contractor or a subcontractor, of any tier, whether basic trade subcontractor, specialty subcontractor or other;

B. "pre listed subcontractors" means the subcontractors, of any tier, that the offeror is required to list, pursuant to 1.4.8.13 NMAC of 1.4.8 NMAC, at the time it submits a proposal in response to a request for proposals;

C. "reckless" shall mean the submission or omission of a false or misleading material fact in connection with a request for proposals under 1.4.8 NMAC that the submitting firm and/or person knew or should have known was false or misleading;

D. "RFP" means requests for proposals;

E. "RFP documents" means any one or combination of the following request for proposal documents: technical proposal; price proposal; contractor qualification statement; subcontractor qualification statement.

[1.4.8.7 NMAC - N, 09-30-05]

1.4.8.8 APPLICATION (COMPETITIVE SEALED PROPOSAL PROCEDURES FOR CONSTRUCTION AND FACILITY MAINTENANCE, SERVICE AND REPAIRS 1.4.8.1 -1.4.8.17):

A. General. The provisions of 1.4.8.1 NMAC through 1.4.8.17 NMAC set forth specific procedures that shall apply to all procurements made by competitive sealed proposals for construction and facility maintenance, service and repair.

B. The regulations applicable to the use of competitive sealed proposals pursuant to 1.4.1.29 NMAC through 1.4.1.47 NMAC, as well other existing rules applicable to competitive sealed proposals and procurement generally, e.g., 1.4.1.65 NMAC through 1.4.1.92 NMAC, shall apply to procurements made by competitive sealed proposals for construction and facility maintenance, service and repair to the extent they do not conflict with the provisions of 1.4.8 NMAC.

C. A state agency with rule making authority may adopt its own regulations to supplement the provisions of 1.4.8 NMAC, provided that such regulations meet the requirements of 1.4.8 NMAC, do not otherwise conflict with 1.4.8 NMAC and the state agency receives prior written authorization from the general services department secretary.

[1.4.8.8 NMAC - N, 09-30-05]

1.4.8.9 GENERAL DISCUSSION:

The RFP competitive sealed proposal process is authorized to give using agencies flexibility to achieve the best overall value from a procurement contract. This is accomplished by permitting consideration of certain contractor qualification and performance factors that add value to a procurement contract, such as contractor past performance, technical expertise and experience, management capabilities and resources, subcontractor teams and craft personnel resources. It can also be achieved by permitting consideration of other technical or non-price factors that add value to a procurement contract, including schedule or contract warranty. Due to the inherently complex nature of most construction contracts and contracts for facility maintenance, service and repairs, the procurement of these services can often be accomplished more effectively through competitive sealed proposals, rather than competitive sealed bids, since the latter process essentially makes price the sole determining factor. When the competitive sealed proposal process is used, however, it is critical that appropriate procedures, criteria and information-gathering techniques be utilized to ensure that the RFP process works efficiently and fairly and achieves optimal results. The following sections are designed to assist using agencies in meeting these goals.

[1.4.8.9 NMAC - N, 09-30-05]

1.4.8.10 RFP PLANNING PROCEDURES:

A. Information required in RFPs. In addition to the information specified in 1.4.1.29 NMAC through 1.4.1.47 NMAC, or otherwise required by 1.4.8 NMAC, an RFP issued pursuant to 1.4.8 NMAC shall include:

- (1) the core evaluation factors specified in Subsection A of 1.4.8.15 NMAC;
- (2) additional evaluation factors, if applicable, as provided by Subsection B. of 1.4.8.15. NMAC, and;
- (3) the numerical weight or points assigned to price and each of the technical evaluation factors specified in the RFP in accordance with the requirements of 1.4.8.14 NMAC.

B. RFP review by state purchasing agent. A using agency issuing an RFP pursuant to 1.4.8 NMAC may submit a draft RFP to the state purchasing agent for review, but must do so at least thirty (30) days prior to the proposed issue date of the RFP. The state purchasing agent shall advise the using agency of any revisions needed to comply with the requirements of 1.4.8 NMAC. If revisions are directed, they shall be made prior to the issuance of the RFP.

C. If a using agency elects to reserve its right to enter discussions or negotiations with offerors in the context of an RFP issued under 1.4.8 NMAC, it shall explicitly reserve such rights in the RFP. If a using agency elects to engage in discussions or negotiations in the context of an RFP issued under 1.4.8 NMAC, it shall comply with applicable requirements of NMAC 1.4.1.29-1.4.1.47 NMAC.

[1.4.8.10 NMAC - N, 09-30-05]

1.4.8.11 PUBLIC NOTICE:

Procurements by the state purchasing agent. The state purchasing agent shall give public notice of the RFP in the same manner as provided in 1.4.1.17 NMAC.

[1.4.8.11 NMAC - N, 09-30-05]

1.4.8.12 PROPOSAL SUBMISSION REQUIREMENTS:

A. Two-part proposal submissions. In addition to any requirements imposed by 1.4.1.29 NMAC through 1.4.1.47 NMAC, or otherwise specified in the request for proposal document, RFPs issued under this rule shall instruct offers to submit two-part, two-volume written proposals. Each volume shall be submitted in a separate sealed envelope or package and offerors shall be instructed to clearly label each volume with their name, address and date of submittal and prominently identify each as: volume I: technical proposal and volume II: price proposal.

B. Restrictions regarding opening of proposals. Price proposals shall remain sealed until the using agency has completed its evaluation of the technical proposals for all offerors and has prepared final technical scores as required by this rule.

C. Representations in RFP process. All RFP documents executed in connection with an RFP issued pursuant to this rule shall contain an acknowledgement and certification section with the following provisions.

(1) All RFP documents shall be signed by a director, officer or manager of the submitting firm who has sufficient knowledge to fully address all matters and respond to all inquiries included in RFP documents.

(2) The submitting firm shall represent that the information provided in the RFP documents is truthful, accurate and complete and that the firm and individual responsible for the submission shall be fully responsible for and bound by all information, data, certifications, disclosures and attachments included in the RFP documents.

(3) The submitting firm further understands:

(a) the information and data provided in connection with the RFP documents, as well as any other relevant information obtained from any other sources regarding the firm, may be reviewed to determine whether it qualifies as a responsible contractor pursuant to 1.4.1.47 NMAC and whether its offer represents the best value to using agency;

(b) a firm's failure to meet responsibility standards or provide requested information may render it ineligible to perform work on the prospective procurement contract;

(c) the submitting firm acknowledges its obligation to carefully review and complete, and, when applicable, update the RFP documents;

(d) the omission of any material fact concerning requested or submitted information, or the submission of any material false or misleading statement, or misrepresentation of a material fact concerning any requested or submitted information, may lead to the disqualification of the proposal.

(4) The submitting firm agrees that if it is awarded the contract, the RFP documents, and all terms and conditions specified therein, and all information, data, certifications and disclosures included in the RFP documents, shall be incorporated into the contract.

(5) The submitting firm further understands that if it is determined that it has intentionally or recklessly failed to disclose requested information, or has intentionally or recklessly made a false statement, misrepresentation, or omission regarding a material fact relating to the RFP documents, the firm may be declared in default of contract and any such conduct shall provide the using agency with grounds to terminate the contract and/or withhold full or partial payment and/or impose any sanctions or penalties, as deemed appropriate and available under New Mexico law.

D. Contractor/Subcontractor Qualification Statements. A general contractor or other prime contractor submitting a proposal pursuant to an RFP issued under 1.4.8 NMAC shall be required to submit as part of its technical proposal a certified contractor qualification statement and certified subcontractor qualification statements in accordance with the requirements of 1.4.8.12 NMAC.

(1) **Use of Qualification Statements.** Contractor and subcontractor qualification statements shall be submitted on forms prepared by the general services department or the using agency. Information provided in these statements shall be considered by the using agency for evaluating and scoring contractors and subcontractors on technical proposals required under this rule. These statements shall also be considered in determining whether a contractor or subcontractor is a responsible contractor for purposes of 1.4.1.47 NMAC. RFPs should inform contractors and subcontractors, however, that in making such evaluations and determinations, the using agency is not restricted to the minimum information required for disclosure qualification statements and that any relevant information regarding performance from reliable sources may be considered.

(2) **Subcontractor Qualification Statements.** Subcontractor qualification statements shall be required for all subcontractors identified in the technical proposal pursuant to the subcontractor listing requirements 1.4.8.13 NMAC, where the value of the subcontract is fifty-thousand (\$50,000) or five percent, whichever is greater. A using agency may reserve the right to require subcontractor qualification statements from any other subcontractors, at whatever tier and regardless of the value of the subcontract.

(3) **Minimum Information Required.** Contractor and subcontractor qualification statements required pursuant to Subsection D of 1.4.8.12 NMAC shall include, at a minimum, the following information:

(a) a list of all projects the firm has performed work on in the five (5) years immediately preceding the submission of its proposal that are similar in size and scope, as specified by the using agency in the RFP, to the prospective procurement project; in the event that an offeror or a pre-listed subcontractor is a new business and does not have a performance record sufficient to evaluate the firm's past performance, the using agency may consider the past performance of the firm's officers, management and owners or partners;

(b) copies of any types of performance evaluations reports for the past five (5) years prepared in connection with the work identified in Subparagraph (a) of Paragraph (3) of Subsection D of 1.4.8.12 NMAC;

(c) the following representations, regarding the firm's present capabilities to perform the procurement contract and its prior history for the past three (3) years immediately preceding the date of this statement:

(i) the firm has a current contractor registration, as required by Section 13-4-13.1 NMSA 2004;

(ii) the firm has all applicable business and/or contractor licenses required by state or local law;

(iii) the firm possesses the necessary equipment, financial resources, technical resources, management, professional and craft personnel resources and other required capabilities to successfully perform the contract, or will achieve same through its prelisted subcontractors;

(iv) the firm has not had any business, trade or contracting license suspended or revoked;

(v) the firm has not been debarred by any government agency;

(vi) the firm has not defaulted on any project;

(vii) the firm has not committed willful or repeated violations of federal or state wage laws as determined by a final non-appealable decision of a court or government agency;

(viii) the firm has not committed serious or willful violations of federal or state safety laws as determined by a final non-appealable decision of a court or government agency;

(ix) disclosure by the firm of the following most recently available safety data: experience modification ratings; total lost workday incident rates (calculated by the number of lost time injuries and illnesses x 200,000 ÷ total hours worked); and recordable incident rates (calculated by the number of injuries x 200,000 ÷ total hours worked).

(4) Additional Performance Related Information. Using agencies may also require additional relevant information relating to a firm's past performance or present capability to perform the procurement contract. The extent of detail of such information may vary with the size and complexity of the project. Using agencies may require that additional information required from contractors and subcontractors be included in contractor and subcontractor qualification statements, or in other sections of the offeror's technical proposal. Types of additional information using agencies may wish to consider include, but are not limited to:

(a) information regarding the firm's financial status and financial resources;

(b) bonding information, including affirmative letters of bonding from certified bonding companies;

(c) past incidents involving denials of pre-qualification or findings of non-responsibility;

(d) past incidents of law violations in any area relating to contracting, including violations of environmental laws, antitrust laws, licensing laws;

(e) outstanding tax delinquencies to the state of New Mexico or its political subdivisions;

(f) disclosure of the names of any corporations, partnerships or other business entities the firm or its owners or officers have owned or operated in the past five (5) years;

(g) disclosure of the following information with regard to all projects identified in response to Subsection D (3)(a) of 1.4.8.12 NMAC:

(i) the original bid or proposal price of the projects and the final price of the projects and a brief explanation of cost growth, if any, for such projects;

(ii) the originally scheduled completion date of the projects and the final completion dates of the projects and a brief explanation of schedule growth, if any, for such projects;

(iii) a list of any contract claims or cases in litigation or arbitration concerning the projects, a brief description of the reasons for such disputes and status of such cases.

[1.4.8.12 NMAC - N, 09-30-05]

1.4.8.13 PROCEDURES REGARDING SUBCONTRACTORS:

A. Evaluation of subcontractors. To ensure that an RFP secures the best value from a procurement contract, the role and impact of subcontractors proposed for a project may be evaluated in accordance with the requirements of 1.4.8.13 for any project in which subcontractors are used.

B. Objective of subcontractor evaluation. The objective of subcontractor evaluation is to identify the general/subcontractor team or prime contractor/subcontractor team that offers the most advantageous proposal and best overall value to the using agency. The qualifications and performance capabilities of subcontractors may be evaluated in conjunction with and in relation to the evaluation of the technical proposal of the offeror/general contractor, construction management firm or other prime contractor as specified in Paragraph (2) of Subsection B of 1.4.8.16 NMAC.

C. Subcontractor listing threshold. In preparing an RFP subject to this rule, the using agency shall prepare a subcontractor listing threshold, which shall establish a dollar

threshold, stipulated in the RFP, above which subcontractors must be listed. All activities and issues concerning the listing of subcontractors in this regard shall be governed by the Subcontractor's Fair Practices Act NMSA 13-4-31, et. seq. and applicable regulations issued thereunder.

D. Subcontractor listing amount. The subcontractor listing threshold included in RFPs shall be five thousand dollars (\$5,000) or one-half of one percent of the architect's or engineer's estimate of the total project cost, including alternatives, whichever is greater.

E. When submitting a proposal in response to an RFP issued pursuant to this rule, the offeror shall provide a list of all subcontractors that will perform work on the project above the subcontractor listing threshold. For each such prelisted contractor, the offeror shall include in its proposal the following information:

(1) the name of subcontractor that will perform work or labor or render service on the project identified in the RFP and the city or county of its principal place of business; and

(2) the category of the work that will be done by each subcontractor; only one subcontractor may be listed for each category of work as defined by the offeror in its proposal.

F. Firms identified in the subcontractor list shall not be substituted except as permitted under 13-4-36 NMAC of the Subcontractor Fair Practices Act NMSA, 14-4-36.

[1.4.8.13 NMAC - N, 09-30-05]

1.4.8.14 WEIGHT ASSIGNED TO PRICE AND RFP EVALUATION FACTORS:

A. Numerical ratings systems. Numerical ratings systems are required for procurements under 1.4.8 Use of Competitive Sealed Proposals for Construction and Facility Maintenance, Services and Repairs and shall comply with the requirements of 1.4.8.14 NMAC.

B. Total available points. The RFP shall specify the total points available for the procurement (for example, 1,000 total points for all price and non-price technical evaluation factors) and shall assign specific numerical weights or points to price and to each of the non-price evaluation factors identified in the RFP.

C. Numerical weight for price. The numerical weight assigned to price shall be no greater than seventy (70) percent of the total evaluation points available.

D. Numerical weight for core evaluation factors. The numerical weight assigned to the non-price evaluation factors shall be as follows:

(1) each of the four core evaluation factors specified in Subsection A of 1.4.8.15 NMAC shall be assigned at least twenty (20) percent of the available points for non-price technical evaluation factors;

(2) the weight assigned to any additional evaluation factors shall be determined by the using agency in accordance with the needs of the agency and the project.

[1.4.8.14 NMAC - N, 09-30-05]

1.4.8.15 RFP EVALUATION FACTORS:

A. Core evaluation factors. Each RFP issued pursuant to 1.4.8 NMAC shall include the following core evaluation factors, for both general and subcontractors for which qualification statements are required, with the sub-factors and criteria specified herein:

- (1) Past performance:
 - (a) budget and schedule data;
 - (b) if available, performance quality and overall customer satisfaction;
 - (c) compliance with applicable laws and regulations;
 - (d) safety performance record.
- (2) Management plan:
 - (a) management team;
 - (b) technical approach to project;
 - (c) safety plan/programs;
 - (d) project schedule.
- (3) Project staffing/craft labor capabilities:
 - (a) participation in skill training;
 - (b) reliable staffing sources/project staffing.
- (4) Health & Safety.

B. Additional evaluation factors:

(1) a using agency may include additional evaluation factors in an RFP issued pursuant to 1.4.8.15 of this NMAC 1.4.8 provided that any such factor is relevant to the successful completion of the contract or otherwise in the best interest of the state or using agency;

(2) examples of such additional factors may include, but are not limited to financial capabilities, project schedule, contract warranty or hiring of local construction or maintenance craft labor.

[1.4.8.15 NMAC - N, 09-30-05]

1.4.8.16 EVALUATION OF PROPOSALS:

A. Evaluation Committee ("EC"). Proposals submitted in response to RFPs issued under this regulation shall be evaluated by an evaluation committee ("EC") of at least three persons appointed by the procuring agency's management. The team should collectively possess expertise in the technical requirements of the project, construction design and contracting. A using agency may use independent consultants or agents to support source selection teams, provided appropriate precautions are taken to avoid potential conflicts of interest.

B. Scoring technical proposals. General procedures regarding technical proposal evaluation.

(1) When rating the technical proposals, the EC shall consider only the evaluation factors stated in the RFP.

(2) The EC may consider any relevant information or data, from any reliable source, relating to the RFP evaluation factors and the firm's ability to successfully perform the project. Such information may be obtained from the firm itself, prior customers of the firm, commercial and public databases and other reliable sources.

C. Scoring price proposals. Procedures for scoring price proposals under this rule shall be as follows:

(1) price proposals shall be initially evaluated to ensure that the price(s) offered is responsive to the RFP requirements and instructions and is realistic in respect to the project plans and specifications;

(2) price proposals shall be evaluated on the basis of the numerical weight assigned to price in the RFP and scored in accordance with the following process to permit the scoring of competing offerors' price proposals in relation to one another: the offeror with the lowest price shall receive the maximum price score, i.e., the maximum numerical weight assigned to price in the RFP (for example, 500 points out of a total 1,000 points);

(3) the price score of each other offeror shall be determined by applying the following mathematical formula: price of lowest offeror divided by the price for this offeror multiplied by the maximum price score, i.e.,

$$\frac{\text{price of lowest offeror}}{\text{price of this offeror}} \times \text{maximum price score} = \text{price score of this offeror}$$

[1.4.8.16 NMAC - N, 09-30-05]

1.4.8.17 RESIDENT PREFERENCE:

To effectuate the requirements of the state's resident contractor preference laws, 13-4-1 NMSA, et. seq., final cost scores of proposals under 1.4.8 NMAC shall be modified.

[1.4.8.17 NMAC - N, 09-30-05]

PART 9: ELECTRONIC SIGNATURES

1.4.9.1 ISSUING AGENCY:

General Services Department (GSD).

[1.4.9.1 NMAC, 04/10/2018]

1.4.9.2 SCOPE:

This rule applies to the use of electronic media, including electronic signatures for the execution of contracts and amendments or change orders, thereto, in the award process of procurements by state agencies and local public bodies subject to Sections 13-1-28 through 13-1-199 NMSA 1978 ("Procurement Code").

[1.4.9.2 NMAC - N, 04/10/2018]

1.4.9.3 STATUTORY AUTHORITY:

Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978; Uniform Electronic Transactions Act, Section 14-16-1 et seq. NMSA 1978.

[1.4.9.3 NMAC – N, 04/10/2018]

1.4.9.4 DURATION:

Permanent.

[1.4.9.4 NMAC - N, 04/10/2018]

1.4.9.5 EFFECTIVE DATE:

April 10, 2018, unless a later date is cited at the end of a section.

[1.4.9.5 NMAC - N, 04/10/2018]

1.4.9.6 OBJECTIVE:

This rule establishes uniform procedures and defines levels of signature authority for the state purchasing agent (and central purchasing offices when not excluded from purchasing through the state purchasing agent) and local public bodies to use electronic signatures for conducting procurements through the award process.

[1.4.9.6 NMAC - N, 04/10/2018]

1.4.9.7 DEFINITIONS:

For purposes of this part, all terms defined in the Uniform Electronic Transactions Act, Section 14-16-1 et seq. NMSA 1978 have the meaning set forth in statute. Additionally, the following terms shall have the following meanings:

A. Definitions beginning with the letter "A":

(1) **"Agency"** means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions.

(2) **"Agency head"** means the individual, or their proper designee, statutorily authorized to bind the state.

(3) **"Award process"** means when the final individual or their proper designee signs a document that statutorily binds the entity including the state or local public body to any contract, amendment or change order when performing procurements subject to the Procurement Code.

(4) **"Authenticate"** refer to Electronic Authentication of Documents Act, Subsection A of Section 14-15-3 NMSA 1978.

B. Definitions beginning with the letter "B": [RESERVED].

C. Definitions beginning with the letter "C":

(1) **"Contract"** means any agreement for the procurement of items of tangible personal property, services or construction.

(2) **"Contractor"** as defined in Section 13-1-43 NMSA 1978 means any business having a contract with a state agency.

(3) **"CRS number"** means the New Mexico tax identification number issued by the New Mexico taxation and revenue department that is used for reporting gross receipts, compensating, and withholding tax.

(4) **"Cyber Threat"** means a potential circumstance, entity or event capable of exploiting vulnerability and causing harm. Threats can come from natural causes, human actions, or environmental conditions. A threat does not present a risk when there is no vulnerability. Vulnerability is a weakness that can be accidentally triggered or intentionally exploited.

D. Definitions beginning with the letter "D":

(1) **"Department"** means the general services department.

(2) **"Digital signature"** means any electronic signature that can be used to authenticate the identity of the sender of or signer of a document, and may also ensure that the content of the sent document is unaltered.

(3) **"Digitized signature"** means a graphical image of a handwritten signature.

(4) **"Document"** means an identifiable collection of words, letters or graphical knowledge representations, regardless of the mode of representation. For purposes of this rule, "document" may include, but is not limited to correspondence, agreements, contracts, amendments, change orders, invoices, reports, certifications, maps, drawings and images in both electronic and hard copy.

E. Definitions beginning with the letter "E":

(1) **"Electronic"** includes electric, digital, magnetic, optical, electronic or similar medium.

(2) **"Electronic authentication"** means the electronic signing of a document that establishes a verifiable link between the originator of a document and the document by means of optical, electrical, digital, magnetic, electromagnetic, wireless, telephonic, biological, a public key and private key system or other technology providing similar capabilities.

(3) **"Electronic record"** means a record created, generated, sent, communicated, received or stored by electronic means.

(4) **"Electronic signature"** means an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. Refer to Uniform Electronic Transactions Act, Paragraph (8) of Section 14-16-2 NMSA 1978.

F. Definitions beginning with the letter "F": [RESERVED].

G. Definitions beginning with the letter "G": "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of the federal government or of a state or of a county, municipality or other political subdivision of a state.

H. Definitions beginning with the letter "H": [RESERVED].

I. Definitions beginning with the letter "I":

(1) "Identification" means the process of verifying and associating attributes with a particular person designated by an identifier for needed levels of signature authority.

(2) "Identity" means the unique name of an individual person, and any associated attributes; the set of the properties of a person that allows the person to be distinguished from other persons.

(3) "Information" means data, text, images, sounds, codes, computer programs, software, databases or the like.

(4) "Integrity" means a state in which information has remained unaltered from the point it was produced by a source, during transmission, storage and eventual receipt by the destination.

(5) "Intent to sign" means the intent of a person that a sound, symbol or process is applied to a record in order to have a legally binding effect.

J. Definitions beginning with the letter "J": [RESERVED].

K. Definitions beginning with the letter "K": [RESERVED].

L. Definitions beginning with the letter "L": "Level of assurance" means the level of authentication assurance that describes the degree of certainty that a user has presented an identifier that refers to her identity.

M. Definitions beginning with the letter "M": "Method" means a particular way of doing something, a means, process or manner of procedure, especially a regular and systematic way of accomplishing something and an orderly arrangement of steps to accomplish an end.

N. Definitions beginning with the letter "N": [RESERVED].

O. Definitions beginning with the letter "O": "Originator" means the person who signs a document electronically.

P. Definitions beginning with the letter "P":

(1) **"Password"** means a secret word or string of characters that is used for authentication, to prove identity or to gain access to a record or resource. Passwords are typically character strings.

(2) **"PDF"** or "portable document format" refers to a file format used to present documents in a manner independent of application software, hardware, and operating systems. A PDF file encapsulates a complete description of a fixed-layout flat document, including the text, fonts, graphics, and other information needed to display it.

(3) **"Person"** means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(4) **"Personal identification number (PIN)"** means a shared secret a person accessing a government organization's electronic application is requested to enter, such as a password or PIN. The system checks that password or PIN against data in a database to ensure its correctness and thereby "authenticates" the user.

(5) **"Private key"** means the code or alphanumeric sequence used to encode an electronic authentication and which is known only to its owner. The private key is the part of a key pair used to create an electronic authentication.

(6) **"Public key"** means the code or alphanumeric sequence used to decode an electronic authentication. The public key is the part of a key pair used to verify an electronic authentication.

(7) **"Public/private key system"** means the hardware, software, and firmware that are provided by a vendor for:

- (a) the generation of public/private key pairs;
- (b) the record abstraction by means of a secure hash code;
- (c) the encoding of the signature block and the record abstraction or the entire record;
- (d) the decoding of the signature block and the record abstraction or the entire record; and
- (e) the verification of the integrity of the received record.

Q. Definitions beginning with the letter "Q": [RESERVED].

R. Definitions beginning with the letter "R":

(1) **"Reason for signing"** means the purpose statement of a person with regard to a document or electronic record that is affirmed by signing the document or record. The reason for signing should be distinguished from the intent to sign.

(2) **"Record"** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in a perceivable form.

(3) **"Record abstraction"** means a condensed representation of a document, which condensation is prepared by use of a secure hash code; it is also known as a message digest.

(4) **"Regulation"** as defined by Section 13-1-80 NMSA 1978 means any rule, order, or statement of policy, including amendments thereto and repeals thereof, issued by a state agency or a local public body to affects persons not members or employees of the issuer.

(5) **"Repudiate"** and **"non-repudiation"** refer to the acts of denying or proving the origin of a document from its sender, and to the acts of denying or proving the receipt of a document by its recipient. The burden of proof is with the person challenging the authenticity of the signature.

S. Definitions beginning with the letter "S":

(1) **"Secretary"** means the secretary of the general services department.

(2) **"Security"** shall mean either low, moderate or high risk transaction for any electronic form of signature, as defined in 1.12.7.15 NMAC. The level of security (low, moderate and high) is determined by the analysis of the likelihood of a successful challenge to the enforceability of a signature and the analysis of the cost or impact of an unenforceable signature.

(3) **"Security procedure"** means a procedure employed for the purpose of verifying that an electronic signature, record or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, callback or other acknowledgment procedures.

(4) **"Signed"** and **"signature"** means the manual or electronic signature of an individual or officer who is authorized, delegated, or required to legally bind a party.

(5) **"Signature block"** means the portion of a document, encoded by the private key, which contains the identity of the originator and the date and time of the records creation, submittal or approval.

(6) **"Signing requirements"** means the requirements that must be satisfied to create a valid and enforceable electronic signature.

(7) **"Sole source"** means tangible personal property, services or construction for which there is only one source and that source is unique and no other similar items of tangible personal property, services or construction can meet the intended purpose of the procurement.

(8) **"State agency"** means any department, agency, commission, council, board, advisory board, committee, or institution of the state of New Mexico, and does not include local public bodies.

(9) **"State purchasing agent"** means the director of the purchasing division of the general services department.

T. Definitions beginning with the letter "T":

(1) **"Tax and revenue"** shall mean the taxation and revenue department.

(2) **"Transaction"** means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial affairs or governmental affairs.

(3) **"Transferable record"** means an electronic record that would:

(a) be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and

(b) the issuer of the electronic record expressly has agreed is a transferable record.

(4) **"Trusted entity"** means an independent, unbiased third party that contributes to, or provides, important security assurances that enhance the admissibility, enforceability and reliability of information in electronic form. In a public/private key system, a trusted entity registers a digitally signed data structure that binds an entity's name (or identity) with its public key.

[1.9.7.7 NMAC - N, 04/10/2018]

1.4.9.8 ELECTRONIC SIGNATURE WORKFLOW PROCESS FOR CONTRACTS AWARDED AND CONTRACT AMENDMENTS:

The electronic signature workflow process for procurements, contracts awarded, change orders and contract amendments that are initiated and executed by any agency is as follows:

A. Signed by the contractor, with moderate security, and shall be considered final and binding as to the terms of contract.

B. Signed by any tax and revenue employee, with low security, and shall be considered to confirm the CRS number status of the contractor.

C. Signed by the agency (or agencies') head(s), if required by the state purchasing agent, with moderate security, and shall be considered final and binding as to the agency or agencies.

D. Signed by chief legal counsel for the agency, with high security, and shall be considered to have been reviewed and approved for execution.

E. Signed by the state purchasing agent, with high security, and shall be considered final and binding as to the terms of the contract or, for professional services, signed by the contracts review bureau of the department of finance, as designated by the department of finance cabinet secretary, with high security, and shall be considered final and binding as to the terms of the contract.

[1.4.9.8 NMAC - N, 04/10/2018]

1.4.9.9 DELEGATION OF APPROVAL AUTHORITY:

A. The state purchasing agent may delegate, in writing, to certain members of the department, the authority to approve contracts with the same level of security to sign all contracts and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

B. Any agency head may delegate, in writing, to certain members of their department, the authority to approve contracts with the same level of security to sign all contracts and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

C. Any chief legal counsel may delegate, in writing, to certain members of the general counsel office, the authority to approve contracts with the same level of security to sign for execution for all contracts and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

[1.4.9.11 NMAC - N, 04/10/2018]

PART 10: GOVERNING THE APPROVAL OF CONTRACTS FOR THE PURCHASE OF PROFESSIONAL SERVICES

1.4.10.1 ISSUING AGENCY:

General Services Department (GSD).

[1.4.10.1 NMAC - N, 6/21/2022]

1.4.10.2 SCOPE:

A. The contracts review bureau of the general services department shall review and approve all professional services contracts which result in expenditures greater than five thousand dollars (\$5,000), including applicable gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of 1.4.10.2 NMAC. Contracts expending public funds in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

B. The following state agencies are currently exempt from submitting professional services contracts and amendments through the contracts review bureau of the general services department:

(1) state agencies within the judicial branch of government as defined by the New Mexico Constitution, Article VI;

(2) state agencies within the legislative branch of government as defined by the New Mexico Constitution, Article IV;

(3) state educational institutions as defined by the New Mexico Constitution, Article XII, Section 11 and as set forth in Section 21-1-1 through 21-16A-1 et. seq. NMSA 1978;

(4) the state fair for only those contracts exempted pursuant to Subsection H of Section 13-1-99 NMSA 1978;

(5) the New Mexico public school insurance authority pursuant to Subsection F of Section 22-29-6 and 22-29-8 NMSA 1978 for contracts for procuring goods or services and paying for insurance or insurance-related services;

(6) the New Mexico mortgage finance authority pursuant to Section 58-18-20 NMSA 1978; and

(7) other state agencies exempt by statute.

C. Pursuant to Section 6-5-9 NMSA 1978, the secretary of the department of finance and administration may exempt a state agency's contracts from the general services department contracts review bureau review and approval when the secretary of the department of finance and administration determines that efficiency or economy so requires. a state agency seeking an exemption must:

(1) apply in writing to the secretary of the department of finance and administration; and

(2) meet all of the following requirements:

- (a) issue its own warrants;
- (b) be exempt from prior submission of vouchers or purchase orders to the financial control division of the department of finance and administration;
- (c) receive the majority of its money from non-general fund sources;
- (d) maintain pre-audit and post-audit fiscal accounting controls;
- (e) maintain and operate its own administrative unit for procurement and controls its own encumbrance of funds available for professional service contracts;
- (f) provide administrative control and review of professional services contracts through its own administrative unit; and
- (g) employs in-house counsel to prepare, review, and approve professional services contracts for form and legal sufficiency and to advise the state agency with respect to all applicable laws and regulations; provided, however, that the attorney general shall also review and approve all contracts subject to Paragraph (1) of Subsection C of 1.4.10.10 NMAC of this rule prior to approval and execution by the state agency.

[1.4.10.2 NMAC - N, 6/21/2022]

1.4.10.3 STATUTORY AUTHORITY:

A. Sections 13-1-118 and 13-1-125 NMSA 1978 authorize the general services department to review professional services contracts of state agencies as to form, legal sufficiency, and budgetary requirements if required by its regulations.

B. Section 6-5-3 NMSA 1978 provides that before any state agency enters into a contract expending public funds, the financial control division of the department of finance and administration shall determine the authority for such proposed expenditure. After the authority for the expenditure is determined, the appropriate fund shall be shown by the financial control division to be encumbered to the extent of the proposed expenditure. The financial control division may request, and the state agency shall provide, such documentation and other information as the financial control division deems necessary to justify the state agency's determination of authority. The financial control division may disapprove the proposed expenditure if it determines that the justification is inadequate or is not substantiated by law.

C. Section 6-5-6 NMSA 1978 requires the financial control division of the department of finance and administration to determine that the proposed expenditure does not exceed the state agency's appropriation, does not exceed the periodic

allotment made to the state agency or the unencumbered balance of funds at its disposal. The state agency shall determine that a proposed expenditure is for a public benefit and purpose consistent with the related appropriation and is necessary to carry out the statutory mission of the state agency prior to committing the state to the transaction.

D. Subsection E of Section 9-1-5 and Subsection E of Section 9-17-5 NMSA 1978 provide that after notice and hearing, the secretary of the general services department may make and adopt such reasonable administrative and procedural rules and regulations as necessary to carry out the duties of the general services department and its divisions.

[1.4.10.3 NMAC - N, 6/21/2022]

1.4.10.4 DURATION:

Permanent.

[1.4.10.4 NMAC - N, 6/21/2022]

1.4.10.5 EFFECTIVE DATE:

June 21, 2022 unless a later date is cited at the end of a section.

[1.4.10.5 NMAC - N, 6/21/2022]

1.4.10.6 OBJECTIVE:

The purpose of this rule is to establish the procedures state agencies must follow and the requirements state agencies must meet in drafting, entering into, and seeking approval of professional services contracts. These procedures ensure compliance with Sections 6-5-3, 6-5-6, 13-1-118 and 13-1-125 NMSA 1978 as amended.

[1.4.10.6 NMAC - N, 6/21/2022]

1.4.10.7 DEFINITIONS:

A. "Bureau" means the contracts review bureau of the general services department.

B. "Contract" means any agreement for the provision of professional services.

C. "Contract brief" means the bureau paper form or electronic version which shall accompany all professional services contracts and amendments submitted to the bureau.

D. "Contractor" as defined in Section 13-1-43 NMSA 1978 means any business having a contract with a state agency.

E. "Department or GSD" means the general services department.

F. "Form" means, at a minimum, that all contracts and amendments contain the provisions required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures when required and as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

G. "Legal sufficiency" means, at a minimum, that all contracts and amendments contain the provisions required by law and that all signatures required by the bureau have been obtained.

H. "Procurement" as defined by Section 13-1-74 NMSA 1978 means purchasing, renting, leasing, lease purchasing or otherwise acquiring items of personal property, services or construction and includes all procurement functions, including but not limited to, preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of the contract, and contract administration.

I. "Procurement Code" means Sections 13-1-28 to 13-1-199 NMSA 1978, as amended.

J. "Professional services" as defined by Section 13-1-76 NMSA 1978 means the services of architects, archaeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, and persons or businesses providing similar services, including information system resources professional services, and other such services which may be designated as professional services by a determination issued by the state purchasing agent or designee.

K. "Regulation" as defined by Section 13-1-80 NMSA 1978 means any rule, order, statement or policy, as amended, issued by a state agency or a local public body that affects persons not members or employees of the issuer.

L. "Retroactive approval to a contract or a contract amendment" means approval of a contract or contract amendment that was submitted to the bureau and approved by the GSD secretary or designee pursuant to 1.4.10.13 NMAC of this rule after the contractor has begun work pursuant to a request to perform work from a state agency employee or public officer with authority to make such a request.

M. "Secretary GSD" means the secretary of the general services department.

N. "Sole source contract or amendment to sole source contract" means a contract or amendment which fulfills the requirements of Sections 13-1-118, 13-1-126 and 13-1-126.1 NMSA 1978, as amended.

O. "State agency" means any department, agency, commission, council, board, advisory board, committee, or institution of the state of New Mexico, and does not include local public bodies.

[1.4.10.7 NMAC - N, 6/21/2022]

1.4.10.8 DELEGATION OF APPROVAL AUTHORITY:

A. The bureau shall review all contracts and contract amendments for professional services with state agencies as to form and budgetary requirements.

B. The bureau shall consult with the department's legal counsel as needed regarding any issues of legal sufficiency of a state agency's contracts and contract amendments for professional services.

C. The GSD secretary shall delegate, in writing to certain members of the bureau, the authority to approve professional services contracts which result in expenditures greater than five thousand dollars (\$5,000), including gross receipts tax, and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

[1.4.10.8 NMAC - N, 6/21/2022]

1.4.10.9 FORM AND SUBMISSION:

A. All contracts and subsequent amendments shall be in a form and contain such provisions and signatures as required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures when required and as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments.

B. All contracts and amendments shall:

(1) be accompanied by a contract brief being in such form and containing such information as may be required by the bureau;

(2) be accompanied by a document prescribed by the financial control division of the department of finance and administration showing that funds have been encumbered to the full extent of the contract, including any amendments to that contract; if the contract term includes more than one fiscal year, the contract must be

accompanied by an encumbrance for the current fiscal year amount or, up to the total amount of the current appropriation available for that contract;

(3) be accompanied by a written request for approval from the secretary of the contracting state agency or designee if the contract is subject to Paragraph (1) of Subsection C of 1.4.10.10 NMAC of this rule; and

(4) comply with New Mexico law regarding indemnification and insurance.

[1.4.10.9 NMAC - N, 6/21/2022]

1.4.10.10 REVIEW PROCEDURES:

A. State agencies must submit to the bureau for review:

- (1) sole source contracts;
- (2) amendments to sole source contracts;
- (3) retroactive approval to contracts; and
- (4) retroactive approval to contract amendments.

B. Bureau review:

(1) The bureau shall review all contracts or contract amendments for form, budgetary requirements and compliance with the requirements of the bureau including those prescribed on the contract brief.

(2) No contract or contract amendment shall become binding or effective until signed and dated by a member of the bureau with contract approval authority.

C. Other review:

(1) Prior to the bureau's review and at the bureau's request, the attorney general shall review all contracts which may violate conflict of interest provisions of the Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978.

(2) The bureau may submit any contract or amendment to the attorney general or other legal counsel for review if the bureau is aware of legal issues concerning the contract or the amendment.

[1.4.10.10 NMAC - N, 6/21/2022]

1.4.10.11 SMALL PURCHASES:

A contract for professional services having a value over five thousand dollars (\$5,000) excluding applicable gross receipts taxes, but not exceeding the amount set forth in Section 13-1-125 NMSA 1978 except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978.

[1.4.10.11 NMAC - N, 6/21/2022]

1.4.10.12 SOLE SOURCE CONTRACT OR AMENDMENT TO SOLE SOURCE CONTRACT:

A. A contract may be awarded without competitive sealed proposals, regardless of the estimated cost, when a central purchasing office of a contracting state agency makes a written determination, signed by the secretary of the contracting state agency or designee, which states that a good-faith review of available sources has been conducted and that there is only one source for the required professional services. The written determination and the dollar amount of the contract shall be submitted to the bureau for review and approval by the GSD secretary or designee and shall include the following information:

(1) a detailed, sufficient explanation of the reasons, qualifications, proprietary rights, or unique capabilities that make the prospective contractor a sole source;

(2) an explanation of the criteria developed and specified by the state agency as necessary to perform the contract and upon which the state agency reviewed available sources;

(3) a description of the procedures used by the state agency in conducting a good faith review of available sources, including without limitation, a narrative description of all steps taken by the state agency as evidence of the good-faith review performance such as:

(a) researching trade publications and industry newsletters;

(b) reviewing telephone books or other advertisements;

(c) reviewing current contract(s);

(d) contacting similar service providers; and

(e) reviewing the state purchasing agents vendor list; and.

(4) a list of all businesses contacted and an explanation of why those businesses could not perform the contract, or a reasonable explanation of why the state agency has determined that no businesses, besides the prospective contractor, exist.

B. The bureau must obtain written approval of the agency's sole source determination from the GSD secretary or designee prior to executing a sole source contract or amendment to a sole source contract.

[1.4.10.12 NMAC - N, 6/21/2022]

1.4.10.13 RETROACTIVE APPROVAL FOR A CONTRACT OR CONTRACT AMENDMENT:

A. The Procurement Code, Section 13-1-102, NMSA 1978, as amended, requires that all non-exempt procurement (Section 13-1-98 NMSA 1978) by state agencies shall be achieved by competitive sealed bids or competitive sealed proposals except for small purchases, sole source procurements, emergency procurements, existing contracts and procurements from antipoverty program business. For professional services, the proposal and procurement process are not complete until a written contract or contract amendment is signed by the agency and the contractor and any other signatory required by the bureau, and is approved by the bureau through the GSD secretary or designee.

B. For retroactive approval of contracts and contract amendments which fulfill all of the requirements of this rule and the Procurement Code, GSD will approve the date requested in writing by the agency on the brief accompanying the document as long as the requested approval date is within thirty days of the first day of each fiscal year.

C. For retroactive approval of contracts and contract amendments apart from the approval given pursuant to the provisions 1.4.10.13 NMAC of this rule, GSD may grant additional retroactive approval to a contract or contract amendment, based upon rare and exceptional circumstances, where all of the following conditions are met:

(1) the professional services performed without GSD's prior approval of the contract did not occur as the result of repeated agency mistakes or willful misconduct;

(2) the failure to obtain GSD's retroactive approval will prevent the state agency from fulfilling its statutory obligations;

(3) the state agency provides to GSD a written, factual, detailed explanation of the matters described in Paragraphs (1) and (2) of Subsection C of 1.4.10.13 NMAC, certified to be true by signature of the head of the state agency;

(4) the state agency requested, through a public officer or employee with authority to make such a request, the contractor to perform professional services that were then actually performed by the contractor in good faith reliance that it would be paid for those professional services.

D. The Procurement Code, Section 13-1-182 NMSA 1978, as amended, and the department of finance and administration's model of accounting practices ("MAPs")

govern situations in which GSD has denied a request for retroactive approval of a contract or contract amendment due to the state agency's failure to meet the requirements of Subsections B or C of 1.4.10.13 NMAC of this rule.

[1.4.10.13 NMAC - N, 6/21/2022]

1.4.10.14 EMERGENCY PROCUREMENT:

An emergency procurement of professional services may be made under the conditions provided in the Procurement Code. Records of any emergency procurement of professional services, including the written determination of the basis for the emergency procurement being relied on by the state agency as justification for the emergency procurement, shall be maintained by the state agency for a minimum of three years and shall be made available by the state agency to the financial control division upon request.

[1.4.10.14 NMAC - N, 6/21/2022]

1.4.10.15 COMPLIANCE:

State agencies must comply with federal and state statutes, rules, regulations and policies and shall have their state agency's legal counsel review all contracts and contract amendments certifying in writing that they are legally sufficient prior to submission to the bureau. Wrongful or mistaken approval by the bureau shall not be a defense to an action brought by or against the state agency on a contract.

[1.4.10.15 NMAC - N, 6/21/2022]

1.4.10.16 RECORDS:

A. Record inspection, record retention and record destruction relating to contracts shall be conducted in accordance with the Inspection of Public Records Act, Sections 14-2-1 to 14-2-12 NMSA 1978; the Public Records Act, Sections 14-3-1 to 14-3-23 NMSA 1978; and with Section 13-1-128 NMSA pertaining to sole source and emergency procurement; and Section 13-1-116 NMSA 1978 of the Procurement Code.

B. The bureau will retain original contracts, any subsequent amendments, and contract briefs, whether in hard copy or electronic formats, in accordance with provisions of the Inspection of Public Records and Public Records Act.

[1.4.10.16 NMAC - N, 6/21/2022]

1.4.10.17 RULE FILING:

This rule shall be filed in accordance with the State Rules Act, Sections 14-4-1 to 14-4-11 NMSA 1978 and shall become effective upon publication in the New Mexico Register.

[1.4.10.17 NMAC - N, 6/21/2022]

CHAPTER 5: PUBLIC PROPERTY MANAGEMENT

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: [RESERVED]

PART 3: ADMINISTRATION AND USE OF STATE VEHICLES

1.5.3.1 ISSUING AGENCY:

General Services Department.

[1.5.3.1 NMAC - Rp, 1.5.3.1 NMAC, 7-30-2015]

1.5.3.2 SCOPE:

A. This rule applies to all public agencies that use state vehicles.

B. This rule also applies to the legislative and judicial branches, public schools, institutions of higher education, and all other public related institutions, to the extent that they lease motor pool vehicles from the state central fleet authority (SCFA).

[1.5.3.2 NMAC - Rp, 1.5.3.2 NMAC, 7-30-2015]

1.5.3.3 STATUTORY AUTHORITY:

Sections 15-8-6 and 15-8-10 NMSA 1978.

[1.5.3.3 NMAC - Rp, 1.5.3.3 NMAC, 07-30-2015]

1.5.3.4 DURATION:

Permanent.

[1.5.3.4 NMAC - Rp, 1.5.3.4 NMAC, 7-30-2015]

1.5.3.5 EFFECTIVE DATE:

July 30, 2015, unless a later date is cited at the end of a section.

[1.5.3.5 NMAC - Rp, 1.5.3.5 NMAC, 7-30-2015]

1.5.3.6 OBJECTIVE:

The purpose of this rule is to implement the Transportation Services Act, Chapter 15, Article 8 NMSA 1978, by establishing standards and procedures for the administration and use of state vehicles by state agencies or any entity that leases vehicles from state central fleet authority SCFA.

[1.5.3.6 NMAC - Rp, 1.5.3.6 NMAC, 7-30-2015]

1.5.3.7 DEFINITIONS:

In addition to the definitions in Section 15-8-3 NMSA 1978, as used in this rule:

A. account manager means a TSD employee designated to prepare, manage and enforce short-term and long-term transportation services division/state central fleet authority TSD/SCFA vehicle leases; serve as liaison for designated state agency authorized drivers and TSD/SCFA maintenance personnel; prepare monthly billings and utilization reports, using data gathered from various systems including a global positioning system GPS;

B. agency approved authority means the cabinet secretary of a state department or the agency director who is responsible for the agency;

C. agency fleet coordinator means the individual assigned by an agency head or designee who is responsible for providing fleet management information and reports to TSD;

D. alert means a notice given when specific parameters/barriers that are defined by either the agency or TSD are compromised thereby informing the using agency, or TSD, of the occurrence;

E. alternative fuel means a fuel other than an unleaded gasoline such as E-85, a blend of ethanol and unleaded gasoline; bio-diesel; electricity; compressed natural gas; propane; hydrogen; or other fuels.;

F. authorized driver means:

(1) a state employee holding a valid New Mexico driver's license or an approved out-of-state driver's license and a TSD approved defensive driving certificate who is permitted to use a state vehicle in furtherance of official state business; a valid New Mexico driver's license or an approved out-of-state driver's license but *does not* include provisional, limited, restricted or administrative permits;

(2) for those candidates for full-time, term or temporary employment with the state of New Mexico that live out-of-state, the following process is required and;

(3) once gainfully employed by the state, the out-of-state employee must provide a copy of his driving record to TSD on a semi-annual basis to assure the drivers' license is in good standing;

G. authorized passenger means an individual who is permitted to occupy a state vehicle in furtherance of official state business or a person who has received prior authorization from the director or designee to occupy a state vehicle, or where the transport is a part of the daily operations of the department;

H. authorized use means travel in a state vehicle for official state business only as delegated by appropriate agency representative(s);

I. CAFE standards mean the national highway traffic safety administration corporate average fuel economy standards for passenger vehicles and light trucks;

J. commute means domicile-to-duty privilege authorized by the leasing agency's cabinet secretary or agency head to state authorized drivers where it is in the state's best interest to allow these employees to use a state vehicle to and from work and residence; (refer to 1.5.3.20 NMAC);

K. custody (of a state vehicle) means the director's or designee's right to exercise final decision-making authority with respect to the purchase, title and registration, use, administration, operation, maintenance, replacement, and disposal of a state vehicle in accordance with state law and regulations;

L. declared gross vehicle weight or DGVW means the maximum weight of a vehicle; the DGVW is used to differentiate between light, medium or heavy duty vehicle utilization;

M. department means the general services department;

N. director means the director of the transportation services division of the general services department;

O. DGF means the department of game and fish;

P. division means the transportation services division of the general services department;

Q. DHSEM means the department of homeland security and emergency management;

R. DOT means the department of transportation;

S. DPS means the department of public safety;

T. EMNRD means the energy minerals and natural resources department;

U. flex fuel vehicle means a vehicle that has the capacity of burning a regular unleaded gasoline and an alternative fuel;

V. Global Positioning System or GPS means a system that is installed on vehicles that is used to track specific data on the vehicle;

W. GSD means the general services department;

X. G-series license plate means a distinctive government license plate issued by the taxation and revenue department for vehicles of institutions of higher learning, public schools and all other subdivisions of government (cities, counties, villages, conservancy, wastewater, landfill districts, etc.), does not include any state level agency state vehicles of the executive, legislative or judicial branches that will display G-series license plates until replaced by SG license plates through attrition; Subsection NN of 1.5.3 NMAC.

Y. inclement weather means road conditions are unsafe for travel; inclement weather includes but is not limited to: icy or snow packed road conditions, dust storms, or flooding;

(1) TSD will follow state personnel rulings on inclement weather for state business closures and delays;

(2) TSD reserves the right to prohibit the use of state vehicles during inclement weather.

Z. NSC means the national safety council;

AA. National safety council/defensive driving class (NSC/DDC) instructor is someone who has completed the NSC/DDC through NSC and has a current DDC instructor certification;

BB. New Mexico driver's license means a valid driver's license issued by the motor vehicle division of the NM taxation and revenue department; this does not include provisional, limited, restricted, or any court-ordered restricted or administrative license or permit; while an "H" restriction may allow an individual to operate their privately owned vehicle (POV) to and from employment; TSD will not authorize an individual to operate a state vehicle with anything other than a valid drivers' license with no limitations or restrictions;

CC. new state employee means a person employed by a New Mexico state government agency for the first time or who is returning to state government after having had a break in service.

DD. protective license plate means a regular passenger license plate issued to a state vehicle that is in the custody of a state agency, can be traced to that state agency and is being used for sensitive activities;

EE. public agency means an agency other than a state agency as defined in Subsection JJ of 1.5.3 NMAC authorized to use SCFA vehicles; this does include institutions of higher learning and public schools;

FF. RMD means the risk management division of the general services department;

GG. SCFA means the state central fleet authority of the transportation services division of the general services department;

HH. secretary means the cabinet secretary of the New Mexico general services department;

II. sensitive activity means an activity performed by an employee of the state that;

(1) is authorized by the state to be performed for a legitimate and appropriate purpose for the state, other than a legitimate undercover law enforcement purpose; and

(2) would place the employee at a higher risk of personal injury if knowledge of the activity were made public, as determined in writing by an appropriate authority of the employee;

JJ. special-use vehicles means state vehicles designated as such by the director or designee, including but not limited to emergency and law enforcement vehicles, buses, tractors, boats, trailers, snow cats, vehicles of a special design or construction that effectively limits their use for a particular purpose, and all other vehicles that are not passenger vehicles;

KK. state agency means a state department, agency, board or commission, including the legislative and judicial branches, this definition includes any public agency authorizing an officer or employee use of a state vehicle;

LL.state employee means any person who has been elected to, appointed to, or hired for any state office and who receives compensation in the form of salary or is eligible for per diem and mileage reimbursement;

MM. state vehicle means an automobile, van, sport-utility truck, pickup truck or other vehicle with a declared gross vehicle weight of less than ten thousand (10,000) pounds used by a state agency to transport passengers or property;

NN. SG-series license plate means an SG license plate designed for the specific use of agencies of the executive, legislative and judicial branches of state government for vehicles marked as required by Section 15-8-6 NMSA 1978: this **does not include** institutions of higher learning, public schools or any other political subdivision of government;

OO. transportation services division or TSD means the transportation services division of the general services department;

PP. TSD approved NSC/DDC instructor means an NSC/DDC instructor with a current instructor certification who has been audited and approved by TSD to conduct training for employees who have had their driving privileges suspended;

QQ. TSD online NSC/DDC means an online course offered by TSD. This class is presented in two (2) distinct parts, part one (1) covers the administrative use of state vehicle policy, and part two (2) is the direct presentation from the national safety council; and

RR. undercover license plate means a regular passenger license plate issued to a state vehicle which is registered in a fictitious name and address that cannot be traced to the state agency having custody of the vehicle and that is being used for legitimate law enforcement purposes only.

[1.5.3.7 NMAC - Rp, 1.5.3.7 NMAC, 7-30-2015]

1.5.3.8 STATE VEHICLE PROCUREMENT PROCESSES AND VEHICLE STANDARDS:

In accordance with the governor's executive orders 05-049, "requiring the increased use of renewable fuels in New Mexico state government", and 06-069 "New Mexico climate change action", this section establishes the standards by which all state and public agencies shall procure state vehicles with a declared weight up to ten thousand (10,000) pounds.

A. State agency vehicle requests, application form required requests for exemption to executive orders. By the 15th of April of each calendar year, state agencies shall prepare a SCFA application for purchase, lease and disposal of state vehicles. The state agency in conjunction with GSD shall assure that all requests meet the governor's executive order directives including assuring the highest fuel economy for the intended use, meeting or exceeding the most current CAFE standards and compliance with the Alternative Fuels Acquisition Act. Any requests for exemption from the governor's executive orders shall be submitted along with clear justification for the requested exemption and the aforementioned form for the director's or designee's review. If the exemption is timely and approved, the agency shall be notified with time to submit the request to the specification developers. The specification development time-line shall not be expanded due to the state agency's failure to comply with this rule.

B. State procurement cycles - time lines. State agency vehicles shall be procured based on specifications consistent with executive order 05-049 and prepared by the department in conjunction with DOT, DPS, DGF, DHSEM and EMNRD during the months of June, July and August of each year. The development of the specifications is to prepare for the bid advertisement, pre-bid conference, bid opening and award for the purchase of vehicles for each fiscal year. The order of model year vehicles shall be consistent with the directions established in each bid, with expectations that new model year vehicles will be delivered prior to manufacturer's build-out dates for each subsequent calendar year.

C. Vehicle standards. The standards establish the minimum requirements for the procurement of passenger vehicles for the executive, legislative and judicial branches of the state of New Mexico. DOT, DPS, DGF, DHSEM, and EMNRD, vehicle standards are developed and maintained by the respective agency. These standards are to be reviewed annually and subject to change based on increased fuel efficiencies and reduction of greenhouse gases. The standards are an administrative attachment to this rule and must be reviewed, amended, published and distributed by July 1 of each year.

[1.5.3.8 NMAC - Rp, 1.5.3.8 NMAC, 7-30-2015]

1.5.3.9 LEASE OF MOTOR POOL VEHICLES:

A. A state agency or public agency may lease a motor pool vehicle from the SCFA:

- (1) through a "quik ride" or short-term lease by the hour or day not exceeding six (6) consecutive months; or,
- (2) through a long-term lease for a period exceeding six (6) consecutive months; or,
- (3) through a third-party commercial lease;

B. Rates. Rates for the lease of motor pool vehicles are based on costs for the type of vehicle leased. The SCFA will provide current rates and policies for the lease of motor pool vehicles upon request. There are three (3) types of SCFA long-term leases:

- (1) standard lease is a long-term lease of a TSD owned vehicle which includes overhead, maintenance and depreciation costs, less residual; divided by the life-cycle term;
- (2) operational lease is a long-term lease of a TSD owned vehicle which includes overhead and maintenance costs; or,
- (3) third-party commercial lease is a long-term lease of a TSD leased vehicle which includes overhead, maintenance and third-party financing costs; third party leased vehicles may be subject to excessive mileage costs.

C. Terms.

(1) Standard leases depend on the leasing agency's operational requirements and budget availability. Life-cycles for standard leases are to be five (5) years.

(2) Operational leases shall consist of leases for vehicles that have exceeded the standard lease life-cycles or have been procured by the user agency that has chosen not to pay the depreciation cost.

(3) Third party commercial leases are determined by a state price agreement, typically three (3) years and sixty thousand (60,000) miles. These leases are subject to mileage over-runs and excessive wear and tear costs that are passed on to the customer.

D. Accounts receivable. The SCFA requires the leasing state agency to maintain its accounts receivable current - thirty (30) days or less. The SCFA shall assess a one and one-half percent (1.5%) per month late payment penalty fee on accounts over thirty (30) days past due. The SCFA may take action to cancel any lease agreement(s) and recover the vehicle(s) if the lessee is delinquent over one hundred twenty (120) days in making payment. For short-term leasing, SCFA will charge for one (1) day use for reservations that are not canceled.

E. Encumbrance. The SCFA requires the leasing state agency to encumber the entire fiscal year cost of the lease at the time the lease is signed at the beginning of each fiscal year. The leasing agency may disencumber funds only after a written request to the director or designee is approved. The director or designee will act on requests to disencumber funds within ten (10) working days of the date of the receipt of the leasing agency's request.

F. Operating transfer. To expedite the payment of lease costs to the SCFA, the user agency may choose to pay the annual cost of vehicles leased through an operating transfer within the first forty-five (45)-days of each fiscal year.

G. Termination. Either the division or a state agency may terminate the lease of a state vehicle as per the terms and conditions included in the standing lease agreement.

[1.5.3.9 NMAC - Rp, 1.5.3.9 NMAC, 7-30-2015]

1.5.3.10 STATE MOTOR VEHICLE LICENSE PLATES:

At the beginning of each fiscal year, the director or designee shall determine which type of license plate shall be issued for each state vehicle. This relates to the state of New Mexico government plate, protective license plate or undercover plate.

A. A state agency may submit a written request for an undercover license plate for any SCFA state vehicle it uses for legitimate undercover law enforcement purposes.

The state agency must annually justify the need for an undercover license and must provide statutory authority to that effect.

B. A state agency may submit a written request for a protective license plate for any state vehicle it uses for a sensitive activity. The request must be signed off by the cabinet secretary or agency head attesting that this position is authorized to perform a legitimate and appropriate activity which is sensitive in nature and this activity would place the employee at a higher risk of personal injury if knowledge of the activity was made public. At the beginning of each fiscal year, the state agency must justify the need for a protective license plate and must provide statutory authority regarding the type of work requiring something other than a state government license plate. Based on the justification, the director or designee may authorize the protective license plate.

C. The director or designee shall issue a state of New Mexico government license plate with permanent decals for all other state agency vehicles.

(1) All vehicles must display the state seal and an identifying decal describing the user agency, i.e., state of New Mexico motor pool, or the appropriate acronym identifying the user agency.

(2) All state vehicles must display the 1-800-627-6639 vehicle abuse program bumper sticker.

(3) All state vehicles must display the #DWI bumper sticker.

(4) User agencies will be billed the cost of replacement of authorized official decals or stickers.

(5) User agencies may use their own non-permanent decals upon acquiring director's or designee's written authorization. Cost for these decals will be the responsibility of the user agency.

(6) Deviation from the SCFA official decals and stickers must receive written prior authorization from the director or designee.

[1.5.3.10 NMAC - Rp, 1.5.3.10 NMAC, 7-30-2015]

1.5.3.11 REQUIRED

DOCUMENTS IN STATE VEHICLES: Each state agency shall ensure that current copies of the following documents are kept in the glove compartment of all state vehicles in its custody.

A. Auto Loss Form. These are forms and instructions that are included in the packet provided by RMD on how auto accidents in state vehicles are to be dealt with by the authorized driver.

B. Fuel credit cards. Each vehicle will have detailed instructions and procedures for use of the fuel credit card with a list of authorized purchases.

C. How-to brochure. Each vehicle will have a brochure that provides the driver simple instructions regarding the use of the vehicle, telephone numbers, emergency processes, and waivers.

D. RMD financial responsibility document. These documents include the state's official proof of insurance and letter stating the state's responsibility to have proof of registration in a state vehicle.

E. Vehicle maintenance manual. This is the manual that is provided by the manufacturer which includes the manufacturer's specifications. Additional maintenance requirements or specifications may be required by the director or designee and provided to the leasing agency in writing.

F. Vendor list. This is a current list of SCFA authorized motor vehicle maintenance and repair vendors throughout the state of New Mexico. The list is to be used for preventive maintenance, emergency road service and repair.

G. Vehicle registration. This is the official proof of vehicle ownership/registration document issued by the state motor vehicle division. This document shall remain with the vehicle until ownership is transferred or the vehicle is sold by SCFA.

H. Vehicle mileage log. This log should have the date, employee name, beginning and ending mileages, destination, purpose of trip, type of fuel purchased, number of gallons purchased, total fuel cost, other vehicle related purchases, and a place for a supervisor to make verifications.

[1.5.3.11 NMAC - Rp, 1.5.3.11 NMAC, 7-30-2015]

1.5.3.12 AUTHORIZED DRIVERS AND PASSENGERS:

A. Authorized drivers. The director or designee may authorize a state employee who possesses a current valid New Mexico drivers' license or approved out-of-state license, and who has completed a TSD approved NSC defensive driving course and orientation prescribed by the division to operate a state motor vehicle. The state employee must have the appropriate class of driver's license to drive any state vehicle that is not a passenger vehicle. Upon request each agency must provide a list of all authorized drivers.

B. Authorized passengers. Only authorized passengers may occupy a state vehicle. A person who is not a state employee must obtain written authorization from the director or designee before occupying a state vehicle. Failure to comply may result in suspension of driving privileges.

C. Suspension or revocation of authorized drivers' privileges. The director or designee may suspend or revoke the authorized driver privileges of any state employee who permits a person who is not an authorized driver to operate a state vehicle or who transports, or permits the transportation of a person who is not an authorized passenger. In addition, such state employee may be held personally liable to the extent permitted by law for any liability for personal injury, death or property damage arising out of the unauthorized use or occupancy of the state vehicle.

D. Reinstatement of driving privileges. An authorized driver whose state driving privileges have been suspended or revoked must complete a NSC/DDC six (6)-hour class instructed by a TSD approved instructor before receiving a written driver privilege reinstatement authorization from the director or his designee.

E. Exceptions. Nothing in this section shall be construed to prohibit the use or occupancy of a state vehicle:

- (1) to render emergency aid or assistance to any person; or
- (2) by private sector automobile mechanics or maintenance and repair personnel performing required maintenance or repairs.

[1.5.3.12 NMAC - Rp, 1.5.3.12 NMAC, 7-30-2015]

1.5.3.13 DEFENSIVE DRIVING COURSE:

A. Defensive driving course. TSD will use the on-site instructor taught course material including the TSD online national safety council (NSC) defensive driving and safety curriculum (DDC). Agencies desiring to provide NSC/DDC training independent of TSD must request authorization to provide NSC/DDC instruction from the director or designee prior to commencing the utilization of any NSC/DDC tools or materials. In addition, the agencies must follow the curriculum approved by the director or designee prior to commencing the utilization of the proposed training tools. It is the responsibility of the proposing agency to incorporate all state of New Mexico TSD requirements into the defensive driving curriculum. All on-line courses are required to be reviewed and permission to utilize these courses must be approved by TSD *prior* to commencing use.

B. Course availability. TSD shall offer regularly scheduled defensive driving classes in Santa Fe and Albuquerque. This does not preclude TSD from offering these classes at the requesting agency's site. A state agency or state employee should contact the division for information about scheduled classes, locations, costs, registration, or scheduling of department trainings.

C. Instructor certification. To receive a certificate as a NSC/DDC Instructor, it is necessary to submit the written request to the director or designee for review and approval. This applies to employees who may have received a NSC/DDC instructor certification while under the employment of another governmental agency. All

prospective instructors may attend the TSD instructed NSC/DDC - six (6) and four (4) hour classes; and, are required to teach one TSD six (6) hour course and one (1) TSD four (4) hour course under TSD supervision prior to receiving consideration of approval to teach. Instructors in good standing must complete the TSD certification process every two (2) years. TSD may choose to conduct instructor/class audits.

D. Driver certification required. All defensive driving certificates are valid for four (4) years. All authorized drivers of state vehicles must have a current TSD approved NSC defensive driving certificate in their possession while driving a state vehicle. TSD requires employees who seek to operate a state vehicle to provide proof of current certification. New employees must successfully take and pass the six (6) hour TSD prescribed NSC defensive driving class with a grade of eighty percent (80%) or better to become an authorized driver. If the new employee provides proof of NSC/DDC certification within two (2) years previous to the date of employment, at the discretion of the director or designee, the employee may only have to take the four (4) hour NSC/DDC, or the administrative use of state vehicles online certification course.

(1) If a state employee needs to operate a state vehicle in furtherance of state business but has not successfully completed the NSC defensive driving course, the state employee must register for the next available NSC defensive driving course, or the TSD online NSC/DDC. The employee's agency head or designee must submit a written request for a temporary waiver not to exceed thirty (30) days of the certification requirement from the director or designee. The waiver request shall include the state employee's name and New Mexico driver's license or an approved out-of-state driver's license number (accompanied by a valid out-of-state driving record), and the date the state employee is scheduled to attend the NSC defensive driving course. If approved, the director or designee will specify the term of the waiver. If the request is denied, the director or designee will specify in writing the reason for the denial within ten (10) working days of the date the waiver request is received by the division. Driver waivers cannot be renewed.

(2) If the state employee's certification has expired, the employee shall be required to successfully complete a six (6)-hour NSC/DDC certification class taught by an instructor or complete the TSD online NSC/DDC.

E. Driver re-certification. Each state employee is required to take the defensive driving refresher course every four (4) years.

(1) An employee may take the four (4) hour refresher course provided by TSD; however, the employee must provide proof of previous NSC/DDC certification.

(2) Failure to provide proof of previous NSC/DDC will require the employee to register to take the six (6) hour NSC/DDC course or the TSD online NSC/DDC.

F. List of certified state employees. The agency vehicle coordinator shall maintain a list of certified state employees employed by the agency, including a current copy of the employee's valid NM drivers' license.

G. User agency requirements.

(1) The user agency is responsible for checking authorized drivers' licenses to assure compliance with motor vehicle division laws.

(2) TSD will provide a template of the TSD database to the instructor.

(3) The maintenance and listing of authorized drivers.

(4) Maintenance and listing of suspended driving privileges including drivers' license revocations, suspensions and driving under the influence (DUI).

(5) The agency is subject to TSD audits of state agency authorized driver records.

(6) Certificates must be printed and have an original instructor signature.

H. Lost certificates. If a state employee loses his or her defensive driving certificate, the TSD will issue a replacement certificate at a cost per certificate. If the state employee cannot provide proof of taking a TSD authorized defensive driving certification course, the employee must register for a six (6) hour NSC defensive driving course or the TSD online NSC/DDC.

[1.5.3.13 NMAC - Rp, 1.5.3.13 NMAC, 7-30-2015]

1.5.3.14 TRAFFIC LAWS AND OPERATOR CONDUCT:

A. Authorized drivers shall obey all applicable traffic laws while operating a state vehicle.

B. Authorized drivers must exercise appropriate caution and prudence while operating a state vehicle.

C. Authorized drivers shall not engage in discourteous behavior or inappropriate conduct while operating a state vehicle.

D. Authorized drivers shall not use state vehicles for inappropriate or illegal activities including personal use; and shall have no reasonable expectation of privacy in the use of any state vehicle.

E. Authorized drivers on official travel, who exceed their post of duty by thirty-five (35) miles, may utilize the state vehicle to take care of personal business such as visiting eating establishments, grocery stores, etc.

F. Authorized drivers shall only utilize a cell phone with a hands free device while operating a state vehicle.

G. At no time will the authorized driver be allowed to text or type on any other device(s) such as a smartphone and laptop computer while driving. At no time is reading from any electronic device or paper source permissible while operating a state vehicle.

H. Authorized drivers shall minimize distractions while operating state vehicles. These distractions include but are not limited to eating and playing with the radio/cd player.

I. Authorized drivers shall operate state vehicles at or below posted speed limits.

J. An authorized driver who receives a traffic citation or parking ticket while using a state vehicle must notify TSD. If TSD receives a state employee's traffic citation or parking ticket involving a SCFA motor vehicle, the director or designee will forward it to the state agency leasing the state motor vehicle to assure the employee promptly clears the citation/ticket.

(1) The driver shall be personally responsible for any costs (cost of ticket, late fees, court fees or administrative fees) associated with the citation or ticket,

(2) The driver is also required to retake and pass a six (6)-hour TSD approved instructor NSC/DDC certification class before operating a state vehicle. An agency may deem that the employee is responsible for paying for additional classes.

(3) If the driver of the vehicle cannot be identified, the agency shall be held responsible for any costs associated with the citation or ticket.

K. Authorized drivers involved in a traffic accident while operating a state vehicle who are found at fault will have their driving privileges suspended or revoked and are required to immediately register for a six (6) hour TSD approved instructor NSC/DDC certification class.

L. State employees shall carpool to meetings, conferences whenever feasible.

M. Supervisors will ensure that their employees are fit for duty when operating a state vehicle. This includes ensuring that the employee is not fatigued.

[1.5.3.14 NMAC - Rp, 1.5.3.14 NMAC, 7-30-2015]

1.5.3.15 SUSPENSION OF STATE VEHICLE OPERATOR PRIVILEGES:

A. The director or designee shall automatically suspend a state employee's authorization to operate a state vehicle if the state employee's New Mexico driver's license or an approved out-of-state driver's license is expired, revoked, or suspended. This extends to include disqualifications or administrative actions on driver's licenses. An employee whose driving privileges have been suspended or revoked for an expired driver's license may register for the TSD/NSC online Defensive Driving Class (DDC).

B. An authorized driver that receives a citation and is convicted while operating a state vehicle will have their privileges suspended until proof of the ticket being paid is submitted to TSD and a NSC six (6) hour defensive driving class taught by a TSD approved instructor has been taken and passed or successfully completed. Suspensions extend to utilizing personal vehicles to conduct state business.

C. A state agency shall report each suspension or revocation to the director or designee. The director or designee will provide the agency head with names of any state employee's employed by the requesting state agency whose state vehicle operator privileges have been suspended or revoked.

D. To determine that state authorized drivers have a valid driver's license, the director or designee will at random review the driving record of state authorized drivers. The director or designee will review the status of the driving record of any state authorized driver upon receipt of any request for waiver, constituent complaint, registration for DDC, traffic citation, parking ticket, accident, police report or vehicle abuse.

E. An authorized driver that has his/her driving privileges suspended or revoked must successfully complete a six (6) hour TSD approved instructor NSC/DDC class before the director or designee will consider authorizing the reinstatement of those privileges.

F. The director or designee shall review all complaints of alleged fraud, waste, and abuse involving state vehicles, and shall forward them to the state agency fleet coordinator and to the appropriate state agency management team.

(1) If three (3) vehicle abuse allegations are received within a fiscal year for the same allegation, the authorized driver will have his/her driving privileges temporarily suspended and will be required to retake a TSD approved instructor six (6) hour NSC/DDC class. The agency will then provide a copy of the retaken DDC to TSD.

(2) Failure to comply or respond to final notice of abuse allegations will result in vehicle lease termination.

G. Any agency may require the employee to pay for a DDC class necessary to reinstate their driving privileges.

H. The director or designee or the state agency may suspend or revoke driving privileges of an authorized driver for failure to comply with any provision of this rule.

[1.5.3.15 NMAC - Rp, 1.5.3.15 NMAC, 7-30-2015]

1.5.3.16 ALCOHOL, CONTROLLED SUBSTANCE, DRUG, AND TOBACCO USE PROHIBITED REPORTING REQUIREMENTS:

A. No authorized driver shall operate a state vehicle while under the influence of intoxicating alcohol, controlled substances, or drugs. Nor shall an authorized driver transport an individual who has consumed alcohol, controlled substances, or drugs. State law enforcement officers investigating criminal activities as part of their duties can transport individuals who have consumed alcohol, controlled substances, or drugs.

B. No authorized driver shall transport intoxicating alcohol of any type, whether in open or unopened containers, while operating or occupying a state vehicle, unless the person is an employee of the state alcohol and gaming division of the regulation and licensing department or a state law enforcement officer investigating criminal activities as part of their duties.

C. No authorized driver shall operate a state vehicle when he or she is so impaired by a legal drug that renders him or her incapable of operating a motor vehicle in a safe and responsible manner.

D. No authorized driver or passenger shall smoke or use smokeless tobacco products of any type in any state vehicle.

E. The driving privileges of an authorized driver that is convicted of a DUI citation while operating a state vehicle are immediately and permanently revoked. Reinstatement of the driving privileges may be requested in writing by the head of the state agency in which the employee works. The director or designee will review the request and provide the state agency a written determination as to the employee's state vehicle driving privileges within ten (10) working days of the receipt of the request by the division.

F. It is the sole responsibility of the state employee to report all current convictions of driving while intoxicated to their immediate supervisor and the director. Failure to comply with this section shall cause immediate revocation of their driving privileges of state vehicles. It is the director's responsibility to report DUI convictions to the state employee's immediate supervisor and cabinet secretary or agency head. Disciplinary actions are the responsibility of the state agency.

G. The state authorized driver privileges shall be suspended while the employee goes through the DUI court and administrative process. If convicted, the authorized driver's state vehicle driving privileges shall be revoked. If not convicted, the state agency shall notify the director or designee in writing requesting that driving privileges

be reinstated along with evidence of the dismissal of charges. The director or designee will review the request and provide the state agency a written determination as to the employee's state vehicle driving privileges within ten working days of receipt of the request for reinstatement by the division.

H. Revocation of state vehicle driving privileges for a DUI conviction extends to the utilization of the employee's personal vehicle if it is to be used to conduct state business.

[1.5.3.16 NMAC - Rp, 1.5.3.16 NMAC, 7-30-2015]

1.5.3.17 WEAPONS AND PETS PROHIBITED:

A. No authorized driver or passenger shall possess a weapon while operating a state motor vehicle unless the authorized driver or passenger is a certified law enforcement officer. This includes individuals with concealed weapons licenses.

B. No pets allowed at any time in state vehicles. Upon written request, the director or designee may authorize canine patrols or transportation of other animals including assistance dogs. The director or designee will review the request and provide the state agency a written determination within ten (10) working days of receipt by the division.

[1.5.3.17 NMAC - Rp, 1.5.3.17 NMAC, 7-30-2015]

1.5.3.18 SEAT BELT USE:

A. All authorized drivers and passengers of state vehicles shall wear seat belts.

B. All authorized drivers shall observe child safety and restraint laws at all times when transporting a minor in a state vehicle in furtherance of official state business.

C. Violation of this law may result in loss of state authorized driver privileges.

[1.5.3.18 NMAC - Rp, 1.5.3.18 NMAC, 07-30-2015]

1.5.3.19 USE OF FUEL CREDIT CARDS:

A. All state agencies and authorized drivers are required to use the GSD/TSD contracted fuel credit card for authorized purchases.

B. The state agency shall assign a single fuel credit card to each vehicle using the state issued license plate number or a unique fixed asset number that is tied back to the vehicle that the card is assigned to.

(1) Credit card shall be kept with the assigned vehicle and not with the driver.

(2) Card is stored in the protective sleeve and out of direct sunlight or other heat sources.

(3) When purchasing items enter exact current mileage (no tenths).

(4) If a problem is encountered at the time of purchase, the driver should contact the credit card company for help.

(5) Lost, damaged, or stolen credit cards need to be reported to their agency fuel card account manager within one (1) working day of the discovery. Card will be suspended and a new card ordered at that time.

C. A personal identification number (PIN) shall be assigned to each authorized driver.

(1) Personal identification number must be six (6) digits long and requested from the gasoline account manager in your agency at least twenty-four (24) hours in advance of anticipated use.

(2) Authorized drivers shall not share the PIN with anyone else or let someone else use the PIN.

(3) Agency fuel account managers are responsible for terminating personal identification numbers for employees who are no longer with the agency.

D. Whenever possible, authorized drivers shall use self-service fuel pumps when refueling motor pool vehicles. Every attempt shall be made to fill the vehicle at the cheapest location, which is usually a tier II station that sells unbranded fuel. Authorized drivers are required to use alternative fuels when they are approved by the manufacturer and when an alternative fuel vendor is located less than ten (10) miles away at the time fueling is needed. All non-flex fuel gasoline operated vehicles will use E-10 when a vendor is located less than ten (10) miles away at the time fueling is needed.

E. Each agency will evaluate fuel purchase exception reports provided by the fuel credit card company on a monthly basis.

(1) Each agency shall establish use requirements and parameters on their fleet. Such parameters will include multiple daily transactions, number of gallons purchased at one (1) time, limit dollars per transaction, off hour transactions, non-fuel transactions, and unauthorized purchases (soda, candy, etc.).

(2) Transactions that cannot be justified must be investigated with a formal report summarizing the findings with recommendations. A copy of the report will be sent to SCFA.

F. The fuel credit card may be used for road-side service, or emergency service or repairs not to exceed two hundred fifty dollars (\$250) per occurrence.

G. If an authorized driver uses the fuel credit card to purchase an unauthorized item or service, the state agency shall collect the cost of the unauthorized purchase from the authorized driver and an investigation will be conducted. Investigation findings must be sent to SCFA for review. The state agency or the director or designee may suspend or revoke the state vehicle operator privileges of an authorized driver for misuse of a fuel credit card.

H. A state agency or authorized driver shall immediately notify the vendor contracted by GSD/TSD if the fuel credit card for a motor pool vehicle is lost.

I. All expenses charged to the contracted GSD/TSD fuel credit card shall be paid by the user agency.

J. Under no circumstance shall state fuel credit cards be used for personal vehicles, even if using a personal vehicle to conduct state business.

K. Misuse of state vehicle fuel credit cards will result in disciplinary actions. Disciplinary actions include, but are not limited to, administrative, disciplinary, and may also include criminal action by the state agency, the director, or designee, up to and including termination.

[1.5.3.19 NMAC - Rp, 1.5.3.19 NMAC, 7-30-2015]

1.5.3.20 AUTHORIZATION TO COMMUTE:

A. No authorized driver or passenger shall use a state vehicle for private use.

B. Commuting is defined as the consistent use of a state vehicle from assigned post of duty to domicile and from domicile to assigned post of duty, even if it is for short periods of time, i.e. legislative session. Occasional use is not considered commuting, i.e. taking the vehicle home the night before an out-of-town trip.

C. A state agency must develop a written policy that allows authorized drivers to use state vehicles to commute between work and residence for security purposes or if doing so is in the best interest of the state. Only the leasing agency's cabinet secretary of an executive department or the director of an independent executive state agency (not part of an executive department but still part of the executive) can approve the commuting policy and commuting of individual authorized drivers.

D. All agency cabinet secretaries or agency heads must acquire approval from the governor's office. Approvals must be forwarded to SCFA.

E. Each state agency permitting authorized drivers to utilize this domicile-to-duty privilege shall maintain current records of and provide a current copy of the following to SCFA:

- (1)** all state authorized commuters/passengers by name and position;
- (2)** the number of total miles each state authorized driver, who commutes, drives annually between work and residence using a state vehicle;
- (3)** the number of times annually a state authorized driver who is given written approval to use a state vehicle to commute between his assigned post of duty and his primary residence and is called back when the state employee is off-duty;
- (4)** review all authorizations to use a state vehicle to commute at least once a year; and
- (5)** provide an annual commuting report to SCFA that identifies by authorized commuter; the vehicle state plate, total commuting mileage, number of call backs for ending fiscal year; this report shall also identify drivers and state vehicle plates authorized to commute for the following year; this report is due sixty (60) days prior to each fiscal year.

F. State vehicles are not to be used to transport employees to and from public transportation drop off points.

G. Failure to provide this report to SCFA will result in vehicle lease termination.

[1.5.3.20 NMAC - Rp, 1.5.3.20 NMAC, 7-30-2015]

1.5.3.21 STATE VEHICLE CARE AND MAINTENANCE:

A. An authorized driver must turn off the ignition, close all windows, and lock the doors and trunk of a state vehicle whenever the state vehicle is left unattended.

B. State agencies and authorized drivers are responsible for assuring that state vehicles in their custody are parked in secure areas minimizing exposure to vandalism, damage, destruction, wreckage, sabotage, defacement or harm. If after multiple occurrences of vandalism, damage, destruction, wreckage, sabotage, defacement or harm occur, the agency head shall, in writing, request authorization from the director or designee for authorized drivers to take state motor vehicles to their place of residence for security purposes only. The authorization will be provided only if the state agency head or designee can prove that:

- (1)** the state agency's landlord does not provide a secure space for state vehicles; or,

(2) the state agency cannot avail itself of other secure state of New Mexico parking spaces; or,

(3) the state agency cannot acquire secure private sector parking spaces.

C. If the director or designee provides the approval, the state agency must comply with the reporting and tracking requirements of 1.5.3.20 NMAC.

D. State agencies must ensure that the subscribed manufacturer's preventive maintenance service is done on all leased state vehicles at regular mileage, or time intervals, in accordance with the manufacturer's specifications, or as otherwise specified by the director or designee. For vehicles leased or owned by TSD, without exception, the agency is required to use TSD approved vendors. If there are vendors that are not on the list that are willing to provide repair or maintenance services the user agency must refer them to the TSD procurement office for inclusion to the TSD authorized vendor list. Under no circumstances will it be permitted for the authorized driver to receive services from an unauthorized vendor without a valid purchase order from TSD. Unauthorized expenses will be billed to the user agency.

(1) The state agency is responsible for ensuring that oil and oil filters on all leased state vehicles are changed in accordance with the manufacturer's specifications, TSD maintenance requirements, and that all other preventive maintenance functions performed are in accordance with the prescribed TSD service schedule, which is an attachment to the vehicle lease.

(2) A state agency, may without the prior approval of the director or designee, use the fuel credit card to perform minor repairs of emergency equipment, such as changing windshield wipers, repairing a damaged tire, replacing a fan belt, or adding a quart of oil, etc., in an amount not to exceed two hundred fifty dollars (\$250). If the emergency repairs will cost more than two hundred fifty dollars (\$250), it is the responsibility of the user agency to notify the TSD procurement officer of the need to execute an "emergency procurement" in accordance with the New Mexico Procurement Code, Chapter 13, Article 1 of the NMSA 1978.

E. State agencies are responsible for the cleanliness of leased state vehicles inside and out. State agencies are also responsible for checking the leased state vehicle's vital engine fluids and tire pressure at each refueling. SCFA will not be responsible for providing emergency roadside kits, first aid kits, ice scrapers, fire extinguishers for the vehicles under its' control. State agencies are responsible for providing any of these types of equipment for their vehicles.

F. No authorized driver or passenger shall abuse or misuse a leased state vehicle. The SCFA or a state agency head or designee may assess authorized drivers and authorized passengers for the costs of loss of or damage to a leased state vehicle if the loss or damage was caused by reckless driving or driving while under the influence of intoxicating liquor, controlled substances or drugs.

G. The SCFA will charge a state agency for the cost of repairing a leased state vehicle damaged due to neglect or abuse. The SCFA will charge the cost of repairs to a state agency if the state agency neglects a leased state vehicle or fails to inform the SCFA of possible damage or a maintenance problem. The director or designee may recall a leased state vehicle or suspend or revoke the authorized driver privileges for damage or improper care of a leased state vehicle.

H. State agencies may not display any commercial advertising on a state vehicle at any time. A state agency may display the agency's toll-free telephone number on a state vehicle. A state agency must be in compliance with the decals defined by Subsection C of 1.5.3.10 NMAC with a New Mexico government license plate. The director or designee must approve, in writing, any agency written requests for other bumper sticker, plaque or signage prior to the state agency affixing it to a state vehicle. For flex fuel vehicles, a state agency must display a sticker next to the gas port indicating the type of alternative fuel the vehicle can accept.

I. No person shall alter, modify, convert, or improve the original vehicle equipment of any state vehicle without the prior written authorization of the director or designee.

J. All TSD leased vehicles must be inspected by TSD at least once a year. Inspections will be held in various locations throughout the state. TSD reserves the right to conduct unannounced inspections of state vehicles.

[1.5.3.21 NMAC - Rp, 1.5.3.21 NMAC, 7-30-2015]

1.5.3.22 STATE VEHICLE RETURN:

A. The director or designee may rotate state vehicles within an agency or between agencies if the director or designee determines that a state agency is under or over utilizing an assigned vehicle. The director or designee will notify the state agency of such occurrences and recommend the rotation. The director or designee, in conjunction with the state agency, will make the appropriate changes to the location of the leased state vehicle.

B. Once TSD has notified a state agency that a replacement vehicle is available to exchange for a vehicle that has met or exceeded its life expectancy, or is no longer road worthy, the agency has thirty (30) days to execute the exchange.

C. The SCFA will notify state agencies if there is a manufacturer's recall applicable to a leased state vehicle. The state agency shall take the leased state vehicle to the appropriate dealer for service or modification, and shall, upon completion of the recall-related work, notify the SCFA.

D. The director or designee in conjunction with the SCFA and the state agency shall determine when a state vehicle needs to be replaced. Life cycles are determined primarily from user requirements provided by the agency fleet coordinator. A state

agency must return a leased state vehicle to the division upon receipt of a new or different vehicle.

E. A state agency may return a leased state vehicle in accordance with the terms of the lease agreement. In no case will an agency turn in a vehicle that has not reached its life cycle while requesting additional units unless the agency satisfies the remaining balance of the turned in vehicles replacement cost.

F. A state agency shall not transfer; receive control of, or custody of, a leased state vehicle to or from another state agency without the prior written authorization of the director or designee.

[1.5.3.22 NMAC - Rp, 1.5.3.22 NMAC, 7-30-2015]

1.5.3.23 EMERGENCY REPAIRS AND MECHANICAL BREAKDOWN:

An authorized driver shall immediately take steps to correct any mechanical or operating problem that occurs while a TSD leased state vehicle is in operation. An authorized driver shall, in no case, continue to operate a state vehicle if continued operation could endanger any person or property. Furthermore, the authorized driver is responsible for immediately notifying the state agency fleet coordinator and SCFA account manager of any unsafe vehicle condition. Failure to comply with the notification portion of this section requires any costs to be billed to the user agency or reimbursed to TSD.

[1.5.3.23 NMAC - Rp, 1.5.3.23 NMAC, 7-30-2015]

1.5.3.24 VEHICLE UTILIZATION:

The utilization standards establish the minimum requirements for the use of passenger vehicles for the executive, legislative and judicial branches of the state of New Mexico. TSD, DOT, EMNRD, DGF and DPS develop and maintain vehicle utilization standards. These utilization standards are to be reviewed annually and subject to change based on increased fuel efficiencies (CAFE) and reduction of greenhouse gas emissions benchmarks.

[1.5.3.24 NMAC - Rp, 1.5.3.24 NMAC, 7-30-2015]

1.5.3.25 UNDER-UTILIZATION OF STATE VEHICLES:

The director or designee may re-allocate state vehicles that are being under-utilized.

A. The director or designee shall analyze monthly leased state vehicle mileage statistics.

B. The director or designee may rotate state vehicles within an agency or between agencies if it is determined that a state agency is under or over utilizing an assigned vehicle. The director or designee will notify the state agency of such occurrences and recommend the rotation. The director or designee in conjunction with the state agency will make the appropriate changes to the location of the leased state vehicle.

C. If the director or designee finds that a leased state motor vehicle is accumulating low mileage, the director or designee will notify the state agency in writing that a state vehicle assigned to it is being under-utilized.

D. The state agency shall examine its utilization of the state vehicle and respond in writing justifying to the director or designee its need for the state vehicle and describing its intra-agency vehicle rotation plan. If the state agency does not provide such a plan, the director or designee will rotate vehicles among state agencies.

E. The director or designee will continuously monitor mileage utilization of the leased state vehicles. If the agency's use of the leased state motor vehicle does not increase, the director or designee may recall the vehicle or replace it with a state vehicle that has more mileage.

F. The director or designee will consider under-utilization of state vehicles when evaluating a state agency's requests for additional or different vehicles.

[1.5.3.25 NMAC - Rp, 1.5.3.25 NMAC, 7-30-2015]

1.5.3.26 VEHICLE DISPOSAL PROGRAM:

The disposal of vehicles is governed by Chapter 13, Articles 1 and 6 NMSA 1978. The director or designee in conjunction with the SCFA will consider disposing of a state vehicle when:

A. the leased state vehicle reaches the end of its predetermined accounting and life cycle;

B. the estimated cost of repairs exceed the value of the leased state vehicle; or,

C. the leased state vehicle is unsafe, inoperable or obsolete.

[1.5.3.26 NMAC - Rp, 1.5.3.26 NMAC, 7-30-2015]

1.5.3.27 OUT-OF-STATE AND OUT-OF-COUNTRY TRAVEL IN-STATE VEHICLES:

A. The director or designee must approve in writing all out-of-state and out-of-country travel requests, in state vehicles, in advance.

B. The state agency must request the appropriate approval in writing including the following information:

(1) names of employee drivers/passengers - if travelers are not employees please provide their names, entity they represent and reason why they need to travel in a state vehicle (relatives or friends that are not conducting business in the furtherance of state of New Mexico business cannot travel in a state car);

(2) NM drivers' license numbers of all authorized drivers;

(3) copies of drivers national safety council/defensive driving certificate;

(4) G or SG-plates of vehicles making the trip;

(5) point of departure;

(6) points of destination, i.e., Santa Fe, New Mexico; to El Paso, Texas; to Ciudad Juárez, Chihuahua; to Chihuahua, Chihuahua; to Torreón, Coahuila, etc.

(7) date of departure;

(8) date of return;

(9) purpose for the travel, and;

(10) an agency approved travel request form including per diem costs.

C. The requesting agency must get approval from the governor's office.

D. The state agency fleet coordinator must provide the appropriate information to the director or designee based on the following schedules:

(1) for a non-state employee passenger waiver, at least five (5) working days notice;

(2) for an out-of-state waiver, at least ten (10) working days notice; and,

(3) for an out-of-country waiver at least ten (10) working days notice.

E. The authorized driver must have the proper insurance, vehicle registration and waiver documentation in-hand prior to the travel date.

[1.5.3.27 NMAC - Rp, 1.5.3.27 NMAC, 7-30-2015]

1.5.3.28 ACCIDENTS AND ACCIDENT REPORTING:

A. An authorized driver, or appointed fleet coordinator, of a state vehicle owned or leased by GSD/TSD shall file an auto loss notice for any auto accident in a state vehicle within twenty-four (24) hours or the next business day regardless of the severity of the accident. A police report and automobile loss notice are required with or without property damage, bodily injury, whether or not the authorized driver is at fault.

B. The authorized driver shall provide the police accident report, automobile loss notice, and three (3) quotes for repair costs to RMD and a copy of the same to the agency vehicle coordinator and the TSD account manager.

C. If the authorized driver did not file a police report, the state agency fleet coordinator must complete the automobile loss notice and include the authorized driver's name and driver's license number, and any witnesses, written and notarized affidavit(s) describing the accident in detail, with distribution of the documents as previously described.

D. If the authorized driver is found to be at fault, the driver will be suspended and is required to take and pass a TSD approved instructor taught six (6)-hour NSC/DDC course.

E. RMD will assist the director or designee in maintaining accident reports and filing insurance claims for all state vehicles.

F. Since the premiums for RMD state passenger vehicles are part of the TSD lease rates, the deductible for any loss will be paid by TSD. However, if there is proof that the loss was caused by the negligence or abuse of a state employee, the user agency will bear the costs of the insurance deductibles up to two thousand five hundred dollars (\$2,500) and any other costs as may be determined by the director, or designee, and RMD.

[1.5.3.28 NMAC - Rp, 1.5.3.28 NMAC, 7-30-2015]

1.5.3.29 CUSTODY OF STATE VEHICLES:

A. Determination by director or designee. The director or designee may, on his own initiative or in response to a written request from a state agency, determine that custody of certain state vehicles should reside in a state agency. The director or designee shall make such determination in accordance with the criteria set forth in Subsection B of Section 15-8-6 NMSA 1978. All state vehicles in the custody of other state agencies shall be titled in the name of the division in accordance with Section 15-8-9 NMSA 1978.

B. Responsibilities of state agencies with custody of state vehicles. A state agency that has custody of one or more state vehicles shall:

(1) appoint an agency fleet coordinator who shall be responsible for answering any questions from the director or designee regarding the owned or leased TSD state vehicles in the state agency's custody;

(2) maintain an accurate inventory of all state vehicles in its custody, including any public property with a license plate;

(3) submit an inventory report to the director or designee by June 15th of each year for the fiscal year ending on June 30 of that year;

(4) notify the director or designee within thirty (30) days of any change in the name, address, telephone number, or facsimile number of the state agency or the agency fleet coordinator, or any change in the status of state vehicles in the state agency's custody;

(5) register all state vehicles using the name GSD/TSD/SCFA as the first lien holder or name;

(a) the name of GSD/SCFA as the first lien holder or name one (1); and,

(b) the name of the state agency as name two (2) and the state agency accounting code as "VIN two (2)",

(6) be responsible for all operation, maintenance, repair, and replacement costs of leased state vehicles in the state agency's custody;

(7) budget appropriately for replacement of leased state vehicles;

(8) develop written inventory, administrative, operational, and replacement policies;

(9) develop a written policy regarding the use of leased state vehicles for commuting between work and residence;

(10) track all special use motor vehicles and motor vehicles leased or purchased totally or partially with federal funds using the vehicle identification number (VIN) instead of the license plate number; and

(11) maintain insurance coverage on non-TSD leased state vehicles in accordance with the requirements established by RMD.

C. License plates. On an annual basis, the director or designee shall determine which type of license plate shall be issued for each state vehicle in the custody of a state agency based on information provided by the requesting agency.

1.5.3.30 USE-OF-STATE VEHICLES DURING INCLEMENT WEATHER:

A. No employee should be expected to travel if they feel unsafe due to inclement weather. The employee should inform their supervisor and request that the trip be delayed until the inclement weather hazard has dissipated.

B. No short term lease or "quik ride" vehicles will be issued while inclement weather conditions are present. Reservations will be rescheduled for a later time or date, depending on weather conditions and vehicle availability.

C. TSD reserves the right to prohibit the use of state vehicles during inclement weather.

[1.5.3.30 NMAC - Rp, 1.5.3.30 NMAC, 7-30-2015]

1.5.3.31 GLOBAL POSITIONING SYSTEMS - GPS:

A. GPS will be used to monitor the location and operation of vehicles in order to protect driver and vehicle safety and to improve fleet efficiency.

(1) TSD will establish statewide vehicle alerts in order to identify improper driving behaviors;

(2) TSD will provide oversight of vehicle monitoring and data reporting;

(3) Each agency assigned a state vehicle with a GPS device installed shall have access to the GPS tracking system in order to track and run reports for their agency vehicles and shall inform its employees about the use of the GPS device and system alerts, including use for disciplinary reports and related purposes;

(4) All costs associated with an agency's use of GPS will be billed by TSD through its monthly billing system. Costs will flow through and be identified as an "add on".

B. Each agency will monitor the vehicles assigned to it in order to identify and document any unusual patterns or activity associated with specific GPS unit numbers by establishing alerts.

(1) each agency will be responsible for its own policy on informing its employees on the use of GPS including their use in determining disciplinary actions; reports displaying violations will be deemed a matter for inclusion in an employee's personnel file;

(2) each vehicle's travel data must be consistent with the work assignment of the employee operating the vehicle. TSD shall retain GPS data for the current calendar year and the previous calendar year; and,

(3) each agency that allows for commuting must still report these vehicle activities to TSD.

C. Each agency shall ensure that all personnel actions associated with the use of the GPS are in accordance to that agency's specific rules and regulations.

(1) TSD recommends that each vehicle that has a GPS device installed have a decal displayed in the interior clearly identifying that a GPS unit is installed and that all activity including speed and location is and will be monitored;

(2) each agency shall establish additional alerts that are specific to their operations such as hours of use and operation, route information, idling time, locations where vehicles travel outside their respective assigned areas, etc.; and,

(3) tampering with any GPS equipment is prohibited and offending employees may be subject to disciplinary action.

[1.5.3.31 NMAC - N, 7-30-2015]

1.5.3.32 WAIVER FROM TSD RULES:

The GSD secretary or authorized designee may waive any portion of this rule provided the request is submitted in writing. The director or designee or the state agency may suspend or revoke driving privileges of an authorized driver for failure to comply with any provision of this rule.

[1.5.3.32 NMAC - Rp, 1.5.3.31 NMAC, 07-30-2015]

PART 4: PURCHASE OF PETROLEUM PRODUCTS AND SERVICES BY STATE OF NEW MEXICO CREDIT CARDS

1.5.4.1 ISSUING AGENCY:

General Services Department, Administrative Services Division.

[Recompiled 11/30/01]

1.5.4.2 SCOPE:

(Does not apply to bulk purchases).

[3/1/88; Recompiled 11/30/01]

1.5.4.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 11/30/01]

1.5.4.4 DURATION:

Permanent.

[Recompiled 11/30/01]

1.5.4.5 EFFECTIVE DATE:

March 1, 1988 [unless a later date is cited at the end of a section].

[Recompiled 11/30/01]

1.5.4.6 OBJECTIVE:

This rule establishes procedures for the procurement of petroleum products and related items with state of New Mexico credit cards.

[Recompiled 11/30/01]

1.5.4.7 DEFINITIONS:

[RESERVED]

1.5.4.8 ISSUANCE, DESIGN, LOSS OF CARD:

The administrative services division of the general services department will issue credit cards upon request of state agencies and local public bodies. Credit cards will be sold for \$4.00 for the first four cards and \$0.50 each thereafter. Credit cards will be designed to allow the assignment of control numbers to the state agencies or local public bodies to whom the cards have been issued. Each state agency and local public body shall be responsible for the proper use of its cards. If a credit card is lost, destroyed or stolen, the state agency or local public body shall immediately report the incident in writing to GSD's administrative services division for cancellation of the card and issuance of a new card.

[3/1/88; Recompiled 11/30/01]

1.5.4.9 AUTHORIZATION FOR PROPER USE OF CREDIT CARDS:

Vehicle operators are responsible for insuring that invoices or tickets issued by service station attendants bear the vehicle license number, make of vehicle, year and model. They are also responsible for insuring that purchases of fuel are made at the best obtainable price. Independent services stations and self-service pumps shall be used when at all possible. (This requirement does not apply to handicapped persons.) Credit

cards shall be used only for official business and only for the items listed in Section 6 of this rule [now 1.5.4.12 NMAC]. Emergency purchases shall be in the minimum amount necessary for the safe return of a vehicle to its home base and shall not exceed \$100.00 in total.

[3/1/88; Recompiled 11/30/01]

1.5.4.10 SERVICE STATION STATEMENTS:

All service stations are encouraged to honor state of New Mexico credit cards. Statements shall be furnished monthly by the service station's central billing office to the appropriate state agency or local public body. Each statement shall indicate any discounts offered.

[3/1/88; Recompiled 11/30/01]

1.5.4.11 TRADING STAMPS OR GIVE-AWAYS:

Service stations are not required to offer trading stamps or other give-away inducements to operators of state-owned vehicles.

[3/1/88; Recompiled 11/30/01]

1.5.4.12 CREDIT CARD COVERAGE:

State of New Mexico credit cards shall be used only for official business and only to furnish state-owned vehicles with:

- A. regular gasoline;
- B. unleaded gasoline;
- C. diesel fuel;
- D. lubrication;
- E. motor oil;
- F. car wash; and
- G. emergency purchases not exceeding \$100.00 in total.

[3/1/88; Recompiled 11/30/01]

PART 5: AVIATION SERVICES BUREAU AIRCRAFT USE REGULATIONS

1.5.5.1 ISSUING AGENCY:

General Services Department - Transportation Services Division.

[7/1/94; Recompiled 11/30/01]

1.5.5.2 SCOPE:

This rule governs the use of all state-owned passenger aircraft operated by the general services department.

[7/1/94; Recompiled 11/30/01]

1.5.5.3 STATUTORY AUTHORITY:

Chapter 135, Laws of 1994, Section 3.B.(1) through (7); Section 3.C.; and Section 4.

[7/1/94; Recompiled 11/30/01]

1.5.5.4 DURATION:

Permanent.

[Recompiled 11/30/01]

1.5.5.5 EFFECTIVE DATE:

July 1, 1994 [unless a later date is cited at the end of a section].

[7/1/94; Recompiled 11/30/01]

1.5.5.6 OBJECTIVE:

The purpose of this rule is to regulate the use of state passenger aircraft and to ensure their efficient and cost effective use.

[7/1/94; Recompiled 11/30/01]

1.5.5.7 DEFINITIONS:

A. "Transportation services division" - refers to the division of the general services department created by Section 4 of Chapter 119, Laws of 1994.

B. "Crew" - refers to any passenger who has any officially assigned duties involved in the operation of the aircraft. Crew members include, but are not limited to: pilot, co-

pilot, check pilot, flight examiner, FAA designated flight examiner, flight instructor, flight engineer, navigator, mechanic, flight attendant or load-master.

C. "Coverage" - refers to the liability, hull, and medical insurance on state aircraft.

D. "Director" - refers to the director of the transportation services division of the general services department.

E. "Duties" - as defined in the Tort Claims Act means performing any official duties which a public employee is requested, required or authorized to perform by the governmental entity regardless of the time and place of performance.

F. "Emergency" - a condition which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failures, or similar events.

G. "FAA" - means the federal aviation administration or its counterpart in a foreign country having jurisdiction over civil aviation.

H "Federal aviation regulations" - means the body of regulations governing civil aviation in the United States or the equivalent body of regulations governing civil aviation in a foreign country.

I. "Fleet" - means the aircraft operated by the general services department.

J. "Fleet average cost" - is the average hourly cost of operating the fleet. It is determined by combining all variable and fixed costs associated with the fleet in a fiscal year and dividing the total by the total number of aircraft hours flown in that fiscal year.

K. "Passenger" - refers to any authorized person or persons, including crew, while in, or entering a state aircraft for the purpose of riding or flying therein, or exiting the aircraft during or following a flight or attempted flight.

L. "Authorized persons" - refers to the following classes of persons:

- (1) elected or appointed state government officials;
- (2) law enforcement officers;
- (3) persons acting on behalf of or in service of a state governmental entity in any official capacity, whether with or without compensation;
- (4) persons in the custody or care of the state; and
- (5) licensed foster parents providing care for children in the custody of the state.

M. "Secretary" - refers to the cabinet secretary of the general services department.

N. "State agency" - refers to the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions.

O. "State aircraft" - means any state-owned aircraft used primarily to transport passengers.

[7/1/94; Recompiled 11/30/01]

1.5.5.8 USE OF STATE-OWNED AIRCRAFT:

A. For official use only. State aircraft shall be used only for official purposes and in the most cost effective manner practicable.

B. By authorized persons only. Only authorized persons may be transported on state aircraft. The state assumes no liability for any passenger who is not an authorized person as defined in Section 4.12 of this rule [now Subsection L of 1.5.5.7 NMAC].

C. Use guidelines. The following guidelines shall be applied to determine whether a state aircraft shall be scheduled for a proposed trip by a governmental agency, board, or commission:

(1) Cost effectiveness. The user agency and the aviation services bureau shall consider the cost of the flight, location, time required to accomplish mission, cost of alternative transportation, and cost of users' time.

(2) Occupancy. A minimum of three official passengers shall be on any flight unless appropriate written justification is submitted to and approved by the secretary.

(3) Emergencies. The secretary or the secretary's designee shall have the authority to waive cost-effectiveness or occupancy guidelines in emergencies when failure to use state aircraft would threaten:

(a) the functioning of government;

(b) the preservation or protection of property; or

(c) the health or safety of any person.

(4) Permitted areas of use. State aircraft shall be flown only within the territory specified in the state's insurance coverage. Questions should be referred to the risk management division of the general services department.

[7/1/94; Recompiled 11/30/01]

1.5.5.9 SCHEDULING OF STATE AIRCRAFT:

A. Role of aircraft control center.

(1) Authority: Pursuant to Section 15-3-31 NMSA 1978, the department maintains an aircraft control center.

(2) Statutory duties: The aircraft control center shall maintain records of all flights made by state aircraft including a preflight report of anticipated time of departure and arrival for each flight, name of the pilot and each passenger, the destination and intermediate stops, and a post-flight report of actual departure and arrival times.

B. Governor and elected officials: The governor and other state elected officials of the state of New Mexico shall have priority in the use of state aircraft. Except for the governor, who shall have bumping rights on all scheduled flights, elected officials shall be scheduled on a first-come, first-served basis.

C. Other state officials and employees: Non-elected state employees, officers, and board members shall be scheduled on a first-come, first-served basis except in cases involving emergencies or as provided in Section 6.3 [now Subsection D of 1.5.5.9 NMAC], below. The secretary shall determine the validity of emergency requests.

D. Aircraft with special equipment: The aerial photo unit of the state highway and transportation department shall have first priority, including bumping rights, for the scheduling of any aircraft specially equipped for aerial photography.

E. Timeliness of scheduling: All flight requests shall be scheduled as far in advance as possible.

F. Training and maintenance: The chief pilot shall schedule pilot leave and training, as well as normal aircraft maintenance, as far in advance as possible. Scheduled periods of aircraft non-availability will be entered on the scheduling system at the time they are scheduled.

G. Right to Refuse Scheduling: The secretary may refuse any request to schedule a state aircraft as provided under Section 3.C. of Chapter 135, Laws of 1994.

H. Prerogatives of Pilot in Command: Any pilot in command of a state aircraft may refuse to fly a scheduled trip if, in his or her opinion, conducting such a flight creates an unsafe condition inconsistent with his or her responsibilities as pilot in command under Part 91 of the federal aviation regulations.

[7/1/94; Recompiled 11/30/01]

[Compiler's note: Subsection C, above, contains a reference to *Section 6.3 below*, which appears to be in error since that is the same section. The correct citation most likely is 6.4, now Subsection D.]

1.5.5.10 RESPONSIBILITIES OF USER AGENCIES AND EMPLOYEES:

A. Ground transportation: Users shall arrange for their own ground transportation to and from the airport.

B. Boarding requirements: Any passenger scheduled on a flight should be at the airport for check-in at least fifteen minutes prior to departure. If a passenger misses a flight, the passenger's agency will be charged its share of the trip whether flown or not.

C. Courier or package service: Any agency requesting courier service to assist in the conduct of official business (specifically, items which are not under the responsibility of an employee of that agency on the same flight) will be responsible for delivery to and loading of the item at the destination airport. The size and weight of the item must be cleared with the pilot in command of the flight at the time the service is scheduled.

[7/1/94; Recompiled 11/30/01]

1.5.5.11 CONDUCT OF PASSENGERS:

A. Smoking: Smoking in, or within 50 feet of, state aircraft is prohibited.

B. Alcohol: Consumption of alcoholic beverages in state aircraft is prohibited.

C. Seat belts: Passengers shall wear seat belts at all times while seated in state aircraft.

D. Conduct of passengers: A passenger whose behavior, in the opinion of the pilot in command of a flight, constitutes a detriment to the safe conduct of the flight, shall be denied permission to board the aircraft and shall be subject to charge for his or her proportionate share of the trip's cost.

[7/1/94; Recompiled 11/30/01]

1.5.5.12 REPORTING OF FLIGHTS:

All flight reports shall be filed with the secretary or the secretary's designee and the aircraft control center within 48 hours of completion.

[7/1/94; Recompiled 11/30/01]

1.5.5.13 APPEAL OF CHARGES:

A. Charges for trips not flown: Charges for aircraft use assessed to an agency under the operation of Section 8.2 or Section 9.4 [now Subsection B of 1.5.5.10 NMAC or Subsection D of 1.5.5.11 NMAC], above, may be appealed in writing to the secretary, who shall render a decision as to the appropriateness of the charges within 30 days of receipt of the appeal.

B. Disputed charges: All other disputed charges for aircraft services may be appealed to the secretary or the secretary's designee in writing within thirty days of the invoice or statement, whichever is later. The secretary or the secretary's designee shall render a decision as to the appropriateness of the charges within 30 days of receipt of the appeal. Amounts not expressly under appeal shall be deemed payable within 30 days of the statement date.

[7/1/94; Recompiled 11/30/01]

1.5.5.14 RATES:

A. Establishment of rates: The aviation services bureau shall be responsible for the establishment of prospective hourly rates and other associated use charges for state passenger aircraft on or before July 1 of each year. Rates shall be promulgated by memorandum.

B. Included costs: Rates shall be sufficient to offset the estimated costs of operation, maintenance, and depreciation of state aircraft.

C. Equalization of rates: Rates shall be established based on fleet average cost.

D. Retroactive adjustment of rates: On June 30, 1995 and each year thereafter, the aviation services bureau shall compute an actual fleet average cost for fleet operations during that fiscal year. In the event revenues from use of state aircraft exceed the actual fleet cost, the bureau shall issue each user agency a credit equal to the difference between the prospective hourly rate and the actual fleet average cost for its use in that fiscal year. Such credits shall be redeemable by June 30 of the following year only for aircraft use. Unused credits shall be extinguished on that date.

[7/1/94; Recompiled 11/30/01]

PART 6: [RESERVED]

PART 7: DESIGN AND BUILD PROJECT DELIVERY SYSTEMS

1.5.7.1 ISSUING AGENCY:

General Services Department - State Purchasing Division.

[4-15-98; Recompiled 11/30/01]

1.5.7.2 SCOPE:

All state agencies and local public bodies procuring design and build project delivery systems in accordance with the Procurement Code, (Section 13-1-28 through Section 13-1-199 NMSA 1978).

[4-15-98; Recompiled 11/30/01]

1.5.7.3 STATUTORY AUTHORITY:

Section 13-1-119.1, NMSA 1978 directs the secretary of the general services department, in conjunction with the appropriate and affected professional associations and contractors, to promulgate regulations which shall be adopted by the governing bodies of all using agencies and, except for road and highway construction or reconstruction projects of the state highway and transportation department or any local public body, shall be followed by all using agencies when procuring a design and build project delivery system.

[4-15-98; Recompiled 11/30/01]

1.5.7.4 DURATION:

Permanent.

[4-15-98; Recompiled 11/30/01]

1.5.7.5 EFFECTIVE DATE:

April 15, 1998 unless a later date is cited at the end of a section or paragraph.

[4-15-98; Recompiled 11/30/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

1.5.7.6 OBJECTIVE:

To ensure fair, uniform, clear, and effective procedures when using agencies are procuring a design and build project delivery system and to assist in the delivery of a quality project, on time and within budget.

[4-15-98; Recompiled 11/30/01]

1.5.7.7 DEFINITIONS:

A. "Design and build project delivery system" means a procurement process by which a using agency contracts with one firm who has responsibility for the design, construction and delivery of a project under a single contract with the using agency.

B. "Design and build team" or "firm" as the terms are used herein, are synonymous with one another and, within their broad definition mean any offeror, who may be a person, a legal entity, a consortium of experts, a joint venture, a team of persons who, through partnership, general or limited or other legal entity, corporation, association, other organizations, or any combination thereof, formally organized so that it may submit a qualified offer in response to a request for proposals and, as result, who may be considered for a contract award for a design and build project delivery system with a using agency. No distinction is made between formally organized design/build firms and a project-specific design/build firm.

C. "Determination" means the written documentation of a decision of a procurement officer, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

D. "Local public body" means every political subdivision of the state and the agencies, instrumentalities, and institutions thereof.

E. "Maximum allowable construction cost of more than ten million dollars" means a cost reasonably anticipated to exceed ten million dollars under a contract with a design and build team. Such allowable construction cost may include the estimated construction cost, the cost of design, gross receipts tax, utility connection fees, site development costs, built in equipment and furnishings, and a maximum contingency allowance of ten percent (10 %), but excludes the cost of land, the cost of financing, and the costs required to operate and conduct business in the facility.

F. "Project" means a construction project undertaken by a state agency or a local public body.

G. "State agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative, or judicial branch of the government of this state. State agency includes the purchasing division of the general services department and the state purchasing agent, but does not include local public bodies. State agency also includes the property control division of the general services department.

H. "Using agency" means any state agency or local public body requiring services, construction, or items of tangible personal property.

[4-15-98; Recompiled 11/30/01]

1.5.7.8 DETERMINATION REQUIRED:

A. A design and build project delivery system, as defined in this rule, may be authorized when the state purchasing agent or a central purchasing office makes a determination in writing that it is appropriate and in the best interest of the state or local public body to use design and build on a specific project with a maximum allowable construction cost of more than ten million dollars (\$10,000,000.00).

B. The determination shall include consideration of the following criteria:

- (1) the extent to which the project requirements have been, or can be, adequately defined;
- (2) time constraints for delivery of the project;
- (3) the capability, experience and availability of potential offerors familiar with the design and build process;
- (4) the suitability of the project for use of the design and build process as concerns time, schedule, costs, and quality; and
- (5) the capability of the using agency to manage the project, including experienced personnel or outside consultants, and to oversee the project with persons who are familiar with the design and build process.

C. It is recommended that determination also include consideration of:

- (1) budget constraints;
- (2) the desirability of alternative designs;
- (3) the need or desirability for a single point of accountability;
- (4) the desirability to use specialized services for the project;
- (5) the availability of design and build teams; and
- (6) other factors as may be documented with facts by the using body.

[4-15-98; Recompiled 11/30/01]

1.5.7.9 SOLICITATION OF DESIGN AND BUILD PROJECT DELIVERY SYSTEMS:

A. When a determination has been made by the state purchasing agent or a central purchasing office that it is appropriate to use a design and build project delivery system, the design and build team shall include, as needed, a New Mexico registered engineer

or architect, and a contractor properly licensed in New Mexico for the type of work required.

B. For each proposed design and build project delivery system, the using agency shall utilize a two-phase request for proposal procedure for awarding design and build contracts. During phase one, and prior to solicitation, the following shall occur:

(1) procurement documents shall be prepared for a "request for qualifications based proposal" by an engineer or architect registered in New Mexico;

(2) such registered engineer or architect may be either an employee of the using agency or selected in accordance with Section 13-1-120 NMSA 1978 (the Procurement Code); and

(3) the documents shall include minimum qualifications, scope of work statement and schedule, documents defining the project requirements, evaluation criteria and a description of the selection process, the composition of the selection committee, and a description of the phase two requirements, program statements for the facility that describe space needs, design goals and specific objectives so that all responsive offers can be comparably evaluated and meet using agency needs; if the using agency desires, it may include complete programming and schematic design including recommended or required building systems, elevations, areas, floor plans and cross sections, all depicted in limited detail for further development by design and build team;

(4) the document shall also include a description of subsequent management to be provided to bring the project to completion proposed contractual terms and conditions, and a summary of proposed relationships between the design and build team and the owner's specified representatives; it is recommended that the agency retain a qualified professional, or use the services of a professional employed by the using agency to assist the agency in the oversight of the project from the preparation of the documents to completion;

(5) the request shall include all design factors the using agency considers necessary to describe the project and should include, as appropriate, the following:

(a) the legal description of the site;

(b) survey information, site data and subsoil investigation;

(c) interior space requirements;

(d) special material and quality standards;

(e) aesthetic considerations and compatibility with existing facilities;

- (f) conceptual criteria for project;
- (g) special equipment and system requirements;
- (h) cost or budget estimates including available funding;
- (i) time schedules;
- (j) quality assurance and quality control requirements;
- (k) site development requirements;
- (l) special codes, regulations, ordinances, or statutes;
- (m) provisions for availability, and responsibility for costs of utilities, parking and landscaping requirements;
- (n) future expansion requirements;
- (o) existing contracts, if any, to be utilized; and
- (p) any other applicable requirements.

C. The entity shall evaluate the proposals and select a design and build team in two phases:

(1) In phase one, the agency shall evaluate each offeror's experience technical competence and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications. Design and build qualifications of responding firms shall be evaluated and a maximum of five firms shall be short-listed in accordance with technical and qualification-based criteria. A mandatory pre-proposal conference shall be conducted to allow a short-listed offeror the opportunity to submit questions of clarification. The using agency should not use any submittal as the basis of retaining any design and build team other than the submitting design and build team.

(2) In phase two, the agency shall invite short-listed offerors to submit detailed specific technical concepts or solutions, costs and scheduling.

(a) Unsuccessful phase two offerors submitting a responsive proposal may be paid a stipend to cover proposal expenses. It is recommended that criteria be developed to determine whether a stipend will be provided to the short-listed firms. For the purposes of this section, a stipulated stipend means using funds, as determined by the using agency, to cover some expenses likely to be incurred by the short-listed firms.

(b) The agency shall evaluate the short listed offerors with selection criteria stated in the RFP including the weight given to each criteria. The selection criteria should include but are not limited to:

- (i) phase one qualifications;
- (ii) quality of proposed design, including required technical submittals;
- (iii) quality of construction approach;
- (iv) demonstrated response to program requirements;
- (v) management plan for constructing the project; and
- (vi) cost and schedule.

(c) Presentation requirements to properly judge the offers should be stated in the RFP and should include but are not limited to:

- (i) the maximum number and size of drawings and/or technical submittals allowed;
- (ii) whether models are allowed or not; and
- (iii) types of media that can be used in the presentation.

(d) Upon completion of the evaluation process the selection shall be made and the contract awarded to the highest ranked offeror.

D. Once the proper determination is made in accordance with paragraph 8 [now 1.5.7.8 NMAC], and the evaluation and selection conducted in accordance with paragraph 9.3 [now Subsection C of 1.5.7.9 NMAC], the state purchasing agent or central purchasing office may award the contract regardless of whether the contract falls below, equals, or exceeds ten million dollars.

E. Except to the extent that this rule conflicts with the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, this rule is governed by the Procurement Code and all applicable general services department (GSD) regulations.

[4-15-98; Recompiled 11/30/01]

PART 8: CONSTRUCTION MANAGEMENT SERVICES

1.5.8.1 ISSUING AGENCY:

General Services Department - State Purchasing Division.

[4/15/98; Recompiled 11/30/01]

1.5.8.2 SCOPE:

All state agencies and local public bodies procuring construction management services in accordance with the Procurement Code, (Section 13-1-28 through Section 13-1-199 NMSA 1978).

[4/15/98; Recompiled 11/30/01]

1.5.8.3 STATUTORY AUTHORITY:

Section 13-1-100.1 NMSA 1978 directs the secretary of the general services department, in conjunction with the appropriate and affected professional associations and contractors, to promulgate regulations which shall be adopted by the governing bodies of all using agencies and shall be followed by all using agencies when procuring construction management services.

[4/15/98; Recompiled 11/30/01]

1.5.8.4 DURATION:

Permanent.

[4/15/98; Recompiled 11/30/01]

1.5.8.5 EFFECTIVE DATE:

April 15, 1998 unless a later date is cited at the end of a section or paragraph.

[4/15/98; Recompiled 11/30/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

1.5.8.6 OBJECTIVE:

To insure fair, uniform, clear and effective procedures for the utilization of construction management services to assist in the delivery of a quality project for the owner, on time and within budget.

[4/15/98; Recompiled 11/30/01]

1.5.8.7 DEFINITIONS:

A. "Construction management services" means a comprehensive array of management and/or consulting services spanning all phases of the design and construction process from conception to completion of the construction project; that applies appropriate management techniques to project planning, design and construction for the purpose of controlling time, cost and quality for the project owner; includes construction manager services, but does not include professional design or professional engineering services or acting in the capacity of contractor, general or subcontractor, for a construction project.

B. "Construction manager" means a person, properly licensed under the Construction Industries Licensing Act, or any successor agency as applicable, who acts as an agent of the state agency or local public body for a construction project; who coordinates and manages the construction process; who is a member of the construction team with the owner, architect, engineer and other consultants that may be required for the project; and who utilizes his skill and knowledge of general contracting to assist in developing schedules, preparing project construction estimates, studying labor conditions and advising concerning construction, safety and other issues that may surface which are related to the project and may include, but are not limited to, monitoring progress, payments, changes and other factors affecting cost or as may otherwise be specified in the RFP solicitation issued by using agency.

C. "Agent" means a person who has been delegated specific authority by a state agency or local public body to act on its behalf and represent its interests throughout all phases of a construction project. The authority delegated by a state agency or local public body shall not include central purchasing authority as defined in the Procurement Code, (Section 13-1-37 NMSA 1978).

D. "Determination" means the written documentation of a decision of a procurement officer, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

E. "Local public body" means every political subdivision of the state and the agencies, instrumentalities, and institutions thereof.

F. "Person" includes an individual, firm, partnership, corporation, limited liability company or partnership, association, or other organization or any combination thereof, including, but not limited to, a joint venture.

G. "State agency" means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution, or official of the executive, legislative, or judicial branch of the government of this state. State agency includes the purchasing division of the general services department and the state purchasing agent, but does not include local public bodies. State agency also includes the property control division of the general services department.

H. "Using agency" means any state agency or local public body requiring services, construction, or items of tangible personal property.

[4/15/98; Recompiled 11/30/01]

1.5.8.8 DISCUSSION:

A. As used herein "construction management services" is given a broad and general meaning to describe a project delivery method that, for any duration from conception to completion of the construction project, applies appropriate management techniques to project planning, design and construction in order to control time and cost and assure quality for the project owner. Such overall services may include advisory consulting services, reviewing or preparing cost estimates, reviewing or suggesting program requirements or other similar functions. The program of services requested and applied to a particular project should be one which is appropriate to the size, type and complexity of the project and the needs of the using agency. The construction management process is most effective when employed from the beginning of the project, allowing the CM, the owner and the design professional(s) to identify and resolve issues of value and constructibility prior to the construction phase of the project.

B. Whereas in this rule, "construction manager" is more specific and applies to the necessary professional qualifications and experience of the "person" in order to meet the specified scope of work, goals and objectives as established by the using agency and set forth in a competitive solicitation. The construction manager's primary task is to represent the interests of the owner throughout all phases of the project.

C. When utilizing construction manager services for a construction project initiated by a state agency or local public, the responsible state agency or local public body rather than the construction manager assumes the risk and responsibility for the project.

D. Advisory consulting services such as cost estimating, reviewing, or suggesting program requirements, lighting and acoustical consulting and other special purpose services may be procured without meeting the specific requirements of these regulations.

[4/15/98; Recompiled 11/30/01]

1.5.8.9 DETERMINATION REQUIRED:

A. A using agency may issue a solicitation, and enter into, a construction management services contract when the using agency first makes a determination that it is in the public's interest to utilize such services.

B. The determination shall include findings of fact to support the decision that:

(1) the construction management services would not duplicate, and would be in addition to the normal scope of separate architect or engineer contracts; and

(2) a detailed description of the complexity or unusual requirements of the project, prompting the need for construction management services.

C. The determination may also include additional findings that:

(1) the using agency does not otherwise have sufficient or qualified staff resources to adequately provide construction management services;

(2) the provision of construction management services would better meet the needs of the using agency;

(3) the utilization of construction management services could provide early completion of the public works project is essential; or

(4) specialized expertise in specified construction areas is desirable for the construction project and may be reflected as an additional criterion under paragraph 9 [now 1.5.8.9 NMAC].

[4/15/98; Recompiled 11/30/01]

1.5.8.10 SOLICITATION OF CONSTRUCTION MANAGEMENT SERVICES:

A. Construction management services shall be solicited through a competitive sealed qualification-based request for proposals method of procurement.

B. The using agency shall appoint a construction management selection committee which shall consist of a procurement manager who manages and administers the procurement and others who are members of the committee and who shall perform the evaluation of offeror proposals. The size of the committee can be any number, however, it should be manageable and include both user and technical support representatives as appropriate.

C. For each proposed construction management contract, the construction management selection committee shall evaluate statements of qualifications and performance data submitted by all responsive businesses in regard to the particular project, and may conduct interviews with, and may require public presentation by, all businesses applying for selection regarding their qualifications, their approach to the project, and their ability to furnish the required services.

D. The construction management selection committee shall select, ranked in the order of their qualifications, no less than three businesses deemed to be the most highly qualified to perform the required services, after considering the following criteria, together with any criteria established by the using agency authorizing the project:

(1) specialized design and technical competence of the business, including a joint venture or association, regarding the type of services required;

(2) capacity and capability of the business, including any consultants, their representatives, qualifications, and locations, to perform the work, including any specialized services, within the time limitations;

(3) past record of performance on contracts with government agencies or private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules;

(4) proximity to, or familiarity with, the area in which the project is located;

(5) the amount of design work that will be produced by a New Mexico business within this state;

(6) the volume of work previously done for the entity requesting proposals which is not seventy-five percent complete with respect to basic professional design services, with the objective of effecting an equitable distribution of contracts among qualified businesses and of insuring that the interest of the public in having available a substantial number of qualified businesses is protected; provided, however, that the principle of selection of the most highly qualified businesses is not violated; and

(7) price of construction management fees may be considered as a criteria in the selection of construction management services; it is recommended that this criterion not exceed ten percent of the overall selection criteria, unless the using agency makes a determination that the characteristics of the construction management services warrant the designation of a higher percentage.

E. The use of the words "specialized design and technical competence," "design work," and "design services" in the selection criteria refers to such competence, work, and service pertinent to construction and construction management.

F. The using agency shall negotiate in a manner consistent with the selection criteria. The using agency shall negotiate a contract with the highest qualified business at compensation determined in writing to be fair and reasonable. In making this decision, the using agency shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature of the services. Should the using agency be unable to negotiate a satisfactory contract with the business considered to be the most qualified, at a price determined to be fair and reasonable, negotiations with that business shall be formally terminated. The using agency shall then undertake negotiations with the second most qualified business. Failing accord with the second most qualified business, the using agency shall formally terminate negotiations with that business. The using agency shall then undertake negotiations with the third most qualified business. Should the using agency be unable to negotiate a contract with any of the businesses selected by the committee, additional businesses

shall be ranked in order of their qualifications, and the using agency shall continue negotiations in accordance with this section until a contract is signed with a qualified business or the procurement process is terminated and a new request for proposals is initiated. The using agency shall publicly announce the business selected for award.

G. The names of all businesses submitting proposals and the names of all businesses, if any, selected for interview shall be public information. After an award has been made, the construction management selection committee's final ranking and evaluation scores for all proposals shall become public information. Businesses which have not been selected for contract award shall be so notified in writing within fifteen days after an award is made.

H. Any proposal received in response to a solicitation that has been cancelled in accordance with Section 13-1-131 NMSA 1978 is not public information and shall not be made available to competing offerors.

[4/15/98; Recompiled 11/30/01]

PART 9: PUBLIC FACILITY NAMING

1.5.9.1 ISSUING AGENCY:

General Services Department (GSD) Facilities Management Division.

[1.5.9.1 NMAC - N, 10/30/2018]

1.5.9.2 SCOPE:

All executive branch agencies with facilities under the control of the general services department.

[1.5.9.2 NMAC - N, 10/30/2018]

1.5.9.3 STATUTORY AUTHORITY:

Section 15-3B-1, *et. seq.*, NMSA 1978 as amended.

[1.5.9.3 NMAC - N, 10/30/2018]

1.5.9.4 DURATION:

Permanent.

[1.5.9.4 NMAC - N, 10/30/2018]

1.5.9.5 EFFECTIVE DATE:

October 30, 2018 unless a later date is cited at the end of a section or paragraph.

[1.5.9.5 NMAC - N, 10/30/2018]

1.5.9.6 OBJECTIVE:

The objective of this rule is to establish a fair, uniform, clear and effective process to develop a list of potential names for public facilities and for the removal of names from public facilities.

[1.5.9.6 NMAC - N, 10/30/2018]

1.5.9.7 DEFINITIONS:

- A. "Department"** means the general services department.
- B. "Division"** means the facilities management division of the department.
- C. "Public facility"** means a building or other real property under the control of the division.
- D. "Secretary"** means the secretary of general services.

[1.5.9.7 NMAC - N, 10/30/2018]

1.5.9.8 LIST DEVELOPMENT:

The secretary shall follow the below prescribed procedure for naming any public facility:

- A.** The secretary shall announce the department's intent to name a public facility on a publically available website.
- B.** The announcement shall identify the public facility to be named, solicit proposed names from interested parties, allow at least 15 days for the submission of names, and specify the submission method.
- C.** The secretary shall review the submitted names in consultation with the leadership of the agency or agencies that use the public facility and develop a list of name(s) to transmit to the governor for consideration.
- D.** The secretary shall submit this list to the governor no more than 15 days after the expiration of the submission deadline in the announcement.
- E.** If no proposed names are submitted to the department before the applicable deadline, the secretary may select a name and submit only this name to the governor.

[1.5.9.8 NMAC - N, 10/30/2018]

1.5.9.9 FORMAL NAMING:

The governor may select a name from the list submitted by the secretary in accordance with statute and issue a proclamation formally naming the public facility. The governor may choose not to name the public facility or may choose to request another list of names.

[1.5.9.9 NMAC - N, 10/30/2018]

1.5.9.10 REMOVAL OF NAME:

A public facility shall not be named for a public officer or other person who has been convicted of a felony. The division shall remove the name from a public facility named for such person immediately upon conviction, whether or not another name has been offered or approved for substitution and renaming. The division shall remove the name within 10 days of the conviction and notify the occupying agencies of the removal.

[1.5.9.10 NMAC - N, 10/30/2018]

PART 10-12: [RESERVED]

PART 13: AUTOMOTIVE BODY REPAIRS [RESERVED]

PART 14-15: [RESERVED]

**PART 16: LEASING REAL PROPERTY: USE OF PROPERTY CONTROL
DIVISION REAL PROPERTY**

1.5.16.1 ISSUING AGENCY:

General Services Department, Property Control Division.

[7/10/86; Recompiled 11/30/01]

1.5.16.2 SCOPE:

The purpose of this regulation is to establish procedures for the management of buildings and land under the control of the property control division of the general services department, including use of property by non-state organizations or individuals, where the division is the lessor.

[7/10/86; Recompiled 11/30/01]

1.5.16.3 STATUTORY AUTHORITY:

This regulation is based on Section 15-3-2 A (2) NMSA 1978, which provides for the director of the property control division to regulate the use and occupancy of buildings and real property under his control and make reasonable requirements for the continuation of that use or occupancy and Section 15-3-14 NMSA 1978.

[7/10/86; Recompiled 11/30/01]

1.5.16.4 DURATION:

Permanent.

[7/10/86; Recompiled 11/30/01]

1.5.16.5 EFFECTIVE DATE:

July 1, 1986 [unless a later date is cited at the end of a section.]

[7/10/86; Recompiled 11/30/01]

1.5.16.6 OBJECTIVE:

The policy of this regulation is to insure that the public and non-state agency governmental units have an equitable opportunity to obtain the privilege to lease division buildings and land.

[7/10/86; Recompiled 11/30/01]

1.5.16.7 DEFINITIONS:

A. **"Agency"** means any unit of state government including, but not limited to boards, commissions, bureaus, agencies, councils, divisions and departments.

B. **"Director"** means the director of the property control division of the general services department, or his designee.

C. **"Division"** means the property control division of the general services department.

D. **"Premises"** means the real property under the control of the division and all improvements and structures thereon that is the subject of the regulation governing the use of such real property.

E. **"Request for proposals"** (RFP) means all documents, including those attached or incorporated by reference, used for soliciting proposals.

[7/10/86; Recompiled 11/30/01]

1.5.16.8 ORGANIZATIONS AFFECTED:

This regulation affects the general public and all state agencies using land and buildings under the control of the property control division, general services department. This includes all executive state departments, boards, commissions, councils, agencies and divisions of state government.

[7/10/86; Recompiled 11/30/01]

1.5.16.9 LEASE OF DIVISION REAL PROPERTY:

A. **Scope:** Use of division premises by a non-state government entity shall be by lease entered into pursuant to the procedures required in this regulation.

(1) **Exception:** Use of Premises pursuant to (1) a designation of use by the director pursuant to Section 15-3-2 A NMSA 1978, or (2) the terms of a joint powers agreement (as defined in Section 11-1-1 through 11-1-7 NMSA 1978) with the director where such joint powers agreement, pursuant to the occupancy designation procedure required in Section 15-3-2 A(1) and (2) NMSA 1978, (A) allows an agency the management powers over a premises and/or, (B) includes the agency's right to contractually require contractors with the agency to occupy such premises in performing services for the agency, and not as a lease of real property, are exempt from this regulation.

(2) **Exception:** This rule shall not apply to use of premises for charitable purposes as regulated by GSD 86-503.

(3) **Employee housing:** Agency employees required to live on division premises as a condition of employment shall occupy such premises as their dwelling (A) under a contract of employment and such contract shall recite that the employee's compensation (salary) includes the fair market rental value of such dwelling; or, (B) pursuant to a lease, and such lease and the rent charged therein shall be approved by the state board of finance, provided however, that no RFP shall be required. Lessee selection shall be by the agency and approved by the director; or, (C) pursuant to a standard rental rate and lease, pre-approved by the state board of finance. Records of actual rentals shall be provided to the state board of finance and the director, giving rental period, amount of rent, name of Lessee and unit rented.

B. **Determination of need:** Whenever the director makes a written determination that no agency has a use for a premises, and that no use exists as defined in Section 6.1 [Subsection A of 1.5.16.9 NMAC], the director may, at his option, issue an RFP from non-state entities for the leasing of such premises from the division. The RFP process required in this regulation shall be the only method of selection of lessee.

C. **Requests for proposals (RFP):**

(1) The director shall require in the RFP that the proposal state details regarding:

(a) the amount of rent, if any, that will be paid to the division,

(b) any consideration (services) to the state of New Mexico or the community in which the premises is located that may be offered in lieu of all or part of direct rental payment,

(c) length of lease,

(d) responsibility for maintenance of premises,

(e) payment of utilities,

(f) amount of insurance coverage, and

(g) such other subjects as the director may require.

(2) All RFP's shall be in writing.

(3) **Contract (lease) requirements:** The RFP shall state that all who submit proposals must state that they agree to meet the following requirements:

(a) the provisions of the lease attached hereto as appendix 7.1 [Section 1.5.16.10 NMAC], insofar as they are applicable,

(b) insurance coverage, as required in the RFP,

(c) the provision that the division may require early termination of the lease if the director determines there is (state) agency need for use of the premises,

(d) janitorial and daily maintenance requirements of the RFP,

(e) up-grading the premises to meet building code requirements, including handicapped accessibility requirements and other building code requirements of the RFP,

(f) the requirements in division regulations GSD 86-506 [1.5.17 NMAC], Clean Indoor Air Regulation; GSD 86-505, Concession Sales Regulation; and GSD 86-504 [1.5.16 NMAC], Charitable Use of Property Regulation and

(g) such other requirements as the director may deem appropriate.

(4) **Selection criteria recited in RFP:** The RFP shall state what weight or ranking each factor of the RFP shall be given. The director may give preference or limit

proposals to proposals from non-profit organizations providing charitable services to the community or state.

(5) **Other RFP information:** The RFP shall state:

- (a) the time and day (deadline) for submitting proposals,
- (b) the place for submitting proposals,
- (c) whether the premises is available for inspection, and if so, the procedure for gaining access,
- (d) that the division reserves the right to reject any and all proposals or any part of any proposal,
- (e) the time and place of any pre-proposal conference, and
- (f) such other information the director deems appropriate.

D. Publication of notice of RFP: The director shall cause to be published in a daily newspaper of general circulation, in the community in which the premises is located, notice of the RFP. Such publication shall be for a minimum of once a week for two consecutive weeks. If no daily newspaper of general circulation exists in the community in which the premises is located, such publication shall be in a daily newspaper within the county in which the premises is located. If no such newspaper exists, publication shall be in a daily newspaper with state-wide circulation.

(1) **Contents of notice of RFP:** The notice of RFP shall state:

- (a) location of premises,
- (b) that the division is seeking proposals from those wishing to lease the premises, (c) that all submitting proposals must obtain the RFP and respond to its requirements,
- (d) the name, address and telephone number of the person or persons from whom copies of the written RFP may be obtained,
- (e) the deadline and place for submitting proposals,
- (f) the date of the pre-proposal conference, if any, and
- (g) a statement that all proposals must be submitted in an envelope clearly labeled as a "sealed proposal".

E. Pre-proposal conference: The director may, at his option, hold a pre-proposal conference. If such a determination is made, the time and place of the conference shall be given in the RFP and notice of RFP. All pre-proposal conferences shall be held at least five (5) working days prior to the deadline for submitting proposals. Any verbal representation made at any pre-proposal conference is not binding. All questions and requests for clarification shall be presented in writing. Responses shall be in writing and issued as an addenda to the RFP.

F. Amendments (addenda) to RFP and eligibility to submit proposals:

(1) All amendments to RFP's shall be in writing and shall be mailed to all eligible to submit proposals.

(2) No one shall be eligible to submit a proposal in response to the RFP unless first signing an acknowledgment of receipt of the RFP. The acknowledgment shall require the name and mailing address of the person authorized to receive all amendments to the RFP.

(3) Amendments issued prior to the deadline for submitting proposals shall be mailed no later than five (5) days prior to that deadline.

(4) Amendments issued by the director after the deadline for submitting proposals shall be mailed only to those who submitted proposals and shall provide no less than five (5) work days for response.

G. Selection of proposals: The director shall evaluate all proposals and obtain further information on proposals and/or negotiate with the proposer if the director deems such further steps are necessary.

(1) **State board of finance (the "board") approval:** The director shall evaluate the proposals and make a recommendation of best proposal (or a ranking of the proposals shall be submitted) to the board along with appropriate documentation in support of the evaluation for the board's review and approval. Submission of the proposed lease shall be pursuant to the board's procedures.

(2) **Leases:** A proposed lease shall be submitted to the board at the time the initial presentation is made under Section 6.6.1 [now Paragraph (1) of Subsection F of 1.5.16.6 NMAC]. No signatures shall be affixed to the proposed lease until the board has approved that lease. All leases shall be approved prior to submission to the board as to form and legal sufficiency by the office of the general counsel of the general services department and shall be in a form substantially similar to the form attached hereto as appendix 7.1 [now 1.5.16.10 NMAC].

(3) **Execution of lease:** Four multiple originals of the lease shall be signed by the director (as lessor), the lessee, the director of the state board of finance, the

secretary of the general services department and such other signatures as the board may require.

H. **Payment of rent:** Leases of premises shall require all rental payments be made to the division. Agencies paying costs related directly to the premises may be reimbursed by the lessee for their actual cost. Such payment by lessee shall be identified and calculated in the lease as being separate from rental payment, and be paid directly to the agency entitled to such reimbursement, pursuant to the terms of the lease.

I. **Improvements to premises:** All leases shall require lessee to obtain advanced written approval by the director for any improvements or alterations lessee makes on the premises.

[7/10/86; Recompiled 11/30/01]

[Compiler's note: Subparagraph (f) of Paragraph (3) of Subsection C of 1.5.16.9 contains a reference to GSD 86-505, Concession Sales Regulations that were not filed in accordance with the State Rules Act.]

1.5.16.10 APPENDIX:

Standard Lease Form (for Non-Profit/Charitable Organization Lessee).

LEASE AGREEMENT

(Non-Profit/Charitable

Organization Lessee)

THIS LEASE is made by and between the State of New Mexico, Property Control Division, General Services Department hereinafter ("Lessor"). and _____, (hereinafter "Lessee").

WHEREAS, Lessor through the _____ Department, previously used _____ (Name of Building or Land) in _____ (Location of Land) New Mexico, and for several years has not had any use of this real property; and,

WHEREAS, the _____ (Name of Building or Land) described hereinafter is not needed for the operation of any state agencies and constitutes an economic drain because of the necessity of cleaning and policing such land without receiving any benefit to the Lessor; and,

WHEREAS, Lessee proposes to _____ (general description of use or proposed use of land), without any cost to lessor for construction,

maintenance, or any upkeep whatsoever, for the purposes of providing
_____ (general description of Lessee's program)
_____ (area served) in _____, New
Mexico.

NOW, THEREFORE, in consideration of the foregoing, the rent herein reserved, the covenants herein contained, and for the good and valuable consideration, Lessor does hereby lease, demise and let unto Lessee the property herein described for the term and in accordance with the conditions herein set forth. The parties agree as follows:

1. **Description:** The _____ (acreage, buildings, etc.) Leased herein is designated on the (survey, map, drawings, etc.) attached hereto as Exhibit "A" and incorporated herein as though set forth in full, consisting of (give location and size of building or land) _____ in _____, New Mexico, more particularly described (give legal description, if available)

2. **Term:** The base term shall be for _____ years, beginning the _____ day of _____, 19_____, and ending the _____ day of _____, 19_____.

3. **Rent:** Lessee agrees to pay Lessor, and Lessor agrees to accept as rent for the Premises, the sum of _____ dollar(s) (\$_____) per year payable annually (insert monthly fees if applicable), the first installment to be paid on or before the 10th day of the first month of the lease year, and each succeeding installment to be paid (annually or monthly) thereafter throughout the term of this lease.

4. **Condition of Premises:** Lessee hereby acknowledges that Less has made an on-site inspection and knows the conditions of said Premises, that no representations as to the condition of the Premises have been made by Lessor, and Lessee hereby accepts the demised Premises in their present condition.

5. **Ownership of Improvements:** All improvements on the Premises shall be owned by Lessee during the term of this lease; upon expiration of the term they shall be owned by Lessor, [provided however, (insert list of exceptions, if any.)]
_____.

6. **Utilities:** Lessee will pay for the extension of all necessary utilities to the Premises and will pay promptly all utility charges which may be incurred in connection with Lessee's use of the Premises, and will save Lessor harmless therefrom. Lessee will pay all costs associated with the acquisition of utility meters and utility service to the Premises.

7. **Maintenance.** Lessee shall, at Lessee's sole expense keep and maintain the Premises and all improvements thereon in a reasonable state of repair and preservation, and shall not suffer or permit any continuing nuisance thereon.

8. **Assignment and Subletting:** Lessee may not assign, sublet, mortgage, subordinate, alienate or hypothecate the Premises, or any part thereof, without the express written consent of Lessor.

9. **Signs and Personal Property:** Lessee may place signs on the Premises only with the advance written approval of Lessor. Such approval shall not be unreasonably withheld by Lessor. All personal property, signs and improvements of Lessee, its employees, agents, customers and invites kept on the Premises shall be at the sole risk of the Lessee, and Lessor shall not be liable for any damage thereto.

10. **Taxes:** Lessee assumes and agrees to pay, before they become delinquent, all taxes, including but not limited to, taxes assessed by the _____ (Name of Conservancy District or other specific tax), which may be lawfully levied and assessed against either the Premises, the improvements constructed thereon, or the contents therein, or all of these, during the term of this lease; provided that Lessee may in good faith contest the amount or validity of such taxes and, in such event may permit the taxes to remain unpaid while contested unless, because of the delay in payment, the Premises will be subject to loss. Lessor shall forward all tax billings received to lessee.

11. **Inspection:** Lessee will permit Lessor to come upon the Premises at all reasonable times in order to inspect the condition, use, safety or security of the Premises and any improvements thereon.

12. **Laws:** Lessee will comply with all applicable federal, state and local laws and ordinances and with all applicable rules and regulations of Lessor, and will insure that those persons using the Premises so comply. Lessee shall indemnify Lessor and hold it harmless from and against any and all claims, damages, loss and liability (including, but not limited to attorney's fees and costs of litigation) suffered by Lessor by reason of Lessee's failure to comply with the foregoing terms of this paragraph.

13. **Non-Discrimination:** Lessee, with respect to employment of staff and to those persons using the Premises and/or receiving services from Lessees, shall not discriminate unlawfully with respect to race, sex, national origin, age, physical handicap, religion or as to any other class protected against discrimination by applicable state or federal laws.

14. **Indemnity:** Lessee shall defend, indemnify and hold Lessor harmless from action, proceedings, loss, costs, damages, liability and all other liabilities and expenses, including but not limited to attorney's fees, and cost of litigation, incurred by Lessor by reason of any claim against Lessor arising out of this lease and/or the operation of the Premises, except those claims arising out of the active conduct or

negligence of Lessor's employees acting in the course of their employment for the benefit of Lessor and not Lessee.

15. **Notice:** All notices relating to this lease shall be in writing and shall be delivered to the following addresses and, if mailed, sent certified or registered mail:
LESSOR: Property Control Division

General Services Department 715 Alta Vista, Santa Fe, New Mexico 87503. LESSEE:
(Name:) _____ (Address:) _____
_____ or to such other addresses as either party may give
to the other party by written notice as set forth above.

16. **Waiver:** No failure on the part of Lessor to exercise, and no delay in exercising, any right, power or privilege hereunder shall preclude other or further exercise thereof, or the exercise of any other right, power or privilege. The rights or limitations herein provided are cumulative and not exclusive of any rights and remedies otherwise provided by law or equity.

17. **Expiration:** Upon termination of this lease by reason of the expiration of the term, Lessee will peaceably surrender to Lessor possession of the Premises and all improvements thereon in good condition and repair, reasonable wear and tear excepted.

18. **Insurance:** Lessee shall carry and maintain in full force and effect during the term of this lease and any extension thereof at Lessee's sole cost and expense and as additional rent hereunder, public liability insurance covering bodily injury, disease, illness or death and property damage liability, in a form and with an insurance company acceptable to Lessor, with limits of coverage not less than \$300,000 for each person and \$500,000 in the aggregate for bodily injury, disease, illness or death with respect to any one occurrence, and \$100,000 for each accident for property damage liability, for the benefit of both Lessor and Lessee as protection against all liability claims arising from the Premises, causing Lessor to be named as an additional-names insured on such policy of insurance, and delivering a copy thereof to Lessor upon the commencement of the term of this lease.

19. **Default of Lessee and Remedies of Lessor:** If any of the following events, "Events of Default", shall occur:

(A) Lessee's failure to pay any tax or special assessment which Lessee is obligated to pay pursuant to this lease lawfully assessed against the Premises so that it becomes delinquent for a period of ninety (90) days, unless the payment thereof is contested in good faith by Lessee with such period of time in the manner stated in paragraph 10 hereof;

(B) Lessee's abandonment of the Premises for a period of thirty (30) continuous days;

(C) Lessee's breach or default under any other term, covenant or condition of this lease;

(D) Lessee's failure to pay when due any insurance premiums required to be paid hereunder;

then Lessor may give Lessee written notice by certified or registered mail specifying what Event of Default has occurred. Unless the Event of Default is remedied or obviated by Lessee within ninety (90) days after its receipt of such notice, or unless within such ninety (90) day period Lessee shall have commenced and shall continue to take action for the purpose of remedying or obviating such Event of Default and shall thereafter in good faith prosecute such action to completion, Lessor may declare the forfeiture of the interest of Lessee in this lease by giving Lessee written notice thereof by certified or registered mail, and this lease shall terminate forthwith.

Upon receipt of such notice of forfeiture, Lessee shall immediately peacefully surrender the Premises, together with all improvements, building (except as otherwise provided herein) and fixtures thereon. If Lessee fails to surrender the Premises, Lessor may forthwith take possession of the Premises, together with all improvements, buildings and fixtures thereon, either by force, summary proceedings or by any other suitable action or proceedings at law or otherwise, without being liable for damages. Lessee agrees that in the event of forfeiture hereunder it shall, upon request of Lessor, assign, convey and transfer to Lessor the title to all improvements, buildings and fixtures on the Premises. Under this remedy Lessee shall be liable for the costs, expenses and attorneys' fees of Lessor in enforcing its rights under this lease, including injunctive relief or the obtaining of possession, and Lessor shall have a lien on all property of Lessee on the Premises as security for the payment of such rental, costs, expenses and attorneys' fees. Lessee shall not be liable for any future rental from the date of termination if this remedy is pursued, and Lessor shall have no further obligation to Lessee under this lease.

20. **Uses to be Made of Premises:** The Premises shall be used for the conduct and operation _____ (insert a description of Lessee's activities/program) and for such other lawful purposes to which the Lessor shall consent in writing. In no event shall Premises be used for any unlawful purpose or other purpose constituting or creating a public or private nuisance.

21. **Approval of State Board of Finance:** This lease shall not be binding or effective until approved by the State Board of Finance of New Mexico and the Secretary of the General Services Department.

22. **Succession:** This agreement shall extend to and be binding upon the heirs, successors and assigns of the parties.

23. Condemnation: In the event that all or any portion of the Premises is condemned by any governmental body or agency, Lessor shall be entitled to all compensation awarded or paid without participation by Lessee.

24. Early Termination of Lease: Lessor may terminate this lease in the event that Lessor determines that the Premises is needed by any agency or other unit of the State of New Mexico for the conduct of state business. Should determination be made, Lessee shall be entitled to _____ (time period) notice, in writing, from Lessor of early termination of this lease.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals.

LESSOR:

By: _____

(Name)

Property Control Division Director

ACKNOWLEDGMENTS

STATE OF NEW MEXICO)

)ss.

COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me, the undersigned authority, this _____ day of _____, 19_____, by _____, Property Control Division Director, General Services Department, State of New Mexico.
Notary Public

My commission expires: _____

LESSEE:

BY: _____

(Name:)

(Title:)

STATE OF NEW MEXICO)

)ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me the undersigned authority, this
_____ day of _____ 19 ____, by _____ (Name)
_____ (Title).

Notary Public

My commission expires: _____

APPROVED: _____

SECRETARY

GENERAL SERVICES DEPARTMENT

BY: _____

DATE: _____

STATE BOARD OF FINANCE:

BY: _____

DIRECTOR

[7/10/86; Recompiled 11/30/01]

**PART 17: CLEAN INDOOR AIR REGULATION: USE OF PROPERTY
CONTROL DIVISION REAL PROPERTY**

1.5.17.1 ISSUING AGENCY:

General Services Department - Property Control Division.

[7/10/86; Recompiled 11/30/01]

1.5.17.2 SCOPE:

This regulation affects all state agencies using buildings under the control of property control division, general services department. This includes all executive state departments, boards, commissions, councils, agencies and divisions of state government.

[7/10/86; Recompiled 11/30/01]

1.5.17.3 STATUTORY AUTHORITY:

This regulation is based on:

A. Section 15-3-2 A.(2) NMSA 1978, which provides that the director of the property control division regulate the use of the occupancy of buildings and real property under his control and make reasonable requirements for the continuation of that use or occupancy and Sections 15-3-25 through 15-3-28 NMSA 1978 regarding motor pool vehicles.

B. Section 24-16-1 through 24-16-11 NMSA 1978.

[7/10/86; Recompiled 11/30/01]

1.5.17.4 DURATION:

Permanent.

[Recompiled 11/30/01]

1.5.17.5 EFFECTIVE DATE:

Immediately, July 1, 1986 [filed July 10, 1986].

[7/10/86; Recompiled 11/30/01]

1.5.17.6 OBJECTIVE:

Establish a policy on smoking in the general services department and all property control division buildings. This regulation constitutes the general services department's policy as required under Section 24-16-1 through 24-16-11 NMSA 1978.

[7/10/86; Recompiled 11/30/01]

1.5.17.7 DEFINITIONS:

A. "Act" means the "Clean Indoor Air Act, Sections 24-16-1 through 24-16-11 NMSA 1978.

B. "Agency" means any unit of state government including, but not limited to, boards, commissions, bureaus, agencies, councils, divisions and departments.

C. "Agency head" means the person having the highest authority within an agency, or his designee.

D. "Building services" means the building services division of the general services department.

E. "Department" means the general services department.

F. "Director" means the director of the property control division of the general services department, or his designee.

G. "Division" means the property control division of the general services department.

H. "Manager" means that person designated by the director as manager of a building used by more than one agency and that person designated as manager of a building by an agency head where the agency has sole use of that building.

I. "Premises" means the real property under the control of the division and all improvements and structures thereon that is the subject of the regulations governing the use of such real property.

J. "Smoking" or "smoke" means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling or the smoke of a pipe, cigar or cigarette or any kind.

K. "User agency" means the agency assigned the use of division premises by the director, pursuant to Section 15-3-2A (1) and (2) NMSA 1978.

[7/10/86; Recompiled 11/30/01]

1.5.17.8 POLICY:

The policy of this regulation is to reduce the hazards of smoking to both smokers and non-smokers by actively encouraging smokers to stop, or at least reduce their smoking, and by providing non-smokers an atmosphere free of the discomfort and hazards of smoke.

[7/10/86; Recompiled 11/30/01]

1.5.17.9 PROCEDURES:

A. Scope: This regulation constitutes the written policy statement required by the act for all agencies using division premises or leasing real property pursuant to the terms of

leases that must be approved by the division under the requirements of Section 15-3-2A NMSA 1978. Nothing in this regulation should be construed as prohibiting user agencies from establishing rules on smoking policy within and for such agencies where such agency rules explain, implement, or embellish the act or this regulation.

B. Designation of smoking permitted and non-smoking areas:

(1) The exterior signs: The director shall post signs on all public entrances of division buildings pursuant to Section 24-16-8 NMSA 1978, or designate a state agency occupying the building to post the required signs, pursuant to the procedures of Section 6.4 [now Subsection D of 1.5.17.9 NMAC]. The exterior signs must be conspicuously posted on or near all public entrances. The signs shall either state "no smoking" or "no smoking except in designated areas." Such signs may be affixed to interior surfaces if the signs are readily visible from the exterior of the building.

(2) The interior signs: The director shall designate smoking-permitted areas in every enclosed indoor building area in division buildings or shall designate the entire building as a non-smoking area. Where smoking-designated areas exist in a building, the remainder of the building shall automatically be a non-smoking area. Whenever an agency is assigned a specific area of a division building by the director, the agency head shall make such designations.

C. Signs: Upon designation of smoking-permitted areas, the director or agency head shall notify building services or the manager of the location and type of signs to post. The designations may also include areas for the posting of "no smoking" signs. The building services director shall post and maintain the signs for Division buildings within the city limits of Santa Fe, New Mexico. The manager of each building or agency head shall post and maintain the signs for division buildings outside Santa Fe city limits. Agencies who do not require building services or the manager to post signs, may post their own signs except for those signs to be affixed in a permanent manner, such as bolting or nailing into a wall or door. Agencies installing their own signs shall be responsible for maintaining the signs. Types of signs:

- (1) "No smoking", as designated in appendix 8.1;
- (2) "No smoking except in designated areas", as designated in appendix 8.2;
- (3) "Smoking permitted area", as designated in appendix 8.3;
- (4) All signs shown in appendix 8.1 through 8.3 are full size.

D. Required use of signs; installation and maintenance: The signs designated under Section 6.3.1 [now Paragraphs (1) (2) and (3) of Subsection C of 1.5.17.9 NMAC] or signs with the same wording and are otherwise substantially similar shall be the only signs used by building services and by the manager. Building services or the manager may install and maintain the signs in areas designated by agencies occupying division

buildings, provided however, that the agency shall pay the cost of such signs. In making the request, the user agency requesting building services or the manager to install signs shall provide exact locations and designations of sign type.

E. Compliance with Sections 24-16-6, 24-16-8 and 24-16-9 NMSA 1978:

(1) The agency head of any agency using division premises is deemed "the person in charge of a public place" for the purposes of establishing the duty of complying with the requirements of the act.

(2) Common areas: The director may designate any agency using a division premises as the agency in control of any area of the premises that is in common use with other agencies housed in the premises, and any exterior portions of the premises for purposes of establishing the "person in charge of public place" under the act.

F. Ventilation systems: Any agency seeking better ventilation systems or other physical modifications to the premises to reduce smoke transfer to non-smoking areas must first notify building services or the manager for maintenance, and the director, if repairs or renovation are needed. This provision shall not apply to physical modifications that are not affixed to the premises.

G. Designation of smoking/non-smoking work areas:

(1) Fully enclosed work areas: Fully-enclosed work areas are those areas within a building that have no openings to other portions of the building other than ventilation, utility passages, doorways (with a door than can be closed) and/or windows that can be closed. In order to qualify as a fully-enclosed work area, the interior doors (and windows, where applicable) must remain closed while occupants are smoking in order to contain smoke in a smoking-permitted designated area. Any agency employee or employees exclusively occupying a fully-enclosed office or work area may designate that area as a smoking or non-smoking area, provided however, that should the designation allow smoking, adequate ventilation must exist or interior doors and windows must be closed while occupants are smoking to limit the smoke going into non-smoking areas, provided that employers (the agency) shall not be required to make structural or other physical modifications to accomplish adequate ventilation. The director shall determine what measures, if any, may be taken to establish adequate ventilation.

(2) Report of designation: All designations required under Section 6.7 [now Subsection G of 1.5.17.9 NMAC] shall be approved by the agency head in charge of the work area before posting of any signs, or such designation shall be pursuant to procedures established within that agency.

(3) No smoking areas: Smoking in division premises is prohibited in all elevators, hallways, and nurses aid stations or similar facilities for medical treatment of employees.

(4) Common non-work areas: Not more than one-half of all seating capacity and floor space may be designated as a smoking area for all employee lunchrooms, cafeterias, auditoriums, employee lounges, public and employee restrooms and reception (waiting) rooms. The non-smoking area must be contiguous and it must be accessible through a non-smoking area.

(5) Common work areas: Whenever smokers and non-smokers work together, the agency head or director of the division to which the area is assigned shall, upon request of an employee, provide to that employee a work area that is designated as a non-smoking area and is smoke-free to the extent ventilation systems provide smoke-free areas, provided that no structural change in the work areas available to that employee is required. Structural changes shall not include modification of movable partitions. Nothing in this regulation shall be construed as prohibiting the user agency or the director from authorizing structural or other changes to division buildings or requesting funding for such changes for the purpose of improving working environments. The various divisions or smaller units of an agency in the same building shall coordinate efforts to combine smokers or non-smokers where such grouping does not substantially interfere with the work duties of the employees being grouped together.

(6) Smoking in motor pool vehicles:

(a) The motor pool of GSD shall designate twenty-five percent of all vehicles as vehicles in which smoking is prohibited. State employees requesting "non-smoking" vehicles shall be provided such vehicles to the extent of their availability. There shall be no smoking in all "non-smoking" designated vehicles.

(b) Required travel: Any state employee who is required to travel in a GSD motor pool division vehicle as a part of his duties of employment may request other people in such vehicle to refrain from smoking. No state employee may smoke when such request is made.

(7) Non-discrimination: Agency supervisors of state employees may not discriminate or retaliate in any manner against employees requesting nonsmoking or smoking permitted work areas or vehicles or against any employee who files a complaint for violation of these regulations or of the act.

(8) Conference/meeting rooms: Unless adequate seating space and ventilation exist, there shall be no smoking in conference or meeting rooms during meetings unless all in attendance affirmatively state that smoking is permissible. Agency employees in charge of the meeting shall enforce this provision.

(9) Pipes and cigars: Nothing in this regulation shall be construed as prohibiting a user agency from passing rules or regulations requiring that smoking-permitted areas shall be for smoking of cigarettes only.

(10) Tobacco sales: Nothing in this regulation shall be construed as prohibiting a user agency from passing rules or regulations requiring that tobacco sales in the user agency offices are prohibited. Existing concession sales contracts may be modified to prohibit such sales whenever economically possible upon request by the user agency's agency head to the director. All new concession sales contracts may have provisions prohibiting tobacco sales when the user agency agency head makes such request to the director.

[7/10/86; Recompiled 11/30/01]

1.5.17.10 IMPLEMENTATION AND ENFORCEMENT OF RULES:

A. The agency heads shall arrange seating in work areas and non-work areas to provide smoke-free areas, in compliance with the requirements of this regulation.

B. Agency heads shall:

(1) ask smokers to refrain from smoking on request of a client, employee or any other person asserting he is suffering from discomfort from the smoke;

(2) affirmatively direct smokers to smoking-permitted areas; and

(3) use existing physical barriers and ventilation systems to minimize the toxic effect of transient smoke in adjacent smoking areas.

C. Any agency employee failing to comply with this regulation may be disciplined by the agency head to the extent permitted by state personnel board rules and regulations.

D. Any person who is not a state employee may be asked to leave the building if he will not comply with a request to stop smoking in a non-smoking area.

[7/10/86; Recompiled 11/30/01]

1.5.17.11 APPENDIXES:

A. "No smoking" sign. [Appendix A]

B. "No smoking except in designated areas" sign. [Appendix B]

C. "Smoking permitted" sign. [Appendix C]

[7/10/86; Recompiled 11/30/01]

PART 18: ARCHITECT RATE SCHEDULE

1.5.18.1 ISSUING AGENCY:

General Services Department, Property Control Division.

[Recompiled 12/31/01]

1.5.18.2 SCOPE:

Organizations affected - These regulations affect all state agencies engaged in determining the maximum permissible architect rate for any project.

[Recompiled 12/31/01]

1.5.18.3 STATUTORY AUTHORITY:

References - The regulations herein are based on the following authority: Section 13-1-124, NMSA 1978 (1984 Suppl), titled Chapter 13, Public Purchases and Property," requires that the secretary of the general services department adopt by regulation an architect rate schedule which shall set the highest permissible rates for each building-type group, which shall be defined in the regulations. The rate schedule shall be in effect upon approval of the state board of finance in compliance with state rules (14-3-24, 14-3-25, and 14-4-1 through 14-4-9, NMSA 1978) and shall apply to all contracts between a state agency and an architect which are executed after the effective date of the architect rate schedule.

[Recompiled 12/31/01]

1.5.18.4 DURATION:

Permanent.

[Recompiled 12/31/01]

1.5.18.5 EFFECTIVE DATE:

February 26, 1985 [filed May 8, 1985].

[Recompiled 12/31/01]

1.5.18.6 OBJECTIVE:

Purpose - The purpose of this rule is to establish an architect rate schedule which will define the maximum permissible rates payable by any state agency to an architect for professional services rendered on any state project.

[Recompiled 12/31/01]

1.5.18.7 DEFINITIONS:

For purposes of this rule, the following definitions shall apply throughout the rule unless otherwise noted.

A. "State agency": any unit of state government including but not limited to boards, commissions, bureaus, agencies, councils, divisions, and departments as defined in Section 13-1-90, NMSA 1978 (1984 Suppl). Also used as "agency" herein.

B. "Architect": a legal resident registered architect of New Mexico or a firm which employs a legal resident registered architect of New Mexico which has been selected and ranked pursuant to Sections 13-1-118 through 13-1-122, NMSA 1978 (1984 Suppl) or other statutory authority.

C. "MACC": the maximum allowable construction cost, which is the total sum available for construction purposes, including furnishings and equipment, but excluding professional fees, owner's contingency funds, acquisition costs, and other costs which are the responsibility of the owner.

D. "MAR": maximum architect rate, which refers to the highest permissible fee or rate an architect may be paid for services rendered for a proposed state capital project.

E. "PCD": the property control division of the general services department, state of New Mexico.

F. "Owner": the state agency or entity that is empowered to enter into an agreement with the architect.

G. "Cost based": actual documented costs, including all profit and overhead arrived at by estimating the architect's estimated actual costs for the services required.

H. Other definitions. The remaining definitions of words or phrases used in this rule are as defined in Section 13-1-124, NMSA 1978 (1984 Suppl).

[Recompiled 12/31/01]

1.5.18.8 POLICY:

A. The policy of these regulation is to ensure one standard architect rate schedule and one process for establishing the maximum architect rate is applied by all state agencies to all contracts between agencies and architects per Section 13-1-124, NMSA 1978 (1984 Suppl).

B. State board of finance approval required: This schedule shall be in effect upon approval of the state board of finance pursuant to the provisions of Section 13-1-124, NMSA 1978 (1984 Suppl).

C. Architect selection process: Firms or individuals considered for all architectural, engineering, land surveying, and landscape design services which cost \$15,000 or more shall be selected in conformance with the provisions of the architect, engineer, land surveyor and landscape architect selection process as defined in Sections 13-1-118 through 13-1-124, NMSA 1978 (1984 Suppl).

[Recompiled 12/31/01]

1.5.18.9 PROCEDURES:

A. The schedule is applicable to all owner-architect agreements between a state agency and an architect and is based upon a percentage of the estimated construction cost for work which will be let on a stipulated-sum construction contract. The schedule establishes the highest permissible architect rate and is not to be mistaken as establishing the lower limit, average, or actual fee.

B. Included as basic services are programming, schematic design, design development, construction documents, assistance in bidding and negotiation, construction administration and post-construction services, all of which are further outlined in Sections 6.2.1 through 6.2.7 [now Paragraphs (1) through (7) of this subsection]. This list does not necessarily correlate with the descriptions or numbering of the architect's basic services as described in an agency's owner-architect agreement but do provide the general description of basic services. If the maximum architectural fee is allowed, pursuant to the rate schedule appendix "A" herein, all of the basic services listed in Section 6.2.1 through 6.2.7 [now Paragraphs (1) through (7) of this subsection] of these rules shall be provided. If any of the basic services listed in 6.2.1 through 6.2.7 [now Paragraphs (1) through (7) of this subsection] are not included in the architectural services, other factors, as specified in these rules, shall be present before the owner may award the maximum allowable architectural rate.

(1) Programming phase - programming phase services

- (a) project administration
- (b) owner-supplied data coordination
- (c) establishment of program goals and needs
- (e) determination of space area requirements
- (f) establishment of space relationships
- (g) site analysis for building location
- (h) site utility studies and reports

(i) obtaining licensing agencies' or other regulatory entities' consultation/review

(j) project budgeting

(k) presentation(s) to owner

(l) obtaining approval of programming documents from owner

(2) Schematic design phase - schematic design phase services

(a) project administration

(b) concept design for all applicable disciplines, including but not limited to:

(i) architectural

(ii) civil

(iii) landscaping

(iv) structural

(v) mechanical

(vi) electrical

(vii) other (list)

(c) interim design presentation(s) to owner

(d) preliminary alternative materials and systems recommendations,
including:

(i) life cycle maintenance briefing

(ii) feasibility of utilizing alternative energy sources

(e) statement of probable construction cost

(f) submittal and presentation of schematic design documents to owner

(g) obtaining approval of schematic design documents from owner

(h) other (list)

(3) Design development phase - design development phase services

(a) project administration

(b) finalization of design and selection of materials and systems for all applicable disciplines, including but not limited to:

(i) architectural

(ii) civil

(iii) landscaping

(iv) structural

(v) mechanical

(vi) electrical

(vii) other (list)

(c) project scheduling

(d) statement of probable construction cost

(e) outline of specifications, including equipment and furnishings

(f) obtaining licensing agencies' or other regulatory entity's review and approvals, as required

(g) submittal and presentation(s) of design development documents to owner

(h) obtaining approval of design development documents from owner

(i) other (list)

(4) Construction document phase - construction documents phase services

(a) project administration

(b) preparation of final bidding and construction documents for all applicable disciplines, including but not limited to:

(i) architectural

(ii) civil

- (iii) landscaping

- (iv) mechanical

- (v) electrical

- (vi) other (list)

- (c) detailed cost estimates

- (d) obtaining licensing agencies' and other regulatory entities' reviews and approvals

- (e) presentation(s) of bidding and construction documents to owner

- (f) obtaining approval of bidding and construction documents from owner

- (5) Bidding phase - bidding phase services

- (a) project administration

- (b) bidding documents distribution

- (c) bidding inquiries review and disposition

- (d) proposed substitution, pre-approval, or prequalification review and disposition

- (e) issuance of addenda

- (f) representation and assistance to owner at bid opening

- (g) analysis of bids and recommendation on award of contract

- (h) assistance to owner in preparation and execution of construction agreement

- (6) Construction administration phase - construction administration phase services

- (a) project administration

- (b) administration of preconstruction conference

- (c) periodic construction field observations

- (d) administration of progress meetings
- (e) review and disposition of
 - (i) submittals
 - (ii) change orders
 - (iii) contractor pay requests
 - (iv) other (list)
- (f) interpretation of documents
- (g) monitoring of construction schedule
- (h) coordination of applicable regulatory agency review and approvals
- (i) determination of substantial and final completion
- (j) project closeout, including:
 - (i) maintenance, operation, and start-up assistance
 - (ii) recording of construction and warranty documents
- (7) Post-construction - post-construction services
 - (a) maintenance and operational troubleshooting
 - (b) eleven-month warranty review

C. The services listed in Article 6.2 [now 1.5.18.9 NMAC] should be viewed as a guide to basic services required of the architect on each project. Wherever appropriate, the list of services actually required must be reviewed to ascertain the services to be deleted or modified. Such modifications could include deletion or requirement of furnishings; soils and foundation investigation; boundary, topography, utilities, and existing facility surveys; and cost engineering, construction management, and other owner-required special services beyond those that would ordinarily be included for the type of project involved. Such modifications should be considered in the negotiation of the fee.

D. Based on the scope of services, the architect is required to make a fee proposal, supporting the proposal with cost-based estimating documentation. The agency and the architect shall negotiate the rate and document the methodology and basis for arriving at the architect's fee. A copy of this documentation shall be kept with the project file.

Documentation required shall be submitted on approved phase compensation worksheets, phase/service matrix worksheets, and project time and payment schedules, all of which are attached hereto as appendix "C."

E. Reimbursable expenses: Where provided by the owner-architect agreement, reimbursable expenses are not included in basic services compensation and are actual expenditures made by the architect or his employees in the interest of the project. Examples of reimbursable expenses are as follow:

- (1) expenses of mileage and per diem when traveling in connection with the project;
- (2) expense of fees paid for securing approvals of authorities having jurisdiction over the project;
- (3) expense of reproduction of drawings, specifications, and other documents as required by the owner to solicit bids and execute contracts;
- (4) expense of applicable gross receipts taxes on basic services, reimbursable expenses, or additional services.

F. Additional services of the architect: Additional services are beyond basic services and, when authorized by the owner, shall be negotiated separately and paid for as agreed to by the parties and stated in the owner-architect agreement. Examples of potential additional services are as follows:

- (1) providing financial feasibility or other special studies;
- (2) providing programming, planning surveys, site evaluations, environmental impact studies, or comparative studies of prospective sites other than those services required under basic services to provide a complete and operable facility;
- (3) providing services related to future facilities, systems, and equipment which are not intended to be constructed during the construction phase;
- (4) making revisions in drawings, specifications, or other documents when such revisions are inconsistent with written approvals or instructions previously given and are due to causes beyond the control or not the responsibility of the architect; this does not apply to revisions necessary for final approval of programming, schematic design studies and statement of project scope and design development documents, or to revisions necessary to bring the project within the designated MACC; the architect shall receive written authorization from the owner before commencing work on any change or alteration to the contract documents;
- (5) preparing drawings, specifications, and supporting data and providing other services in connection with change orders to the extent that the adjustment in the

basic compensation resulting from the adjusted construction cost is not for work which should have been provided pursuant to basic services and that such change orders are required because of causes not related to the actions or responsibilities of the architect;

(6) making investigations, surveys, valuations, inventories, or detailed appraisals of existing facilities when such work is not covered by the owner-architect agreement;

(7) providing consultation concerning replacement of any work damaged by fire or other cause during construction and furnishing services as may be required in connection with the replacement of such work;

(8) full-time or part-time project representation beyond that required as part of basic services.

G. Application of architect rate schedule

(1) The maximum architect rate (MAR) shall be limited by the architect rate schedule chart, attached hereto as appendix A and incorporated herein as though set forth in full, as modified by the building type group schedule, attached hereto as appendix B and incorporated herein as though set forth in full.

(2) The maximum allowable rate is arrived at by the fee curve for the appropriate building type and associated guide notes found in the building type group schedule and the fixed MACC found in the architect rate schedule chart.

[Recompiled 12/31/01]

1.5.18.9 BUILDING TYPE GROUP SCHEDULE (APPENDIX "B"):

A. [Building type group schedule]

Building group	Building types
A	Specialized projects broadcast and telecast facility, concert hall, data processing center, detention facility, emergency operating center, fish hatchery and rearing facility, hospital, laboratory, museum, research facility.
B	Complex projects animal control facility, auditorium, church, clinic, convention center, court house, educational building (with special facilities such as trade, vocation, etc.), fitness center, laundry, library, medical center, mortuary, parking structure (enclosed), repair

C	garage, residence (custom), restaurant, swimming pool (enclosed) synagogue, theater, transportation terminal, zoo facility. Average projects
D	apartment building, armory, bakery, bank, cafeteria, chapel, community center, dormitory, educational building (without special facilities), fire station, gymnasium, hotel, industrial building, motel, office building, parking structure (open air), police administration building, recreational building, retail store. Simple projects
	airplane hangar, barn, comfort station, garage (without repair work), residence, stadium (open air), swimming pool (open air), warehouse.

B. General notes:

(1) Rates for building types not listed in the building type group schedule should be negotiated from the rates indicated for buildings of similar design complexity. In instances where the owner or user has no similar facility and is not able to offer any guidance or expertise to the building to be constructed, the architect rate shall be negotiated with the architect rate schedule chart, appendix A, only as a reference, whenever applicable.

(2) When a building or project includes several types of uses, the schedule rates apply to such types individually and negotiation is appropriate.

(3) Alterations to buildings may involve many unforeseeable conditions that may not easily be included in normal basic services. An alteration is defined as any change, architectural, structural, mechanical, or electrical, made to an existing building, and includes portions of buildings altered as a result of a new wing extension of such building, excluding historical restorations. Negotiation of the architect's rate for alterations in all categories is appropriate. Consideration of whether there are "trade-offs" in the scope of services should be taken.

(4) Historical renovation projects as a general rule require services substantially in excess of those cited as basic services. These services can include investigative analysis of existing systems, demolition planning and coordination, historical data collection and other coordination. Other instances may not address serious modification of structural systems, finishes, etc. Negotiation of the architect rates is appropriate for all categories of building types whenever the primary architectural services are for historic building renovation.

(5) Where multi-contract or fast-track construction contracts are deemed to be in the best interest of the state and are required in writing by the state, negotiation of the fee is appropriate. Multi-contract or fast-track projects as a general rule require higher

levels of coordination, additional personnel, increased levels of construction observation, and accelerated time schedules, all of which may increase the costs of architectural activities.

(6) On projects not requiring full basic services (such as fixtures, equipment, furnishings, interior displays, memorials, reroofing, etc.), when not a part of an overall building, the architect rate shall be negotiated on a cost-based compensation basis by individual project.

(7) For projects whose major design elements are repetitive, the architect rates in all categories may be reduced to reflect the repetitive nature of the project.

(8) Residence," as used in building type group D, is defined as a development-type residence, namely, a single- or two-family house.

(9) Fees for projects under \$150,000 and over \$10,000,000 shall be negotiated individually on a cost-based compensation basis; this rate schedule shall not apply.

[Recompiled 12/31/01]

1.5.18.10 [APPENDIX C]

PART 19-20: [RESERVED]

PART 21: STATE AGENCIES LEASING REAL PROPERTY

1.5.21.1 ISSUING AGENCY:

General Services Department Property Control Division.

[12/31/98; Recompiled 11/30/01]

1.5.21.2 SCOPE:

All executive branch agencies except the state land office.

A. **General applicability.** This rule applies to all leases and rentals of space in public and private buildings, for periods exceeding ninety (90) days, by state executive agencies other than the state land office.

B. **Land leases:** Leases of vacant land and leases of parking space only are not covered by this rule.

[12/31/98; Recompiled 11/30/01]

1.5.21.3 STATUTORY AUTHORITY:

Section 15-3-2 NMSA 1978, enacted by Laws 1968, Chapter 43, Section 2 and amended in subsequent years thereafter, requires the Property Control Director to control the lease or rental of space in private buildings and applies to all state executive agencies other than the land office. (1978 Comp., Section 15-3-2; 1953 Comp., Section 6-2-26; enacted by Laws 1968, Chapter 43, Section 2; amended by Laws 1971, Chapter 285, Section 2; Laws 1973, Chapter 209, Section 1; Laws 1977, Chapter 247, Section 69; Laws 1977, Chapter 385; Section 14; Laws 1978, Chapter 166, Section 14; and Laws 1980, Chapter 151, Section 16.)

[12/31/98; Recompiled 11/30/01]

1.5.21.4 DURATION:

Permanent.

[12/31/98; Recompiled 11/30/01]

1.5.21.5 EFFECTIVE DATE:

December 31, 1998 unless a later date is cited at the end of a section or paragraph.

[12/31/98; Recompiled 11/30/01]

1.5.21.6 OBJECTIVE:

The objective of this rule is to establish a fair, uniform, clear and effective process to regulate leasing property owned by private entities as office space or special use facilities for state executive agencies under jurisdiction of the property control division.

[12/31/98; Recompiled 11/30/01]

1.5.21.7 DEFINITIONS:

A. **"Agency"** means a state executive agency other than the state land office seeking to lease space.

B. **"Agency cost ceiling"** means the estimated first-year annual cost which an agency determines it can budget for a lease. The agency shall provide this information to PCD using the appropriate GSD form.

C. **"Agency RFP representative"** means a person who serves on the selection committee and who has been designated, in writing, by the agency head at the beginning of each RFP to act on behalf of the agency as the sole contact in for information from and about the agency during the RFP process.

D. **"Agency on-site lease monitor"** means a person who has been designated by the agency to fulfill the duties described in 1 NMAC 5.21.19.1 [now Subsection A of 1.5.21.19 NMAC].

E. **"Bid bond"** means a negotiable security instrument required when proposals are submitted to ensure a proposal for space can be delivered by the top-ranked offeror. Bid bonds are returned to all unsuccessful offerors when the top-ranked offeror selection is approved. (See 1 NMAC 5.21.9.8) [now Subsection H of 1.5.21.9 NMAC]

F. **"BOMA method"** means the current, industry standard methodology for calculating usable square footage (by the building owners and managers association).

G. **"Desirable"** The terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

H. **"General services department (GSD)"** means the cabinet agency established in Chapter 9, Article 17 NMSA 1978.

I. **"Leasable square feet (LSF)"** means usable area, plus interior office circulation, plus prorated common space, if applicable, which is what the overall lease payments are based on and which defines the lease boundaries.

J. **"Lease"** means the standard New Mexico lease of real property form provided by PCD.

K. **"Lease record drawings"** means drawings prepared in accordance with PCD requirements that address the agency lease requirements, building code requirements, accessibility and applicable state and federal regulations.

L. **"Mandatory"** The terms "must", "shall", "will", "is required", "are required", "requires", identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.

M. **"Performance bond"** means a bond required of the successful offeror to ensure conformation of space required by the lease agreement is successfully completed. The performance bond is returned when the lease space is approved for occupancy. (See 1 NMAC 5.21.14.6) [now Subsection F of 1.5.21.14 NMAC]

N. **"Principal individual owners"** means all majority stockholders, members of board of directors, officers and partners.

O. **"Property control division (PCD)"** means the division of the general services department established in Chapter 15, Article 3 NMSA 1978 which is statutorily responsible for controlling the lease or rental of space in buildings by state executive agencies other than the state land office.

P. **"Selection committee"** means a group of five (5) individuals, including a PCD staff member and four (4) people assigned by an agency to develop RFP evaluation criteria, review lease proposals, develop recommendations for the agency, and select the top-ranked offeror. If an agency presents a compelling reason in writing for less than four (4) agency representatives, the PCD director may approve a selection committee of a total of three (3) individuals, one (1) from PCD as the chair and two (2) assigned by the agency.

Q. **"Short-term lease"** means a lease for a period that does not exceed one year, including any renewal options.

R. **"Special use facility"** means a facility other than an office building, warehouse or storage space, which is unique, distinctly different and provides for needs beyond those previously listed. Examples include reintegration centers and hospitals.

S. **"Storage space"** means space which is used for the bulk storage of materials and which does not exceed 1,000 usable square feet or house employees.

T. **"Usable square feet (USF)"** means the amount of specific floor area needed to provide an employee or function of an agency with adequate space to perform effectively. Usable square footage is calculated using the BOMA method. Usable square footage can be described as the area within the four walls which defines a work space.

U. **"Warehouse"** means a space used to store bulk products, materials or supplies or storage space in excess of 1,000 usable square feet. A warehouse may include space to house employees required for operation of the warehouse.

[12/31/98; Recompiled 11/30/01]

1.5.21.8 PROPERTY CONTROL DIVISION RESPONSIBILITIES:

A. **Adequacy of existing state facilities:** The PCD director shall determine whether existing state facilities are adequate for an agency's needs before an agency is allowed to lease from any other governmental entity or the private sector.

B. **Lease agreements:** The PCD director shall have final approval of all the leases, lease amendments, lease extensions, exercise of options-to-renew and all other agreements subject to this rule. No such agreement shall be valid or binding on the state of New Mexico or any of its agencies unless it is in writing, signed by the appropriate parties and approved in writing by the PCD director. The PCD director's signature shall not signify that PCD is a party to an agreement, but only that PCD has authorized, approved, and validated the agreement in compliance with statute and this rule.

C. **Director's designee:** The PCD director may assign a designee to act on his or her behalf in carrying out his or her duties under this rule. Any such designation shall be in writing.

[12/31/98; Recompiled 11/30/01]

1.5.21.9 COMMENCEMENT OF LEASE PROCESS:

A. **Competitive sealed proposals:** Except to the extent that this rule conflicts with the Procurement Code and except for leases excluded by this rule from the requirement of solicitation through competitive sealed proposals, all leases shall be solicited in accordance with the Procurement Code and applicable GSD regulations.

B. **PCD notice to agency:** Approximately one year prior to the expiration of an existing lease, PCD will notify an agency that its lease is due to expire and will direct the agency to perform procedures required by this rule.

C. **Drafting the RFP:** The agency shall initiate the lease process for office or warehouse space by submitting a space needs questionnaire (GSD form) to PCD. PCD will prepare the RFP draft to be considered by the selection committee. For new leases, the agency should begin the RFP process six (6) to eighteen (18) months prior to occupancy, depending on the size of the facility.

D. **Selection committee:** The selection committee is chaired by a PCD staff person, who shall guide the RFP process to conform with this rule, provide lease process expertise to the agency members, and vote in the case of a tie. The selection committee will remain in effect until a lease is signed and the performance bond is returned to the lessor.

E. **Agency cost ceiling** (GSD form): The agency shall submit its agency cost ceiling, as defined in 1 NMAC 5.21.7.2 [now Subsection B of 1.5.21.7 NMAC], on the proper GSD form to PCD at the same time it submits its space needs questionnaire. Thereafter, if the agency changes its cost ceiling for any reason, the agency shall notify PCD immediately using the proper GSD form.

F. **RFP review:** PCD will review an agency's proposed RFP and will require changes when the RFP is prepared incorrectly. PCD will return the proposed RFP to the agency for revisions.

G. **RFP approval:** PCD will review the selection committee's recommendations and return the final approved RFP to the agency.

H. **Bid bond:** A bid bond is bid security in the dollar amount of five percent (5%) of the agency cost ceiling, not to exceed \$2,000. Submittal of a bid bond is required with submittal of the lease proposal form. Form and sufficiency of the bid bond is subject to PCD approval.

[12/31/98; Recompiled 11/30/01]

1.5.21.10 SOLICITATION OF PROPOSALS:

A. **RFP approval required:** The agency shall not solicit proposals until PCD has approved the agency's final RFP in writing and has scheduled a proposal opening. Only copies of the RFP showing PCD's approval may be issued.

B. **Public notice** (GSD form): After approval of the agency's RFP, GSD shall provide a copy of the public notice to potential offerors on the public notice mailing list (see 1 NMAC 5.21.24.1 [now Subsection A of 1.5.21.24 NMAC]). Potential offerors are responsible for requesting approved RFP's and any amendments to the RFP from PCD.

C. **Advertising:** The agency shall advertise in the "legal notice" section of a local newspaper, in the area in which proposals are requested, at least once within the week prior to release of the RFP. The agency shall utilize the standard public notice (GSD form) for its advertisement.

D. **Pre-proposal conference:** When an agency seeks to lease 5,000 USF of space or more, PCD shall conduct a pre-proposal conference in the city in which it seeks to lease space. The pre-proposal conference shall be held no less than ten (10) calendar days prior to the proposal deadline.

E. **Amendments to the RFP:** Amendments to the RFP shall be in writing and shall be issued in a timely manner in accordance with the Procurement Code. The selection committee shall submit amendments to PCD in writing which require PCD approval before distribution by the selection committee to all entities who requested copies of the RFP. Amendments will be issued no later than five (5) working days prior to the deadline for proposal submission, except an amendment withdrawing the RFP or one which includes postponement of the date for proposal submission.

F. **Proposal submission deadline:** Offerors shall submit each proposal in a sealed envelope, clearly labeled with the RFP name and number, on or before the date and time stated in the RFP. All proposals received after the deadline shall be deemed non-responsive and returned unopened by PCD. All proposals will be opened at the same time by more than one (1) PCD staff person, with a log of proposals opened which is witnessed by at least two (2) PCD employees.

G. **Ownership disclosure:** Any proposal that is submitted in response to an RFP shall indicate the ownership of the facility offered for lease. If the facility is owned by a corporation or other legal entity, the proposal shall also indicate the principal individual owners and percentages of their ownership.

H. **Proposal modifications:** After a proposal is submitted, an offeror shall not withdraw a building that has been offered or attempt to substitute buildings or building sites on non-contiguous properties. However, an offeror may substitute locations within a building or building sites on contiguous properties so long as the substitution is in the best interest of the agency and the proposed cost is less than or equal to the original proposed cost. This is the only allowable substitution in the original proposal.

I. **Confidentiality of proposal contents:** Proposal contents are confidential until an award is made.

J. **Cancellation of RFP:** Only PCD may cancel an RFP when it is in the best interest of the state to do so, by providing written notice to all potential offerors of record.

K. **Costs:** Any costs to the offerors associated with responding to the RFP and/or reaching final approval of a lease shall be borne solely by the offeror.

[12/31/98; Recompiled 11/30/01]

1.5.21.11 EVALUATION OF PROPOSALS:

A. **Mandatory requirements:** PCD shall review proposals to ensure all mandatory requirements are met, and will forward all responsive proposals to the selection committee for evaluation.

B. **Evaluation criteria:** The RFP will contain and describe all evaluation criteria, and at least the following standard criteria: "cost", "utilities", "lease term", "geographic preference", and "quality of lease space". It may contain "other needs" and/or "proposal incentives", which must be defined specific to that RFP. Geographic preference must contain a statement showing how the specifics of this criteria are relevant to the service delivery requirements of the user agency.

C. **Evaluation points:** Each RFP will contain a total of 100 points. PCD will assign at least 80 points for the evaluation criteria, and the agency may choose to assign up to 20 points to the standard criteria, or to "other needs" and/or "proposal incentives".

D. **Evaluation:** The selection committee shall evaluate each proposal, taking into consideration the criteria set forth in the RFP. The committee shall conduct on-site inspections and interviews with each offeror who submits a responsive proposal as part of its evaluation. The committee may request clarification from any or all offerors. All clarifications shall be requested and submitted in writing to the selection committee, within deadlines set by the committee. The director may waive, in writing, any irregularity based on written proof that the irregularity is technical in nature.

E. **Ranking:** After the selection committee has completed on-site inspections and received any clarifications requested, the committee shall rank proposals based upon the evaluation points in the RFP.

F. **Ranking report:** The selection committee shall submit the results of the ranking in a report to PCD. The report shall include the following information and attachments:

(1) **Information:**

(a) names of selection committee members;

- (b) copies of any amendments to the RFP;
- (c) name of each offeror;
- (d) address of each proposed facility, including suite and/or floor number;
- (e) usable square footage of each facility;
- (f) leasable square footage of each facility;
- (g) annual and total term cost of each facility;
- (h) lease term;
- (i) agency cost ceiling amount;
- (j) description of the review process, including any clarifications, and the rating process;
- (k) a certification that the selected facility meets the agency's space needs; and
- (l) a justification for the recommendation.

(2) **Attachments:**

- (a) proposal rating and ranking form for leased office space (GSD form);
- (b) rating and ranking summary form (GSD form); and
- (c) agency cost evaluation form (GSD form).

G. Nonresponsive proposals: If PCD receives only nonresponsive proposals, PCD may re-solicit proposals. Before re-solicitation, PCD may require that the RFP be modified in order to assure a competitive process.

H. Ranking approval: PCD shall review and approve in writing the selection committee's ranking report. PCD may request additional information from the selection committee to complete its review.

I. Offeror notification: After the selection committee has received written approval from PCD of the ranking report, the selection committee shall notify each offeror of the ranking. The top ranked offeror shall be notified by the selection committee to proceed with record drawings in accordance with 1 NMAC 5.21.13 [1.5.21.13 NMAC]. The notification shall be in writing and within fifteen (15) calendar days of receipt of PCD's approval.

J. **Protests:** Any offeror who is aggrieved in connection with the solicitation or award of a lease may protest to the director of PCD. All protests to PCD shall be in writing. Protests shall be governed by the New Mexico Procurement Code Sections 13-1-172 through 13-1-176 and 13-1-183 NMSA 1978 and applicable GSD regulations.

[12/31/98; Recompiled 11/30/01]

1.5.21.12 EXEMPTIONS FROM COMPETITIVE SEALED PROPOSAL PROCESS:

A. **General:** The types of leases that are listed in this section are exempt from the competitive sealed proposal process. They are not exempt, however, from building code or accessibility requirements.

B. **Storage leases:** The agency is not required to solicit competitive sealed proposals for storage leases. The agency shall attempt to receive a minimum of three (3) written quotations and shall submit the following information for each quotation along with the proposed lease, for PCD's approval:

- (1) agency cost ceiling form (GSD form);
- (2) proposed lessor's name;
- (3) address of facility;
- (4) size of facility;
- (5) cost of facility per month or year;
- (6) lease term; and
- (7) recommendation and justification by the agency.

C. **Leases for less than \$10,000 per year, not to exceed \$50,000 total term or less than 2,000 usable square feet:**

(1) The agency is not required to seek competitive sealed proposals for leases when the annual lease cost, less janitorial and utility expenses, will be less than \$10,000 or when the size of the facility will be less than the 2,000 usable square feet. The annual lease cost for any year of the lease shall not exceed \$10,000, and the total term shall not exceed \$50,000. The agency shall complete the RFP form and submit it to PCD for review and approval. The RFP form will be used by the agency as the basis for negotiations with the proposed lessor. The agency shall request PCD approval of the lease pursuant to 1 NMAC 5.21.13 and 5.21.14 [now 1.5.21.13 and 1.5.21.14 NMAC], by recommending the facility which the agency deems to be the most satisfactory for its needs. The agency shall attempt to receive a minimum of three (3) written quotations and justify the selection to

PCD by providing, at a minimum, the following information for each facility that the agency has considered:

- (a) agency cost ceiling form (GSD form);
- (b) description of the agency's needs;
- (c) proposed lessor's name;
- (d) address of facility, including suite or floor number;
- (e) size of facility;
- (f) annual and total term cost of facility; and
- (g) selection criteria and justification for selecting the facility.

(2) A diagram of the floor plan, with dimensions showing USF, adequate for PCD review shall be submitted for the top-ranked facility to PCD. The diagram may be submitted to PCD after the agency's recommendation.

D. Short-term leases: For short-term leases, as defined in 1 NMAC 5.21.7.14 [now Subsection Q of 1.5.21.7 NMAC], an agency shall proceed in accordance with 1 NMAC 5.21.12.3 [now Subsection C of 1.5.21.12 NMAC].

E. Special use facilities: The agency may submit a written request to PCD to designate a facility as a special use facility, as defined in 1 NMAC 5.21.7.15 [now Subsection R of 1.5.21.7 NMAC]. PCD will determine if the facility is appropriately defined as a special use facility and if accessibility is required. Only unoccupied and non-public special use facilities will not require compliance with accessibility requirements. The agency may then select a facility appropriate to its needs and submit its selection and justification in accordance with 1 NMAC 5.21.12.3 [now Subsection C of 1.5.21.12 NMAC].

F. Lease with any other governmental entities: The agency may lease space from another governmental entity without soliciting competitive sealed proposals. The agency shall request authorization from PCD to lease space from another governmental entity. PCD shall evaluate whether the proposed facility complies with applicable building codes and accessibility standards. A diagram of the floor plan, with dimensions showing USF, adequate for PCD review shall be submitted for the facility to PCD. If PCD approves the agency's request, the agency may utilize the standard New Mexico lease of real property form or the other governmental entity's form, if approved by PCD. The PCD Director's signature is not required on the lease. However, a copy of the lease shall be maintained on file at PCD.

G. Leases outside the state of New Mexico: For leases outside the boundaries of the state of New Mexico, agencies shall proceed in accordance with 1 NMAC 5.21.12.3

[now Subsection C of 1.5.21.12 NMAC], except that applicable local building codes shall apply.

[12/31/98; Recompiled 11/30/01]

1.5.21.13 RECORD DRAWINGS:

A. **Submittal to PCD:** After the selection committee has notified each offeror of its ranking in accordance with 1 NMAC 5.21.11.9 [now Subsection I of 1.5.21.11 NMAC], the first ranked offeror shall develop record drawings for review by PCD. Prior to the submittal, the selection committee may meet with the offeror or the architect to develop a partial layout which best meets its needs. If after ninety (90) calendar days the offeror has failed to provide record drawings, the proposal shall be deemed nonresponsive. In that event, the selection committee shall proceed to the second-ranked offeror or recommend cancellation of the RFP.

B. **PCD review:** PCD shall review record drawings with respect to layout, applicable codes, accessibility standards and general compliance with the RFP. If the selection committee, an offeror or architect chooses, he or she may request a meeting with PCD's plan review staff to review drawing contents and required graphic information. PCD may make recommendations as necessary.

C. **Insufficient for review:** Record drawings which are insufficient for review shall be returned to the selection committee along with any pertinent information the agency should provide to the offeror or architect. The offeror shall resubmit the revised drawings within thirty (30) calendar days of receipt of the insufficient drawings, or the proposal shall be deemed nonresponsive.

D. Disapproval:

(1) If record drawings do not comply with applicable codes or accessibility standards, PCD will disapprove them and return them to the selection committee. The selection committee must then decide on one of the following courses of action:

- (a) continue considering the first-ranked proposal;
- (b) deem the first-ranked proposal nonresponsive and request the second-ranked offeror to develop record drawings; or
- (c) recommend PCD cancel the RFP.

(2) If the agency requests the first-ranked offeror to correct the deficiencies, the offeror shall modify the record drawings and resubmit them for review. Either the selection committee or PCD may recommend a meeting with the various parties to resolve any outstanding issues.

E. **Building codes:** If an existing condition does not appear to comply with an applicable building code, PCD may require submittal of a copy of the building permit issued by the local code authority and certificate of occupancy or other documentation as required prior to approval of the lease.

[12/31/98; Recompiled 11/30/01]

1.5.21.14 FINAL APPROVAL AND PROCESSING OF LEASE:

A. **PCD authorization to enter lease:** PCD shall give written authorization to the agency to proceed to enter into a lease before the agency may enter into a lease agreement.

B. Lease:

(1) After receiving written authorization to enter into a lease, the agency shall complete three (3) originally-signed standard New Mexico lease of real property forms (GSD forms) and submit them to PCD for review and approval. Each lease shall include, as a minimum, the following attachments:

- (a) RFP and amendments to the RFP;
- (b) proposed lessor's proposal and any clarifications or certifications;
- (c) certificate of insurance;
- (d) approved record drawings; and
- (e) performance bond.

(2) An agency that does not regularly perform leasing tasks may request PCD to complete the lease forms. The agency will be responsible for acquiring all signatures, notarizations, and copies of all attachments and forms.

C. **Performance bond:** A performance bond in the amount equivalent to twenty-five percent (25%) of the lessee's total first year lease payment shall be submitted by the lessor with the signed lease. The performance bond secures the lessor's performance to provide lease space in conformance with the approved lease record drawings and lease agreement. The bond shall be returned to the lessor upon agency and PCD acceptance of the lease space for occupancy. In the event that the lessor fails to provide the lease space conforming to the lease record drawings in the time period specified in the lease agreement, the bond shall be forfeited to the agency.

D. **Conflict of interest:** Any lease which may violate the Conflict of Interest Act, Sections 10-16-1 through 10-16-15 NMSA 1978, shall be reviewed and approved by the attorney general prior to approval by the PCD director.

E. **Final approval:** Once the PCD director approves a lease, PCD will keep one copy of the lease and provide one copy to the agency and one copy to the lessor.

F. **Occupancy:** No agency shall occupy the leased premises until a lease or lease amendment, approved by PCD, has been executed.

[12/31/98; Recompiled 11/30/01]

1.5.21.15 LEASE TERM:

A. **Minimum:** No minimum lease term is required. Leases for less than ninety (90) days are exempted from this rule.

B. **Maximum:** PCD will not approve any lease which exceeds a total term of twenty (20) years, including all options-to-renew (examples of acceptable terms are ten (10) years with one ten-year (10) option, or twenty years with no option).

C. **Options to purchase:** Any proposal which includes an option to purchase shall be deemed nonresponsive and shall be rejected.

[12/31/98; Recompiled 11/30/01]

1.5.21.16 LEASE AMENDMENTS:

A. **General:** Any lease may be amended, except as described below.

B. **Limitations:** No lease may be amended

(1) to increase the usable square footage by more than

(a) fifty percent (50%) for leases greater than 5,000 usable square feet;

(b) sixty percent (60%) for leases less than 5,000 but greater than 1,000 usable square feet: or

(c) seventy-five percent (75%) for leases less than 1,000 usable square feet.

(2) by more than the initial term, and no total amended term, including all extensions and options to renew, shall be more than a total of twenty (20) years.

(3) No lease may be amended three (3) months prior to its expiration without the agency beginning the RFP process.

C. **Building codes and accessibility:** The PCD Director may disapprove any amendment when existing leased space does not comply with building code requirements or accessibility standards.

D. **Time frame:** All amendments shall be submitted to PCD for approval at least fifteen (15) working days prior to the effective date of the amendment.

[12/31/98; Recompiled 11/30/01]

1.5.21.17 MONTH-TO-MONTH TENANCIES AND OPTIONS-TO-RENEW:

A. **Month-to-month tenancies:** Whenever the agency requires a month-to month tenancy because the agency is unable to complete the RFP process in a timely manner, the agency shall request and receive written approval for a month-to-month tenancy from PCD. **Term:** No month-to-month tenancy shall exceed six (6) months from the date of expiration of a lease without the agency beginning the RFP process, unless the agency has submitted and PCD has approved a written justification.

B. **Options-to-renew:** The agency with an option-to-renew in its lease may renew the lease upon approval by PCD which may include building code compliance and accessibility. If PCD disapproves a building for failure to meet any requirement, the agency shall solicit proposals as required by this rule.

(1) **Requests:** In order to exercise an option-to-renew, the agency shall submit a written request to PCD which certifies that the existing lease continues to meet the requirements of the agency. Approved record drawings shall be submitted if they are not on file with PCD.

(2) **Time frame:** The agency shall submit a written request to PCD six (6) months prior to expiration of the lease for review of the request.

(3) **Approval:** Upon approval by the PCD director, an agency shall notify the lessor at least thirty (30) days prior to the expiration of its lease that the agency is exercising its option-to-renew.

(4) **Insurance:** When the agency exercises an option-to-renew, the lessor shall submit an updated certificate of insurance to PCD.

[12/31/98; Recompiled 11/30/01]

1.5.21.18 INSURANCE AND INDEMNIFICATION:

A. **Insurance provisions:** All leases between the agency and a private lessor shall contain insurance provisions that have been approved by GSD's risk management division.

B. **Indemnification:** No lease governed by this rule shall contain any provision whereby the agency agrees to defend, indemnify or provide tort liability insurance for any lessor.

C. **Lease provisions void:** Any insurance or indemnification provision in any lease executed in violation of this section shall be void and of no effect.

[12/31/98; Recompiled 11/30/01]

1.5.21.19 OCCUPANCY:

A. **Agency on-site lease monitor:** Upon occupancy, the agency shall designate an employee as the agency on-site lease monitor. The agency on-site lease monitor shall be the local liaison with PCD and shall be responsible for at least the following:

- (1) compliance of lease terms;
- (2) maintenance and janitorial agreements;
- (3) internal employee complaints;
- (4) monthly inspections; and
- (5) maintenance of records of correspondence.

B. **Requests to a lessor:** All requests to a lessor shall be in writing and refer to specific provisions of the lease.

C. **Maintenance:** The lessor shall be responsible for interior and exterior maintenance, unless otherwise specified in the lease.

(1) **Monthly inspections:** The agency should inspect the entire facility monthly using the PCD lease facility inspection form (GSD form) to determine maintenance compliance.

(2) **Report:** The agency should notify a lessor in writing of any problems and should request that the lessor initiate appropriate action within a specified time frame.

(3) **Refusal:** If a lessor does not agree to perform required maintenance, the agency shall document in writing the refusal and any reasons given.

(4) **Second opportunity:** An agency may offer a lessor a second opportunity, if appropriate, and again follow the procedures of 1 NMAC 5.2.19.4.2 [now Paragraph (2) of Subsection D of 1.5.2.19 NMAC].

(5) **Failure:** If, after written notification, the lessor fails to perform required maintenance, the agency may abate rent, or perform the maintenance and withhold the cost of the maintenance from the lessor, in accordance with the standard New Mexico lease of real property form (GSD form).

D. **Legal counsel review:** PCD recommends that the agency consult legal counsel before abating rent.

E. **PCD notification:** The agency shall submit copies to PCD of all correspondence and documents.

[12/31/98; Recompiled 11/30/01]

1.5.21.20 EARLY TERMINATION:

A. **Agency request:** An agency that wishes to terminate a lease before the end of the lease term shall make a written request to PCD. The request shall include copies of all correspondence and documents which relate to the matter.

B. **PCD approval:** The PCD director shall have final approval of any early lease termination by the agency. No early lease termination shall be effective unless it has been approved by the PCD director, and no approval shall be effective unless it is in writing.

[12/31/98; Recompiled 11/30/01]

1.5.21.21 FAILURE TO COMPLY WITH THIS RULE:

A. **Agency:** If the agency fails to comply with this rule, PCD may reject and disapprove a proposed lease until the rule has been followed properly.

B. **Firm:** Any business, whether an individual or firm, that violates any provision of this rule or violates the provisions of a lease may be suspended or debarred in accordance with Sections 13-1-177 through 13-1-180 and 13-1-183 NMSA 1978.

[12/31/98; Recompiled 11/30/01]

1.5.21.22 WAIVERS:

A. **Authorized waivers:** The PCD director may grant full or partial waivers, in writing, of any section or provision of this rule, except as noted in 1 NMAC 5.21.22.3 [now Subsection C of 1.5.21.22 NMAC], when the agency certifies, in writing, that an emergency condition exists. When an agency certifies to an emergency condition, it must include a written description of what the emergency is and why it is recommending a waiver. An emergency condition is one that creates an immediate and serious need that cannot be met through normal leasing methods and that would seriously threaten:

- (1) the functioning of government;
- (2) the preservation or protection of property; or
- (3) the health and safety of any person.

B. **Short-term lease:** When PCD grants a waiver, PCD may require that the lease be a short-term lease, as defined in 1 NMAC 5.21.7.14 [now Subsection Q of 1.5.21.7 NMAC]. An agency's application for a waiver shall include written justification for the length of the proposed lease.

C. **Waiver conditions:** The PCD has no authority to waive federal requirements under the American with Disabilities Act.

[12/31/98; Recompiled 11/30/01]

1.5.21.23 STANDARD GSD FORMS:

PCD will develop and adopt standard forms for use in the lease process. PCD will provide each agency a copy of these forms as they are adopted. Standard forms shall be utilized by an agency during the lease process, unless written approval is given by PCD to modify a form.

[12/31/98; Recompiled 11/30/01]

1.5.21.24 MAILING LIST:

A. **Method:** Any potential offeror may submit an application (GSD form) to GSD's state purchasing division for placement on the public notice mailing list. The state purchasing division sends all potential offerors who are on the mailing list copies of the public notice for all RFP's issued in the counties for which they have applied.

B. **Fee:** GSD's state purchasing division charges for each application at the rates established by that office.

[12/31/98; Recompiled 11/30/01]

1.5.21.25 PROPERTY CONTROL DIVISION FEE SCHEDULE:

PCD charges by the page for copies of GSD rules, documents, forms, drawings, lease inventory, and other printed material associated with this rule. The charge shall be based on a fee schedule issued by PCD and based on costs to PCD.

[12/31/98; Recompiled 11/30/01]

PART 22: CHARITABLE USE OF REAL PROPERTY REGULATION: USE OF PROPERTY CONTROL DIVISION, REQUIREMENTS FOR CHARITABLE USE OF REAL PROPERTY

1.5.22.1 ISSUING AGENCY:

General Services Department, Property Control Division.

[Recompiled 11/30/01]

1.5.22.2 SCOPE:

This regulation affects all agencies and all non-state government organizations and individuals using land and buildings under the control of the property control division, general services department. Affected agencies include all executive state departments, boards, commissions, councils, agencies and divisions of state government.

[Recompiled 11/30/01]

1.5.22.3 STATUTORY AUTHORITY:

This regulation is based on: Section 15-3-2 A (1) and (2) NMSA 1978, which provides for the director of the property control division to assign and regulate the use and the occupancy of buildings and real property under his control and make reasonable requirements for the continuation of that use or occupancy.

[Recompiled 11/30/01]

1.5.22.4 DURATION:

Permanent.

[Recompiled 11/30/01]

1.5.22.5 EFFECTIVE DATE:

Effective: Immediately July 1, 1986 [filed July 10, 1986].

[Recompiled 11/30/01]

1.5.22.6 OBJECTIVE:

A. The purpose of this regulation is to establish procedures for the management of land and buildings under the control of the property control division of the general services department, including use of property by non-state government organizations or individuals.

B. The policy of these regulations is to insure that the public has an equitable opportunity to obtain the right to use division premises for charitable purposes while protecting agencies from the disruption of their work by such activities; to protect the public from uninsured sales related to such activities; and to prevent interference with government services to the public by the uncontrolled use of division premises.

[Recompiled 11/30/01]

1.5.22.7 DEFINITIONS:

A. "Agency" means any unit of state government including, but not limited to boards, commissions, bureaus, agencies, councils, divisions and departments.

B. "Agency head" means the person having the highest authority within an agency or his designee.

C. "Charitable Organizations and Solicitations Act" (the Act") means Sections 57-22-1 through 57-22-11 NMSA 1978.

D. "Charitable purpose" means any purpose for which a charitable organization has been established to directly promote the well-being of the public at large or the benefit of an indefinite number of persons and may not result in any profit to the non-profit organization.

E. "Director" means the director of the property control division of the general services department or his designee.

F. "Division" means the property control division of the general services department.

G. "Non-profit organizations" for purposes of this regulation, means all individuals and organizations, whether incorporated or not, that conduct activities for charitable purposes.

H. "Premises" means the real property under the control of the division and all improvements and structures thereon. Premises include all real property leased pursuant to Section 15-3-2 A (5) NMSA 1978.

I. "Professional fundraiser" means any individual, corporation, association, or other entity who for financial or other consideration, solicits contributions for, or on behalf of, a charitable organization, either personally or through agents or employees specifically employed for that purpose. The following shall not be deemed to be a professional fundraiser by reason of the activities listed:

(1) an attorney, investment counselor, or banker, who advises any person to make a contribution to a charitable organization, if he does not otherwise perform the functions of a professional fundraiser; or

(2) a bona fide salaried officer or employee of a charitable organization which maintains a permanent office in the state.

J. "Sales" means the act of selling of any product and/or service where such activity is not conducted by or on behalf of the state of New Mexico or any of its subdivisions. Sales include, but are not limited to, selling by vending machines, temporary and

permanent concession stands as well as selling by those walking through or driving onto division premises with products and/or services for sale or lease.

K. "Solicitation" means any request or appeal, either written or oral, or any endeavor to obtain, seek or plead for funds, property, financial assistance or other thing of value, including the promise [sic] or grant of any money or property of any kind or value for a charitable purpose.

[Recompiled 11/30/01]

1.5.22.8 PROCEDURES:

A. Scope:

(1) Use of division premises for short term (thirty (30) days or less) charitable purposes, by non-profit organizations, shall not be subject to the provisions provided in GSD Rules on Concession Sales (GSD 86-505) or GSD rules on leasing (GSD 86-504) [now 1.5.16 NMAC] but shall follow the requirements set forth hereafter. Use of premises may include advertising or promotional activities for charitable purposes to the extent specifically authorized by the director.

(2) The provisions of this regulation shall apply to use of premises designated through joint powers agreements entered into by the division, wherein control of such premises is designated with an agency other than the division and to premises under lease pursuant to division regulation GSD 86-504 [now 1.5.16 NMAC].

B. Registration: Any individual or organization wishing to use division premises for charitable purposes must register with the director. Applications for registration shall be on the form attached to this regulation as [sub-section 11.1] Appendix 7.1, which shall set forth, among other things, the location or locations that may be used, the days of the week and times of day for such use, and a termination date of such use. Approved registrations shall expire no later than thirty (30) consecutive calendar [sic] days after date of issuance. Applicants must provide their name, address, phone number, signature, and agree to a provision that the director may, by advanced written notice, 1) change the time and place for use by the applicant, and 2) advance the termination date for the use of the building.

(1) Length of use: Approved registrations shall state the length of time the registered entity may use division premises, stating the precise dates, and, if applicable, the hours, each premises may be used. The total number of days for all premises in which use is authorized shall not exceed thirty (30) consecutive calendar days. Applications requesting more than 30-days use shall be restricted to the maximum 30-day period.

(2) Proof of filing: All non-profit organizations registering under this regulation who are subject to the provisions of the Charitable Organizations and Solicitations Act

shall provide the director with a showing of filing with the attorney general of New Mexico pursuant to the requirements of the act, as well as proof of current compliance with the provisions of the act.

(3) Professional fundraisers: All professional fundraisers associated with a non-profit organization's activities on division premises shall be listed in the application (appendix 7.1 of this regulation [now 1.5.22.11 NMAC] and provide the proof of compliance required in Section 6.2.2 [now paragraph (2) of Subsection B of 1.5.22.10 NMAC], above, in all instances where the non-profit organization is subject to the act.

C. Compatibility with state functions: All applicants for use of state buildings under this regulation shall agree, in writing, that their activities will not interfere with the work functions of the agencies located in the buildings in which the applicant's activities occur and agree to the provisions of these rules. The director shall notify the agency head for each agency using the area in which an applicant is granted permission to conduct his activities. The agency head shall notify the director, in writing, if he has any objections to any of the provisions regarding scheduling, location, and nature of the applicant's activities. The director shall modify or withdraw the permission granted to the applicant whenever there is a showing of interference, by an agency, with the activities of an agency.

D. Proof of non-profit status: The director shall require any individual or organization registering under this regulation to provide proof of both the non-profit status of the applicant and the charitable purpose of the activities on the division premises including, but not limited to, an accounting of the use of the proceeds obtained from all sales and solicitations on division premises.

E. Sales or solicitation: Charitable purposes activities in division premises may include solicitations or sales. The nature of such sales and/or solicitations shall be specified in the application by the applicant. If sales include selling food products, the director shall require proof of compliance with applicable health standards and may require proof of food purveyors and product liability insurance coverage in an amount acceptable to the director.

[Recompiled 11/30/01]

[Compiler's note: Paragraph (1) of Subsection A of 1.5.22.10 contains a reference to GSD 86-505, Concession Sales Regulations that were not filed in accordance with the State Rules Act.]

1.5.22.9 APPENDIX:

Application Form: Charitable use of Property Control Division Land and Buildings.

[Recompiled 11/30/01]

1.5.22.10 APPLICATION FORM:

Charitable Use of Property Control Division Land and Buildings

Name of Applicant: _____ (include names of all Professional Fundraisers to be used by applicant***)

Address: _____ Telephone: _____

Town: _____ Zip: _____

Name of Applicant's Agent or Representative: _____

Town: _____ Zip: _____

Telephone: _____

Applicant requests the Property Control Division, GSD, State of New Mexico authorize applicant's use of Division buildings and/or land, as follows:

1. Address of building(s) or land to be used*:

Street address: _____

City: _____

2. Location(s) **within the building to be used***:

3. Dates of use (not to exceed 30 consecutive calendar days):

4. Time of day for the activities listed below:

5. Activities of Applicant (describe activities to be conducted in Division Buildings and/or land in detail)*:

6. Purpose of activities (describe nature of applicant, if funds are raised or solicitations requested, list how funds are to be used, list non-profit incorporations, if any, IRS status, etc.): _____

7. If sales of product or service are involved in case of Division and/or Buildings, describe product** including origin and price*:

8. The requirements of the Charitable Organization and Solicitation Act:

_____ do not apply to Applicant

_____ do apply to Applicant, proof of compliance is attached***

Applicant hereby certifies that the foregoing information is correct, and agrees that the Property Control Division Director or his designee may, by advanced written notice, cancel this permission to conduct the above-listed activities or modify the times and places allowed for such activities.

Applicant further agrees to defend, indemnify and hold the Property Control Division and the State of New Mexico harmless from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of applicant's use of the buildings or land described heretofore, unless caused by the tortuous act or omission of the State of New Mexico, its officials, employees or servants.

Applicant agrees to not interfere with the work functions of any (state) Agency in the buildings or on land in which applicant's activities are conducted, agrees to comply with all provisions of Regulation GSD 86-503 [now 1.5.22 NMAC], and further agrees that any such interference or violation of said regulation may result in immediate termination of the permission granted herein, at the option of the Director of the Property Control Division.

This application shall become the registration required under Regulation GSD 86-503, Section 6.2 [now Subsection B of 1.5.22.10 NMAC], only upon approval of the Property Control Division Director or his designee.

Applicant's Name:

By:

Name of Authorized Agent

Approved: Property Control Division

By:

* Continue on separate sheet if necessary and attach.

** If the product is food, the Director of the Property Control Division shall require proof of compliance with applicable Health Standards and may require proof of food purveyors and product liability insurance coverage in an amount acceptable to the Director.

*** Proof of compliance shall consist of a showing of filing and current compliance with the Act. Proof of compliance is required for each Professional Fundraiser (as defined in GSD 86-503, Section 4.9 [now Subsection I of 1.5.22.7 NMAC]) to be used by Applicant.

[Recompiled 11/30/01]

PART 23: REAL PROPERTY ACQUISITIONS, SALES, TRADES, OR LEASES

1.5.23.1 ISSUING AGENCY:

State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM.

[1.5.23.1 NMAC - Rp, 1.5.23.1 NMAC 12/23/2024]

1.5.23.2 SCOPE:

Any transfer of funds, capital outlay project, or acquisition, donation to, or purchase, sale, trade or lease or other disposition of real property by public bodies that by law requires state board of finance approval, except as otherwise indicated, or unless already addressed in a separate board rule.

[1.5.23.2 NMAC - Rp, 1.5.23.2 NMAC 12/23/2024]

1.5.23.3 STATUTORY AUTHORITY:

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

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

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

C. Subsection B of Section 15-3B-7 NMSA 1978 provides that the property control division, subject to the approval of the state board of finance and after following the bidding procedures required by the Procurement Code for the purchase of personal tangible property, is authorized to enter into long-term leases not exceeding 10 years of vacant lands when the lessor contracts with the state to construct and complete buildings, subject to approval of the state architect, as a condition precedent to the start of the rental term.

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

E. Subsection B of Section 3-46-34 NMSA 1978 provides that a municipality may dispose of real property in an urban renewal or land development area to private persons only under reasonably competitive bidding procedures as it shall prescribe or as provided in this subsection. The municipality may accept any proposal it deems to be in the best interest and in furtherance of the purposes of the urban renewal law; provided, that a notification of intention to accept the proposal shall be filed with the governing body not less than thirty days prior to any acceptance. Thereafter, the municipality may execute a contract in accordance with the provisions of the urban renewal law, and deliver deeds, leases and other instruments and take all steps necessary to effectuate the contract; provided that if the municipality accepts other than the highest bid, the acceptance must be approved by the state board of finance before the municipality may proceed.

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

1.5.23.4 DURATION:

Permanent.

[1.5.23.4 NMAC - Rp, 1.5.23.4 NMAC 12/23/2024]

1.5.23.5 EFFECTIVE DATE:

December 23, 2024, unless a later date is cited at the end of a section.

[1.5.23.5 NMAC - Rp, 1.5.23.5 NMAC 12/23/2024]

1.5.23.6 OBJECTIVE:

This rule provides general guidance regarding the financial and legal requirements for state board of finance approval of certain real property transactions as required by state statute. This rule is not applicable to the acquisition of real estate by Article XII, Section 11 educational institutions, whose expenditures regarding acquisitions are governed by a separate board rule. The rule is intended to benefit the state and its agencies and political subdivisions in their real property dealings by describing which transactions require state board of finance approval and listing materials that must be submitted to the state board of finance for approval. State board of finance approval is based solely on information provided by the public body. The state board of finance has no duty to independently investigate, and does not independently investigate, the merits and risks involved in the real property transaction.

[1.5.23.6 NMAC - Rp, 1.5.23.6 NMAC 12/23/2024]

1.5.23.7 DEFINITIONS:

A. "Acquisition" means, unless usage indicates otherwise, obtaining title in fee simple absolute to real estate by purchase, trade, gift or donation.

B. "Appraisal report" means a report of an opinion of value conducted by a general certified appraiser and that meets all requirements under the Uniform Standards of Professional Appraisal Practice (USPAP).

C. "Board" means state board of finance.

D. "Consideration" means something which is of a value at least equal to the value of the real property interest being conveyed, including but not limited to cash, another piece of real estate, services, or other form of compensation.

E. "Current" means:

(1) in the context of an appraisal, an appraisal report with an effective date within one year of the date of submission of the proposed transaction to the board for approval, and

(2) in the context of a title binder, dated within six months of the proposed closing date.

F. "General certified appraiser" means a person who holds a valid, current general certificate as a state certified real estate appraiser issued by the real estate appraisers board pursuant to the Real Estate Appraisers Act.

G. "Local public body" means all political subdivisions, but not including municipalities except for those transactions where board approval is required by law and school districts, of the state and their agencies, instrumentalities and institutions.

H. "Private entity" means any non-public entity, including but not limited to persons, associations, and both for-profit and non-profit corporations. It does not include Indian nations, tribes and pueblos.

I. "Public entity" means a local public body, a state agency, a school district or state educational institution.

J. "Real property" means any interest in real estate, including but not limited to estates in fee simple, leaseholds (including subleaseholds and any leases entered into pursuant to Section 4-38-13.1 NMSA 1978), water rights and permanent easements.

K. "Residential certified appraiser" means a person who holds a valid, current residential certificate as a state certified real estate appraiser issued by the real estate appraisers board pursuant to the Real Estate Appraisers Act (who has met the qualification required in Subsection C of Sections 60-30-12 NMSA 1978 and 16.62.4.8 NMAC).

L. "Sale, trade or lease" means any disposition of real property, including but not limited to donations by one governmental entity to another governmental entity, but disposition does not include demolition of buildings or other improvements on real property owned by the public body.

M. "School district" means those political subdivisions of the state established for the administration of public schools.

N. "State agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities, or institutions other than state educational institutions.

O. "School districts" means those political subdivisions of the state established for the administration of public schools.

P. "State educational institution" means Article XII, Section 11 educational institutions.

Q. "Term" means the period of time during which a lease is in effect, and includes all renewal options or extensions.

[1.5.23.7 NMAC - Rp, 1.5.23.7 NMAC 12/23/2024]

1.5.23.8 ACQUISITION OF REAL PROPERTY:

A. Public bodies requiring board approval before acquiring real property include, but are not limited to, the following:

- (1) general services department;
- (2) department of game and fish for expenditures from the game and fish capital outlay fund;
- (3) the state for state parks or recreational areas pursuant to Subsection J of Section 16-11 NMSA 1978.

B. In order to attain approval for acquisition of real property, the board requires that the following information be provided at the time of submission to the board:

- (1) the form of general warranty deed by which the public entity will take title in fee simple absolute containing legal description of the property and warranty covenants; reversions or other forfeiture provisions in the deed shall be accepted only under extraordinary circumstances; special warranty deeds will be accepted only under extraordinary circumstances; when the seller is a public body, transfer of title shall be by quitclaim deed;
- (2) a copy of a current appraisal report completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review from the property tax division of the taxation and revenue department if the appraisal was not done by the property tax division; the public entity seeking property tax division review must submit necessary information to the property tax division within the time frame specified by the property tax division; when the seller is another governmental entity, neither an appraisal nor property tax division review is required;
- (3) full sized site improvement survey plat to verify legal description and to identify the existence of recorded easements and encroachments, if applicable;
- (4) a description of the proposed use;
- (5) sources of funds used for the purchase;

(6) current title binder evidencing clear title with no non-standard exceptions, and:

(a) agreement by the title company of the inclusion of exceptions and statements verbatim as set forth in 13.14.5.10 NMAC;

(b) for any special exceptions listed in Schedule B, an explanation of each exception and measures the public body is taking to mitigate any risks associated with the exception;

(7) purchase agreement, if applicable, containing a statement making the purchase and any amendments to the agreement subject to board approval;

(8) phase 1 environmental assessment for all properties; phase II environmental assessment if recommended by the phase I assessment; explanation of any recognized environmental conditions contained in such assessments and statement of how recognized environmental conditions will impact intended use of the property;

(9) resolution or minutes of the governing body, if applicable, authorizing the purchase and containing a provision making the acquisition subject to approval by the board; and

(10) approval of the disposition by the local government division of the department of finance and administration pursuant to Subsection D of Section 3-54-2 NMSA 1978 if the entity selling, exchanging or donating the real property is a municipality

C. Acquisition of real property for more than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.8 NMAC, is not permitted.

[1.5.23.8 NMAC - Rp, 1.5.23.8 NMAC 12/23/2024]

1.5.23.9 SALE OR TRADE OF REAL PROPERTY:

A. If the sale or trade of real property is for a consideration of more than twenty-five thousand dollars (\$25,000), then prior board approval is necessary for:

(1) state agencies (unless the consideration is one hundred thousand dollars (\$100,000) or more, in which case require approval by the legislature is required);

(2) school districts; and

(3) local public bodies, including, but not limited to:

(a) counties;

(b) community colleges (but not including branch community colleges) and technical vocational institutes;

(c) conservancy districts; and

(d) flood control authorities.

B. In order to obtain approval for the sale or trade of real property, the board requires that the following information be provided at the time of submission to the board:

(1) any summary information, forms, or checklists as determined and required by Board staff through established guidelines;

(2) a cover letter providing details of the request;

(3) the form of quitclaim deed from the public body transferring title to purchaser containing the legal description of the property;

(4) a copy of a current appraisal report completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property and report of review by the property tax division of the taxation and revenue department if the appraisal was not done by the property tax division (for both properties if trade); the public entity seeking property tax division review must submit necessary information to the property tax division within time frame specified by the property tax division; when the buyer is another governmental entity, neither an appraisal nor property tax division review is required;

(5) a description of the reason for the sale or trade;

(6) selection process used to determine purchaser; competitive sealed bid, public auction, or negotiation;

(7) purchase price and if applicable, cost per square foot, cost per acre, or cost per acre foot of water rights, etc. (for both properties if trade);

(8) sale agreement, if applicable, containing a statement making the sale or trade and any amendments to the agreement subject to board approval;

(9) resolution or minutes of the governing body, if applicable, authorizing the sale or trade and containing a provision making the sale or trade subject to approval by the board;

(10) approval by the state engineer of any transfer of water rights;

(11) if a school district is seeking approval of a disposition of real property that includes a building, it must submit evidence that the building does not meet public school capital outlay council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district, use of the building pursuant to Subsection F of Section 22-8B-4 NMSA 1978; and

(12) if a state agency is seeking approval of the disposition of real property within the boundaries of a community land grant, a resolution or meeting minutes of the board of trustees of the community land grant evidencing its intent not to purchase the real property pursuant to Section 13-6-5 NMSA 1978; in the event a board of trustees does not respond to the state agency's notice of sale within forty-five days, the state agency shall document the lack of response in its submission to the board.

C. Transfer for less than fair market value, as determined by the requirements of Paragraph (2) of Subsection B of 1.5.23.9 NMAC, of real property owned by a public entity to any private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution.

[1.5.23.9 NMAC - Rp, 1.5.23.9 NMAC 12/23/2024]

1.5.23.10 LEASE OF REAL PROPERTY:

A. Board approval is required whenever certain public bodies wish to lease (or sub-lease) properties they own (or are leasing): if

- (1) the term of the lease or sublease is for a period of more than five years, or
- (2) the consideration over the lease term is more than twenty-five thousand dollars (\$25,000).

B. Prior board approval is necessary for:

- (1) state agencies (unless consideration is one hundred thousand dollars (\$100,000) or more and the term is for a period of more than twenty-five years, in which case approval by the legislature is required);
- (2) counties;
- (3) school districts (unless leasing facilities to a locally chartered or state-chartered charter school, in which case approval by the public school facilities authority is required); and
- (4) local public bodies, which include, but are not limited to, the following:

(a) community colleges (but not including branch community colleges) and technical vocational institutes;

(b) conservancy districts;

(c) flood control authorities; and

(d) special hospital districts and county hospitals pursuant to the Hospital Funding Act.

C. In order to obtain approval for leases of real property, the board requires that at least the following information be provided:

(1) any summary information, forms, or checklists as determined and required by board staff through established guidelines;

(2) a cover letter providing details of the request;

(3) current appraisal report completed by a general certified appraiser for commercial property or a general certified appraiser or a residential certified appraiser for residential property or other evidence of fair market value and report of review from the property tax division of the taxation and revenue department if the appraisal was not done by the property tax division; the public entity seeking property tax division review must submit necessary information to the property tax division within the time frame specified by the property tax division; when the lessee/tenant is another public body, neither an appraisal nor property tax division review is required;

(4) copy of the lease containing a statement making the lease and any amendments subject to board approval;

(5) resolution from the governing body, if applicable, approving the lease, and containing a provision making the lease subject to board approval;

(6) the reason for leasing;

(7) description of the selection process used to determine lessee: competitive sealed bid, public auction, or negotiation;

(8) if consideration is being provided by the lessee (or sub-lessee), partially or completely, in the form of services, tangible personal property or construction, evidence that the selection of the lessee (or sub-lessee) complied with the procurement code or is expressly exempted and the term of the lease complies with, Section 13-1-150 NMSA 1978, as it may be amended from time to time;

(9) if a school district is seeking approval of a lease of real property that includes a building, evidence the building does not meet public school capital outlay

council occupancy standards or that all charter schools located in the district have declined within a reasonable period of time set by the school district use of the building pursuant to Subsection F of Section 22-8B-4 NMSA 1978; and

D. Rent or other consideration at less than fair market value, as determined by the requirements of Paragraph (1) of Subsection B of 1.5.23.10 NMAC, from a private entity is not permitted, except as authorized by legislation implementing the economic development and affordable housing exceptions to the Anti-donation Clause of Article IX, Section 14 of the New Mexico constitution.

[1.5.23.10 NMAC - Rp, 1.5.23.10 NMAC 12/23/2024]

1.5.23.11 SUBMISSION OF REQUESTS TO THE STATE BOARD OF FINANCE:

A. Real property transaction requests submitted to the board should address each of the specific items in this rule, as applicable. An electronic bookmarked PDF must be submitted to the board.

B. Completed packages, in their entirety, must be submitted on or before the board's meeting deadline, as published on the board's website, and must meet application-formatting criteria.

C. Upon request, the board, in its discretion, may waive any requirement under this rule provided that the requesting party can demonstrate that other documents provided are equivalent to or satisfy the rationale for submitting the item and that the state's interest will still be sufficiently protected.

D. The board, in its discretion, may require additional information be provided as may be relevant to a specific transaction.

[1.5.23.11 NMAC - Rp, 1.5.23.11 NMAC 12/23/2024]

PART 24: CONDUCT ON AND USE OF STATE PROPERTY

1.5.24.1 ISSUING AGENCY:

General Services Department, Property Control Division.

[1.5.24.1 NMAC - N, 1/1/09]

1.5.24.2 SCOPE:

All state property under the authority of property control division. General applicability: This rule applies to all persons entering in or on such property. Each occupant agency shall be responsible for the observance of this rule. State agencies must post the notice as required by PCD at each public entrance to each state facility.

[1.5.24.2 NMAC - N, 1/1/09]

1.5.24.3 STATUTORY AUTHORITY:

Section 15-3B-4(A) (2) NMSA 1978, which allows the division to regulate the use or occupancy of buildings and real property under its jurisdiction and make reasonable requirements for the continuation of that use or occupancy; and 15-3B-4(A) (7) which allows the division to make rules for the conduct of all persons in and about buildings and grounds under its jurisdiction necessary and proper for the safety, care and preservation of the buildings and grounds and for the safety and convenience of the persons while they are in and about the buildings and grounds; (1978 Comp., Section 15-3-2; 1953 Comp., Section 6-2-26; enacted by Laws 1968, Chapter 43, Section 2; amended by Laws 1971, Chapter 285, Section 2; Laws 1973, Chapter 209, Section 1; Laws 1977, Chapter 247, Section 69; Laws 1977, Chapter 385; Section 14; Laws 1978, Chapter 166, Section 14; and Laws 1980, Chapter 151, Section 16.)

[1.5.24.3 NMAC - N, 1/1/09]

1.5.24.4 DURATION:

Permanent.

[1.5.24.4 NMAC - N, 1/1/09]

1.5.24.5 EFFECTIVE DATE:

January 1, 2009, unless a later date is cited at the end of a section.

[1.5.24.5 NMAC - N, 1/1/09]

1.5.24.6 OBJECTIVE:

The objective of this rule is to establish a fair, uniform, clear direction and effective process to govern conduct on and use of state real property under the jurisdiction of the property control division.

[1.5.24.6 NMAC - N, 1/1/09]

1.5.24.7 DEFINITIONS:

A. "**Agency**" means a state executive agency other than the state land office, state armory board, the office of cultural affairs, the state fair commission, the department of game and fish, the department of transportation, the commissioner of public lands, the state parks division of the energy, minerals and natural resources department, the state institutions of higher learning, the New Mexico school for the deaf, the New Mexico school for the visually handicapped, the judicial branch, the legislative branch, property

acquired by the economic development department pursuant to the Statewide Economic Development Finance Act (6-25-1 NMSA 1978) and property acquired by the public school facilities authority pursuant to the Public School Capital Outlay Act (22-24-1 NMSA 1978).

B. "**Alterations and modifications**" means work performed to change the interior arrangements or other physical characteristics of an existing facility or installed equipment so that it can be used more effectively for its currently designated purpose or adapted to a new use. Alterations may include work referred to as improvement, conversion, remodeling, and modernization but are not maintenance. Also included is work to replace or restore damaged, worn-out building components to a normal operating condition. Such repairs are curative, while maintenance is preventative.

C. "**Authorized persons**" means a non-state employee given written authorization by the lead agency and or the PCD to enter a property when the property is closed to the public.

D. "**Charitable purpose**" means any purpose for which a charitable organization has been established to directly promote the well-being of the public at large or the benefit of an indefinite number of persons and may not result in any profit to the non-profit organization.

E. "**Director**" means the director of the property control division (PCD).

F. "**Improvements**" means all land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on the land, and all "interests" in the property.

G. "**Lead agency**" means the agency designated by the division to occupy a state building or campus subject to the jurisdiction of PCD who is responsible for ensuring that the building(s) are maintained to standard and that all costs associated with the operation of the building(s) are paid.

H. "**Major repairs**" means work necessary to restore a facility, system or component to its intended use.

I. "**Maintenance, operations and repair**" means those activities essential for the routine use for which a facility was designed, including preventive maintenance activities and related work that is required to preserve a facility in a condition such that it can be effectively used for its intended purpose. Examples of expenses that are included are utilities, custodial services, security, pest control, trash-recycle removal, preventive maintenance, minor repairs and related administrative costs.

J. "**Preventative maintenance**" means a planned program of periodic inspections, servicing, maintenance and performance testing.

K. **"Property control division (PCD)"** means the division of the general services department established in Chapter 15, Article 3 NMSA 1978.

L. **"Smoke" or "Smoking"** means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment or the lighting or emitting or exhaling the smoke of a pipe, cigar or cigarette of any kind.

M. **"Solicitation"** means any activity which may be considered or reasonably interpreted as being for the advertisement, promotion, or sale of products, or services, or for the participation in a commercial venture of any kind. The distribution or posting of handbills, leaflets, circulars, advertising or other printed materials for the purpose cited in Paragraph (2) of Subsection A and Paragraph (5) of Subsection B of 1.5.24.9 NMAC is construed as solicitation.

N. **"State property"** also referred to as property and premises, is all premises and grounds maintained by, or for the use of, a state agency, department or division under the jurisdiction of PCD.

O. **"Vendor"** means someone who promotes or exchanges goods or services for money or other valuable consideration.

[1.5.24.7 NMAC - N, 1/1/09]

1.5.24.8 ASSIGNMENT OF BUILDING:

The division shall assign a lead agency in each building under its jurisdiction. The lead agency shall be responsible for compliance with, this rule and shall take all steps necessary to comply with all requirements herein. The lead agency shall be responsible for ensuring that the building(s) are maintained to standard and that all costs associated with the operation of the building(s) are paid. The lead agency for all buildings maintained by New Mexico building services division shall be the building services division.

[1.5.24.8 NMAC - N, 1/1/09]

1.5.24.9 SOLICITING, VENDING AND DEBT COLLECTION:

A. Policy.

(1) All persons entering in or on state property are prohibited from soliciting or requesting or receiving political donations.

(2) No solicitation materials may be posted except on designated bulletin boards.

(3) With the exception of bulletin boards designated for posting solicitation materials, no state materials, supplies, services or equipment may be used for solicitation purposes other than activities authorized by an agency of the state for state-connected business or state-sponsored charitable purposes.

(4) Any and all violations observed shall be reported immediately to the PCD.

B. Permissible non-employment related activities: persons or charitable organizations wishing to seek permission to use premises for an activity must submit an application to PCD, a copy of the application may be obtained from PCD. No activity as listed in Paragraphs (1) through (8) of this subsection shall commence until approval is granted.

(1) Charitable purposes.

(2) Organized employee participation in sports activities representing their state agency or a charitable organization including departmental or charity ball teams.

(3) Activities conducted at the direction of the head of a state agency.

(4) Sale of small craft items during breaks and lunch in employee lounges and break areas by employees of the state.

(5) State employees may post handbills, leaflets, circulars, advertising or other printed materials on specifically designated bulletin boards regarding the offering or sale of personal items such as free kittens or bikes for sale, or personal announcements such as wedding announcements or ride share requests. This does not apply to announcements relating to a personal business.

(6) Employee recognition events conducted by a state agency such a national secretaries week luncheons which are approved by the supervisor of the employees affected.

(7) Labor union activities if permitted by the agreement between the union and state of New Mexico.

(8) No vending machines may be permitted except as permitted by the New Mexico commission for the blind as per Chapter 80 of Laws of 1957 (Horace De Vargas Act).

[1.5.24.9 NMAC - N, 1/1/09]

1.5.24.10 ADMISSION TO PREMISES BY LEAD AGENCIES:

A. Lead-agency may close property or the affected portion thereof, to the public during normal work hours, on a temporary basis, when needed to protect the property and or the safety of individuals on the property.

B. If the property is closed for more than 24 hours, the lead-agency will ensure that the property or the affected portion, is restricted to "authorized persons" who must register upon entry to the property and must, when requested, display government or other identifying credentials to the New Mexico state police or other authorized individuals when entering, leaving or while on the property. Failure to comply with any of the applicable provisions is a violation of these regulations.

C. The lead-agency shall notify the PCD as soon as possible, but not later than the next business day following the closure of the property.

D. The lead-agency may approve the use of the property after-normal working hours, as authorized by Subsection E of this section.

E. The lead-agency may authorize the use of the building or portions thereof for use by other state agencies and or non-profit organizations, subject to the provisions of the Property Control Act and this rule.

[1.5.24.10 NMAC - N, 1/1/09]

1.5.24.11 PRESERVATION OF PROPERTY:

All persons entering in or on state property are prohibited from:

A. improperly disposing of rubbish on property;

B. willfully destroying or damaging property;

C. stealing property;

D. creating any hazard on property to persons or things;

E. throwing articles of any kind from or at a building or the climbing upon statues, fountains or any part of the building;

F. roller-skating;

G. skateboarding.

[1.5.24.11 NMAC - N, 1/1/09]

1.5.24.12 CONFORMITY WITH SIGNS AND DIRECTIONS:

Persons in and on property must at all times conduct themselves in accordance with the law and comply with official signs of a prohibitory, regulatory or directory nature and with the lawful direction of state police officers and other authorized individuals.

[1.5.24.12 NMAC - N, 1/1/09]

1.5.24.13 DISTURBANCES:

All persons entering in or on state property are prohibited from loitering, pan handling, exhibiting disorderly conduct or exhibiting other conduct on property which:

- A. creates loud or unusual noise or a nuisance;
- B. unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;
- C. otherwise impedes or disrupts the performance of official duties by government employees; or
- D. prevents the general public from obtaining the administrative services provided on the property in a timely manner.

[1.5.24.13 NMAC - N, 1/1/09]

1.5.24.14 NARCOTICS AND OTHER DRUGS:

Except in cases where the drug is being used as prescribed for a patient by a licensed physician, all persons entering in or on state property are prohibited from:

- A. being under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or other illegal substances;
- B. using or possessing any narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines; or other illegal substance;
- C. operating a motor vehicle on the property while under the influence of alcoholic beverages, narcotic drugs, hallucinogens, marijuana, barbiturates, or amphetamines or other illegal substances.

[1.5.24.14 NMAC - N, 1/1/09]

1.5.24.15 EXPLOSIVES:

No person entering or while on state property may carry or possess explosives, or items intended to be used to fabricate an explosive or incendiary device, either openly or concealed, except for official purposes.

[1.5.24.15 NMAC - N, 1/1/09]

1.5.24.16 WEAPONS IN STATE BUILDINGS:

Persons carrying a concealed weapon in state buildings are required to be in compliance with the New Mexico Concealed Handgun Carry Act of 2003, Chapter 29, Article 19 and 10.8.2 NMAC.

[1.5.24.16 NMAC - N, 1/1/09]

1.5.24.17 NONDISCRIMINATION:

State agencies shall not discriminate by segregation or otherwise against any person or persons because of race, creed, sex, color, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

[1.5.24.17 NMAC - N, 1/1/09]

1.5.24.18 SMOKING:

The lead agency shall be required to comply with Chapter 24 Article 16 NMSA 1978 as amended by Laws of 2007 Chapter 20 "The Dee Johnson Clean Indoor Air Act". Designate smoking areas will be established a minimum of 50 feet away from any entrance, ventilating systems or operable window in a building and the lead agency shall provide notice to all employees in the building, regarding this location.

[1.5.24.18 NMAC - N, 1/1/09]

1.5.24.19 DOGS AND OTHER ANIMALS:

Except dogs used for law enforcement purposes, seeing eye dogs, other guide dogs, and animals used or being trained to guide or assist handicapped persons, persons may not bring dogs or other animals on state property for other than official purposes.

[1.5.24.19 NMAC - N, 1/1/09]

1.5.24.20 PHOTOGRAPHS FOR NEWS, ADVERTISING, OR COMMERCIAL PURPOSES:

Except where security regulations apply or a state court order or rule prohibits it, persons entering in or on state property may take photographs with the permission of the state agency of:

A. space occupied by a tenant agency but only with the permission of the occupying agency concerned;

B. space occupied by a non-state agency for commercial purposes with written permission of an authorized official of the occupying agency concerned; and building entrances, lobbies, foyers, corridors, or auditoriums for news purposes.

[1.5.24.20 NMAC - N, 1/1/09]

1.5.24.21 PARKING:

Reserved parking - the lead agency may designate reserved parking for the following purposes:

A. visitor parking: an equal number of visitor spaces to parking for the disabled will be provided if designated;

B. registered van or carpools;

C. alternative fuel vehicles;

D. cabinet secretary;

E. deputy cabinet secretary;

F. elected officials headquartered in the building;

G. up to two additional spaces for elected officials to be designated for use by the elected official headquartered in the building;

H. loading areas;

I. state vehicles.

[1.5.24.21 NMAC - N, 1/1/09]

1.5.24.22 MAINTENANCE OF ASSIGNED BUILDINGS AND CAMPUSES:

A. The lead agency shall be responsible for securing an appropriate budget for all maintenance, operation and preventative maintenance costs as defined herein. Budget requests will consider the following if applicable:

- (1) custodial services;
- (2) custodial cleaning supplies;
- (3) landscape and grounds;
- (4) building maintenance;

- (5) routine building maintenance supplies;
- (6) heating, cooling and ventilation system equipment maintenance;
- (7) generator maintenance;
- (8) sewage system maintenance;
- (9) security services;
- (10) fire suppression systems maintenance including fire extinguisher inspection;
- (11) utilities;
- (12) recycle program: recycle program shall comply with the New Mexico Solid Waste Act;
- (13) in compliance with any facility related governor's executive orders.

B. The property control division will be responsible for alterations, modifications, and major repairs. Funding for these types of projects may require legislative appropriation.

C. Lead agency shall comply with the PCD "facility maintenance standards" (an electronic copy may be obtained from PCD). Should the lead agency fail to follow the facilities maintenance standards, thereby ensuring that the buildings are being maintained to standard, the property control division may have a budget amount necessary to maintain the facility and grounds transferred to a new lead agency the general services department, building services division so that they will be able to ensure that they have the budget to take over the maintenance of the buildings(s) or campus that the lead agency occupies thereby ensuring compliance with the "facilities maintenance standards" manual. Cost of utilities may remain with the state agency in order to more appropriately manage energy conservation directives.

D. With the assistance and approval of the property control division the lead agency shall be responsible for seeking operating funds in an amount comparable with the national average for operating costs as published by the building owners and managers association (BOMA) "annual experience and exchange report for office buildings". Non-office buildings including 24 hour use facilities, will seek operating budgets as appropriate for their facility.

E. By July 1 of each calendar year, the lead agency shall provide to the property control division a maintenance report on the form provided by the division that includes the following items:

- (1) budget for maintenance and operation for upcoming fiscal year;

- (2) list of all buildings, including square footage of buildings to be maintained;
- (3) contact name of person responsible for operation and maintenance of building(s);
- (4) number of state employees or contract workers assigned to perform building maintenance, landscape maintenance, custodial services and security;
- (5) list of critical maintenance contracts utilized for the purpose of maintaining the assigned building(s);
- (6) list of major repairs needed for each building.

[1.5.24.22 NMAC - N, 1/1/09]

1.5.24.23 WAIVER:

Notwithstanding any provision of this rule, a waiver of any provision thereof, may be made in writing by the director, if it determines in writing that the strict holding of the provision would be unreasonable under the circumstances and that the provision is not needed to protect the facility, grounds or the public. The applicant has the burden to establish that the waiver should be granted. The request for waiver shall be made in writing as part of the "facility use application" and must provide the necessary information and documentation to support such waiver. The decision of the director may not be appealed and is final.

[1.5.24.23 NMAC - N, 1/1/09]

PART 25: STATE AGENCIES LEASE-PURCHASING OF REAL PROPERTY

1.5.25.1 ISSUING AGENCY:

General Services Department, Property Control Division.

[1.5.25.1 NMAC - N, 01/01/11]

1.5.25.2 SCOPE:

This rule applies to all lease-purchases by executive branch agencies except the state land office.

[1.5.25.2 NMAC - N, 01/01/11]

1.5.25.3 STATUTORY AUTHORITY:

Section 9-17-5 NMSA 1978, 15-3B-4 NMSA 1978. Sections 15-10-1 and 15-10-2 NMSA enable state agencies to enter into lease-purchases.

[1.5.25.3 NMAC - N, 01/01/11]

1.5.25.4 DURATION:

Permanent.

[1.5.25.4 NMAC - N, 01/01/11]

1.5.25.5 EFFECTIVE DATE:

January 1, 2011, unless a later date is cited at the end of a section.

[1.5.25.5 NMAC - N, 01/01/11]

1.5.25.6 OBJECTIVE:

The objective of this rule is to establish a fair, uniform, clear and effective process to regulate the lease-purchasing of real property constructed by public or private entities as office, warehouse or special use facilities for state executive agencies under jurisdiction of the property control division.

[1.5.25.6 NMAC - N, 01/01/11]

1.5.25.7 DEFINITIONS:

A. "Agency" means a state executive agency other than the state land office seeking to lease-purchase space.

B. "Agency representative" means a person who serves on the selection committee and who has been designated, in writing, by the agency head at the beginning of each lease-purchase process to act on behalf of the agency as the sole contact for information from and about the agency during the process.

C. "Bid bond" means a negotiable security instrument required when proposals are submitted to ensure a proposal for space can be delivered by the top-ranked offeror. Bid bonds are returned to all unsuccessful offerors when the top-ranked offeror selection is approved.

D. "BOMA method" means the current, industry standard methodology for calculating usable square footage (by the building owners and managers association).

E. "Desirable" means the terms "may", "can", "should", "preferably", or "prefers" identify a desirable or discretionary item or factor (as opposed to "mandatory").

F. "Determination" means the written documentation of a decision of a procurement officer, including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.

G. "Evaluation committee" means a body appointed by the property control division director to evaluate proposals and make selection recommendation and or selection. The evaluation committee consists of at least three members. The committee should collectively possess expertise in the technical requirements of the project, design, construction, leasing, and contracting. The committee may use independent consultants or agents to support the committee, provided appropriate precautions are taken to avoid potential conflicts of interest. The PCD staff architect or designee serves as staff to the evaluation committee.

H. "Facilities" means buildings and the appurtenances and improvements associated with them, including the real property upon which a building is constructed; suitable parking for use of the building; utilities, access roads and other infrastructure; and related real estate. "Facilities" can also mean undeveloped real estate that is transferred or leased with the intent that a new building or improvement be constructed thereon.

I. "General services department (GSD)" means the cabinet agency established in Chapter 9, Article 17 NMSA 1978.

J. "Leasable square feet (LSF)" means usable area, plus interior office circulation, plus prorated common space, if applicable, which is what the overall lease-purchase payments are based on and which defines the purchase boundaries.

K. "Lease-purchase document" means the standard New Mexico lease-purchase of real property form provided by PCD.

L. "Lease-purchase agreement" means a financing agreement for the leasing of facilities by the state or a state agency from a public or private entity with a option to purchase the leasehold property for a price that is reduced according to the payments made pursuant to the financing agreement.

M. "Leasehold property" means facilities that are subject to a lease-purchase agreement.

N. "Lease revenues" means the amounts payable pursuant to a lease-purchase agreement.

O. "Mandatory" means the terms "must", "shall", "will", "is required", "are required", "requires", identify a mandatory item or factor (as opposed to "desirable"). Failure to meet a mandatory item or factor will result in the rejection of the offeror's proposal.

P. "Performance bond" means a bond required of the successful offeror to ensure conformation of space required by the lease-purchase agreement is successfully completed. The performance bond is returned when the lease-purchase space is approved and accepted for occupancy.

Q. "Principal individual owners" means all majority stockholders, members of board of directors, officers and partners.

R. "Property control division (PCD)" means the division of the general services department established in Chapter 15, Article 3 NMSA 1978 which is statutorily responsible for controlling the lease-purchase of space in buildings by state executive agencies other than the state land office.

S. "Request for Proposal" (RFP) means all documents, including those attached or incorporated by reference, used for soliciting proposals.

T. "Usable square feet (USF)" means the amount of specific floor area needed to provide an employee or function of an agency with adequate space to perform effectively. Usable square footage is calculated using the BOMA method. Usable square footage can be described as the area within the four walls which defines a work space.

[1.5.25.7 NMAC - N, 01/01/11]

1.5.25.8 PROPERTY CONTROL DIVISION RESPONSIBILITIES:

A. Adequacy of existing state facilities: the PCD director shall determine whether existing state facilities are adequate for an agency's needs before an agency is allowed to initiate the lease-purchase process from any other public or private entity.

B. Lease-purchase agreements: the PCD director shall have final signatory of all lease-purchases, lease-purchase amendments, lease-purchase extensions, and all other agreements subject to this rule. No such agreement shall be valid or binding on the state of New Mexico or any of its agencies unless it is in writing, (on a PCD approved lease-purchase form) signed by the appropriate parties and approved in writing by the PCD director. The PCD director's signature shall not signify that PCD is a party to an agreement, but only that PCD has authorized, approved, and validated the agreement in compliance with statute and this rule.

C. Director's designee: the PCD director may assign a designee to act on his or her behalf in carrying out his or her duties under this rule. Any such designation shall be in writing.

[1.5.25.8 NMAC - N, 01/01/11]

1.5.25.9 COMMENCEMENT OF LEASE-PURCHASE PROCESS:

A. Sufficient resources to evaluate and implement project: a lease-purchase contract can be very complex and involve multiple professional disciplines.

(1) The agency/department seeking to implement a lease-purchase project shall collaborate with the property control division in seeking sufficient resources and expertise to at the minimum analyze, evaluate and negotiate the following to be consistent with the guidance document approved by the CBPC:

- (a) baseline costs;
- (b) market/feasibility studies;
- (c) architectural and engineering specifications;
- (d) construction/development budgets;
- (e) developer qualifications;
- (f) legal aspects of developer agreements;
- (g) comprehensive financial modeling including alternative finance scenarios.

(2) To the extent these resources do not exist within the agency/department, the agency/department in consultation with the property control division shall engage those third party resources deemed necessary to implement said transaction. The costs of these third party resources may be paid directly by the agency/department or factored into and become a part of the total project cost funded through the lease-purchase project.

B. Develop baseline cost model: the user agency/department in concert with PCD shall develop a baseline cost model by which to compare the lease-purchase scenario. The baseline cost model should be forecast for the anticipated useful life of the new facility. Costs should include but not be limited to:

- (1) all third party leasing costs as escalated over the proposed term including pass-through of operating expenses;
- (2) debt service/capital costs for owned facilities that are to be vacated or replaced;
- (3) anticipated deferred maintenance expenses for owned facilities; and
- (4) ancillary costs that will be eliminated by acquisition of new facility for example, third party parking expenses, special meeting spaces, external storage facilities, etc;

(5) for comparison purposes, the total baseline cost as well as the cost of the lease-purchase scenario shall be discounted to a net present value using the state's then applicable cost of tax exempt borrowing.

C. Comprehensive space needs assessment: the agency/department shall have prepared and submitted to the property control division for approval a comprehensive space needs assessment. The space needs assessment will reflect the current space standards for all state employees as well as take into consideration the special space needs of the agency/department including but not limited to meeting rooms, hearing rooms, storage and technology requirements.

[1.5.25.9 NMAC - N, 01/01/11]

1.5.25.10 LEGISLATIVE APPROVAL:

Review by capitol planning building commission (CPBC). In accordance with Sections 15-10-1 and 15-10-2 NMSA 1978 the CBPC will review state agency lease-purchase agreements for facilities or other real property prior to the lease-purchase agreements being submitted to the legislature for approval pursuant to Section 15-3-35 NMSA 1978.

[1.5.25.10 NMAC - N, 01/01/11]

1.5.25.11 SOLICITATION OF LEASE-PURCHASE PROCUREMENT:

A. General.: the provisions of 1.5.25 NMAC set forth specific procedures that shall apply to all procurements of real property made by lease-purchase.

B. Regulation to use sealed proposal: the regulations applicable to the use of competitive sealed proposals pursuant to 1.4.1.29 NMAC through 1.4.1.47 NMAC, as well as other existing rules applicable to competitive sealed proposals and procurement generally, e.g., 1.4.1.64 NMAC through 1.4.1.92 NMAC, shall apply to procurements made by lease-purchase for real property to the extent that they do not conflict with the provisions of 1.5.25 NMAC.

C. Fair and open process: to promote a fair and open process and to foster maximum participation and competition from the development community the property control division shall acquire lease-purchase facilities through a three phased procedure. During phase one, and prior to solicitation, the following shall occur:

(1) a procurement plan shall be prepared describing the conduct of the lease-purchase procurement;

(2) the procurement plan shall be approved by the PCD director and shall include rationale for the procurement, key personnel involved in the procurement, procurement schedule, key evaluation factors, and criteria for providing a stipend to cover some expenses, if offered;

(3) documents shall be prepared for a "request for proposals"(RFP);

(a) the documents shall include minimum qualifications, scope of work statement and schedule, evaluation criteria and a description of the selection process, the composition of the selection committee, and a description of the subsequent phases' requirements, program statements for the facility that describe space needs, design goals and specific objectives so that all respondents can be comparably evaluated;

(b) the phase two RFP documents shall include program statements for the facility that describe space needs, design goals and specific objectives, building specifications, proposed transaction structures, schedule and other important project and contract terms; building performance specifications shall be prepared to describe the quality of building sought by the state; the narrative description shall include but not be limited to expected base building materials and standards (roof, windows, cladding, etc), interior finishes and quantities, HVAC specifications, vertical conveyances, parking, sustainability standards, etc.

D. Evaluation of proposals: PCD shall evaluate proposals and select a lease-purchase team in three phases:

(1) In phase one, the evaluation committee shall evaluate statements of qualifications and performance data submitted by all responsive businesses in regard to the particular project, and select, ranked in the order of their qualifications, up to three firms deemed to be the most highly qualified to perform the required services. The selection criteria should include but are not limited to:

(a) experience, organization and reputation of the respondent's team on similar projects, based on relevant factors such as:

- (i) history of on-time and on budget projects;
- (ii) design excellence of completed projects;
- (iii) clear lines of authority and responsibilities;
- (iv) team and key personnel qualifications;
- (v) availability of key team members;
- (vi) ability to work with the state of New Mexico;
- (vii) litigation and compliance record;
- (viii) health and safety record.

(b) financial capacity of the respondent based on relevant factors such as:

(i) ability to raise and commit funds for the project and continuing operations and maintenance;

(ii) reasonableness of the cash flow analysis.

(2) In phase two, PCD shall invite the short listed firms to submit their response to the phase two RFP documents including detailed specific technical concepts of solutions, costs and scheduling, as well as their financial proposal.

(a) A mandatory preproposal conference will be conducted to allow short-listed firms the opportunity to submit questions of clarification.

(b) Unsuccessful phase two offerors submitting a responsive proposal may be paid a stipend to cover proposal expenses.

(c) The evaluation committee may conduct interviews with, and may require public presentation by, all offerors responding to the RFP regarding their qualifications, their approach to the project, and their ability to furnish the required services. The evaluation committee may also choose to visit examples of one or more of the responding offeror's completed projects.

(d) The evaluation committee shall evaluate the short listed offerors with selection criteria stated in the phase two RFP documents including the weight given to each criterion. The selection criteria should include but are not limited to:

(i) phase one qualifications;

(ii) quality of proposed design, including response to RFP objectives, and clarity in sustainability proposals;

(iii) strength of financial proposal, including detailed description of project costs, and detailed description of the rent calculation methodology;

(iv) financial analysis will be discounted for similar lengths of term back to a net present value at the state's then existing cost of tax exempt capital.

(e) Presentation requirements to properly judge the offers should be stated in the RFP and should include but are not limited to:

(i) the maximum number and size of drawings or technical submittals allowed;

(ii) types of media that can be used in the presentation;

(iii) the format allowed for the financial proposals.

(f) Upon completion of the evaluation process, the selection will be made and the highest ranked offeror will be invited to negotiations.

(3) During phase three, PCD will conduct negotiations with the selected offeror.

(a) PCD should consider the offeror's overall project plan, schedule, financial proposal, benefits and risks to the state.

(b) The lease-purchase agreement and related documents for the lease-purchase agreement in a final form approved by name's office will be negotiated incorporating specific terms, including the state's and offeror's respective responsibilities, the economic parameters, development standards and requirements, and a performance schedule. The agreement shall not become effective until it has been ratified and approved by the legislature.

(c) The offeror, with PCD cooperation, will complete the project approval processes and any required environmental or historic board review.

E. Ownership disclosure: any proposal that is submitted in response to an RFP shall indicate the ownership of the facility offered for lease-purchase. If the facility is owned by a corporation or other legal entity, the proposal shall also indicate the principal individual owners and percentages of their ownership.

F. Proposal modifications: after a proposal is submitted, an offeror shall not withdraw a building that has been offered or attempt to substitute buildings or building sites on non-contiguous properties.

[1.5.25.11 NMAC - N, 01/01/11]

1.5.25.12 PROPERTY CONTROL DIVISION FEE SCHEDULE:

PCD charges by the page for copies of GSD Rules, documents, forms, drawings, lease-purchase inventory, and other printed material associated with this rule. The charge shall be based on a fee schedule issued by PCD and based on costs to PCD. Some or all documents may be made available electronically.

[1.5.25.12 NMAC - N, 01/01/11]

CHAPTER 6: RISK MANAGEMENT

PART 1: RISK MANAGEMENT GENERAL PROVISIONS [RESERVED]

PART 2: PREMIUM RATING FOR CERTAIN RISKS

1.6.2.1 ISSUING AGENCY:

General Services Department - Risk Management Division.

[6/14/1997; 1.6.2.1 NMAC - Rn, 1 NMAC 6.2.1; 9/15/2004]

1.6.2.2 SCOPE:

A. This rule applies to the calculation, assessment and collection of premiums to be charged to all governmental entities self-insured by the risk management division for any of the following coverages for which at least one year's experience exists:

- (1) general liability, civil rights and personal injury;
- (2) law enforcement liability;
- (3) medical malpractice, personal property, health care facility liability;
- (4) health care personal professional liability;
- (5) foreign jurisdiction excess coverage, auto liability, and property coverage;
- (6) workers' compensation; and
- (7) any other coverages provided through the risk management division except unemployment compensation and employee group benefits coverages.

B. The director may, in his discretion, make this rule applicable for any coverage year to the calculation of premiums due from governmental entities for any fully or partially commercially-insured line of coverage, where sufficient individual entity experience information exists, provided that the notice provisions of Section 8.1 of this rule [now Subsection A of 1.6.2.8 NMAC] need not be complied with for any such line of coverage.

[6/14/1997; 1.6.2.2 NMAC - Rn, 1 NMAC 6.2.2; 9/15/2004]

1.6.2.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 15-7-2 NMSA 1978 which, among other things, requires the risk management division to apportion state agencies' contributions for insurance and self-insurance coverage;

B. Section 15-7-3 NMSA 1978 which, among other things, authorizes the risk management division to adopt regulations prescribing the rating basis, assessments

and penalties applicable to the public liability fund, the workers' compensation retention fund and the public property reserve fund;

C. Section 41-4-25 NMSA 1978 which, among other things, authorizes the risk management division to assess a penalty to local public bodies for failure to make timely payment; and

D. Section 41-4-28 NMSA 1978 which, among other things, requires the director to determine the amount to be assessed by each local public body for foreign jurisdiction liability coverage.

[6/14/1997; 1.6.2.3 NMAC - Rn, 1 NMAC 6.2.3; 9/15/2004]

1.6.2.4 DURATION:

Permanent.

[6/14/1997; 1.6.2.4 NMAC - Rn, 1 NMAC 6.2.4; 9/15/2004]

1.6.2.5 EFFECTIVE DATE:

June 14, 1997, unless a later date is cited at the end of a section or paragraph.

[6/14/1997; 1.6.2.5 NMAC - Rn, 1 NMAC 6.2.5; 9/15/2004]

[The language *or paragraph* is no longer correct. Later dates are now cited only in the history notes, shown in brackets, at the end of sections.]

1.6.2.6 OBJECTIVE:

To prescribe the method of determining total premiums for each line of coverage and to accurately and equitably calculate each covered entity's share of insured or self-insured premium assessments. In addition, to determine the penalty assessment to each covered entity for failure to pay on a timely basis.

[6/14/1997; 1.6.2.6 NMAC - Rn, 1 NMAC 6.2.6; 9/15/2004]

1.6.2.7 DEFINITIONS:

As used in this rule:

A. **"agency"** or **"state agency"** means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions;

B. **"average occupied beds"** means the daily average number of beds occupied in a health care facility during a one-year period, as determined by the risk management

division; provided that, for nursing homes, five average occupied beds shall be equivalent to one average occupied bed in any other health care facility;

C. **"director"** means the director of the RMD;

D. **"experience"** means the amount of money paid and the amount of money reserved to pay claims against an insured, including amounts paid and reserved for adjustment, defense and liability, for claims incurred during a specified period of time;

E. **"exposure"** means a measure of the extent of an insured's risk of loss, disregarding experience. For example, exposure is frequently measured in terms of units based on capitation (e.g., a charge for each employee or student, or a charge by population) or budget;

F. **"full-time equivalent"** means the total number of weekly regular hours budgeted for part-time and full-time employees of a particular class, divided by forty;

G. **"local public body"** means all political subdivisions of the state and their agencies, instrumentalities and institutions;

H. **"RMD"** means the risk management division of the general services department; and

I. **"total operating budget"** means the total budget for an individual entity for the current or other recent year, excluding capital expenditures.

[6/14/1997; 1.6.2.7 NMAC - Rn, 1 NMAC 6.2.7; 9/15/2004]

1.6.2.8 ANNUAL PREMIUM NOTICE, PREMIUM DUE DATE:

A. The RMD shall notify each governmental entity annually of the premiums due for each line of coverage provided by or through the division. Wherever applicable, the RMD shall attempt to mail the premium notice at least three months prior to the annual premium due date, or, if premiums are due more often than annually, at least three months prior to the first date any portion of the premium is due. Failure to provide or receive notice, or the existence of any inaccuracy in any notice, shall not relieve the governmental entity of the obligation to pay any premium. RMD may satisfy this notice provision as to state agencies by giving notice of their premiums to the state budget division of the department of finance and administration.

B. Premiums shall be payable to the RMD on the dates and in the manner the director establishes. Premiums are due and payable within sixty days (Saturdays, Sundays and holidays included) of the billing date, and are overdue thereafter. The RMD shall mail premium billings to each governmental entity at least sixty days before premiums are due. Such billings shall be in addition to any premium notice provided pursuant to Section 8.1 [now Subsection A of 1.6.2.8 NMAC].

C. Premiums not timely paid shall be subject to a late charge of not to exceed one and one-half percent (1.5 percent) per month of the unpaid balance. This late charge is in addition to and is cumulative with any other penalties which the RMD is authorized to impose by law. The director shall establish the percentage rate of the late charge at least annually, with the advice of the risk management advisory board.

D. The director, in his discretion, for good cause shown, may waive premiums and/or late charges for an entity that has insufficient funds for reasons beyond the control of the affected entity. The director in his discretion and after making diligent efforts administratively to collect, may write off premiums or late charges which he considers to be uncollectible. Good cause does not include unavailability of sufficient funds because of the entity's failure to request and/or budget sufficient funds in accordance with the notice provided pursuant to Section 8.1 [now Subsection A of 1.6.2.8 NMAC].

E. The director, in his discretion, may impose a higher deductible against a claim made by a governmental entity which has premiums or late charges (up to or overdue amount) that are more than sixty days overdue.

[6/14/1997; 1.6.2.8 NMAC - Rn, 1 NMAC 6.2.8; 9/15/2004]

1.6.2.9 TOTAL PREMIUM DEVELOPMENT:

A. At least one month prior to the date of the annual premium notice, the RMD shall develop total premiums for each line of coverage to which this rule applies. A total premium shall be developed separately for different risk groups determined by the director.

B. The total premiums for a given line of coverage for a particular risk group shall be the annual average total experience for that risk group and line of coverage for the five most recent consecutive coverage years, disregarding the current year; provided that the director may, in his discretion, increase or decrease the total premium so calculated for any risk group and line of coverage by an amount not to exceed forty percent (40 percent).

C. In developing any total premium, the director may disregard or treat separately any particular experience which he feels would distort the experience as a whole of the risk group.

D. After developing total annual premium, the director shall determine what portion of premium for each risk group for each line of coverage shall be collected through exposure rating and what portion, if any, through experience rating. Lines of coverage with less than \$200,000 total annual premium or which experience smaller numbers of claims may, in the director's discretion, be rated solely on exposure.

[6/14/1997; 1.6.2.9 NMAC - Rn, 1 NMAC 6.2.9; 9/15/2004]

1.6.2.10 DETERMINATION OF EXPOSURE/EXPERIENCE PREMIUMS:

A. Prior to the annual notice required pursuant to Section 4 of this rule [now Subsection A of 1.6.2.8 NMAC], the RMD shall calculate for each covered entity the annual premium for each line of coverage. Such premiums shall consist of an exposure-rated component and if applicable, in accordance with this rule, an experience-rated component.

B The annual premium for an individual entity for a given line of coverage shall be calculated according to the following formula:

Entity Premium = IEP + IXP, where IEP and IXP are, respectively, the individual entity's exposure premium component and experience premium component. IXP may be zero or not applicable to any particular risk group or to any given line of coverage, in the director's discretion. The director may, in his discretion, prescribe a minimum premium for any risk group or line of coverage, and, where applicable, such minimum premium shall be charged to the entity if greater than the entity premium calculated according to this subsection. The director may exempt from payment entities having a premium of \$50.00 or less. Entities having less than three full calendar year's experience shall be charged on a 100 percent exposure basis, regardless of the fact that other entities in the same risk group are paying on the basis of exposure and experience for a given line of coverage.

C. The exposure-rated premium component for each individual entity for each line of coverage, other than entities rated on a 100 percent exposure basis pursuant to Section 6.2 of this rule [now Subsection B of 1.6.2.10 NMAC], shall be calculated according to the following formula:

$$\text{IEP} = \text{TEP} \times \frac{\text{IEU}}{\text{TEU}}$$

where:

- (1) IEP is an individual entity's exposure premium component for a given line of coverage;
- (2) TEP is the total exposure premium for that line of coverage for the risk group of which the individual entity is a part;
- (3) IEU is the number of exposure units of the kind set forth in table 1 for the individual entity for that line of coverage;
- (4) TEU is the total number of exposure units for all entities in that risk group for that line of coverage.

D. Exposure units for specified risk groups for each line of coverage shall be as established by the RMD policy and shall be identified as table 1.

E. The experience-rated premium component, if any, for each individual entity shall be calculated according to the following formula:

$$\text{IXP} = \text{TXP} \times \frac{\text{IL}}{\text{TL}}$$

where:

- (1) IXP is an individual entity's experience premium component for a given line of coverage;
- (2) TXP is the total experience premium for that line of coverage for the risk group of which the individual entity is a part;
- (3) IL is the individual entity's ratable losses for the line of coverage; and
- (4) TL is the total ratable losses for that risk group for that line of coverage.

F. Ratable losses for a given line of coverage for an individual entity shall be the experience for that entity for that line of coverage during the five most recent consecutive fiscal years, including the current partial year; subject to a loss limit per claim of up to five per cent (5 percent) of the entity's total operating budget, but in no case shall such loss be limited to less than \$2,500 per claim or no more than \$1,000,000. The director of the RMD shall set the percentage loss limitation annually and the same percentage shall apply to all individual entities within a group of entities for the line of business involved.

[6/14/1997; 1.6.2.10 NMAC - Rn, 1 NMAC 6.2.10; 9/15/2004]

[Current citations have been added as annotations for the internal references contained in Subsections A and C of this section; however, those references appear to be carried forward incorrectly from earlier versions of the rule, and the current citations provided are based strictly on a reading of the content and could be in error. Also, there is no clear point of reference to the *table 1* cited in Subsections C and D in the rule as filed.]

1.6.2.11 SPECIAL PREMIUMS, EXCEPTION:

A. The director may augment or decrease any entity premium calculated in accordance with this rule upon his written finding that:

- (1) the risk to be covered involves a degree or type of hazard not contemplated by the existing coverage; or

(2) the premium developed in accordance with this rule does not produce a premium corresponding to the risk; or

(3) an entity's individual exposures or experience accounts for 35 percent or more of the total for a given line of coverage.

B. The director shall state in writing the premium he deems appropriate to cover the risk, giving the justification of the amount.

C. The director shall notify in writing the entity which he proposes to charge a special premium pursuant to this section, setting forth his findings, the proposed premium and his justification thereof. The entity shall have thirty days after mailing of such notice to respond in writing to the director. If the entity makes no timely response to the director's notice, the premium shall become effective thirty days after mailing of the notice. If the entity makes a timely response, the director shall review the entity's response with the risk management advisory board in open meeting at which the entity shall have the right to appear and be heard. Thereafter, the premium or any modification shall become effective upon the director's written notice to the entity.

[6/14/1997; 1.6.2.11 NMAC - Rn, 1 NMAC 6.2.11; 9/15/2004]

1.6.2.12 OPTIONAL COVERAGES - EXCEPTION:

This rule shall apply only to coverages that the RMD is mandated to provide. The rule does not apply to those coverages that the RMD may provide on an optional basis, and that [a] government entity has the right to accept or reject. The director shall use these guidelines on optional coverages if it appears that there are enough governmental entities involved, and if it appears that they will be with the RMD for reasonable lengths of time. The director will outline, in writing annually, the rate structure that is to be used for optional coverages.

[6/14/1997; 1.6.2.12 NMAC - Rn, 1 NMAC 6.2.12; 9/15/2004]

1.6.2.13 DEDUCTIBLES:

If a deductible is added or increased, the master rating sheet for all agencies combined shall reflect the credit given. If a deductible is eliminated or reduced, the master rating sheet for all agencies combined shall show the additional charge.

[6/14/1997; 1.6.2.13 NMAC - Rn, 1 NMAC 6.2.13; 9/15/2004]

1.6.2.14 BOARD REVIEW OF PREMIUM RATING PLAN:

The RMD shall seek the advice of the risk management advisory board at least annually with regard to any premium rating plan established pursuant to this rule.

[6/14/1997; 1.6.2.14 NMAC - Rn, 1 NMAC 6.2.14; 9/15/2004]

1.6.2.15 INTERIM RATING PROVISION:

In the event that the computer program cannot be finalized in time to develop the budget for FY 99 to meet DFA budget guidelines, the director may develop FY 99 premium based on a percentage increase or decrease from FY 98 premium in each line of business. Section 11[now 1.6.2.11 NMAC] will still apply to this interim provision.

[6/14/1997; 1.6.2.15 NMAC - Rn, 1 NMAC 6.2.15; 9/15/2004]

[The agency has not amended the part to delete this temporary provision.]

PART 3: BUDGETING AND PAYMENT OF ASSESSMENTS FOR UNEMPLOYMENT COMPENSATION BENEFITS BY STATE AGENCIES AND LOCAL PRIVATE BODIES

1.6.3.1 ISSUING AGENCY:

General Services Department (GSD) - Risk Management Division.

[1.6.3.1 NMAC - Rp, 1.6.3.1 NMAC, 12/11/2018]

1.6.3.2 SCOPE:

Unless otherwise provided by law, this rule applies to all state agencies, including elected officials and institutions of higher learning, and all local public bodies. This rule supersedes and replaces all prior conflicting rules and directives.

[1.6.3.2 NMAC - Rp, 1.6.3.2 NMAC, 12/11/2018]

1.6.3.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to the authority of Section 9-17-5, 15-7-3, 51-1-17 and 51-1-46 NMSA 1978.

[1.6.3.3 NMAC - Rp, 1.6.3.3 NMAC, 12/11/2018]

1.6.3.4 DURATION:

Permanent.

[1.6.3.4 NMAC - Rp, 1.6.3.4 NMAC, 12/11/2018]

1.6.3.5 EFFECTIVE DATE:

December 11, 2018, unless a later date is cited at the end of a section or paragraph.

[1.6.3.5 NMAC - Rp, 1.6.3.5 NMAC, 12/11/2018]

1.6.3.6 OBJECTIVE:

To provide a uniform system for assessing the cost of unemployment compensation benefits to state agencies and local public bodies, based on each covered entity's claims experience that will be sufficient to insure solvency of the fund(s). Further, to prescribe the methods for which local public bodies may enter and leave the local public body unemployment compensation reserve fund.

[1.6.3.6 NMAC - Rp, 1.6.3.6 NMAC, 12/11/2018]

1.6.3.7 DEFINITIONS:

A. "Fund" or "funds" means the state government unemployment compensation reserve fund or the local public body unemployment compensation reserve fund, or both, as the contract requires.

B. "Governmental entity" means the state or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions (Section 51-1-44B NMSA 1978).

C. "Local public body" means all political subdivisions of the state or any of their agencies, instrumentalities and institutions or any county hospitals, or outpatient clinics thereof, leased to, or operated under an agreement with, a state educational institution named in Article 12, Section 11 of the constitution of New Mexico. The term "local public body" shall not be construed to mean school districts.

D. "RMD" means the risk management division of the general services department.

E. "State" or "state agency" means the state of New Mexico or any of its branches, agencies, departments, boards, instrumentalities or institutions, and all school districts of this state.

[1.6.3.7 NMAC - Rp, 1.6.3.7 NMAC, 12/11/2018]

1.6.3.8 GOVERNMENTAL ENTITY BUDGETS, RATES FOR UNEMPLOYMENT COMPENSATION BENEFITS AND ADMINISTRATIVE EXPENSES:

RMD shall prescribe annually before April 15, a schedule of minimum rates per employee to be budgeted by governmental entities for the succeeding year. Rates shall include administrative expenses. Rates shall be determined as follows.

A. A schedule of initial rates shall be developed by RMD to be used until governmental entities are experience rated. One initial rate shall apply to the state agencies in the state fund and another initial rate shall apply to local public bodies in the local public body fund.

B. Rate schedules to be used for those that are to be experience rated shall take into account the prior experience of the governmental entity, the amount of reserves the governmental entity has on deposit in the fund, and the balance in the fund. Separate schedules shall be developed for the state fund and the local public body fund.

C. RMD shall notify each participating entity of the rates to be used the next fiscal year by April 15; or as an alternative RMD may notify the state budget organization serving each entity of the rate for the entities they service.

[1.6.3.8 NMAC - Rp, 1.6.3.8 NMAC, 12/11/2018]

1.6.3.9 PAYMENT OF BILLINGS; INTEREST CHARGE FOR LATE PAYMENT; CANCELLATION OF LOCAL PUBLIC BODIES:

A. The rate schedules will outline the percentage interest charge for late payments for participants in the state fund and local public body fund.

B. The rate schedule will outline how many days participants in the state account will have before payment is delinquent after the date assessment. Participants in the state fund are responsible for paying assessments and interest charges.

C. In accordance with 51-1-46 C NMSA 1978, the director of RMD shall terminate the participation of any local public body if the local public body fails to pay any assessment by RMD within 30 days of the assessment. A local public body may be reinstated without loss of coverage if the local public body pays all assessments and interest charges within 90 days of the billing of the assessment charge that were not paid.

[1.6.3.9 NMAC - Rp, 1.6.3.9 NMAC, 12/11/2018]

1.6.3.10 PENALTY FOR LATE REPORTING OF PAYROLL:

RMD may, at RMD's option, bill any participant entity for the penalty imposed by RMD by the department of labor for an entities first late report in a fiscal year (Section 51-1-112A NMSA 1978). If the next quarter report is also late, RMD shall bill the entity for both late reports plus any additional late reports for the next quarters.

[1.6.3.10 NMAC - Rp, 1.6.3.10 NMAC, 12/11/2018]

1.6.3.11 EXPERIENCE HISTORY TRANSFER:

A. In the case of a total experience history transfer of a governmental entity, the experience history of the transferred entity will be transferred from the predecessor entity to the successor entity in total. The reserve account and the assessment rate will also be transferred in total.

B. When a governmental agency is taken over in total by two or more successor entities, the experience history of the predecessor shall be transferred to the two or more successors as in Subsection A above.

(1) The two or more successor entities shall determine the percentage of employees each received from the predecessor.

(2) This percentage shall be applied to the assessable wage, assessments charged, benefits paid and the reserve account. This formula shall be applied to all the successors and an assessment rate shall be arrived at in accordance with experience and rating requirements.

C. The applicable experience may be transferred to the partial successor in the case of partial transfer of the entity. Both the predecessor and the successor must continue in business with employees. The partial experience history shall be transferred to the successor using the same formula outlined in Paragraphs (1) and (2) of Subsection B of 1.6.3.11 NMAC above.

D. Benefits (total) charged to the predecessor's account by ESD shall be transferred as follows:

(1) In a total experience history transfer, all of the benefits charged shall be assumed by the successor.

(2) In the event the successor is made of two or more entities, they will assume all of the benefits charged to the predecessor. The successor entities shall divide the benefits charges of the predecessor by the percentage figures arrived at in Paragraph (1) of Subsection B of 1.6.3.11 NMAC above.

(3) When there is a partial history transfer and only one successor is involved, the percentage factor arrived at in 1.6.3.8 NMAC shall apply. Benefits charged to the predecessor's account shall be charged to the successor as follows:

(a) in the quarter in which the transfer occurred and in the first successive quarter, the percentage factor of the successor times the benefits charged the predecessor's account;

(b) in the second successive quarter, the percentage factor times seventy-five percent of the benefits charged the predecessor's account;

(c) in the third successive quarter, the percentage factor times fifty percent of the benefits charged the predecessor's account;

(d) in the fourth successive quarter, the percentage factor times twenty-five percent of the benefits charged the predecessor's account;

(e) the fifth and all other quarters will not have benefit charges relating to the predecessor except in unusual cases and such charges shall be transferred to the successor's account;

(f) the predecessor and all successors, when applicable, shall continue to be experienced-rated.

[1.6.3.11 NMAC - Rp, 1.6.3.11 NMAC, 12/11/2018]

1.6.3.12 ELIGIBILITY FOR LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION RESERVE FUND:

To be eligible to participate in the local public body unemployment compensation reserve fund noted in accordance with Section 51-1-46 NMSA 1978, an entity must:

- A. Be a local public body as defined in 1.6.3.7 NMAC.
- B. Not have voluntarily left or have been removed from the local public body unemployment compensation fund, within the past five years.
- C. The local public body does not owe an outstanding financial obligation to RMD.
- D. Apply for participation at least 90 days prior to the new fiscal year and have this application approved by the risk management division.

[1.6.3.12 NMAC - Rp, 1.6.3.12 NMAC, 12/11/2018]

1.6.3.13 APPLICATION TO ENTER LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION RESERVE FUND:

- A. The effective date of coverage for any local public body that enters the local public body unemployment compensation reserve fund shall be January 1.
- B. A local public body must submit an application to RMD to participate in the fund no later than September 30 of the year prior to entering the fund.
- C. Local public bodies shall submit the following information to RMD as part of the application:
 - (1) an application form available on the RMD website;

(2) acceptable proof that the entity is an eligible local public body as defined in 1.6.3.7 NMAC;

(3) the local public body's unemployment claims data for the previous five years;

(4) a written agreement that the local public body will stay in the local public body unemployment compensation reserve fund for the next five consecutive years;

(5) information on current employment statistics, employee salaries, and other similar information requested by the risk management division; and

(6) a written agreement to follow the obligations of local public body unemployment compensation reserve fund membership shown in 1.6.3.14 NMAC.

D. RMD shall inform applicants of acceptance or rejection by December 1 of the year prior to entering the fund.

1.6.3.13 NMAC N, 12/11/2018

1.6.3.14 OBLIGATIONS OF LOCAL PUBLIC BODIES UPON ADMITTANCE TO THE LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION RESERVE FUND:

A. A local public body participating in the fund must meet all obligations to remain in good standing and continue participation.

B. Obligations include:

(1) timely payment of premiums, administrative fees, assessments, fines, remittances, and similar obligations to the risk management division;

(2) complying with any loss control policies or administrative directives issued by RMD or by any permitted third-party;

(3) complying with rules, guidance, and administrative directions from the department of workforce solutions;

(4) preparing for, attending, and participating in training seminars, program meetings, hearings, and other similar events as directed by RMD or the department of workforce solutions; and

(5) agree to comply with RMD and department of workforce solutions determinations regarding a claimant's employment status, employment dates, salaries, separation circumstances, and other similar factors or to appeal determinations to the proper agency following established protocols.

[1.6.3.14 NMAC N, 12/11/2018]

1.6.3.15 NONCOMPLIANCE BY LOCAL PUBLIC BODIES AND TERMINATION OF PARTICIPATION:

A. The director of RMD has sole discretion to determine if a local public body is noncompliant and to terminate the participation of any local public body in accordance with this rule.

B. Upon a determination that a local public body is noncompliant, RMD shall inform the local public body in writing of the determination and the reasons for the finding.

C. Upon a determination that a local public body's participation will be terminated, RMD shall inform the local public body in writing that, effective December 31, it may no longer participate in the fund.

D. Any local public body that has been terminated from the local public body shall remain in the local public body unemployment compensation reserve fund until December 31 and shall comply with all participation obligations and directives from RMD through that date.

E. Upon termination, the local public body remains obligated to pay RMD for any unemployment claims with a date of loss prior to their effective date of removal.

F. On January 1 of the calendar year following termination, a local public body shall resume its sole responsibility to pay its unemployment claims to the department of workforce solutions.

[1.6.3.15 NMAC N, 12/11/2018]

1.6.3.16 VOLUNTARY DEPARTURE OF THE LOCAL PUBLIC BODY UNEMPLOYMENT COMPENSATION RESERVE FUND:

A. A local public body that participates in the local public body fund may voluntarily depart the fund if:

(1) the local public body has participated in the fund for at least the five consecutive years immediately preceding departure;

(2) the local public body applies for departure in writing before September 1 of the year it intends to depart, and

(3) the local public body has secured written approval to depart from RMD.

B. The last effective date of coverage for a local public body departing the fund in a given year shall be December 31 of the year of departure.

C. The local public body shall remain obligated to pay RMD for any claims with a date of loss prior to its departure from the fund on December 31.

D. Following departure, a local public body shall resume its sole responsibility to pay its unemployment claims to the department of workforce solutions on January 1.

[1.6.3.16 NMAC N, 12/11/2018]

PART 4: STATE LOSS PREVENTION AND CONTROL PROGRAM

1.6.4.1 ISSUING AGENCY:

General Services Department (GSD) Risk Management Division.

[1.6.4.1 NMAC - Rp, 1.6.4.1 NMAC, 12/11/2018]

1.6.4.2 SCOPE:

Unless otherwise provided by law, this rule applies to all state agencies, including elected officials and institutions of higher learning. This rule supersedes and replaces all rules and directives for conflicting loss prevention and control programs. State agencies must comply with this rule; no exemptions will be granted.

[1.6.4.2 NMAC - Rp, 1.6.4.2 NMAC, 12/11/2018]

1.6.4.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to Paragraph (9) of Subsection A of Section 15-7-3 NMSA 1978 which empowers the risk management division to initiate safety program establishment and to adopt regulations for effective implementation of safety programs and Subsection E of Section 9-17-5 NMSA 1978 which empowers the secretary of the general services department to adopt regulations to accomplish the duties of the department and its divisions.

[1.6.4.3 NMAC - Rp, 1.6.4.3 NMAC, 12/11/2018]

1.6.4.4 DURATION:

Permanent.

[1.6.4.4 NMAC - Rp, 1.6.4.4 NMAC, 12/11/2018]

1.6.4.5 EFFECTIVE DATE:

December 11, 2018 unless a later date is cited at the end of a section or paragraph.

[1.6.4.5 NMAC - Rp, 1.6.4.5 NMAC, 12/11/2018]

1.6.4.6 OBJECTIVE:

The objectives of this rule 1.6.4 NMAC are to:

- A.** prevent and control insurable losses in state government;
- B.** integrate loss prevention and control activities into state agency operations and culture;
- C.** establish systematic safety and loss prevention and control mechanisms within state agencies;
- D.** develop uniform loss control reporting procedures for state agencies; and
- E.** assure compliance with this rule by reporting non-compliant agencies to the appropriate oversight bodies and by adjusting risk premium rates of non-compliant agencies.

[1.6.4.6 NMAC - Rp, 1.6.4.6 NMAC, 12/11/2018]

1.6.4.7 DEFINITIONS:

The following definitions apply in this rule:

- A. Agency or state agency:** Any department, agency, branch, board, instrumentality, or institution of New Mexico state government.
- B. Committee:** An agency loss prevention and control committee.
- C. Loss prevention and control:** Any managerial system or systems intended to identify potential or actual loss situations and the implementation of a strategy or strategies to prevent or manage losses.
- D. Loss prevention and control coordinator:** The agency loss prevention and control coordinator.
- E. RMD:** The risk management division of the general services department.
- F. State loss control manager:** The state loss control manager at RMD (see Paragraph (10) of Subsection A of Section 15-7-3 NMSA 1978).

[1.6.4.7 NMAC - Rp, 1.6.4.7 NMAC, 12/11/2018]

1.6.4.8 LOSS PREVENTION AND CONTROL PROGRAM:

A. The state loss prevention and control program is created. The program includes coordination of all agency loss prevention and control activities and any loss prevention and control services administered by RMD.

B. Each agency shall develop an annual loss prevention and control plan using a method approved by RMD, submit a copy of its loss prevention and control plan to the state loss control manager within 60 days of adoption of the state loss prevention and control plan, and must inform the state loss control manager of any program change.

C. The state loss control manager shall report any agency that fails to adopt an agency loss prevention and control plan to the agency head, to the secretary of the general services department, and to the director of the risk management division.

D. If the RMD director determines that an agency has failed to substantially comply with this rule, the director shall notify the agency head. The Agency shall have 30 days to cure any deficiencies. If after such 30 day period, the director determines that the agency has still failed to substantially comply with this provision, the director may, after consultation with the secretary of the general services department, adjust the coverage premiums paid by non-compliant entities for the following plan year to reflect the increased risk profile of the entity. Non-compliant entities may appeal any rate adjustment to the risk management advisory board.

[1.6.4.8 NMAC - Rp, 1.6.4.8 NMAC, 12/11/2018]

1.6.4.9 LOSS PREVENTION AND CONTROL COORDINATOR:

A. Each agency shall appoint a loss prevention and control coordinator no later than 60 days after the effective date of this rule. Each agency shall submit this individual's name to RMD and inform the state loss control manager of any appointment changes.

B. Each agency head shall appoint one of the following persons as loss prevention and control coordinator:

- (1)** the deputy agency head;
- (2)** the agency chief financial officer;
- (3)** the agency general counsel;
- (4)** a division director; or
- (5)** a senior supervisory employee approved by RMD.

C. The loss prevention and control coordinator shall:

(1) report to the agency head on matters pertaining to the loss prevention and control program, safety, employment-related civil rights issues, and other potential or actual exposures;

(2) liaise with the state loss control manager and RMD;

(3) establish, interpret, and apply loss prevention and control procedures;

(4) monitor loss prevention and control training, incident investigations, and program progress;

(5) chair the agency safety committee; and

(6) chair the agency loss prevention and control committee.

[1.6.4.9 NMAC - Rp, 1.6.4.9 NMAC, 12/11/2018]

1.6.4.10 LOSS PREVENTION AND CONTROL COMMITTEE:

A. Each state agency shall establish a loss prevention and control committee.

B. Committee members may be appointed by the agency head or by the loss prevention and control coordinator. The appointing authority shall appoint division directors, bureau chiefs, section or unit heads, and other senior supervisory employees. All major components of an agency's organizational structure shall be represented on the agency committee.

C. Each committee should hold meetings at least quarterly. The agency head or chairperson may convene special meetings. Committee meetings may be incorporated into regular agency staff meetings and should address issues at all operational levels within the agency.

D. The loss prevention and control committee shall:

(1) define an annual agency loss prevention and control plan;

(2) meet quarterly to assess the implementation of the loss prevention and control plan;

(3) report the status of the annual loss prevention and control program; and

(4) perform any other functions the chairperson considers useful and appropriate.

[1.6.4.10 NMAC - Rp, 1.6.4.10 NMAC, 12/11/2018]

1.6.4.11 INCIDENT AND LOSS INVESTIGATION:

A. Each state agency shall establish and implement procedures for investigation, analysis, and evaluation of incidents and losses. The procedures shall provide that incidents and losses be thoroughly investigated by the supervisory person most immediately responsible for the operation in which the loss occurred, by an individual who has been trained to perform this type of work, or both.

B. Investigations pertinent to an alleged job-related injury or illness and all necessary and supplemental documentation generated during an investigation will become a part of the injury or illness claim record.

C. Any investigations and reports prepared pursuant to this section are supplementary to and do not replace reports required to comply with state and federal laws, insurance and other reporting requirements.

[1.6.4.11 NMAC - Rp, 1.6.4.11 NMAC, 12/11/2018]

1.6.4.12 LOSS PREVENTION AND CONTROL TRAINING:

A. Each agency shall provide position-appropriate safety training, loss prevention and control training, worker's compensation training, and employment-related civil rights training to all employees.

B. Supervisors shall discuss loss prevention and control policies, procedures, and strategies with employees, individually and at group training sessions.

C. All employees shall be trained in the safe and correct way to perform their job functions as needed.

D. Agencies shall provide training on occupational health and safety laws and regulations to all employees as appropriate to job function.

E. Agencies shall provide training on employment-related civil right to supervisors and managers.

F. Training on Federal and state civil rights laws, including Title VII of the Civil Rights Act and the New Mexico Human Rights Act (Sections 28-1-1 and following NMSA 1978), shall occur on a continuing basis.

[1.6.4.12 NMAC - Rp, 1.6.4.13 NMAC, 12/11/2018]

1.6.4.13 JOB-RELATED INJURY OR ILLNESS CLAIMS MANAGEMENT:

A. Each agency shall adopt a workers' compensation claims management procedure approved by RMD that complies with all relevant laws, regulations, policies, directives, guidance, and other requirements.

B. Each agency shall have written procedures for:

- (1)** workers' compensation claims management;
- (2)** early return to work for workers with job-related injuries or illnesses; and
- (3)** new employee orientation programs that include job safety and workers' compensation training.

C. Each agency shall have written policies providing for the following items, as they apply to job-related injury or illness claims:

- (1)** training, appropriate to each supervisor, on the supervisor's and responsibilities regarding job-related injuries and workers' compensation claims;
- (2)** methods for record keeping and filing job-related injury and illness claims;

D. Claims records retained by agencies and submitted to the RMD shall contain the following:

- (1)** Mandatory documents:
 - (a)** notice of accident (WCA form NOA-1, as may be amended);
 - (b)** employer's first report of injury or illness (WCA form E1.2, as may be amended);
 - (c)** Authorization to release medical information (WCA mandatory form, per Subparagraph (c) of Paragraph (2) of Subsection R of 11.4.4.9 NMAC, as may be amended);
- (2)** Other records, documents, statements, and evidence appropriate to the claim.

E. The policies required by this rule shall address:

- (1)** injured employee responsibilities - At a minimum, injury reporting procedures, administration and documentation details, and compliance with the medical treatment plan;

(2) employer responsibilities - At minimum, job-related injury or illness reactive procedures, contact protocol, employer involvement in all phases of job-related injury or illness claim management, and accountability measures;

(3) identifying job roles and modifying job functions to accommodate a worker placed on restricted or modified work status and procedures and authorities to implement this program;

(4) implementing controls to reduce the likelihood of job-related injuries or illnesses reoccurring.

F. Every effort shall be made to implement an early return to work program that includes, at a minimum, the requirements of Section 52-1-25.1 NMSA 1978. No state employee shall be terminated from employment because of a job-related injury or illness or because of physical circumstances resulting from a job-related injury or illness unless the state agency has provided advance notice to RMD.

G. Vacant positions resulting from job related injuries or illnesses shall not be filled, except by temporary employment, unless provided for elsewhere by law.

(1) A position may be permanently filled if there is documented medical diagnosis or evidence that an employee with a job-related injury or illness has reached maximum medical improvement or that the employee's impairment or condition is permanent and that the employee cannot perform the essential functions of the particular job.

(2) A position may be permanently filled if there is a critical need and that need cannot be satisfied with temporary employment, and the agency has made a "good faith" effort to do so, and the other provisions of this rule have been satisfied.

[1.6.4.13 NMAC - Rp, 1.6.4.14 NMAC, 12/11/2018]

1.6.4.15-1.6.4.16 [RESERVED]

PART 5: CERTIFICATES OF COVERAGE

1.6.5.1 ISSUING AGENCY:

General Services Department, Risk Management Division.

[1.6.5.1 NMAC - N, 7/1/2004]

1.6.5.2 SCOPE:

This rule applies to state agencies and local public bodies for which the general services department, risk management division provides public liability fund coverage

for risk or liability pursuant to NMSA 1978, Section 41-4-20 (A) (2) of the state of New Mexico Tort Claims Act [NMSA 1978, Section 41-4-1 et seq. (1976)] (hereinafter referred to as the "Tort Claims Act" or "the act").

[1.6.5.2 NMAC - N, 7/1/2004]

1.6.5.3 STATUTORY AUTHORITY:

This rule is statutorily authorized and promulgated pursuant to NMSA 1978, Section 15-7-3 (A) (7) (which authorizes the risk management division to issue certificates of coverage in accordance with the rulemaking procedures contained in NMSA 1978, Section 9-17-5 (E), granting the secretary of the general services department the general power to make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions, including the risk management division). In addition, Section 41-4-23 (D) of the Tort Claims Act authorizes the general services department, risk management division to regulate claims made against the public liability fund. Pursuant to NMSA 1978, Section 15-7-2 (A), the director is responsible for the acquisition and administration of all insurance purchased by the state. Except as provided by NMSA 1978, Section 15-7-2, no state agency may procure any kind of insurance other than through the risk management division. Pursuant to NMSA 1978, Section 41-4-20 (C), no liability insurance may be purchased by any governmental entity other than as authorized by the Tort Claims Act.

[1.6.5.3 NMAC - N, 7/1/2004]

1.6.5.4 DURATION:

Permanent.

[1.6.5.4 NMAC - N, 7/1/2004]

1.6.5.5 EFFECTIVE DATE:

July 1, 2004, unless a later date is cited at the end of a section.

[1.6.5.5 NMAC - N, 7/1/2004]

1.6.5.6 OBJECTIVE:

It is the public policy of the state of New Mexico that governmental entities and public employees shall be protected by the principle of sovereign immunity and may only be liable for torts as provided by the express provisions of the Tort Claims Act. The general services department, risk management division is authorized to issue certificates of coverage to governmental entities to defend the state of New Mexico in

cases involving tort liability. This rule sets the parameters and procedures by which certificates of coverage are issued and amended by the director.

[1.6.5.6 NMAC - N, 7/1/2004]

1.6.5.7 DEFINITIONS:

As used herein:

A. "coverage" or "coverage provision" means the type of protection provided against specific risks or losses;

B. "covered entity" means a governmental entity, as defined below, which is covered under the terms of a coverage document issued to it by the public liability fund through the general services department, risk management division;

C. "director" means the general services department, risk management division director;

D. "fund" or "the fund" means the public liability fund as defined in NMSA 1978, Section 41-4-23 of the Tort Claims Act;

E. "governmental entity" means the state and a local public body as defined in NMSA 1978, Section 41-4-3 (B), (C) and (H) in the act;

F. "public employee" means individuals as defined in NMSA 1978, Section 41-4-3 (F) of the act; and

G. "scope of duty" means the performance of duties as defined in NMSA 1978, Section 41-4-3 (G) of the act.

[1.6.5.7 NMAC - N, 7/1/2004]

1.6.5.8 ISSUANCE OF CERTIFICATES OF COVERAGE:

Certificates of coverage shall be issued on an annual basis, unless otherwise determined by the director, on or before July 1 of the state fiscal year, and in the sole discretion of the director shall be in force on July 1 of that fiscal year, or as soon as practicable thereafter, and shall remain in effect for a period of one year from the date of issuance or until superceded by another certificate of coverage, unless otherwise earlier terminated in writing by the director. The director shall issue certificates of coverage by a letter of administration issued to a governmental entity attaching the certificates of coverage. The letter of administration will describe the type, extent, nature and description of coverage(s), and may also include other matters and administrative procedures reasonably necessary and which must be followed to carry on or administer the requirements of the Tort Claims Act.

1.6.5.9 CERTIFICATE OF COVERAGE GUIDELINES:

The following guidelines govern all certificates of coverage that may be issued under cover of a letter of administration.

A. By statute, NMSA 1978, Section 59A-1-16 (C), the general services department, risk management division is expressly exempt for the provisions of the insurance code of the state of New Mexico, NMSA 1978, Section 59A-1-1 et seq. Certificates of coverage do not provide insurance, but instead provide an understanding among the governmental entities of the state of New Mexico about the intent of the use of funds from the public liability fund. The public liability fund is a self-insurance mechanism established to handle losses to or claims against covered governmental entities. Although coverage through the fund may be in formats like or similar to insurance policies, the relationship between the fund and covered entities is not that of insurer and insured. No special duties, rules of construction, or other legal doctrines recognized by the courts or created by statute with respect to the relationship of an insurer to its insured shall apply to the fund or entities covered by it.

B. Pursuant to NMSA 1978, Section 41-4-23 (D), all decisions to expend money from the fund to provide coverage to defend, save harmless, and indemnify any state agency or employee of a state agency or a local public body or an employee of such local public body are within the discretion of the director.

C. Duty to Defend.

(1) Pursuant to NMSA 1978, Section 41-4-23 (B) (3), the general services department, risk management division may expend money from the public liability fund to defend, save harmless, and indemnify a governmental entity or employee of a governmental entity. This defense extends only as far as a governmental entity's duty to provide a defense pursuant to NMSA 1978, Section 41-4-20 (A) for causes of action that may be properly brought under the Tort Claims Act, and any defense provided by the general services department, risk management division for any legal claim or liability exposure is controlled by the terms of the valid and current certificate of coverage in force at the time the claim arose, to the limits of such certificate of coverage. The director may contract with one or more attorneys or law firms, or with the attorney general, to defend tort liability claims against governmental entities and their employees acting within the scope of their duties.

(2) Pursuant to NMSA 1978, Section 41-4-4 (G) of the Tort Claims Act, the general services department, risk management division's duty to defend continues after public employment with the governmental entity has been terminated if the occurrence for which damages are sought happened while the public employee was acting within the scope of duty while the public employee was in the employ of the governmental entity.

(3) Pursuant to NMSA 1978, Section 41-4-17 (B), any settlement or judgment in any action brought under the act constitutes a complete bar to any further legal action on the same occurrence against a governmental entity or public employee whose negligence gave rise to the action. As a result of any settlement or judgment in any action brought under the act, the duty to defend is deemed to have been satisfied by the general services department, risk management division, and no further duty to defend continues to exist.

D. Other than the following specified causes of action that have been waived under the Tort Claims Act, no other causes of action can be defended by the general services department, risk management division. Pursuant to the Tort Claims Act, a defense shall be provided for claims brought on the following grounds:

(1) pursuant to NMSA 1978, Section 41-4-5 of the Tort Claims Act, liability for damages resulting from bodily injury, wrongful death, or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any motor vehicle, aircraft or watercraft;

(2) pursuant to NMSA 1978, Section 41-4-6 of the act, liability for damages resulting from bodily injury, wrongful death, or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation or maintenance of any building, public park, machinery, equipment, or furnishings; provided, however, that nothing in this subparagraph shall be construed as granting waiver of immunity for any damages arising out of the operation or maintenance of works used for diversion or storage of water;

(3) pursuant to NMSA 1978, Section 41-4-7 of the act, liability for damages resulting from bodily injury, wrongful death, or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of airports; provided, however, that nothing in this subparagraph shall include liability for damages due to the existence of any condition arising out of compliance with any federal or state law or regulation governing the use and operation of airports;

(4) pursuant to NMSA 1978, Section 41-4-8 of the act, liability for damages resulting from bodily injury, wrongful death, or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of the following public utilities and services: gas, electricity, water, solid or liquid waste collection or disposal, heating, and ground transportation; provided, however, that nothing in this subparagraph shall include liability for damages resulting from bodily injury, wrongful death, or property damage caused by a failure to provide an adequate supply of gas, water, electricity, or services or arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water;

(5) pursuant to NMSA 1978, Section 41-4-9 of the act, liability for damages resulting from bodily injury, wrongful death, or property damage caused by the negligence of public employees while acting within the scope of their duties in the operation of any hospital, infirmary, mental institution, clinic, dispensary, medical care home, or like facilities;

(6) pursuant to NMSA 1978, Section 41-4-10 of the act, liability for damages resulting from bodily injury, wrongful death, or property damage caused by the negligence of public employees licensed by the state or permitted by law to provide health care services while acting within the scope of their duties of providing health care services;

(7) pursuant to NMSA 1978, Section 41-4-11 of the act, liability for damages resulting from bodily injury, wrongful death, or property damage caused by the negligence of public employees while acting within the scope of their duties during the construction, and in subsequent maintenance of any bridge, culvert, highway, roadway, street, alley, sidewalk, or parking area; provided, however, that nothing in this subparagraph shall include liability for damages caused by a defect in plan or design of any bridge, culvert, highway, roadway, street, alley, sidewalk, or parking area; the failure to construct or reconstruct any bridge, culvert, highway, roadway, street, alley, sidewalk, or parking area; or a deviation from standard geometric design practices for any bridge, culvert, highway, roadway, street, alley, sidewalk, or parking area allowed on a case-by-case basis for appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical, or technical reasons, provided the deviation is required by extraordinary circumstances, has been approved by the governing authority; and is reasonable and necessary as determined by the application of sound engineering principles taking into consideration the appropriate cultural, ecological, economic, environmental, right-of-way through Indian lands, historical, or technical circumstances;

(8) pursuant to NMSA 1978, Section 41-4-12 of the act, liability for personal injury, bodily injury, wrongful death, or property damage resulting from assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, defamation of character, violation of property rights or deprivation of any rights, privileges, or immunities secured by the constitution and laws of the United States or New Mexico when caused by law enforcement officers while acting within the scope of their duties;

(9) pursuant to NMSA 1978, Section 41-4-4 (B) (2) of the act, when alleged to have been committed by a public employee while acting within the scope of their duties, liability for any violation of property rights or any rights, privileges or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico.

E. Pursuant to NMSA 1978, Section 41-4-4 (D) of the act, and whether it is a governmental entity or the general services department, risk management division that

provides a defense, the governmental entity shall pay any settlement or any final judgment entered against a public employee for any tort that was committed by the public employee while acting within the scope of their duty, or a violation of property rights or any rights, privileges, or immunities secured by the constitution and laws of the United States or the constitution and laws of New Mexico that occurred while the public employee was acting within the scope of their duty.

F. Pursuant to NMSA 1978, Section 41-4-4 (H) of the act, the duty of the governmental entity to pay any settlement or any final judgment entered against a public employee as provided in this section shall continue after employment with the governmental entity has terminated if the occurrence for which liability has been imposed happened while the public employee was acting within the scope of his duty while in the employ of the governmental entity.

G. All actions for damages brought against a governmental entity shall be subject to the maximum liability limits contained in NMSA 1978, Section 41-4-19.

H. Pursuant to NMSA 1978, Section 41-4-28, coverage which may be provided for liability arising under and subject to the substantive law of a jurisdiction other than New Mexico, including but not limited to other states, territories, and possessions and the United States, is not limited by the maximum liability limits contained in NMSA 1978, Section 41-4-19, and such coverage may be provided pursuant to the provisions of NMSA 1978, Section 41-4-28 (B).

[1.6.5.9 NMAC - N, 7/1/2004]

1.6.5.10 COVERAGE, APPORTIONMENT, AND UNDERWRITING STANDARDS:

Specific risks covered, properties covered, coverage limits, exclusions, apportionment of contributions, underwriting standards, and other provisions for coverage through the public liability fund shall apply in accordance with certificates of coverage, letters of administration, or other coverage documents issued by the director to each covered entity. Pursuant to NMSA 1978, Section 15-7-2 (B), the director shall apportion contributions toward the purchase of insurance or for the providing of coverage for any risk not insured and the amount of contributions to be made by each governmental entity in a letter of administration issued to the governmental entity. Pursuant to NMSA 1978, Section 15-7-3 (A) (3), the director may prescribe underwriting standards for governmental entities in a letter of administration issued to the governmental entity.

[1.6.5.10 NMAC - N, 7/1/2004]

1.6.5.11 COVERAGE DISPUTES:

A. The director shall make a determination if the certificate applies to a presented claim. The decision of the director may only be appealed through arbitration, and such

arbitration shall be requested by the covered party in writing to the director within 30 days of receipt of the written decision of the director.

B. If arbitration is requested, the covered entity and the director, on behalf of the fund shall, select one arbitrator within 15 days and submit the arbitrator's name in writing to the other side. Within 10 days after the selection of the two arbitrators, those two arbitrators shall select a third independent arbitrator. If the two sides cannot agree on the selection of the third arbitrator within those 10 days, either side may petition the First Judicial District Court in the county of Santa Fe for the appointment of the third arbitrator. The third arbitrator shall be an attorney and preside as the Chairperson of the arbitration panel. No arbitrator shall be employed or affiliated with the covered entity or the general services department, risk management division.

C. A decision of the panel shall be reported in writing to the director and to the covered entity. The written decision of the panel shall be given to both sides within thirty days of the close of the hearing.

D. All decisions of the arbitration panel shall be final and binding upon the parties and shall not be subject to any further appeal or court action.

[1.6.5.11 NMAC - N, 7/1/2004]

1.6.5.12 PREMIUM ESTABLISHMENT:

The director shall determine the appropriate premiums for coverage provided to each covered entity, on an annual basis and in the sole discretion of the director, and shall be reported to each covered entity in a letter of administration from the director. In making the premium determination, the director may use, among other actuarially sound factors, information regarding a covered entity's use of risk control standards and a covered entity's compliance with underwriting standards, such standards being established by the director.

[1.6.5.12 NMAC - N, 7/1/2004]

PART 6: TORT CLAIMS COVERAGE FOR COMMUNITY LAND GRANTS; EXCLUDING COVERAGE FOR BUSINESS ENTERPRISE ACTIVITIES

1.6.6.1 ISSUING AGENCY:

General Services Department, Risk Management Division.

[1.6.6.1 NMAC - N, 7/30/2010]

1.6.6.2 SCOPE:

This rule applies to community land grants governed as a political subdivision of the state in making application to and obtaining coverage from the risk management division of the general services department for coverage for any risk for which immunity has been waived under the Tort Claims Act, through the public liability fund.

[1.6.6.2 NMAC - N, 7/30/2010]

1.6.6.3 STATUTORY AUTHORITY:

This rule is statutorily authorized and promulgated pursuant to NMSA 1978, Section 15-7-3(A)(7)(which authorizes the risk management division to issue certificates of coverage in accordance with the rulemaking procedures contained in NMSA 1978, Section 9-17-5(E), granting the secretary of the general services department the general power to make and adopt such reasonable administrative and procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions, including the risk management division). In addition, Section 41-4-23(D) of the Tort Claims Act authorizes the general services department, risk management division to regulate claims made against the public liability fund. Pursuant to NMSA 1978, Section 41-4-30, community land grants governed as political subdivisions of the state may obtain Tort Claims Act coverage from the risk management division, exclusive of coverage for activities determined by the director to be a business enterprise.

[1.6.6.3 NMAC - N, 7/30/2010]

1.6.6.4 DURATION:

Permanent.

[1.6.6.4 NMAC - N, 7/30/2010]

1.6.6.5 EFFECTIVE DATE:

July 30, 2010, unless a later date is cited at the end of a section.

[1.6.6.5 NMAC - N, 7/30/2010]

1.6.6.6 OBJECTIVE:

This rule describes the activities of community land grants that are business enterprise activities, and that are thereby excluded from coverage through the public liability fund of risks for which immunity has been waived under the Tort Claims Act. Coverage will be provided to community land grants governed as political subdivisions of the state, for such official activities as are typically undertaken by governmental entities in New Mexico.

[1.6.6.6 NMAC - N, 7/30/2010]

1.6.6.7 DEFINITIONS:

A. "Approved activities" means activities conducted at a community center that are approved through procedures established by the board of trustees.

B. "Board of trustees" means the governing body of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

C. "Certificate of coverage" means the liability certificate issued by the director pursuant to Title 1, Chapter 6, Part 5 NMAC.

D. "Community center" means any structure that is owned by a community land grant and managed by and at the direction of the community land grant's board of trustees for the benefit of the community land grant as a whole, and excludes any structure used or designated for habitation, whether or not currently inhabited.

E. "Community land grant" means a land grant governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

F. "Coverage" means the type of protection provided against specific risks or losses.

G. "Director" means the general services department, risk management division director.

H. "Division" means the general services department, risk management division.

I. "Member" means a person who is a member of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

J. "Official activity" or "official activities" means activities of the community land grant that are approved by, and undertaken at the direction of, the board of trustees of the community land grant, for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico.

K. "Public liability fund" means the fund described in 1978 NMSA, Section 41-4-23 of the Tort Claims Act.

L. "Trustee" means a member of a board of trustees of a community land grant that is governed as a political subdivision of the state pursuant to 1978 NMSA, Chapter 49, Article 1.

[1.6.6.7 NMAC - N, 7/30/2010]

1.6.6.8 PROVIDING COVERAGE UPON APPLICATION AND PAYMENT FOR OFFICIAL ACTIVITIES AND APPROVED ACTIVITIES OF COMMUNITY LAND GRANTS GOVERNED AS A POLITICAL SUBDIVISION OF THE STATE:

A. Community land grants that wish to obtain tort claims coverage from the division shall make application for such coverage by providing information requested by the director.

B. The director shall annually determine the assessment which the community land grant is to pay for tort claims coverage to the public liability fund. In conjunction with this assessment, the director may require purchase of supplemental events coverage for specified approved activities, such as an event with large attendance.

C. Tort claims coverage for any community land grant is contingent upon prompt payment of the annual assessment by the community land grant to the public liability fund.

D. Tort claims coverage for any community land grant is contingent upon the community land grant continuing to be managed, controlled and governed by a board of trustees consistent with 1978 NMSA, Chapter 49, Article 1.

E. Tort claims coverage for any community land grant is limited to:

(1) official activities of the community land grant as explicitly authorized by its board of trustees for the governance and operation of the community land grant as a governmental entity, and that are the type of activity typically undertaken by governmental entities in New Mexico, and that are not excluded by virtue of being business enterprise activity; and

(2) approved activities of the community land grant that are not excluded by virtue of being business enterprise activity.

F. The tort claims coverage provided to a community land grant for any risk for which immunity has been waived under the Tort Claims Act, shall be as described in the liability certificate of coverage promulgated by the division.

[1.6.6.8 NMAC - N, 7/30/2010]

1.6.6.9 EXCLUDING COVERAGE OF INDIVIDUAL MEMBERS:

Tort claims coverage for any community land grant does not include coverage for any enterprise or activities undertaken by any of the individual members of the community land grant, whether singly or in association with others.

[1.6.6.9 NMAC - N, 7/30/2010]

1.6.6.10 EXCLUDING COVERAGE OF BUSINESS ENTERPRISE ACTIVITIES:

A. Tort claims coverage for a community land grant does not include coverage for any liability attributable to the business enterprise activities of a community land grant.

B. Business enterprise activities include the following:

(1) any activity undertaken for purposes of earning a monetary profit for the community land grant or for any of its members; the term "monetary profit" as used herein does not include reasonable incidental charges or fees, such as may be made to recoup costs of furnishing meals or refreshments at official activities, or such as a reasonable fee for conducting an approved activity at the community center;

(2) any activity involving the lease or sale of any property of the community land grant;

(3) any activity organized to operate on a non-profit basis, which activity is typically operated on a for-profit basis when conducted by non-governmental entities, such as, but not limited to, the operation of a restaurant or inn, unless the director upon application specifically gives prior approval of coverage for such activity, and only in accordance with such conditions as the director may require; or

(4) any activity involving the provision, sale, or consumption of alcoholic beverages.

C. Business enterprise activities are excluded from coverage regardless of whether they are authorized by the board of trustees, and regardless of whether they are undertaken by individual trustees, or by members, individually, as partnerships or as other types of associations, or in any corporate form.

[1.6.6.10 NMAC - N, 7/30/2010]

CHAPTER 7: STATE PERSONNEL ADMINISTRATION

PART 1: GENERAL PROVISIONS

1.7.1.1 ISSUING AGENCY:

State Personnel Board.

[1.7.1.1 NMAC - Rp, 1 NMAC 7.1.1, 01/01/2020]

1.7.1.2 SCOPE:

All state agencies in the classified service.

[1.7.1.2 NMAC - Rp, 1 NMAC 7.1.2, 01/01/2020]

1.7.1.3 STATUTORY AUTHORITY:

Sections 10-9-3, 10-9-7, 10-9-10, 10-9-12 through 10-9-14 and Section 14-2-1 NMSA 1978.

[1.7.1.3 NMAC - Rp, 1 NMAC 7.1.3, 01/01/2020]

1.7.1.4 DURATION:

Permanent.

[1.7.1.4 NMAC - Rp, 1 NMAC 7.1.4, 01/01/2020]

1.7.1.5 EFFECTIVE DATE:

January 1, 2020 unless a later date is cited at the end of a section.

[1.7.1.5 NMAC - Rp, 1 NMAC 7.1.5, 01/01/2020]

1.7.1.6 OBJECTIVE:

The objective of Part 1 of Chapter 7 is: to define words and phrases used throughout Chapter 7, to cite provisions pertaining to different Parts of Chapter 7, to require maintenance of employment records, and to detail provisions that do not warrant a separate Part.

[1.7.1.6 NMAC - Rp, 1 NMAC 7.1.6, 01/01/2020]

1.7.1.7 DEFINITIONS:

A. "Anniversary date" means the date of hire or reemployment and is changed as of the date of promotion, demotion, reduction, or transfer. The assignment of an employee to a new classification which best represents the job performed by the employee does not affect the employee's anniversary date. The state personnel office (SPO) director shall resolve disputes over how an anniversary date is derived.

B. "Applicant" means any person, who has applied for a position in the classified service.

C. "Appointment" means the assumption of job duties by a candidate who was offered and then accepted a classified position in a state agency.

D. "Audit" means an examination or inspection of an agency's personnel and human resources functions and activities, including but not limited to personnel transactions, recruitment, leave administration, collective bargaining agreement administration, and completion of personnel evaluations.

E. "Break in employment" means any period of time of at least one workday of not being in the classified service.

F. "Candidate" means any applicant who is on the employment list for a position.

G. "Classified service" means all positions in the executive branch of state government which are not exempt by law.

H. "Classification" means a job that is occupationally and quantifiably distinct.

I. "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay band.

J. "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a classified position in one pay band to a classified position in a lower pay band with a reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.

K. "Disciplinary action" means any action taken by an agency to influence change in an employee's performance or behavior to the expected standard, including suspensions, demotions and dismissals.

L. "Dismissal" means the involuntary separation from employment.

M. "Diversity in the workplace" means an acknowledgment of all people in the workplace equally, regardless of their differences. Agencies' management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

N. "Domestic partner" means two individuals who have shared a common, primary residence for at least 12 consecutive months, sign an affidavit of domestic partnership, and meet all of the following criteria:

(1) Both domestic partners must be unmarried.

(2) Domestic partners must have been in a mutually exclusive relationship, intending to do so indefinitely, and the relationship is similar to a marriage relationship in the state of New Mexico.

(3) Domestic partners must meet the age requirements for marriage in New Mexico (18 years of age) and be mentally competent to consent to contract.

(4) Domestic partners must not be related by blood to the degree prohibited in a legal marriage in the state of New Mexico.

(5) Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations.

(6) Domestic partner must not be a member of another domestic partnership; nor have been so during the past 12 months. If domestic partnership dissolves and the same two people want to become partners again, they must once again meet the 12-month requirements.

(7) Domestic partners must provide proof of one of the following: joint mortgage or lease; joint ownership of a motor vehicle; joint bank account; joint credit account; domestic partner named as beneficiary of life insurance; domestic partner named as beneficiary of retirement benefits; domestic partner named as primary beneficiary in the employee's will; domestic partner assigned durable property or health care power of attorney; or documentation of sharing of household expenses by both partners.

O. "Employment list" the list of names of candidates referred to a hiring manager by the agency's human resources, from which a candidate may be selected for an interview, and from which a candidate may be selected for appointment.

P. "Employment records" means documents that contain information related to a person's employment or application for employment.

Q. "Examination" means assessment of qualifications, knowledge, skills, and abilities of an applicant.

R. "Exempt service" means all positions in the executive branch of state government exempt from the classified service by law.

S. "Filed" means received by the office.

T. "Involuntary separation" means involuntary removal of an employee from the classified service without prejudice as provided for in 1.7.10.13 NMAC.

U. "Line authority" means the assignment of activities or approval authority by the SPO director to state personnel office staff or an agency in a manner that does not relinquish the SPO director's administrative oversight or authority.

V. "Manager" means an employee in a position that manages internal staff or external staff, or who plans, organizes, integrates, coordinates, and controls the

activities of others. A manager also is held accountable for the performance of people, services, systems, programs, projects and resources and can change their direction, objectives and assignments to meet performance and business needs.

W. "Midpoint" means the salary midway between the minimum and maximum pay rates of a pay band for positions in the classified service. Midpoint represents a compa-ratio value of 1.00 or one hundred percent.

X. "Minimum qualifications" means requirements approved by the board that must be met to be considered for a position.

Y. "Office" means the state personnel office.

Z. "Pay band" means the range of pay rates, from minimum to maximum.

AA. "Promotion" means the change of an employee from a classified position in one pay band to a classified position in a higher pay band.

BB. "Reduction" means a voluntary change without prejudice, within an employee's pay band, or from a classified position in one pay band to a classified position in a lower pay band.

CC. "Relation by blood or marriage within the third degree" includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

DD. "Resignation" means the voluntary separation of an employee from the classified service.

EE. "Rules" means the rules and regulations of the personnel board.

FF. "Service of Notice" shall be complete on the date the notice is mailed via certified mail to the address of record, delivered to a courier for delivery to the address of record, or hand delivered.

GG. "Signature" means handwritten or electronic signature(s), provided that the mechanism for electronic signatures is approved for use by the SPO director, provides for authentication, and otherwise complies with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978.

HH. "Status" means all of the rights and privileges of an appointment.

II. "Supervisor" means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, regularly directs the work of

other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively, but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

JJ. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

KK. "Transfer" means the movement of an employee from one position to another in the same pay band without a break in employment.

LL. "Without prejudice" means a declaration that no rights or privileges of the employee concerned are waived or lost except as may be expressly conceded or decided.

MM. "Writing or written" means in the written form and/or an alternative format, where deemed appropriate, and when requested, including electronic records that comply with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 1/1/2020; A, 1/14/2025]

1.7.1.8 APPROVAL AUTHORITY:

A. Pursuant to the provision of Subsection A of Section 10-9-12 NMSA 1978, the SPO director shall supervise all administrative and technical personnel activities of the state. The SPO director may audit the administrative and technical personnel activities of the state. The SPO director shall submit any findings of non-compliance with these rules to the board.

B. If it is established that an agency has violated the rules, an applicable collective bargaining agreement in place with the state, or the agency's policies, and the agency is given adequate opportunity to correct violations and fails to do so, the SPO director may suspend the agency's line authority or right to approve personnel actions, to approve employment lists, to advertise employment positions, to negotiate with or to make agreements with exclusive bargaining representatives, or to perform any activities related to the agency's violations and require SPO director approval until the SPO director rescinds the suspension.

C. The SPO director reserves the right to assign line authority under these rules so long as such line authority maintains the SPO director's administrative oversight and authority.

D. The SPO director shall establish criteria governing the requirements which must be met to achieve and maintain line authority status.

E. The SPO director may modify or withdraw line authority status.

[1.7.1.8 NMAC - Rp, 1 NMAC 7.1.8, 1/1/2020; A, 1/14/2025]

1.7.1.9 INTERPRETATIONS:

The board shall establish a procedure for the issuance of interpretations of these Rules.

[1.7.1.9 NMAC - Rp, 1 NMAC 7.1.9, 01/01/2020]

1.7.1.10 METHOD OF SERVING NOTICE:

Any notice required of an agency by these rules, except for 1.7.13 NMAC, shall be delivered by a method that provides proof of service or attempted service.

[1.7.1.10 NMAC - Rp, 1 NMAC 7.1.10, 01/01/2020]

1.7.1.11 COMPUTATION OF TIME:

A. In computing any period of time prescribed or allowed by these rules, the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

B. Whenever an employee is permitted or required by these rules to respond or do some other act within a prescribed period after service of notice, three calendar days shall be added to the prescribed period.

[1.7.1.11 NMAC - Rp, 1 NMAC 7.1.11, 1/1/2020; A, 1/14/2025]

1.7.1.12 EMPLOYMENT RECORDS:

A. Agencies shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to review their own file. Employment-related confidential records shall be available for inspection by agencies during the process of interviewing for employment when the employee has provided a signed release. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit written rebuttal to any material placed in their employment history. Agencies shall transfer the complete record of an employee's employment history upon inter-agency transfer.

B. Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order or subpoena.

C. For the purpose of inspection of public records under Subsection B of 1.7.1.12 NMAC, the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to physical or mental illness, injury or examinations, sick leave and medical treatment of persons; records and documentation maintained for purposes of the Americans with Disabilities Act [42 U.S.C. Section 12010 et seq.]; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; interview notes; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; home address and personal telephone number unless related to public business; social security number; laboratory reports or test results generated according to the provisions of 1.7.8 NMAC; and as otherwise provided by state or federal law.

[1.7.1.12 NMAC - Rp, 1 NMAC 7.1.12, 01/01/2020]

1.7.1.13 SETTLEMENT AGREEMENTS:

Any settlement agreement reached by an agency and an employee to resolve a matter between them, that incorporates provisions covered by these rules, must conform to the provisions of these rules, unless otherwise approved by the SPO director. If a potential offer of settlement relates to a personnel action covered by these rules, including, but not limited to, disciplinary appeals or grievance arbitrations, an agency must secure approval from the SPO director prior to extending the offer. If in the judgment of the SPO director, the offer of settlement is in the best interest of the state, the SPO director may authorize the agency to extend the offer of settlement to the employee. If such settlement also involves payment of monies by an agency, joint approval of the cabinet secretary of the department of finance and administration signifying budget availability and the SPO director is required.

[1.7.1.13 NMAC - Rp, 1 NMAC 7.1.13, 7/7/2001, 1/1/2020; A, 1/14/2025]

1.7.1.14 AGENCY HUMAN RESOURCE POLICIES:

Each agency shall provide a copy of their human resource policies to the office and these policies must conform to the provisions of these rules and other statutory requirements as required by law and include, among other things, policies regarding diversity in the workplace.

[1.7.1.14 NMAC - Rp, 1 NMAC 7.1.14, 01/01/2020]

1.7.1.15 TRAINING AND DEVELOPMENT:

The SPO director shall establish, pursuant to direction from the board, and maintain a training and development work plan. The board will review the training and development work plan on an annual basis.

[1.7.1.15 NMAC - Rp, 1 NMAC 7.1.15, 1/1/2020; A, 1/14/2025]

1.7.1.16 SEVERABILITY:

A determination by a court of competent jurisdiction that any provision of **1.7.1 NMAC** is unconstitutional or invalid shall not adversely affect the constitutionality, validity or enforceability of the remaining provisions.

[1.7.1.16 NMAC - Rp, 1 NMAC 7.1.16, 01/01/2020]

PART 2: CLASSIFIED SERVICE APPOINTMENTS

1.7.2.1 ISSUING AGENCY:

State Personnel Board.

[1.7.2.1 NMAC - Rp, 1 NMAC 7.2.1, 07/07/01]

1.7.2.2 SCOPE:

All state agencies in the classified service.

[1.7.2.2 NMAC - Rp, 1 NMAC 7.2.2, 07/07/01]

1.7.2.3 STATUTORY AUTHORITY:

NMSA 1978, Section 10-9-10(A); NMSA 1978, Sections 10-9-13(E), (J); and NMSA 1978, Section 10-9-18(A).

[1.7.2.3 NMAC - Rp, 1 NMAC 7.2.3, 07/07/01; A, 11/14/02]

1.7.2.4 DURATION:

Permanent.

[1.7.2.4 NMAC - Rp, 1 NMAC 7.2.4, 07/07/01]

1.7.2.5 EFFECTIVE DATE:

07/07/01 unless a later date is cited at the end of a section.

[1.7.2.5 NMAC - Rp, 1 NMAC 7.2.5, 07/07/01]

1.7.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 7 is: to describe various types of appointments in the classified service and to describe employees' rights in the classified system.

[1.7.2.6 NMAC - Rp, 1 NMAC 7.2.6, 07/07/01]

1.7.2.7 DEFINITIONS:

A. "Career appointment" is the employment of a candidate in a position recognized by the office as permanent.

B. "Term appointment" is the employment of a candidate in a position created for a special project or a state or federally funded program with a designated duration.

C. "Temporary appointment" is the employment of a candidate in a position created for a duration of less than one year.

D. "Emergency appointment" is the employment of an apparently qualified applicant when an emergency condition exists and the appropriate employment list contains no available candidates.

E. "Convert(ed)" means the changing of an employee to a different type of status.

[1.7.2.7 NMAC - Rp, 1 NMAC 7.2.7, 07/07/01]

1.7.2.8 PROBATION:

A. A probationary period of one year is required of all employees unless otherwise provided for by these rules.

B. The probationary period includes all continuous employment in the classified service except temporary service.

C. A break in employment of at least one work day or more will require an employee to serve another probationary period upon rehire into the classified service with the exception of those employees returned to work under 1.7.10.10 or 1.7.10.14 NMAC.

D. Any full-time continuous leave, except for military leave, taken during the probationary period exceeding 30 calendar days shall extend the probationary period by the number of days of leave that exceeds 30 calendar days.

E. A probationer may have their appointment expired for non-disciplinary reasons with a minimum of 24 hours written notice without right of appeal to the board. Such employees shall be advised in writing of the reason(s) for the expiration of appointment.

[1.7.2.8 NMAC - Rp, 1 NMAC 7.2.8, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.2.9 CAREER STATUS:

An employee in a career appointment attains career status beginning the day following the end of the probationary period required by **1.7.2.8 NMAC** unless otherwise provided for by these rules.

[1.7.2.9 NMAC - Rp, 1 NMAC 7.2.9, 07/07/01]

1.7.2.10 TERM STATUS:

Employees in term status who complete the one year probationary period required by **1.7.2.8 NMAC** shall have all of the rights and privileges of employees in career status except that term appointments may be expired due to reduction or loss of funding or when the special project or program ends with at least 14 calendar days written notice to the employee without right of appeal to the board.

[1.7.2.10 NMAC - Rp, 1 NMAC 7.2.10, 07/07/01; A, 11/14/02]

1.7.2.11 TEMPORARY STATUS:

Temporary appointments may be expired with at least 24 hours written notice to the employee without right of appeal to the board.

[1.7.2.11 NMAC - Rp, 1 NMAC 7.2.11, 07/07/01]

1.7.2.12 EMERGENCY APPOINTMENTS:

A. An emergency appointment is the employment of an apparently qualified applicant when an emergency condition exists and there are no applicants available on an appropriate employment list.

B. No employee may hold an emergency appointment longer than 90 calendar days in any 12-month period.

C. Emergency appointments may be expired with at least 24 hours written notice to the employee without right of appeal to the board.

D. An employee in emergency appointment may be converted to a career, term, or temporary status if the employee: has met the established requirements or the agency certifies that the employee holds qualifications and abilities necessary for successful job

performance and is performing to the agency's satisfaction; and there are no available candidates for the position after appropriate recruitment.

[1.7.2.12 NMAC - Rp, 1 NMAC 7.2.12, 07/07/01]

1.7.2.13 EXPIRATION OF APPOINTMENT:

The expiration of a term, probationary, emergency or temporary appointment shall not be considered to be a layoff within the meaning of **1.7.10.9 NMAC** or a dismissal within the meaning of **Subsection L of 1.7.1.7 NMAC**.

[1.7.2.13 NMAC - Rp, 1 NMAC 7.2.13, 07/07/01; A, 11/14/02; A, 10-15-08]

1.7.2.14 ACKNOWLEDGMENT OF CONDITIONS OF APPOINTMENT:

Agencies shall require that a form be signed by all employees at the time of appointment acknowledging the terms and conditions of the appointment.

[1.7.2.14 NMAC - Rp, 1 NMAC 7.2.14, 07/07/01; A, 11/14/02]

PART 3: CLASSIFICATION

1.7.3.1 ISSUING AGENCY:

State Personnel Board.

[1.7.3.1 NMAC - Rp, 1 NMAC 7.3.1, 07/07/01]

1.7.3.2 SCOPE:

All state agencies in the classified service.

[1.7.3.2 NMAC - Rp, 1 NMAC 7.3.2, 07/07/01]

1.7.3.3 STATUTORY AUTHORITY:

NMSA 1978, Section 10-9-13(A).

[1.7.3.3 NMAC - Rp, 1 NMAC 7.3.3, 07/07/01; A, 11/14/02]

1.7.3.4 DURATION:

Permanent.

[1.7.3.4 NMAC - Rp, 1 NMAC 7.3.4, 07/07/01]

1.7.3.5 EFFECTIVE DATE:

07/07/01 unless a later date is cited at the end of a section.

[1.7.3.5 NMAC - Rp, 1 NMAC 7.3.5, 07/07/01]

1.7.3.6 OBJECTIVE:

The objective of Part 3 of Chapter 7 is: to provide for a uniform and flexible system for the classification of state positions that supports the mission of state agencies, is adaptable to change, ensures that all positions are assigned to their appropriate classification, and sets forth a process for implementing classification studies.

[1.7.3.6 NMAC - Rp, 1 NMAC 7.3.6, 07/07/01; A, 11/14/02]

1.7.3.7 DEFINITIONS:

"Classification plan" means a document developed by the director and approved annually by the board, that describes the board's classification philosophy and is the foundation for ensuring consistent application of the philosophy.

[1.7.3.7 NMAC - Rp, 1 NMAC 7.3.7, 07/07/01; A, 11/14/02; A, 7-15-05; A, 6-15-10]

1.7.3.8 CLASSIFICATION PLAN:

A. The director, pursuant to direction from the board, shall establish, maintain and, in conjunction with state agencies, administer a classification plan for all positions throughout the classified service.

B. The board establishes a classification through the review, approval and adoption of new or revised classification descriptions.

C. The director may authorize the deletion of unused classification descriptions and revisions to classification descriptions if the revision does not necessitate a study.

D. The director shall provide affected parties an opportunity to comment on the creation, revision, and deletion of classification descriptions prior to implementation.

E. Agencies may request classification reviews, classification studies and/or classification re-evaluations.

[1.7.3.8 NMAC - Rp, 1 NMAC 7.3.8, 07/07/01; A, 11/14/02; A, 7-15-05; A, 6-15-10]

1.7.3.9 POSITION ASSIGNMENT:

A. The director, in conjunction with state agencies, shall ensure that each position in the classified service is assigned to the classification that best represents the duties assigned by the employer and performed by the employee.

B. When a filled position is assigned a classification with a lower pay band, in accordance with the provisions **Subsection A of 1.7.3.9 NMAC**, the employee may elect to take a reduction in accordance with **Subsection EE of 1.7.1.7 NMAC**, or overfill the position in their current classification.

C. A position assignment decision may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.

[1.7.3.9 NMAC - Rp, 1 NMAC 7.3.9, 07/07/01; A, 11/14/02; A, 7-15-05; A, 12-30-05; A, 10-15-08]

1.7.3.10 IMPLEMENTATION OF CLASSIFICATION STUDY RESULTS:

On a date determined by the director, employees affected by a classification study shall be assigned to the resulting new classification which best represents the job performed without having to meet the established requirements, unless minimum qualifications are required by law.

[1.7.3.10 NMAC - Rp, 1 NMAC 7.3.10, 07/07/01; A, 7-15-05]

PART 4: PAY

1.7.4.1 ISSUING AGENCY:

State Personnel Board.

[1.7.4.1 NMAC - Rp, 1.7.4.1 NMAC, 8/1/2021]

1.7.4.2 SCOPE:

All state agencies in the classified service.

[1.7.4.2 NMAC - Rp, 1.7.4.2 NMAC, 8/1/2021]

1.7.4.3 STATUTORY AUTHORITY:

NMSA 1978, Section 10-7-12 NMSA 1978, Sections 10-9-13(B); and 29 U.S.C. Sections 201 to 262.

[1.7.4.3 NMAC - Rp, 1.7.4.3 NMAC, 8/1/2021]

1.7.4.4 DURATION:

Permanent.

[1.7.4.4 NMAC - Rp, 1.7.4.4 NMAC, 8/1/2021]

1.7.4.5 EFFECTIVE DATE:

August 1, 2021 unless a later date is cited at the end of a section.

[1.7.4.5 NMAC - Rp, 1.7.4.5 NMAC, 8/1/2021]

1.7.4.6 OBJECTIVE:

The objective of Part 4 of Chapter 7 is: to provide a uniform system of pay administration for employees that is externally competitive and internally equitable.

[1.7.4.6 NMAC - Rp, 1.7.4.6 NMAC, 8/1/2021]

1.7.4.7 DEFINITIONS:

A. "Alternative pay band" means a pay band based on current market rate for benchmark jobs in the relevant labor market(s).

B. "Alternative work schedule" means a schedule that is requested by an employee and approved by the agency that deviates from the normal work schedule.

C. "Appropriate placement" means those elements to be considered in determining pay upon hire, promotion, transfer or reduction including the employee's education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.

D. "Base pay" or "base salary" means the rate of compensation paid to an employee exclusive of benefits, temporary increases (Subsection K and L of 1.7.4.12 NMAC), pay differentials (Subsection M of 1.7.4.12 NMAC, 1.7.4.13 NMAC), overtime payments (1.7.4.14 NMAC), call-back pay (1.7.4.15 NMAC), on-call pay (1.7.4.16 NMAC), holiday pay (Subsection C of 1.7.4.17 NMAC), and incentive awards (1.7.4.18 NMAC).

E. "Comparison market" means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

F. "Contributor proficiency zones" means subdivisions of the pay band that designate the employee's contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

G. "In pay band adjustment" means movement within a pay band for demonstrated performance, skill or competency development, or internal alignment, which allows agency management to provide base salary growth within a pay band.

H. "Internal alignment" means an adjustment that addresses pay issues involving the proximity of one employee's salary to the salaries of others in the same agency and classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

I. "Normal work schedule" means a schedule established by the agency, defining a start and end time for the employee.

J. "Pay plan" means a document developed by the director and approved annually by the board, that describes the board's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

K. "Shift work schedule" means a normal work schedule assigned to an employee as part of a rotating group of individuals that must continuously maintain a twenty-four hour operation.

L. "Total compensation" means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

[1.7.4.7 NMAC - Rp, 1.7.4.7 NMAC, 8/1/2021]

1.7.4.8 PAY PLAN:

A. The director, pursuant to direction from the board, shall establish, maintain and, in conjunction with state agencies, administer a pay plan for all positions throughout the classified service, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay band.

B. Agencies shall develop and utilize a compensation policy that is in compliance with 1.7.4 NMAC. Agency compensation policies will be filed with, reviewed by, and approved by the director. Subsequent revisions to the compensation policy shall be filed with, reviewed by, and approved by the director prior to adoption of the policy.

C. The board shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.

D. The director shall conduct an annual compensation survey that includes total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, regional state government employers, and central, western and southwestern state government employers. The board or director may authorize additional comparison markets when deemed necessary and appropriate.

E. Prior to the end of each calendar year, the director shall submit a compensation report that includes a summary of the status of the classified pay system and the results of the annual compensation survey that includes total compensation to the board. The board shall review, adopt and submit this report to the governor and the legislative finance committee.

[1.7.4.8 NMAC - Rp, 1.7.4.8 NMAC, 8/1/2021]

1.7.4.9 ASSIGNMENT OF PAY BANDS:

The director shall appoint a job evaluation committee consisting of 10 members. The director will provide training in the job evaluation and measurement process. The committee shall apply the job evaluation and measurement process to all newly created or revised classifications.

A. The committee shall submit the results of the job evaluation(s) as recommendations to the director. The director shall review the results and convert the total job evaluation points to the appropriate pay band. The director shall submit the pay band assignment results to the board for adoption.

B. Agencies may request a re-evaluation of a classification which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months unless otherwise approved by the director.

[1.7.4.9 NMAC - Rp, 1.7.4.9 NMAC, 8/1/2021]

1.7.4.10 ASSIGNMENT OF ALTERNATIVE PAY BANDS:

A. The director shall recommend to the board the assignment of an alternative pay band(s).

B. Alternative pay band(s) will be utilized to address compensation related to recruitment and retention issues.

C. Requests for alternative pay bands must meet criteria established in the pay plan.

D. The board shall assign alternative pay bands based on the director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.

E. The assignments to alternative pay bands shall be reviewed annually to determine their appropriateness. The director shall recommend to the board the continuation or removal of the alternative pay band assignments. The salary of affected employees shall be governed by Subsection H of 1.7.4.12 NMAC.

[1.7.4.10 NMAC - Rp, 1.7.4.10 NMAC, 8/1/2021]

1.7.4.11 SALARY SCHEDULES:

A. Based on the pay plan, the director shall develop and maintain salary schedules for the classified service that shall consist of pay bands.

B. No employee in the classified service shall be paid a salary less than the minimum nor greater than the maximum of their designated pay band unless otherwise authorized by the director, or provided for in these rules, or the employee has been transferred into the classified service by statute, executive order, or order of a court of competent jurisdiction.

C. The director, pursuant to the direction of the board, shall adjust the salary schedules to address the external competitiveness of the service or other concerns. Employees whose pay band is adjusted upward or downward shall retain their current salary. Such salary schedule adjustments may result in employees temporarily falling below the minimum or above the maximum of their pay band upon implementation.

(1) The pay of employees who would be above the maximum of the pay band shall not be reduced.

(2) The pay of employees who fall below the minimum of their pay band shall be raised to the minimum unless the director confirms that the agency does not have budget availability. In these instances, agencies shall raise the pay of employees to the minimum of their pay band within six months of the effective date of the salary schedule adjustment. The director may grant an extension to the six-month time period upon submission and approval of a plan by the agency to raise the pay of employees to the minimum of their pay band.

D. An employee's placement in the pay band will be identified by a compa-ratio value.

[1.7.4.11 NMAC - Rp, 1.7.4.11 NMAC, 8/1/2021]

1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance salary: Upon entrance to a classified position, a newly appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor zone must receive approval from the director prior to appointment.

B. Legislative authorized salary increase:

(1) Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within their assigned pay band.

(2) Employees with a salary at or above the maximum of the position's pay band shall not be eligible for an increase unless authorized by statute.

C. Salary upon in pay band adjustment: Agencies may increase an employee's base salary within the assigned pay band once per fiscal year, subject to director approval, budget availability and reflective of appropriate placement. In pay band adjustments may not result in the employee's base salary exceeding the maximum of the assigned pay band. When reviewing requests for in pay band adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band.

D. Salary upon promotion: Upon promotion, an employee's salary subject to budget availability, should reflect appropriate placement within the pay band. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director. A salary increase greater than fifteen percent (15%) to bring an employee's salary to the minimum of the pay band or less than five percent (5%) to prevent an employee's salary from exceeding the maximum of the pay band does not require the approval of the director. The salary of a promoted employee shall be in accordance with Subsection B of 1.7.4.11 NMAC.

E. Salary upon demotion: Upon demotion, an employee's salary shall be decreased by no more than fifteen percent (15%), unless a greater decrease is required to bring the salary to the maximum of the new pay band or the decrease is being made in accordance with Paragraph (2) of Subsection F of 1.7.4.12 NMAC.

F. Pay allowance for performing first line supervisor duties:

(1) An agency shall grant a pay allowance to an employee in a non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and shall be between zero percent (0%) and twenty percent (20%) above the employee's base pay rate.

(2) A pay allowance granted under this Subsection F shall be considered a part of an employee's base salary while it is in place. When the supervisor duties are no longer being performed, the agency shall remove the pay allowance.

(3) Agencies shall require that a form, established by the director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

G. Salary upon transfer:

(1) Upon transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased up to ten percent. The director may approve a salary increase greater than ten percent (10%) due to special circumstances that are justified in writing.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

H. Salary upon pay band change: When a change of pay band is authorized in accordance with the provisions of 1.7.4.9 NMAC, 1.7.4.10 NMAC, or 1.7.4.11 NMAC the salaries of affected employees shall be determined in accordance with Subsection C of 1.7.4.11 NMAC. Employees whose pay band is adjusted upward or downward shall retain their current salary in the new pay band. Employees' salaries may be addressed through in pay band adjustment unless otherwise allowed by statute.

I. Salary upon reduction: The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with Paragraph (2) of Subsection F of 1.7.4.12 NMAC. An employee's salary should reflect appropriate placement within the pay band. The director may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

J. Salary upon return to work or reemployment: The salary of former employees who are returned to work or re-employed in accordance with the provisions of 1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC shall not exceed the hourly rate of their base salary at the time of separation, unless a higher salary is necessary to bring the employee to the minimum of the pay band.

K. Salary upon temporary promotion: Pay for a temporary promotion under Subsection F of 1.7.5.12 NMAC, will be administered in accordance with Subsection D of 1.7.4.12 NMAC, except that payment of a temporary promotion increase shall be separate from the employee's base salary. The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12-month period, whichever occurs first.

L. Temporary salary increase: An agency may, with the approval of the director, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability or a higher valued job. The director may approve temporary salary increases above the maximum of the employee's current pay band. Payment of a temporary salary increase shall be separate from the employee's base salary. The agency shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12-month period, whichever occurs first.

M. Salary adjustment to minimum: An employee whose salary falls below the minimum of the pay band will be adjusted in accordance with Paragraph (2) of Subsection C of 1.7.4.11 NMAC.

[1.7.4.12 NMAC - Rp, 1.7.4.12 NMAC, 8/1/2021]

1.7.4.13 PAY DIFFERENTIALS:

A. Temporary recruitment differential: The director may authorize, in writing, a pay differential of up to fifteen percent (15%) of an employee's base pay to an employee who fills a position which has been documented as critical to the effective operation of the agency and has been demonstrated and documented to be a severe recruitment problem for the agency.

(1) A temporary recruitment differential authorized under this provision shall be tied to the position and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary. Agencies shall demonstrate to the office, at least biennially, the circumstances which justified the differential to determine the necessity for its continuance.

(2) A temporary recruitment differential of more than fifteen percent (15%) of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band may be authorized by the director.

B. Temporary retention differential: The director may authorize, in writing, a pay differential of up to fifteen percent (15%) of an employee's base pay to an employee in a position which the agency has documented and has been designated as critical to the effective operation of the agency and the employee's departure would disrupt the agency's ability to fulfill its mission.

(1) A temporary retention differential authorized under this provision may be approved up to one year. The agency shall demonstrate to the office, at least annually, the circumstances which justify the continuance of the differential. The agency must provide a detailed plan that outlines how they intend to resolve the problems associated with the retention difficulties. Payment of this differential shall be separate from the employee's base salary and may not transfer with the employee should the employee leave that position.

(2) A temporary retention differential of more than fifteen percent (15%) of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band may be authorized if approved by the director.

C. The temporary recruitment differential and the temporary retention differential are separate and distinct pay differentials that are administered separately.

D. Pay for dusk to dawn work: Employees shall be paid, in addition to their hourly pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m.

(1) Agencies shall notify the director of any change to the dusk to dawn differential or hours of eligibility.

(2) Agencies may choose not to pay the dusk to dawn differential to an employee whose alternative work schedule request results in the employee working any hours between 6:00 p.m. and 7:00 a.m.

[1.7.4.13 NMAC - Rp, 1.7.4.13 NMAC, 8/1/2021]

1.7.4.14 OVERTIME:

A. Agencies are responsible for the evaluation of each employee's position and duties in order to determine their overtime status as set forth under the Fair Labor Standards Act.

B. Agencies shall provide documentation to employees as to the determination of their overtime status.

C. Employees have the right to appeal the determination of their overtime status according to the provisions of 1.7.6.13 NMAC. Agencies shall notify employees in writing of their appeal decision within 30 calendar days. The employee may file an appeal of the agency's decision to the director within 30 calendar days of the agency's decision. Agencies shall notify employees that their appeal to the director must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documentation describing the work currently being performed by the employee and any other relevant information. All information contained in the appeal shall be verified by the employing agency.

D. Agencies shall maintain a record on each employee containing information required by the provisions of the Fair Labor Standards Act.

E. Workweek is a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The director may approve an alternative workweek.

F. Time worked in excess of 40 hours during the designated workweek shall be compensated in accordance with the provision of the Fair Labor Standards Act for Fair Labor Standards Act covered, non-exempt employees.

G. Agencies shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.

H. Agencies shall determine the need for employees to work overtime, and be responsible for authorizing overtime work.

I. Paid holiday leave in accordance with the provisions of Subsection A of 1.7.4.17 NMAC, annual leave taken in accordance with the provisions of Subsection F of 1.7.7.8 NMAC, and administrative leave for voting taken in accordance with the provisions of Subsection C of 1.7.7.14 NMAC shall also count as time worked in the consideration of overtime for Fair Labor Standards Act covered, non-exempt employees.

J. Agencies shall pay Fair Labor Standards Act covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute and shall be paid for accrued compensatory time upon separation.

K. Employees not covered or exempt from the overtime provisions of the Fair Labor Standards Act may be compensated for overtime if an agency's policy permits.

L. Any additional regular hours worked shall not be substituted for approved paid leave time during the same week additional regular hours were worked.

[1.7.4.14 NMAC - Rp, 1.7.4.14 NMAC, 8/1/2021]

1.7.4.15 CALL-BACK PAY:

A. Employees who are directed to return to work after completing their normal or alternative work schedule and before their next normal or alternative work schedule:

(1) shall be paid in accordance with the provisions of 1.7.4.14 NMAC, if the time worked results in overtime; or:

(2) shall be paid their hourly rate, if the time worked does not result in overtime.

B. Agencies may establish a minimum number of hours to be paid when employees are called back in accordance with their agency policy.

[1.7.4.15 NMAC - Rp, 1.7.4.15 NMAC, 8/1/2021]

1.7.4.16 ON-CALL PAY:

A. In accordance with the provisions of the Fair Labor Standards Act, agencies shall develop a policy to compensate employees directed to remain on-call after their normal or alternative work schedule.

B. Agencies shall file their on-call compensation policy with the office. Subsequent revisions to the on-call policy shall be filed with the office prior to implementation.

[1.7.4.16 NMAC - Rp, 1.7.4.16 NMAC, 8/1/2021]

1.7.4.17 HOLIDAY PAY:

A. When an authorized holiday falls on an employee's regularly scheduled workday and the employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

B. Full-time employees, whose normal work schedule does not include the day observed as a holiday, shall be entitled to time off equal to the employee's normal workday.

C. Employees required to work on the day a holiday is observed, shall be compensated at two and one-half times their hourly rate of pay for all hours actually worked on the holiday. Such compensation shall be in the form of straight time cash payment for all hours actually worked and additional premium compensation, at the agency's discretion, of either compensatory time off or cash payment at one and one-half times the usual hourly rate of pay for all hours actually worked.

D. Part-time employees whose normal work schedule does not include the day a holiday is observed shall not be compensated for the holiday.

E. Employees who have been charged absence without leave on the workday prior to or directly following a holiday shall not be paid for the holiday.

[1.7.4.17 NMAC - Rp, 1.7.4.17 NMAC, 8/1/2021]

1.7.4.18 GOVERNMENT COST SAVINGS INCENTIVE AWARDS:

Agencies may provide cash awards to employees with the approval of the board in accordance with the provisions of NMSA 1978, Section 10-7-12. The director and the secretary of the department of finance and administration shall jointly issue and administer guidelines for submitting proposed awards to the board.

[1.7.4.18 NMAC - Rp, 1.7.4.18 NMAC, 8/1/2021]

1.7.4.19 [RESERVED]

[1.7.4.19 NMAC - Rp, 1.7.4.19 NMAC, 8/1/2021]

PART 5: RECRUITMENT, ASSESSMENT, SELECTION

1.7.5.1 ISSUING AGENCY:

State Personnel Board.

[1.7.5.1 NMAC - Rp, 1.7.5.1 NMAC, 1/14/2025]

1.7.5.2 SCOPE:

All state agencies in the classified service.

[1.7.5.2 NMAC - Rp, 1.7.5.2 NMAC, 1/14/2025]

1.7.5.3 STATUTORY AUTHORITY:

Subsection A of Section 10-9-10, Subsection A of Section 10-9-12, Subsection C of Section 10-9-13, Subsection F of Section 10-9-13, Subsection I of Section 10-9-13, Section 10-9-13.2, Subsection B of Section 10-9-18, Section 10-9-22, Section 10-9-23; Section 20-4-9, NMSA 1978; Sections 24-2B-1 to 24-2B-8, NMSA 1978; and Sections 28-2-1 to 28-2-6, Section 28-10-12, NMSA 1978.

[1.7.5.3 NMAC - Rp, 1.7.5.3 NMAC, 1/14/2025]

1.7.5.4 DURATION:

Permanent.

[1.7.5.4 NMAC - Rp, 1.7.5.4 NMAC, 1/14/2025]

1.7.5.5 EFFECTIVE DATE:

January 14, 2025 unless a later date is cited at the end of a section.

[1.7.5.5 NMAC - Rp, 1.7.5.5 NMAC, 1/14/2025]

1.7.5.6 OBJECTIVE:

The objective of Part 5 of Chapter 7 is: to provide a system for the recruitment, examination and selection of applicants for employment in the classified service.

[1.7.5.6 NMAC - Rp, 1.7.5.6 NMAC, 1/14/2025]

1.7.5.7 DEFINITIONS:

A. "Doublefill" is when two employees are paid to work in the same position.

B. "Open for recruitment" means soliciting applications from the general public and state employees for vacant positions.

C. "Overfill" is when an employee is assigned to a position with a higher pay band than the position's budgeted pay band.

D. "Recruitment Waiver" means a candidate for hire is identified through a non-competitive process in lieu of the position being posted and advertised.

E. "Underfill" is when a candidate is hired for a position that they are not fully qualified for, but who can gain the necessary skills and experience through on the job training. Once the candidate has met the minimum experience requirements, they will be promoted to the position's actual pay band.

[1.7.5.7 NMAC - Rp, 1.7.5.7 NMAC, 1/14/2025]

1.7.5.8 VACANT POSITIONS:

A. All budgeted vacant positions to be filled shall be open for recruitment unless a recruitment waiver is authorized by the state personnel office (SPO) director.

B. Positions in the classified service shall be filled at the assigned classification. An underfill may be approved by the SPO director. An authorized underfill may not exceed one year unless extended by the SPO director.

C. The SPO director may approve a position to be doublefilled for up to one year.

D. Agencies may allow part-time employees to share the same position.

[1.7.5.8 NMAC - Rp, 1.7.5.8 NMAC, 1/14/2025]

1.7.5.9 RECRUITMENT:

A. The recruitment process shall be established by the state personnel office in accordance with established professional techniques and relevant federal and state laws, regulations, and guidelines.

B. The SPO director shall establish a means to effectively advertise and recruit for vacant positions within the classified service.

C. Any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, sexual orientation, age, or mental or physical disability unless based on a bona fide occupational requirement.

D. Agencies shall be sensitive to creating diversity in the workplace.

E. Applications shall be submitted in accordance with the SPO director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment.

[1.7.5.9 NMAC - Rp, 1.7.5.9 NMAC, 1/14/2025]

1.7.5.10 APPLICATIONS:

A. The SPO director shall establish application procedures which include, among other things, criteria that will ensure compliance with federal and/or state law. Information on gender, ethnicity, and age of applicants shall be utilized only for affirmative action and other non-discriminatory purposes.

B. The agency shall reject an application and not accept any application from the applicant if the applicant:

(1) has made any false statement or produced any false document in support of the application; or

(2) has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

[1.7.5.10 NMAC - Rp, 1.7.5.10 NMAC, 1/14/2025]

1.7.5.11 ASSESSMENT OF QUALIFICATIONS:

A. Assessments shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

B. Except as provided in Subsection C of 1.7.5.11 NMAC no agency shall administer any test to an applicant or employee without the test and the test administration having been approved by the SPO director unless otherwise authorized by statute.

C. An agency may request a description or demonstration of the skill or ability needed to perform an essential job function in accordance with the *Americans with Disabilities Act of 1990 (42 U.S.C. Section 12101 Note 29C.F.R. Part 1630.14(a) Pre-employment inquiry)*.

D. Preference Points:

(1) In accordance with the provisions of Section 10-9-13.2 NMSA 1978 and Section 20-4-9 NMSA 1978, veterans honorably discharged from the United States armed forces and applicants currently serving in the national guard shall have five

points added to their final passing numerical scores on applications. Veterans honorably discharged from the United States armed forces with a service-connected disability shall have 10 points added to their final passing numerical scores on applications. A veteran with or without a service-connected disability has his/her name placed on the employment list in accordance with numerical rating of other veterans and non-veterans.

(2) In accordance with the provisions of Section 10-9-13, NMSA 1978, applicants who meet minimum qualifications shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.

[1.7.5.11 NMAC - Rp, 1.7.5.11 NMAC, 1/14/2025]

1.7.5.12 SELECTION:

A. In accordance with the purpose of the *Personnel Act NMSA, Section 10-9-2*, selection shall be based solely on qualification and ability. Selection for any positions in the classified service shall be justified in writing and made from employment lists.

B. All employers subject to the Criminal Offender Employment Act. Sections 28-2-1 to 28-2-6 NMSA 1978, may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtain public employment. Employer may only take into consideration a conviction after the applicant has been selected as a finalist for the position.

C. Agencies shall follow all established procedures approved by the SPO director unless otherwise provided by law.

D. Agencies shall be sensitive to creating diversity in the workplace.

E. Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico department of education, division of vocational rehabilitation, the commission for the deaf and hard of hearing, or the commission for the blind, in accordance with the provisions of Section 28-10-12, NMSA 1978.

(1) Agencies shall certify the names of former employees who are currently receiving temporary total or permanent partial workers' compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of 1.7.10.12 NMAC.

(2) Agencies shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per 1.7.10.10 NMAC.

F. Temporary promotions: Employees may be temporarily promoted for a period not to exceed 12 months to a temporary or effectively vacant position for which the

agency certifies that the employee holds the qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

G. Intra-agency transfers: An agency may transfer an employee without the employee's consent to a position in the same classification within the same geographic location as the employing agency, which is 35 miles from the boundaries of the community where the employee is employed if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

H. Exempt to career service: Employment in the exempt service shall not count towards the probationary period required by Subsection A of 1.7.2.8 NMAC.

I. Emergency appointments/Hires: Emergency appointments/hires shall be made in accordance with 1.7.2.12 NMAC.

J. Reduction: Employees may request a classification reduction to a position for which the agency certifies that the employee holds the qualifications and abilities necessary for successful job performance.

K. Physical examinations: Agencies may require physical examinations of candidates who have been selected for a position contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the agency.

[1.7.5.12 NMAC - Rp, 1.7.5.12 NMAC, 1/14/2025]

PART 6: GENERAL WORKING CONDITIONS

1.7.6.1 ISSUING AGENCY:

State Personnel Board

[5-15-96; Rn, 1 NMAC 7.8, 7-1-97; 1.7.6.1 NMAC - Rn, 1 NMAC 7.6.1, 11/30/00]

1.7.6.2 SCOPE:

All state agencies in the classified service.

[5-15-96; Rn, 1 NMAC 7.8, 7-1-97; 1.7.6.2 NMAC - Rn, 1 NMAC 7.6.2, 11/30/00]

1.7.6.3 STATUTORY AUTHORITY:

NMSA 1978, Sections 10-9-1 to 10-9-25, NMSA 1978, Section 10-9-10(A), NMSA 1978, Section 10-9-13(G), NMSA 1978, Section 10-9-21, NMSA 1978, Section 12-5-2, NMSA 1978, Sections 24-2B-1 to 24-2B-8, U.S.C. Sections 1501 to 1508.

[5-15-96; Rn, 1 NMAC 7.8, 7-1-97; 1.7.6.3 NMAC - Rn, 1 NMAC 7.6.3, 11/30/00; A, 11/14/02]

1.7.6.4 DURATION:

Permanent.

[5-15-96; Rn, 1 NMAC 7.8, 7-1-97; 1.7.6.4 NMAC - Rn, 1 NMAC 7.6.4, 11/30/00]

1.7.6.5 EFFECTIVE DATE:

July 1, 1997, unless a later date is cited at the end of a section.

[5-15-96; Rn, 1 NMAC 7.8.5, 7-1-97; A, 7-1-97; 1.7.6.5 NMAC - Rn & A, 1 NMAC 7.6.5, 11/30/00]

1.7.6.6 OBJECTIVE:

The objective of Part 6 of Chapter 7 is: to define certain acceptable activities; to prohibit certain activities and to provide legal holiday observation dates, while setting forth general working conditions for employees.

[5-15-96; Rn, 1 NMAC 7.8.6, 7-1-97; A, 7-1-97; 1.7.6.6 NMAC - Rn, 1 NMAC 7.6.6, 11/30/00]

1.7.6.7 DEFINITIONS:

"Nonpartisan election" is any election for public office when the candidate's party affiliations are neither indicated nor required.

[7-1-97; 1.7.6.7 NMAC - Rn, 1 NMAC 7.6.7, 11/30/00]

1.7.6.8 NEPOTISM:

No agency shall permit the hiring, promotion, or direct supervision of an employee by a person who is related by blood or marriage within the third degree to the employee.

[11-3-90...5-15-96; Rn, 1 NMAC 7.8.10, 7-1-97; 1.7.6.8 NMAC - Rn, 1 NMAC 7.6.8, 11/30/00]

1.7.6.9 LEGAL HOLIDAYS:

Each year, prior to December 1, the Board shall publish the dates on which legal public holidays as designated in NMSA 1978, Section 12-5-2 (Repl. Pamp. 1988) shall be observed for the next calendar year.

[5-24-53...5-15-96; Rn, 1 NMAC 7.8.12, 7-1-97; 1.7.6.9 NMAC - Rn, 1 NMAC 7.6.9, 11/30/00]

1.7.6.10 PROHIBITED POLITICAL ACTIVITIES:

Employees are prohibited from:

A. using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;

B. directly or indirectly coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose;

C. threatening to deny promotions or pay increases to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising dinners and similar events, advising employees to take part in political activity, and matters of a similar nature;

D. engaging in a political activity while on duty; or

E. being an officer of a political organization.

[4-27-62...5-15-96; Rn, 1 NMAC 7.8.14.5, 7-1-97; 1.7.6.10 NMAC - Rn & A, 1 NMAC 7.6.10, 11/30/00; A, 11/14/02]

1.7.6.11 PUBLIC/POLITICAL OFFICE:

A. Employees covered by the provisions of the *Hatch Act* [5 U.S.C. Sections 1501 to 1508] may not be candidates for partisan political office elections.

B. Employees not covered by the provisions of the *Hatch Act* [5 U.S.C. Sections 1501 to 1508] may be candidates for any partisan political office if, upon filing or accepting the nomination and during the entire campaign, they are authorized full-time continuous leave without pay.

C. Employees may be candidates for nonpartisan political office, subject to the restriction set forth in **1.7.6.11 NMAC**, without taking a leave of absence.

D. Employees may hold only a nonpartisan county or municipal political office during employment in the classified service.

E. Being a local school board member or an elected member of any post-secondary educational institution shall not be construed as holding political office.

F. Employees running for or holding public office shall not use state equipment, facilities, property or time dedicated to employment duties to conduct campaign or public office related business. Violation of this Rule is punishable by disciplinary action pursuant to **1.7.11 NMAC** and/or the criminal penalties set forth in *NMSA 1978 Section 10-9-23*.

[7-1-80...5-15-96; 1.7.6.11 NMAC - Rn & A, 1 NMAC 7.6.11, 11/30/00; A 2-14-01; A, 11/14/02]

1.7.6.12 [RESERVED]

[1-2-93 ... 5-15-96; Rn, 1 NMAC 7.8.16.2, 7-1-97; 1.7.6.12 NMAC - Rn, 1 NMAC 7.6.12, 11/30/00; A, 11/14/02; Repealed, 11/13/2018]

1.7.6.13 COMPLAINTS:

A. Each agency shall establish a written complaint procedure by which employees can seek to remedy problems associated with their working conditions. Agency complaint procedures shall be filed with the Office and the information made available to all employees of the agency.

B. Employees have the right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal.

C. Agencies should utilize alternative methods of dispute resolution, including mediation, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships between employees and management.

D. If the complaint pertains to an interpretation of these rules, it may be appealed to the director within 30 calendar days of the agency's final decision. The director will issue an interpretation in accordance with 1.7.1.9 NMAC.

[7-1-80...5-15-96; Rn & A, 1 NMAC 7.15.11, 7-1-97; 1.7.6.13 NMAC - Rn, 1 NMAC 7.6.13 & A, 11/30/00; A, 5-14-09]

1.7.6.14 [RESERVED]

[Rn & R, 1 NMAC 7.6.8, 1 NMAC 7.6.9, 1 NMAC 7.6.13, 7-1-97; 1.7.6.14 NMAC - Rn, 1 NMAC 7.6.14, 11/30/00]

PART 7: ABSENCE AND LEAVE

1.7.7.1 ISSUING AGENCY:

State Personnel Board.

[1.7.7.1 NMAC - Rp, 1 NMAC 7.7.1, 7/7/2001]

1.7.7.2 SCOPE:

All state agencies in the classified service.

[1.7.7.2 NMAC - Rp, 1 NMAC 7.7.2, 7/7/2001]

1.7.7.3 STATUTORY AUTHORITY:

NMSA 1978, Section 10-9-13(G); Section 11: NMSA 1978, Section 10-7-10; Section 13: 29 U.S.C. Sections 201 and 2601 et seq.; Section 15: NMSA 1978, Section 1-12-42; Section 17: NMSA 1978, Sections 20-4-7, 20-5-14 and 20-7-5 and 38 U.S.C. Section 2024.

[1.7.7.3 NMAC - Rp, 1 NMAC 7.7.3, 7/7/2001; A, 11/14/2002]

1.7.7.4 DURATION:

Permanent.

[1.7.7.4 NMAC - Rp, 1 NMAC 7.7.4, 7/7/2001]

1.7.7.5 EFFECTIVE DATE:

7/7/2001 unless a later date is cited at the end of a section.

[1.7.7.5 NMAC - Rp, 1 NMAC 7.7.5, 7/7/2001]

1.7.7.6 OBJECTIVE:

The objective of Part 7 of Chapter 7: is to provide for the accrual and administration of leave available to employees.

[1.7.7.6 NMAC - Rp, 1 NMAC 7.7.6, 7/7/2001]

1.7.7.7 DEFINITIONS:

A. "Child" or "Children" means a person or persons 18 years of age or younger who is enrolled in School, and who is or are the biological child(ren), legally adopted child(ren), foster child(ren), stepchild(ren), or legal ward(s) of an employee.

B. "Covered active duty or call to covered active duty status" means duty during the deployment of a regular member or reservist to a foreign country.

C. "Covered servicemember" means a current member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness; or a covered veteran (member of the Armed Forces, including a member of the National Guard or Reserves, who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the employee takes FMLA leave to care for the covered veteran) who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

D. "Extra-curricular activities" means events or appointments not falling within the normal school curriculum, including but not limited to sporting events, orientations, ceremonies, field trips, registrations.

E. "Fall semester" means August through December.

F. "Family member" means an individual who is the spouse or domestic partner of or is by blood, marriage or legal adoption a parent, grandparent, great-grandparent, child, foster child, grandchild, great-grandchild, brother, sister, niece, nephew, aunt or uncle, or is living in the household of an of an employee.

G. "Health care provider" means a physician, dentist, podiatrist, clinical psychologist, or optometrist who is authorized to practice medicine or surgery in the state in which the individual practices. In cases limited to treatment consisting of manual manipulation of the spine to correct a subluxation, medical certification may be provided by a chiropractor. Others capable of providing health care services include podiatrists, dentists, clinical psychologists, optometrists, nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice in the state; Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification for the existence of a serious health condition to substantiate a claim for benefits, including a foreign physician.

H. "Medical emergency" means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

I. "School" means a single attendance center in which instruction is offered by one or more teachers and is discernible as a building or group of buildings generally recognized as either a licensed child care center, preschool, elementary, middle, junior high, or high school, or any combination of those, including charter schools, state institutions, and private schools, but not including home schools.

J. "Serious health condition" means an illness or injury that involves an overnight stay in a health care facility and any subsequent treatment in connection with such stay; or, continuing treatment by a health care provider including any one or more of the following:

(1) a period of incapacity of more than three consecutive, full calendar days and subsequent treatment by a health care provider in-person two or more times within 30 days of the first day of incapacity;

(2) treatment by a health care provider in-person on at least one occasion which results in a regimen of continuing treatment;

(3) pregnancy and prenatal care;

(4) chronic condition which requires visits at least twice a year for treatment by a health care provider over an extended period of time and may cause episodic rather than a continuing period of incapacity;

(5) permanent or long-term conditions; and

(6) conditions requiring multiple treatments by a health care provider including recovery time.

K. "Serious illness or injury" means an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces, or existed before the beginning of the servicemember's active duty and was aggravated by service in the line of duty in the Armed Forces, and that may render the covered servicemember medically unfit to perform the duties of the servicemember's office grade, rank or rating. In the case of a veteran who was a covered servicemember, "serious illness or injury" means the same as above but the injury or illness manifested itself before or after the member become a veteran.

L. "Son" or "Daughter" means a biological, adopted, or foster child, a step child, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care" because of a mental or physical disability at the time that FMLA leave is to commence.

M. "Spring semester" means January through May.

N. "Spouse" is defined in the Family and Medical Leave Act regulations [29 CFR 825.122(b)].

[1.7.7.7 NMAC - Rp, 1 NMAC 7.7.7, 7/7/2001; A, 1/1/2020]

1.7.7.8 ANNUAL LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue annual leave at the rate of:

(1) 3.08 hours per pay period if less than three years of cumulative employment,

(2) 3.69 hours per pay period if three years or more but less than seven years of cumulative employment,

(3) 4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment,

(4) 5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or

(5) 6.15 hours per pay period if fifteen years or more of cumulative employment.

B. For purposes of Subsection A of 1.7.7.8. NMAC, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment in the classified service.

C. For purposes of Subsection A of 1.7.7.8. NMAC, employment in programs transferred into the classified service by legislation or executive order shall count as cumulative employment.

D. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue annual leave on a prorated basis.

E. A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December. However, there shall be no limit to the number of annual leave hours that shall be carried forward after the last pay period of December 2020. Any annual leave hours above 240 that are carried forward past December 2020 and are not used prior to the pay period ending July 9, 2021, shall not be carried forward beyond that pay period.

F. Annual leave shall not be used before it is accrued and must be authorized before it is taken in accordance with agency policy.

G. Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at the current hourly rate of their base salary. This payout shall not exceed 240 hours, notwithstanding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

H. Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

I. The estate of an employee who dies while in the classified service shall be paid for the employee's total accrued annual leave, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

[1.7.7.8 NMAC - Rp, 1 NMAC 7.7.8, 7/7/2001; A, 11/14/2002; A, 1/1/2021; A, 8/1/2021]

1.7.7.9 DONATION OF ANNUAL AND/OR SICK LEAVE:

A. Employees may donate annual or sick leave to another employee in the same agency for a medical emergency with approval of the head of the agency. Employees may also make and receive donations of annual leave to and from employees in the exempt service in the same agency for a medical emergency with approval of the head of the agency, as set forth by the department of finance and administration's policies for Governor Exempt Employees.

B. Employees may donate annual leave to the full amount of their accumulated hours.

C. In accordance with the provisions of Section 10-7-10 NMSA 1978, the donation of sick leave is governed by the following restrictions:

(1) employees who have accumulated more than six hundred hours of sick leave can transfer the additional amounts over 600 hours to another employee;

(2) the dollar value of the transferred leave shall equal fifty percent of the monetary value of the total hours transferred by the donor employee;

(3) no more than 120 hours of sick leave may be transferred by the donor in any one fiscal year, with the exception of the year in which an employee retires, when an employee may transfer up to 400 hours of sick leave;

(4) donations of sick leave may be made only once per fiscal year on either the pay date immediately following the first full pay period in January or the first full pay period in July, unless the employee is retiring.

D. An agency shall maintain the following documentation:

(1) the name, position title, and hourly rate of base pay of the proposed leave recipient;

(2) a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and

(3) any other information which the employing agency may reasonably require.

E. Supporting documentation for the request to donate leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

F. The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of base pay to hours of leave based on the recipient's hourly rate of base pay.

G. The recipient of donated leave may not use such leave until first exhausting all accrued annual and sick leave, compensatory time and personal leave day.

H. Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the employee separates from the agency.

[1.7.7.9 NMAC - Rp, 1 NMAC 7.7.9, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2021; A, 8/1/2021]

1.7.7.10 SICK LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of 4.00 hours per pay period.

B. Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue sick leave on a prorated basis.

C. Sick leave may not be used before it is accrued and must be authorized or denied according to agency policy.

D. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a family member, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

E. There is no limit to the amount of sick leave that may be accrued.

F. No payment shall be made for accrued sick leave at the time of separation from the classified service except as provided by law.

G. Former employees who were laid off and are returned to work in accordance with the provisions of 1.7.10.10 NMAC, shall have restored the sick leave they had accrued as of the date of layoff.

H. Payment for Accumulated Sick Leave:

(1) In accordance with the provisions of NMSA 1978, Section 10-7-10, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate of base pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

(2) Immediately prior to retirement from the classified service, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent (50%) of their hourly rate of base pay for up to 400 hours of sick leave.

I. An agency shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate against an employee because that employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency's sick leave policy, files an appeal alleging violation of the Public Employee Caregiver Leave Act, NMSA 1978, Section 10-16H-1, et seq., cooperates in an investigation or prosecution of an alleged violation of that act or opposes any policy or practice established pursuant to that act.

J. Denials of an employee's request for sick leave related to medical treatment or illness of a family member, or alleged violations of the Public Employee Caregiver Leave Act by an agency directly impacting an employee, may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.

[1.7.7.10 NMAC - Rp, 1 NMAC 7.7.10, 7/7/2001; A, 11/14/2002; A, 1/1/2020; A, 8/1/2021]

1.7.7.11 LEAVE WITHOUT PAY:

A. Leave without pay may be approved when:

(1) the agency can assure a position of like status and base pay, at the same geographic location, upon the return of the employee from leave without pay; or

(2) the employee agrees in writing to waive that requirement.

B. Leave without pay shall not exceed 30 consecutive calendar days for employees in emergency or temporary status.

C. Leave without pay may not exceed 30 consecutive calendar days for probationers or employees in term status with less than one year of employment without the prior approval of the agency. Any leave without pay in excess of 30 consecutive calendar days shall not be credited toward the probationary period unless the employee was called to active military duty.

D. Leave without pay for employees in career status and term status with more than one year of employment shall not exceed 12 consecutive months without the prior written approval of the agency.

E. Employees may be authorized leave without pay for up to one year to temporarily accept a position in the exempt service. Such leave without pay may be extended with the approval of the board.

[1.7.7.11 NMAC - Rp, 1 NMAC 7.7.11, 7/7/2001; A, 8/1/2021]

1.7.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in 1.7.7 NMAC eligible employees are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993, as amended. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by Section 7 of the Fair Labor Standards Act, at least 1250 hours during the 12-month period immediately preceding the start of FMLA leave are eligible employees. In addition, employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this rule.

B. An eligible employee is entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period for the birth and care of a newborn child of the employee within one year of the birth; the placement with the employee of a child for adoption or foster care and the care of the newly placed child within one year of placement; the care of the employee's child, parent, spouse, or domestic partner who has a serious health condition; and the employee's own serious health condition that makes the employee unable to perform the essential functions of their job; or any other qualifying exigency arising out of the fact that the spouse, domestic partner, son, daughter or parent of the employee is on covered active duty or has been notified of an impending call or order to covered active duty status, as defined in the FMLA regulations, including issues resulting from short-notice deployment, military events and related activities, childcare and school activities for the military member's child, financial and legal arrangements to address the military member's absence while on covered active duty, counseling, spending time with the military member while on short-term leave, post-

deployment activities, care of the military member's parent who is incapable of self-care, and other activities in accordance with the FMLA regulations. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, domestic partner, son, daughter, parent, or next of kin of a covered servicemember with a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with 1.7.1.12 NMAC.

H. Disputes over the administration of this rule shall be forwarded to the director for resolution.

I. As a condition for restoring an employee whose own serious health condition required FMLA leave, an agency may require the employee to provide certification from their health care provider that the employee is able to resume work. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave.

[1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 7/7/2001; A, 11/14/2002; A, 6/30/2006; A, 10/15/2008; A/E, 1/27/2009; A, 5/14/2009; A, 1/1/2020; A, 8/1/2021]

1.7.7.13 ABSENCE WITHOUT LEAVE:

A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of agency policy governing their readiness for work shall be considered to be absent without leave.

B. Employees shall not be paid for any periods of absence without leave and shall not accrue annual or sick leave.

[1.7.7.13 NMAC - Rp, 1 NMAC 7.7.13, 7/7/2001]

1.7.7.14 ADMINISTRATIVE LEAVE:

A. An agency may authorize employees leave with pay for up to five consecutive workdays when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive workdays must have the prior written approval of the director except for administrative leave granted in accordance with the provisions of Paragraph (2) of Subsection B of 1.7.8.19 NMAC or Paragraph (2) of Subsection D of 1.7.8.19 NMAC or 1.7.11.12 NMAC.

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose workday begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls. This leave is only available for those elections listed in Subsection A of Sections 1-12-42 and 1-1-19 NMSA 1978 and does not apply to absentee or early voting.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency. Employees shall not be entitled to administrative leave to participate in judicial or administrative proceedings against an agency or the state of New Mexico in which the employee is a litigant in or party to the proceeding.

E. Employees shall be entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

F. Employees with a child or children enrolled in a school shall be entitled to the following amounts of paid administrative leave for parent-teacher conferences, provided that the express purpose of the leave is to attend a parent-teacher conference during the employee's normal work day; provided that the leave is not being requested for parental participation or assistance in extra-curricular school activities; provided that the employee follows any procedures required by the office or agency to request paid administrative leave for the parent-teacher conference; and, provided that the employee

provides reasonable notice to the agency in an effort to avoid disruption to operational needs:

(1) Employees with three or more children may be granted up to four hours of paid administrative leave during the spring semester, and up to four hours of paid administrative leave during the fall semester for parent-teacher conferences; and

(2) Employees with one child or two children may be granted up to two hours of paid administrative leave during the spring semester, and up to two hours of paid administrative leave during the fall semester for parent-teacher conferences.

(3) Two employees may request available leave to attend the same scheduled parent-teacher conference for their children.

[1.7.7.14 NMAC - Rp, 1 NMAC 7.7.14, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2020; A, 8/1/2021]

1.7.7.15 EDUCATIONAL LEAVE:

A. An agency may grant employees educational leave with or without pay to pursue training related to their employment that is of immediate or potential value to the agency, including new ideas and innovation that could result from an employee's education on a variety of subjects, expansion of employee skill sets for later promotional or leadership opportunities, and retention. "Educational leave" means time away from work, paid or unpaid, for approved coursework at an academic institution, including participation in classes and travel between an employee's normal work site and the academic institution. Educational leave may be requested as part-time administrative leave with pay or full-time Educational Leave without pay.

B. Employees on full-time educational leave with pay shall not accrue annual or sick leave.

C. Employees who are working part-time while on educational leave shall accrue annual and sick leave in accordance with the provisions of *Subsection D of 1.7.7.8 NMAC* and *Subsection B of 1.7.7.10 NMAC*.

D. Employees who are granted paid educational leave and who leave the employ of the agency within one year of the conclusion of the educational leave, must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee. Employees who are granted paid educational leave and who fail to complete any coursework, testing, or requirements of the educational program must reimburse the agency for any tuition, expenses, or costs that the agency paid on behalf of the employee.

[1.7.7.15 NMAC - Rp, 1 NMAC 7.7.15, 7/7/2001; A, 1/1/2020]

1.7.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the national guard ordered to training shall be given up to 15 workdays of paid military leave per federal fiscal year. These 15 workdays are in addition to other authorized leave.

B. The governor may grant members of the national guard ordered to training up to 15 days of paid military leave, in addition to that already given by law. Such additional leave must not exceed 15 workdays per federal fiscal year.

C. Members of the state defense force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed 30 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed 30 workdays per calendar year for search and rescue missions.

E. Employees on military leave with pay shall accrue annual and sick leave.

F. Employees who are members of a reserve component of the United States armed forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States armed forces.

G. This rule does not apply to employees in temporary or emergency status.

[1.7.7.16 NMAC - Rp, 1 NMAC 7.7.16, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2020]

1.7.7.17 PERSONAL LEAVE DAY:

A. Employees in career status are entitled to two personal leave days each calendar year. The personal leave days will be consistent with the employee's normal workday. Such leave must be requested and approved in advance.

B. Each personal leave day must be taken during consecutive hours.

C. The personal leave days must be taken by December 31 or they will be lost.

D. Employees who do not take their personal leave days shall not be paid for them upon separation from the classified service.

[1.7.7.17 NMAC - Rp, 1 NMAC 7.7.17, 7/7/2001; A, 11/14/2002; A, 10/15/2008; A, 1/1/2021]

1.7.7.18 TRANSFER OF LEAVE:

A. Employees who transfer from one agency to another shall retain all accrued annual, personal and sick leave.

B. All accrued annual and sick leave shall be transferred when persons change status from a position in the exempt service to a position in the classified service without a break in employment.

C. Agencies shall accept all accrued sick leave from persons who separate from the judicial or legislative branches of state government and are employed in the classified service without a break in employment of such separation.

[1.7.7.18 NMAC - Rp, 1 NMAC 7.7.18, 7/7/2001; A, 11/14/2002]

1.7.7.19 DONATING AN ORGAN OR BONE MARROW:

A. In accordance with the provisions of *NMSA 1978, Section 24-28-3*, an agency head may authorize a leave of absence, not to exceed twenty workdays, to an employee for the purpose of donating an organ or bone marrow.

B. In accordance with the provisions of *1.7.7.9 NMAC*, an employee may request and use donated annual or sick leave for the purpose of donating an organ or bone marrow.

C. If an employee requests donations of annual leave or sick leave but does not receive the full amount of leave needed for the donation of an organ or bone marrow, the agency head may grant paid administrative leave for the remainder of the needed leave up to the maximum total of twenty workdays.

D. An agency head may require verification by a physician regarding the purpose of the leave requested and information from the physician regarding the length of the leave requested.

E. Any paid leave of absence granted pursuant to this provision shall not result in a loss of compensation, seniority, annual leave, sick leave or accrued overtime for which the employee is otherwise eligible.

[1.7.7.19 NMAC - N, 12/1/2010]

1.7.7.20 BEREAVEMENT LEAVE:

A. Agencies may grant bereavement leave to employees who have experienced the death of a relation by blood or marriage within the third degree or a person residing in the employee's household.

B. Bereavement leave is a form of administrative leave that an agency may grant to employees in accordance with Subsection A of 1.7.7.14 NMAC. The agency may

authorize bereavement leave for up to five consecutive workdays when it is in the best interests of the agency to do so. Bereavement leave in excess of five consecutive workdays must have the prior written approval of the director.

C. An agency may supplement bereavement leave by authorizing an employee to use accrued annual or sick leave or compensatory time to attend the funeral of a relation by blood or marriage within the third degree or a person residing in the employee's household.

[1.7.7.20 NMAC – N, 8/1/2021]

PART 8: DRUG AND ALCOHOL ABUSE

1.7.8.1 ISSUING AGENCY:

State Personnel Board.

[1.7.8.1 NMAC - Rp, 1.7.8.1 NMAC, 1/14/2025]

1.7.8.2 SCOPE:

All state agencies in the classified service.

[1.7.8.2 NMAC - Rp, 1.7.8.2 NMAC, 1/14/2025]

1.7.8.3 STATUTORY AUTHORITY:

Subsection A of Section 10-9-10 NMSA 1978.

[1.7.8.3 NMAC - Rp, 1.7.8.3 NMAC, 1/14/2025]

1.7.8.4 DURATION:

Permanent.

[1.7.8.4 NMAC - Rp, 1.7.8.4 NMAC, 1/14/2025]

1.7.8.5 EFFECTIVE DATE:

January 14, 2025, unless a later date is cited at the end of a section.

[1.7.8.5 NMAC - Rp, 1.7.8.5 NMAC, 1/14/2025]

1.7.8.6 OBJECTIVE:

The objective of Part 8 of Chapter 7 is: to require every state agency to provide its employees with information on the effects of drug and alcohol abuse; to require drug, alcohol testing or both; and to establish required collection, screening, rehabilitative and sanction parameters.

[1.7.8.6 NMAC - Rp, 1.7.8.6 NMAC, 1/14/2025]

1.7.8.7 DEFINITIONS:

A. "Alcohol" means all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors.

B. "Aliquot" means a portion of a urine specimen used for testing.

C. "Chain of custody" refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. In any dispute regarding chain of custody, the identity and integrity of the sample at issue may be established by a preponderance of the evidence.

D. "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite in a urine specimen by gas chromatography/mass spectrometry (GC/MS).

E. "Drug" means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; or any non-prescription substance containing those drugs.

F. "Initial test" means an immunoassay screen which meets the requirements of the food and drug administration to eliminate negative specimens from further consideration.

G. "Medical review officer" means a New Mexico based and licensed physician knowledgeable in the medical use of prescription drugs and alcohol and the pharmacology and toxicology of illicit drugs and alcohol.

H. "Non-prescription" refers to all substances other than a substance prescribed by a doctor or licensed health professional to the employee or particular candidate.

I. "On duty" means any time during an employee's regular workday or other period during which the employee is required or permitted to work by the employer, including overtime, lunch and other breaks, and anytime while operating or riding in a state vehicle.

J. "Possession" means to knowingly have, own, or have on oneself the drug, the alcohol or both.

K. "Random selection basis" means a system for selecting employees or groups of employees for drug testing in a statistically random system based on a neutral criterion, such as employment or position numbers, without individualized suspicion that a particular employee is using drugs.

L. "Reasonable suspicion" means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.

M. "Safety-sensitive position" is a position in which performance by a person under the influence of drugs or alcohol would constitute an immediate or direct threat of injury or death to that person or another, or as otherwise provided by state or federal law.

[1.7.8.7 NMAC - Rp, 1.7.8.7 NMAC, 1/14/2025]

1.7.8.8 OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991:

A. Employees in safety-sensitive positions within the meaning of the *Omnibus Transportation Employee Testing Act of 1991* ("Omnibus Act" (49 U.S.C. Subtitle VI Part B § 31306) are exempt from and are not covered by the provisions of 1.7.8.7 NMAC and 1.7.8.9 NMAC through 1.7.8.20 NMAC.

B. Agencies with employees covered by the Omnibus Act shall develop and submit to the State Personnel Office (SPO) director a policy for implementing drug and alcohol tests.

C. The policy shall contain at the least the:

- (1) covered positions;
- (2) testing requirements for drugs and alcohol;
- (3) collection of specimen;
- (4) reporting and explanation of test results;
- (5) confidentiality;
- (6) training;
- (7) rehabilitation and sanctions;
- (8) record retention;
- (9) rehabilitative and sanction parameters of drug and alcohol abuse; and

(10) reasonable suspicion.

D. Agencies shall advise the board annually of those positions covered by the Omnibus Act.

[1.7.8.8 NMAC - Rp, 1.7.8.8 NMAC, 1/14/2025]

1.7.8.9 SUBSTANCE ABUSE COORDINATOR:

A. Each agency shall appoint a substance abuse coordinator who shall be responsible for the agency's drug and alcohol abuse program.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

- (1) dangers of drug and alcohol abuse;
- (2) availability of counseling, rehabilitation, and employee assistance programs; and
- (3) sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the duties required by 1.7.8 NMAC.

[1.7.8.9 NMAC – Rp & Rn., 1.7.8.10 NMAC, 1/14/2025]

1.7.8.10 AUTHORIZED DRUG AND ALCOHOL TESTING:

A. The SPO director shall maintain a list of positions designated by the agencies as being safety-sensitive.

B. All candidates for safety-sensitive positions are required to submit to drug testing after an offer of employment is made and prior to final selection.

C. Agencies that require employees in safety-sensitive positions to undergo regular physical examinations shall require such employees to undergo drug testing as part of those physical examinations.

D. Agencies shall require employees to undergo drug, alcohol testing or both if the agency has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to:

(1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty; such symptoms may include, but are not limited to liquor on breath, slurred speech, unsteady walk, or impaired coordination; or

(2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

E. An employee shall submit to a reasonable suspicion drug or alcohol test provided the requesting supervisor has secured the next level supervisor's approval, unless the requesting supervisor is the agency head. The requesting supervisor shall prepare a contemporaneous memorandum outlining the details leading up to the reasonable suspicion drug or alcohol test. The memorandum shall be submitted to the substance abuse coordinator within 24 hours of the request for testing.

F. At least ten percent of employees in safety-sensitive positions in each agency shall be required to undergo drug testing on a yearly basis.

(1) The SPO director shall identify the safety-sensitive positions on a random selection basis.

(2) At the discretion of the agency head or substance abuse coordinator, employees may be excused from random drug testing if:

(a) they have previously requested referral in accordance with the provisions of Subsection B of 1.7.8.19 NMAC;

(b) the selection for random drug testing is made during the first 30 calendar days following the request for referral; or

(c) they are on an authorized absence for 30 calendar days or more.

(3) The agency head or substance abuse coordinator shall inform the SPO director of any employee excused from random drug testing within 10 working days of receipt of the notice of safety sensitive testing.

G. The SPO director may authorize an agency to conduct more than ten percent (10%) random drug testing on employees in safety sensitive positions upon receipt of an agency's written request that would include justification of how the additional testing is related to the conditions of employment and the use of equipment that could pose a risk to public health or safety.

[1.7.8.10 NMAC – Rp & Rn., 1.7.8.11 NMAC, 1/14/2025]

1.7.8.11 COLLECTION OF SPECIMENS:

A. Unless otherwise specified in 1.7.8 NMAC, urine specimens for drug testing shall be collected by a laboratory meeting state licensure requirements and certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

B. Breath specimens may be collected by a certified person, a medical or a laboratory facility. Should the medical or laboratory facility not be available or should the equipment fail, the substance abuse coordinator or designee shall designate another testing facility and report this referral to the SPO director within ten working days of taking the breath specimen.

[1.7.8.11 NMAC – Rp & Rn., 1.7.8.12 NMAC, 1/14/2025]

1.7.8.12 DRUG TESTS:

A. The initial and confirmatory drug tests shall be performed by a state licensed laboratory in accordance with the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing. The laboratory shall have the capability of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

B. The cutoff concentrations set forth in Section 40.85 of Part 40 of 49 C.F.R. shall be used when screening specimens on the initial and confirmatory urine drug tests.

C. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

D. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[1.7.8.12 NMAC – Rp & Rn., 1.7.8.13 NMAC, 1/14/2025]

1.7.8.13 ALCOHOL TESTS:

A. A test for alcohol shall be administered by a legally recognized and approved method.

B. A test by a legally recognized or approved method with results of blood alcohol content (BAC) level of .04 or more shall be deemed positive for alcohol.

C. For employees who have undergone alcohol rehabilitation, pursuant to Paragraph (1) of Subsection D of 1.7.8.19 NMAC, a positive test result during the 30 to 180 calendar days following the first positive test shall subject an employee to disciplinary action. Such a test may be performed by urinalysis.

[1.7.8.13 NMAC - Rp, 1.7.8.14 NMAC, 1/14/2025]

1.7.8.14 REPORTING OF TEST RESULTS:

A. Drug and alcohol test results shall be reported only to the substance abuse coordinator or designee.

B. The test report shall contain the specimen number assigned by the agency, the laboratory accession number and results of the tests. All specimens negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive. Results may be transmitted to the substance abuse coordinator by various means including certified mail with return receipt requested, courier service, or electronic mail in a secure area (e.g., facsimile or computer). Certified copies of all analytical results and chain-of-custody forms shall be available from the laboratory when requested by the SPO director, the agency head, or substance abuse coordinator or designee.

C. The substance abuse coordinator or designee shall advise candidates and employees in writing of positive test results.

D. All records pertaining to a given urine specimen shall be retained by the laboratory for a minimum of two years.

E. Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality may be grounds for disciplinary action.

[1.7.8.14 NMAC – Rp & Rn., 1.7.8.15 NMAC, 1/14/2025]

1.7.8.15 EXPLANATION OF POSITIVE TEST RESULTS:

A. Candidates for a safety sensitive position who test positive for drugs, alcohol or both may, within two workdays of being advised of the test results, submit a written request to the agency's substance abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs, alcohol or both shall be referred by the agency's substance abuse coordinator or designee to the medical review officer.

(1) If the candidate does not request a review of the test results within two workdays, the candidate waives review by the medical review officer and any retesting of the sample and consents to rejection for selection.

(2) The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications for medical or dental treatment. The medical review officer shall also review the results of any retest done according to the provisions of 1.7.8.17 NMAC.

(a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the state to order a reanalysis of the original sample and such retests are authorized to be performed only at a laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

(b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the candidate or employee an opportunity to discuss the test results. The discussion between the medical review officer and the candidate or employee may be in person or by telephone.

(c) The medical review officer shall advise the appropriate substance abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the agency substance abuse coordinator. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the candidate or employee of involuntary ingestion of drugs or alcohol or both, but shall simply report such claims to the agency substance abuse coordinator with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

B. Based upon the medical review officer's report and such other inquiries or facts as the agency may consider, the agency shall determine whether the explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the explanations or challenges of the positive test results are unsatisfactory the agency:

(a) shall provide a written explanation to the candidate or employee as to why the explanation is unsatisfactory, along with the test results, within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year.

(2) If the explanations or challenges of the positive test results are satisfactory the agency:

(a) shall notify the candidate or employee in writing within 11 calendar days of the agency's determination; and

(b) shall retain such records as confidential for one year.

[1.7.8.15 NMAC – Rp & Rn., 1.7.8.16 NMAC, 1/14/2025]

1.7.8.16 RETESTING:

Candidates who have sought review of their positive drug or alcohol urine tests by the medical review officer and all employees who tested positive for drugs or alcohol urine tests may elect to have, at their expense, an aliquot of the original urine specimen retested by another laboratory that meets applicable provisions of any state licensure requirements and is certified in forensic urine drug testing by either the substance abuse and mental health services administration or the college of American pathologists. The drug testing laboratory shall arrange for the shipment of the aliquot to the laboratory of the candidates' or employees' choosing. The agency shall pay for the retest if the retest is negative.

[1.7.8.16 NMAC – Rp & Rn., 1.7.8.17 NMAC, 1/14/2025]

1.7.8.17 CONFIDENTIALITY:

No laboratory reports or test results shall appear in the employee's personnel file unless he or she is subject of a disciplinary action taken in accordance with the provisions of 1.7.8 NMAC. Laboratory reports or test results shall be placed in a special locked file maintained by the substance abuse coordinator. Files relating to laboratory reports or test results maintained by the substance abuse coordinator are confidential within the meaning of 1.7.1.12 NMAC.

[1.7.8.17 NMAC – Rp & Rn., 1.7.8.18 NMAC, 1/14/2025]

1.7.8.18 REHABILITATION AND SANCTIONS:

A. Candidates for employment:

(1) A candidate for employment in a safety-sensitive position shall be rejected for selection when he tests positive for drugs and does not seek review by the medical review officer or cannot satisfactorily explain the positive test results.

(2) An employee for transfer or promotion to a safety-sensitive position who tests positive for drugs and is unable to satisfactorily explain the positive test results shall be subject to disciplinary action including dismissal if the employee occupies a safety-sensitive position. If the employee is not in a safety-sensitive position, the employee shall be treated in accordance with the provisions of Subsection D of 1.7.8.19 NMAC.

B. Voluntary self-identification by employees:

(1) Any employee who requests referral to an EAP, counseling or a drug or alcohol rehabilitation program, prior to selection for drug and alcohol testing shall be referred by the substance abuse counselor. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The agency may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only.

(3) Employees in safety-sensitive positions, who have requested referral shall be assigned to non safety-sensitive duties until successful completion of the approved substance abuse program or treatment plan and release by the substance abuse program provider.

(4) Employees are subject to drug, alcohol testing or both at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of requesting referral.

(a) Employees in safety-sensitive positions who test positive during this time period or fail to successfully complete such program are subject to disciplinary action including dismissal.

(b) Employees in non safety-sensitive positions who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The agency may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation by the agency after considering all factors relevant to the employee's condition and job performance history.

(5) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 to 180 calendar day period following the referral shall be considered a positive test result.

C. Safety-sensitive positions: Employees in safety-sensitive positions who have not requested referral to an employee assistance program, counseling, or a drug or alcohol rehabilitation program and test positive on a required drug, alcohol test or both shall be subject to disciplinary action including dismissal if they do not have a satisfactory explanation for the positive test results.

D. Non safety-sensitive positions:

(1) Employees in non safety-sensitive positions who test positive on a reasonable suspicion drug or alcohol test or both required by Subsection D of 1.7.8.11 NMAC and do not have a satisfactory explanation for the positive test results shall be

referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program. Employees are subject to drug or alcohol testing at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of the first positive test. Any such employee who tests positive for drugs, alcohol or both between 30 and 180 calendar days of the first positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal.

(2) The agency may grant an employee administrative leave to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only.

E. Refusal to cooperate in testing procedure: Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing or both procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal.

F. Possession of drugs or alcohol:

(1) Employees who illegally sell, purchase, or convey from one person or one place to another drugs or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pamp. 1994)*, while on duty shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

(2) When employees, while on duty consume or have in their possession drugs, open containers of alcohol or any substance in *Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pamp. 1994)* without a valid prescription or as otherwise authorized by law, they shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

[1.7.8.18 NMAC – Rp & Rn., 1.7.8.19 NMAC, 1/14/2025]

1.7.8.19 PILOT PROGRAM:

The board may authorize a pilot program to evaluate impairment testing. Such pilot programs may authorize variances from provisions of 1.7.8 NMAC, including random drug testing for participants in the pilot program.

[1.7.8.19 NMAC – Rp & Rn., 1.7.8.20 NMAC, 1/14/2025]

PART 9: PERFORMANCE APPRAISALS

1.7.9.1 ISSUING AGENCY:

State Personnel Board.

[1.7.9.1 NMAC - Rp, 1.7.9.1 NMAC, 1/14/2025]

1.7.9.2 SCOPE:

All state agencies in the classified service.

[1.7.9.2 NMAC - Rp, 1.7.9.2 NMAC, 1/14/2025]

1.7.9.3 STATUTORY AUTHORITY:

Subsection A of Section 10-9-10 NMSA 1978 and Section 10-9-15 NMSA 1978.

[1.7.9.3 NMAC - Rp, 1.7.9.3 NMAC, 1/14/2025]

1.7.9.4 DURATION:

Permanent.

[1.7.9.4 NMAC - Rp, 1.7.9.4 NMAC, 1/14/2025]

1.7.9.5 EFFECTIVE DATE:

January 14, 2025, unless a later date is cited at the end of a section.

[1.7.9.5 NMAC - Rp, 1.7.9.5 NMAC, 1/14/2025]

1.7.9.6 OBJECTIVE:

The objective of Part 9 of Chapter 7 is: to provide for the regular appraisal and documentation of employee performance and review of agency compliance in conducting performance appraisals.

[1.7.9.6 NMAC - Rp, 1.7.9.6 NMAC, 1/14/2025]

1.7.9.7 DEFINITIONS:

[RESERVED]

1.7.9.8 FORM:

A. The performance of managers and employees shall be documented on a State Personnel Office (SPO) director approved appraisal form that includes:

(1) basic employee information (employee's name, working title, employee identification number, position number, anniversary date, and the name of their immediate supervisor);

(2) job assignments and goals;

(3) performance rating areas; and

(4) signature spaces for the employee, rater and reviewer to record initial, interim and final performance appraisal discussions.

B. A performance appraisal shall be initiated within 45 calendar days following the date of the employee's hire, reassignment, promotion, demotion, reduction, or transfer to a position and shall become a part of each employee's employment history.

[1.7.9.8 NMAC - Rp, 1.7.9.8 NMAC, 1/14/2025]

1.7.9.9 PERFORMANCE APPRAISAL:

A. Managers and supervisors must successfully complete a director-approved course of study on employee performance appraisal within 90 days of hire into a supervisor or manager position, and a refresher course every three (3) years, or as needed.

B. The performance appraisal of a career employee shall include, at least, a semi-annual interim review and a final annual review by the immediate supervisor by the employee's anniversary date.

C. The performance appraisal of a probationary employee shall include, at least two interim reviews and a final annual review prior to the completion of the employee's probationary period. The performance of promoted employees shall be reviewed through at least two interim reviews and a final annual review prior to the completion of a one-year period upon promotion.

D. The performance appraisal of an employee shall be performed by the immediate supervisor with employee input and participation. Additional input and participation from employee's peers, customers, subordinates, or other appropriate personnel may be applied when appropriate.

E. Performance appraisals may be performed whenever an immediate supervisor wishes to make an employee's performance a matter of record, upon change of immediate supervisor, or whenever appropriate.

F. Managers and immediate supervisors who fail to comply with the provisions of 1.7.9 NMAC may be subject to disciplinary action including dismissal.

[1.7.9.9 NMAC - Rp, 1.7.9.9 NMAC, 1/14/2025]

1.7.9.10 [RESERVED]

[1.7.9.10 NMAC - Rp, 1.7.9.10 NMAC, 1/14/2025]

1.7.9.11 REBUTTAL:

Employees may submit a rebuttal to performance appraisals, which shall become a part of the performance appraisal.

[1.7.9.11 NMAC - Rp, 1.7.9.11 NMAC, 1/14/2025]

1.7.9.12 REPORT TO THE BOARD:

During the fourth quarter of each calendar year the SPO director shall report to the board on the record of each agency in conducting performance appraisals of its employees in the classified service. Agencies shall cooperate with the director, in accordance with the provisions of NMSA 1978, Section 10-9-15, and provide the director with such information concerning its performance appraisals as the director may require.

[1.7.9.12 NMAC - Rp, 1.7.9.12 NMAC, 1/14/2025]

PART 10: FURLOUGH, REDUCTION IN FORCE, REEMPLOYMENT, SEPARATION WITHOUT PREJUDICE

1.7.10.1 ISSUING AGENCY:

State Personnel Board.

[1.7.10.1 NMAC - Rp, 1 NMAC 7.10.1, 07/07/01]

1.7.10.2 SCOPE:

All state agencies in the classified service.

[1.7.10.2 NMAC - Rp, 1 NMAC 7.10.2, 07/07/01]

1.7.10.3 STATUTORY AUTHORITY:

NMSA 1978, 10-9-10(A); Section 10: NMSA 1978, Section 10-9-19; Section 11: NMSA 1978, Sections 28-15-1 to 28-15-3 and 38 U.S.C. Section 2021; Section 13: NMSA 1978, Section 52-1-25.1.

[1.7.10.3 NMAC - Rp, 1 NMAC 7.10.3, 07/07/01; A, 11/14/02]

1.7.10.4 DURATION:

Permanent

[1.7.10.4 NMAC - Rp, 1 NMAC 7.10.4, 07/07/01]

1.7.10.5 EFFECTIVE DATE:

07/07/01 unless a later date is cited at the end of a section.

[1.7.10.5 NMAC - Rp, 1 NMAC 7.10.5, 07/07/01]

1.7.10.6 OBJECTIVE:

The objective of Part 10 of Chapter 7 is: to provide a system for employee furlough, and separation upon reduction in force; to provide for reemployment after military service; to provide for injured employees' return to work, and potential separation.

[1.7.10.6 NMAC - Rp, 1 NMAC 7.10.6, 07/07/01]

1.7.10.7 DEFINITIONS:

A. "Furlough" means a temporary placement of an employee in a reduced work hour schedule, which can either be partial or full-time, for lack of work or funds.

B. "Agency hire date" means the date on which an employee's current continuous employment with the agency or its legal predecessor began or, when an agency or organizational unit of an agency is merged with another agency, the date on which the employee began continuous employment with the original hiring agency.

[1.7.10.7 NMAC - Rp, 1 NMAC 7.10.7, 07/07/01]

1.7.10.8 FURLOUGH:

A. In the event of the need for a furlough, an agency shall submit a plan identifying organizational units to be affected by the furlough to the board for approval to effect the furlough. The director may approve such plans if an emergency exists and there is insufficient time for the board to consider such plans.

B. The furlough plan shall affect all employees within the organizational unit impacted to the same extent.

C. No furlough shall exceed 12 months in duration.

D. Employees shall be given at least 14 calendar days written notice of furlough, unless the time limit is waived by the director. Notice shall be served in accordance with the provisions of **1.7.1.10 NMAC**.

E. Employees shall be returned from furlough when the reasons for the furlough cease to exist. Wherever possible, all affected employees shall be returned at the same time, to the same extent.

[1.7.10.8 NMAC - Rp, 1 NMAC 7.10.8, 07/07/01; A, 7-15-05]

1.7.10.9 REDUCTION IN FORCE:

A. An agency may lay off employees only for deletion of positions, shortage of work or funds, or other reasons that do not reflect discredit on the services of the employees.

B. An agency shall identify organizational units for purposes of a layoff and submit a written plan to the board. Such organizational units may be recognized on the basis of geographic area, function, funding source, or other factors. The agency must define the classifications affected within the organizational unit.

C. Upon board approval of a layoff plan, the agency effecting the layoff shall initiate a right of first refusal within the agency. All employees affected by the layoff shall be provided the following rights:

(1) employees to be affected by the reduction in force (RIF) shall be provided the right of first refusal to any position to be filled within the agency for which they meet the established requirements, at the same or lower midpoint than the midpoint of the position the employee currently holds, unless there is an actual layoff candidate exercising RIF rights for that position;

(2) affected employees shall compete only with other employees in the same agency affected by the reduction in force;

(3) the agency's list of eligible candidates for the open positions shall be comprised of those affected employees meeting the established requirements of the position;

(4) employees shall have eleven calendar days from the date of an offer to accept the position unless otherwise agreed; employees who do not accept an offer shall not lose the right of first refusal status to other positions; and

(5) the right of first refusal under **Subsection C of 1.7.10.9. NMAC** shall extend until the first effective date of layoff as defined in the plan.

D. The order of layoff due to reduction in force shall be by service date which is determined based upon the agency hire date. In the event of a tie, the director shall determine an appropriate mechanism for breaking the tie.

E. No employee in career status shall be laid off while there are term, probationary, emergency or temporary status employees in the same classification in the same organizational unit.

F. Employees in career status shall be given at least 14 calendar days written notice of layoff. Notice shall be served according to the provisions of **1.7.1.10 NMAC**.

[1.7.10.9 NMAC - Rp, 1 NMAC 7.10.9, 07/07/01; A, 11/14/02; A, 03/31/04; A, 7-15-05]

1.7.10.10 RETURN FROM REDUCTION IN FORCE:

A. Former employees who were in career status at the time of separation by a reduction in force shall have reemployment rights within the classified service, for a six-month period, under the following provisions:

(1) Former employees shall be returned to work in order of highest service date as determined by **Subsection D of 1.7.10.9 NMAC** to any position to be filled within the agency from which the employee was laid off. The position must contain the same or lower midpoint as that held at the time of the former employee's separation, provided the former employee has made application for said position and meets the established requirements;

(2) Reemployment to positions and agencies, other than the agency from which the former employee was laid off, shall extend when any position is to be filled. The position must contain the same or lower midpoint as that held at the time of the former employee's separation, provided the former employee has made application for said position and meets the established requirements. If, when an agency intends to fill a position, there is more than one eligible former employee with rights to return to work under this rule, the agency shall select the former employee who is best qualified in the agency's opinion;

(3) Offers of employment shall be made in writing and shall be delivered by a method that provides proof of service or attempted service;

(4) A former employee who is offered and accepts employment after layoff shall occupy the position within 14 calendar days of accepting the offer of employment or forfeit the right to employment ; and

(5) Any former employee who refuses an offer of employment or fails to respond to an offer of employment within 14 calendar days shall be removed from the employment list for the position offered.

B. Former employees returned to work according to the provisions of **Subsection A of 1.7.10.10 NMAC** shall have that period of time they were laid off counted as time in the classified service, shall hold the status of the position in accordance with **1.7.2.9 NMAC, 1.7.2.10 NMAC or 1.7.2.11 NMAC** and do not have to serve a new probationary period if reemployed into career status.

[1.7.10.10 NMAC - Rp, 1 NMAC 7.10.10, 07/07/01; A, 11/14/02]

1.7.10.11 REEMPLOYMENT AFTER MILITARY SERVICE:

Any employee who separates from the classified service to enter the United States armed forces, national guard, or an organized reserve unit may be reemployed in accordance with the provisions of *38 U.S.C. Section 2021* and *NMSA 1978, Sections 28-15-1 to 28-15-3*.

[1.7.10.11 NMAC - Rp, 1 NMAC 7.10.11, 07/07/01; A, 11/14/02]

1.7.10.12 EARLY RETURN-TO-WORK/MODIFIED DUTY ASSIGNMENTS:

A. Agencies shall implement a policy to enable employees who have been unable to work because of a compensable injury or illness under the workers' compensation act to return to work in a modified duty assignment for up to 6 months and may be extended for a period of up to 6 additional months if substantial progress in the recovery of an injured or ill employee has been demonstrated and it has been anticipated the injured or ill employee will be able to return to full duty within the time frame of the considered extension.

B. The agency shall make a good faith effort to identify and offer modified duty/return to work opportunities to injured or ill employees in accordance with the provisions of *NMSA 1978, Section 52-1-25.1* and *NMSA 1978 52-3-49.1*. At the agency's discretion the employee may be assigned to his or her current classification with modified duties or to a temporary assignment comprised of a combination of duties from a variety of positions.

C. Employees on modified duty assignment to a temporary position shall maintain their salary and status for the duration of such temporary assignment.

[1.7.10.12 NMAC - Rp, 1 NMAC 7.10.12, 07/07/01; A, 11/14/02; A, 7-15-05]

1.7.10.13 SEPARATION WITHOUT PREJUDICE:

A. Employees who have suffered an injury or illness which is compensable under the workers' compensation act and are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, shall be separated from the service without prejudice provided:

(1) the employee has been afforded modified duty in accordance with **1.7.10.12 NMAC**;

(2) the employee has reached maximum medical improvement prior to the completion of up to 12 months of modified duty; or, the employee has not reached maximum medical improvement upon the expiration of up to 12 months of modified duty;

(3) all efforts to accommodate the medical restrictions of the employee have been made and documented; and

(4) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

B. Employees who have suffered an illness or injury that is not compensable under the workers' compensation act and are unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, as a result of the physical or mental disability created by the non job-related injury or illness shall be separated from the service without prejudice provided:

(1) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented; and

(2) the employing agency has made reasonable efforts to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation; or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

C. Agencies may provide modified duty to employees for a period of up to 4 months during the separation process if required to meet the provisions of this rule.

D. Notice of contemplated separation without prejudice:

(1) to initiate the separation without prejudice of an employee who has completed the probationary period, the agency shall serve a notice of contemplated separation without prejudice on the employee which: describes the circumstances which form the basis for the contemplated separation without prejudice; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has 11 calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response;

(2) when the notice of contemplated separation without prejudice is served by mail, the employee receiving service shall have 3 additional calendar days in which to file a response;

(3) at the time the notice of contemplated separation without prejudice is served on the employee, the agency shall notify the director and the risk management division of the general services department of the proposed separation without prejudice and submit a copy of the separation notice along with documentation to support efforts to provide modified duty and to support efforts to find other suitable vacant positions.

E. Response to notice of contemplated separation without prejudice:

(1) a representative of the employee's choosing may respond in writing to the notice of contemplated separation without prejudice on behalf of the employee;

(2) if there is a request for an oral response to the notice of contemplated separation without prejudice, the agency shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the agency agree in writing to an extension of time; a representative of the employee's choosing may represent the employee;

(3) the purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story; it is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to support the proposed involuntary separation without prejudice.

F. Notice of final separation without prejudice:

(1) if the employee does not respond to the notice of contemplated separation without prejudice the agency shall issue a notice of final separation within 11 calendar days following the response period;

(2) if the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final separation without prejudice no later than 11 calendar days from the date of receipt of the response;

(3) the notice of final separation without prejudice shall:

(a) specify the action to be taken;

(b) describe the circumstances which form the basis for the separation without prejudice, which may not include allegations not included in the notice of contemplated separation without prejudice;

(c) give a general explanation of the evidence the agency has;

(d) specify when the final separation without prejudice will be effective, which must be at least 24 hours from the time of service of the notice of final separation without prejudice;

(e) inform the employee that the final separation without prejudice may be appealed to the board with a written statement of the grounds for the appeal delivered to the state personnel office in Santa Fe, New Mexico, and received by the director within 30 calendar days of the effective date of the separation without prejudice; and

(f) the adjudication process is outlined in **1.7.12 NMAC**.

[1.7.10.13 NMAC - Rp, 1 NMAC 7.10.13, 07/07/01; A, 11/14/02; A, 06/08/04; A, 10/29/04; A, 7/15/05; A, 5/15/07; A, 12/1/10]

1.7.10.14 REEMPLOYMENT OF JOB-RELATED INJURED OR ILL FORMER EMPLOYEES:

A. A former employee who has separated from the service due to job-related injury or illness and who has received or is due to receive benefits under the Workers' Compensation Act shall have reemployment rights in accordance with the provisions of *NMSA 1978, Section 52-1-50.1 and NMSA 1978 Section 52-3-49*, under the following provisions:

(1) Reemployment rights under **1.7.10.14 NMAC** are extended only by the agency employing the former employee at the time of the job related injury or illness and are provided only for positions which contain the same or lower midpoint as that held at the time of separation.

(2) To initiate reemployment rights under this rule, the former employee must notify the agency in writing, with a copy to the office, of their desire to be reemployed. The notification shall include the positions and locations, which the former employee is willing to accept, and an appropriate application for employment.

(3) The agency must receive certification in writing from the treating health care provider that the former employee is fit to carry out the essential functions of the

position with or without reasonable accommodation without significant risk of re-injury or relapse to illness.

(4) When the agency is to fill a vacant position which is a position and location indicated by the former employee, the agency shall offer the job to the former employee provided:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the agency certifies that the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

(5) Former employees reemployed in accordance with the provisions of **Subsection A of 1.7.10.14 NMAC** will hold the status of the position in accordance with **1.7.2.9 NMAC, 1.7.2.10 NMAC or 1.7.2.11 NMAC** and do not have to serve a probationary period if they were in career status at the time of separation.

B. The risk management division of the general services department and the office shall be notified immediately of any injured or ill former employee who applies for a position and subsequently declines a job offer.

[1.7.10.14 NMAC - Rp, 1 NMAC 7.10.14, 07/07/01; A, 11/14/02; A, 12/1/10]

PART 11: DISCIPLINE

1.7.11.1 ISSUING AGENCY:

State Personnel Board.

[1.7.11.1 NMAC - Rp, 1.7.11.1 NMAC, 1/14/2025]

1.7.11.2 SCOPE:

All state agencies in the classified service.

[1.7.11.2 NMAC - Rp, 1.7.11.2 NMAC, 1/14/2025]

1.7.11.3 STATUTORY AUTHORITY:

Subsection H of Section 10-9-13, Subsection A of Section 10-9-18, Section 10-9-22, NMSA 1978; and Sections 28-2-1 to 28-2-6 NMSA 1978; Chapter 173, laws of 1997.

[1.7.11.3 NMAC - Rp, 1.7.11.3 NMAC, 1/14/2025]

1.7.11.4 DURATION:

Permanent.

[1.7.11.4 NMAC - Rp, 1.7.11.4 NMAC, 1/14/2025]

1.7.11.5 EFFECTIVE DATE:

January 14, 2025, unless a later date is cited at the end of a section.

[1.7.11.5 NMAC - Rp, 1.7.11.5 NMAC, 1/14/2025]

1.7.11.6 OBJECTIVE:

The objective of Part 11 of Chapter 7 is: to provide a mechanism by which management can implement constructive, progressive steps towards solving performance or behavior problems.

[1.7.11.6 NMAC - Rp, 1.7.11.6 NMAC, 1/14/2025]

1.7.11.7 DEFINITIONS:

[RESERVED]

1.7.11.8 DISCIPLINE:

A. The primary purpose of discipline is to correct performance or behavior that is below acceptable standards, or contrary to the employer's legitimate interests, in a constructive manner that promotes employee responsibility.

B. Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder to an oral or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

C. Agencies shall utilize alternative methods to resolve conflicts or improve employee performance or behavior whenever appropriate.

[1.7.11.8 NMAC - Rp, 1.7.11.8 NMAC, 1/14/2025]

1.7.11.9 NOTICES AND COMPUTATION OF TIME:

A. Notices prescribed by 1.7.11 NMAC shall be served in accordance with the provisions of 1.7.1.10 NMAC.

B. The computation of time prescribed or allowed by 1.7.11 NMAC shall be in accordance with the provisions of 1.7.1.11 NMAC.

[1.7.11.9 NMAC - Rp, 1.7.11.9 NMAC, 1/14/2025]

1.7.11.10 JUST CAUSE:

A. An employee who has completed the probationary period required by Subsection A of 1.7.2.8 NMAC may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work that is inconsistent with the employee's obligation to the agency.

B. Just cause includes, but is not limited to: inefficiency; incompetency; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in 1.7.8 NMAC; failure to comply with any provisions of these rules; falsifying official records and/or documents such as employment applications, or conviction of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 MMSA 1978, apply.

[1.7.11.10 NMAC - Rp, 1.7.11.10 NMAC, 1/14/2025]

1.7.11.11 PROBATIONERS AND EMPLOYEES IN EMERGENCY OR TEMPORARY STATUS:

Probationers and employees in emergency or temporary status may be suspended, demoted, or dismissed effective immediately with written notice and without right of appeal to the board. The written notice shall advise the employee of the conduct, actions, or omissions which resulted in the suspension, demotion, or dismissal.

[1.7.11.11 NMAC - Rp, 1.7.11.11 NMAC, 1/14/2025]

1.7.11.12 ADMINISTRATIVE LEAVE PENDING DISCIPLINARY ACTION:

Agencies may authorize paid administrative leave for a period up to 160 consecutive work hours during a disciplinary action proceeding or investigation. Paid administrative leave in excess of 160 consecutive work hours must be approved by the State Personnel Office (SPO) Director.

[1.7.11.12 NMAC - Rp, 1.7.11.12 NMAC, 1/14/2025]

1.7.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of contemplated action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, the agency shall serve a notice of contemplated action on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has eleven calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by certified mail or courier, the employee shall have three additional calendar days from service of notice in which to file a response.

B. Response to notice of contemplated action:

(1) A representative of the employee's choosing may respond in writing to the notice of contemplated action on behalf of the employee.

(2) If there is a request for an oral response to the notice of contemplated action, the agency shall meet with the employee within 11 calendar days from the date of receipt of the request, unless the employee and the agency agree in writing to an extension of time. A representative of the employee's choosing may represent the employee.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

C. Notice of final action:

(1) If the employee does not respond to the notice of contemplated action, the agency shall issue a notice of final action within 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final action no later than 11 calendar days from the date of receipt of the response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be at least 24 hours from the time of service of the notice of final action; and

(e) inform the employee of his or her appeal rights.

(4) Appeal rights:

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the board by delivering a written statement of the grounds for appeal to the SPO Director at 2600 Cerrillos Road, Santa Fe, New Mexico 87505 no later than 30 calendar days from the effective date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

(b) an employee who is covered by a collective bargaining agreement may either appeal the final disciplinary action to the board as stated above in Subparagraph (a) of Paragraph (4) of Subsection C of 1.7.11.13 NMAC or make an irrevocable election to appeal to an arbitrator pursuant to the collective bargaining agreement.

[1.7.11.13 NMAC - Rp, 1.7.11.13 NMAC, 1/14/2025]

PART 12: ADJUDICATION

1.7.12.1 ISSUING AGENCY:

State Personnel Board.

[1.7.12.1 NMAC - Rp, 1 NMAC 7.12.1, 07/07/01]

1.7.12.2 SCOPE:

All state agencies in the classified service.

[1.7.12.2 NMAC - Rp, 1 NMAC 7.12.2, 07/07/01]

1.7.12.3 STATUTORY AUTHORITY:

NMSA 1978, Section 10-9-10(B), NMSA 1978, Section 10-9-13(E),(H), NMSA 1978, Section 10-9-18, NMSA 1978, Section 10-9-20, NMSA 1978, Section 10-15-1(H) and NMSA 1978, Section 52-5-2(B),(C).

[1.7.12.3 NMAC - Rp, 1 NMAC 7.12.3, 07/07/01; A, 11/14/02]

1.7.12.4 DURATION:

Permanent.

[1.7.12.4 NMAC - Rp, 1 NMAC 7.12.4, 07/07/01]

1.7.12.5 EFFECTIVE DATE:

07/07/01 unless a later date is cited at the end of a section.

[1.7.12.5 NMAC - Rp, 1 NMAC 7.12.5, 07/07/01]

1.7.12.6 OBJECTIVE:

The objective of Part 12 of Chapter 7 is: to provide a system for career status employees to appeal disciplinary actions to the personnel board and to provide a process for the personnel board to hear complaints against workers' compensation judges.

[1.7.12.6 NMAC - Rp, 1 NMAC 7.12.6, 07/07/01]

1.7.12.7 DEFINITIONS:

For purposes of **1.7.12.24 NMAC**.

A. "Complaint" means a sworn statement of the alleged facts underlying the claim that a judge has violated one or more of the canons of the code of judicial conduct as adopted by the supreme court, except canon 21-900 of that code; and;

B. "Judge" means a workers' compensation judge appointed in accordance with the provisions of *NMSA 1978, Section 52-5-2(B)*.

[1.7.12.7 NMAC - Rp, 1 NMAC 7.12.7, 07/07/01; A, 11/14/02]

1.7.12.8 FILING AN APPEAL:

A. Employees who have completed the probationary period as required by **Subsection A of 1.7.2.8 NMAC** and have been demoted, dismissed, or suspended have the right to appeal to the board for a public hearing before a hearing officer designated by the board.

B. A notice of appeal must be in writing and filed with the director no later than 30 calendar days from the effective date of the dismissal, demotion, or suspension. A copy of the notice of final action and a statement of the grounds for the appeal must

accompany the notice of appeal. Appeals not filed within 30 calendar days shall be dismissed by the hearing officer for lack of jurisdiction.

C. Within fifteen days from the date of dismissal, an appellant may request a hearing in which to present evidence challenging a dismissal for lack of jurisdiction. If a hearing on the dismissal is held, the hearing officer shall submit a recommended decision to the board which shall contain a summary of the evidence and findings of fact and conclusions of law. The board, at a regularly scheduled meeting, shall then issue a final decision.

D. Upon acceptance of a notice of appeal, the hearing officer shall send the agency a copy of the notice of appeal and issue a scheduling order directing the parties, in part, to submit to the hearing officer a stipulated pre-hearing order for his/her approval, which shall contain at least: a statement of any contested facts and issues; proposed stipulation of those facts not in dispute; the relief or remedy requested by the appellant; a deadline for disclosure of all probable witnesses with a brief summary of their anticipated testimony and documentary evidence; a list of exhibits; a deadline for the completion of discovery and filing of motions; a deadline for requesting subpoenas; and whether the parties agree to participate in voluntary alternative dispute resolution.

(1) The hearing officer may further revise the pre-hearing order.

(2) Any discussion concerning possible settlement of an appeal shall not be a part of the pre-hearing order and may not be introduced at the hearing.

[1.7.12.8 NMAC - Rp, 1 NMAC 7.12.8, 07/07/01; A, 7-15-05; A, 5/15/07]

1.7.12.9 AGENCY WITHDRAWAL OF DISCIPLINE:

A. An agency may withdraw a completed disciplinary action prior to commencement of a personnel board appeals hearing so long as the appellant is fully restored to pre-disciplinary status insofar as employment, back pay and benefits are concerned.

B. Upon agency withdrawal of a disciplinary action, the hearing officer may dismiss the appeal without prejudice to the agency, which may reinstitute disciplinary action.

[1.7.12.9 NMAC - Rp, 1 NMAC 7.12.9, 07/07/01; 1.7.12.9 NMAC - N, 7-15-05]

1.7.12.10 HEARING OFFICER:

A. The hearing officer shall not participate in any adjudicatory proceeding if, for any reason, the hearing officer cannot afford a fair and impartial hearing to either party. Either party may ask to disqualify the designated hearing officer for cause by filing an affidavit of disqualification within 14 calendar days of the order. The affidavit must state the particular grounds for disqualification. The designated hearing officer shall rule on

motions for disqualification and an appeal of the ruling may be made to the board within 14 calendar days of the hearing officer's ruling.

B. If an appeal is filed by an employee of the office, or if for any other reason a designated hearing officer within the office cannot or does not hear an appeal, the personnel board may designate a qualified state employee to hear the appeal. The personnel board may also decline to designate a qualified state employee to hear the appeal and instead, designate a member or members of the personnel board to serve as hearing officer and prepare a recommended decision. The personnel board member or members hearing the appeal, if less than a quorum, shall not take part in discussion or deliberation which leads to a final decision by a quorum of the personnel board.

C. No person shall communicate concerning the merits of any pending adjudicatory proceeding with the designated hearing officer or member of the board unless both parties or their representatives are present.

D. The hearing officer may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the hearing officer or upon the filing of a motion to withdraw the appeal at any time.

E. The hearing officer may dismiss an appeal with prejudice upon the filing of a motion to withdraw the appeal after the deadline for the completion of discovery upon such terms and conditions as the hearing officer deems proper.

[1.7.12.10 NMAC - Rp, 1 NMAC 7.12.10, 07/07/01; 1.7.12.10 NMAC - Rn, 1.7.12.9 NMAC, 7-15-05; A, 10-15-08]

1.7.12.11 CONSOLIDATION AND JOINDER:

A. The hearing officer may consolidate cases in which two or more appellants have cases containing identical or similar issues.

B. The hearing officer may join the appeals of an appellant who has two or more appeals pending.

C. The hearing officer may consolidate or join cases if it would expedite final resolution of the cases and would not adversely affect the interests of the parties.

[1.7.12.11 NMAC - Rp, 1 NMAC 7.12.11, 07/07/01; 1.7.12.11 NMAC - Rn, 1.7.12.10 NMAC, 7-15-05]

1.7.12.12 DISCOVERY:

The hearing officer has the power to compel, by subpoena or order, the production of written materials or other evidence the hearing officer may deem relevant or material. The parties shall have a right to discovery limited to depositions, interrogatories,

requests for production, and requests for admission and witness interviews. All discovery shall be subject to the control of the hearing officer.

[1.7.12.12 NMAC - Rp, 1 NMAC 7.12.12, 07/07/01; 1.7.12.12 NMAC - Rn, 1.7.12.11 NMAC & A, 7-15-05]

1.7.12.13 MOTIONS:

A. Any defense, objection, or request that can be determined on the merits prior to a hearing may be raised by motion before the deadline set by the hearing officer unless good cause is shown for the delay.

B. Prior to filing the motion, the filing party shall determine whether the non-filing party concurs with the motion. If the non-filing party concurs, the filing party shall include a stipulated order with the motion. If the non-filing party does not concur, the filing party shall indicate the non-concurrence in the motion and include a proposed order.

C. A response to a motion is due twelve (12) calendar days from the date of filing of the motion. A reply to a response is due seven (7) days from the date of filing the response. The response and reply schedule may also be set or modified by the hearing officer.

D. Responses to any motions shall be filed according to a schedule set by the hearing officer.

E. During the course of a hearing, motions may be renewed or made for the first time, if such a motion then becomes appropriate.

F. The hearing officer shall rule on all motions except for dispositive motions on the merits.

[1.7.12.13 NMAC - Rp, 1 NMAC 7.12.13, 07/07/01; 1.7.12.13 NMAC - Rn, 1.7.12.12 NMAC & A, 7-15-05]

1.7.12.14 ADDITIONAL WITNESSES:

Witnesses who are not disclosed by the deadline contained in the pre-hearing order shall not be permitted to testify except for good cause shown and to prevent manifest injustice.

[1.7.12.14 NMAC - Rp, 1 NMAC 7.12.14, 07/07/01; 1.7.12.14 NMAC - Rn, 1.7.12.13 NMAC, 7-15-05]

1.7.12.15 SUBPOENAS:

A. The hearing officer has the power to subpoena witnesses.

B. The hearing officer has the power to subpoena documents or other tangible items.

C. Subpoenas shall be prepared in triplicate by the party requesting the subpoena and will be issued by the hearing officer. A copy of each subpoena shall be sent to the opposing party by the requesting party, together with a transmittal letter listing all persons subpoenaed.

D. Subpoenas shall be hand delivered unless otherwise agreed to.

E. In order to compel attendance at a hearing, the subpoena shall be received by the witness at least 72 hours prior to the time the witness is to appear. The hearing officer may waive this rule for good cause shown.

F. Employees under subpoena shall be granted administrative leave as required by the provisions of **Subsection D of 1.7.7.14 NMAC**.

[1.7.12.15 NMAC - Rp, 1 NMAC 7.12.15, 07/07/01; 1.7.12.15 NMAC - Rn, 1.7.12.14 NMAC & A, 7-15-05]

1.7.12.16 SANCTIONS:

A. The hearing officer may impose sanctions upon the parties as necessary to serve the cause of justice including, but not limited to the instances set forth below.

(1) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, a request for admission, and/or production of witnesses, the hearing officer may:

(a) draw an inference in favor of the requesting party with regard to the information sought;

(b) prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought;

(c) permit the requesting party to introduce secondary evidence concerning the information sought; or

(d) strike any part of the pleadings or other submissions of the party failing to comply with such request.

(2) The hearing officer may refuse to consider any motion or other action which is not filed in a timely fashion.

B. The hearing officer may issue an order to show cause why an appeal should not be dismissed for failure to prosecute, or rule either for the appellant or the appellee, so long as the merits of the case are not concerned. If the order is uncontested, the hearing officer may dismiss the appeal or rule for the appellant. If the order is contested and the hearing officer dismisses the appeal or rules for the appellant, such decision is appealable to the board within 14 calendar days of the order.

C. The board may prohibit a representative from appearing before the board or one of its hearing officers for a period of time set by the board for good cause shown.

[1.7.12.16 NMAC - Rp, 1 NMAC 7.12.16, 07/07/01; 1.7.12.16 NMAC - Rn, 1.7.12.15 NMAC & A, 7-15-05]

1.7.12.17 NOTICE OF HEARING:

Notice of hearing shall be made by certified mail with return receipt requested at least 14 calendar days prior to the hearing, unless otherwise agreed to by the parties and the hearing officer.

[1.7.12.17 NMAC - Rp, 1 NMAC 7.12.17, 07/07/01; A, 11/14/02; 1.7.12.17 NMAC - Rn, 1.7.12.16 NMAC, 7-15-05]

1.7.12.18 HEARINGS:

A. The hearing shall be open to the public unless the parties agree that it shall be closed.

B. A party may appear through a representative at any and all times during the adjudication process, provided such representative has filed a written entry of appearance.

C. The hearing officer may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The agency is entitled to have a person, in addition to its representative, in the hearing room during the course of the hearing, even if the person will testify in the hearing.

D. The agency shall present its evidence first.

E. Oral evidence shall be taken only under oath or affirmation.

F. Each party shall have the right to:

(1) make opening and closing statements;

(2) call and examine witnesses and introduce exhibits;

- (3) cross-examine witnesses;
- (4) impeach any witness;
- (5) rebut any relevant evidence; and
- (6) introduce evidence relevant to the choice of discipline if it was raised as an issue in the pre-hearing order.

G. The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the state of New Mexico. However, in order to support the board's decisions, there must be a residuum of legally competent evidence to support a verdict in a court of law.

H. The hearing officer shall admit all evidence, including affidavits, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The hearing officer shall exclude immaterial, irrelevant, or unduly cumulative testimony.

I. If scientific, technical, or other specialized knowledge will assist the hearing officer to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise. In the case of evidence relating to polygraph examinations, the proponent must have followed all the provisions of rule **11-707 NMRA**.

J. The hearing officer may take administrative notice of those matters in which courts of this state may take judicial notice.

K. The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in the district courts of the state of New Mexico.

L. The hearing officer shall admit evidence relevant only to those allegations against the appellant included in both the notice of contemplated action and the notice of final action or which are contested issues as set forth in the pre-hearing order.

M. The hearing shall be recorded by a video and/or audio-recording device under the supervision of the hearing officer. No other recording of the hearing, by whatever means, shall be permitted without the approval of the hearing officer.

N. The board shall provide for and require that the hearing officer:

(1) appoint a signed language interpreter pursuant to the Signed Language Interpreting Practices Act [*NMSA 1978, Section 61-34-1 to 61-34-17*] to appellants whose hearing is so impaired that they cannot understand voice communication; appellant must provide proof of disability; and

(2) appoint a language interpreter pursuant to the Court Interpreter Act [NMSA 1978, Section 38-10-1 to 38-10-8] for hearing participants who do not understand English well enough to understand the proceedings.

[1.7.12.18 NMAC - Rp, 1 NMAC 7.12.18, 07/07/01; 1.7.12.18 NMAC - Rn, 1.7.12.17 NMAC, 7-15-05; A, 5/15/07; A, 12/1/10]

1.7.12.19 POST-HEARING BRIEFS:

The hearing officer may require or permit written closing arguments, post-hearing briefs and proposed findings of fact and conclusions of law according to a scheduling order issued by the hearing officer. If case law is cited, a copy of the case shall be provided to the hearing officer.

[1.7.12.19 NMAC - Rp, 1 NMAC 7.12.19, 07/07/01; 1.7.12.19 NMAC - Rn, 1.7.12.18 NMAC, 7-15-05]

1.7.12.20 RECOMMENDED DECISION:

The hearing officer shall recommend a decision to the board as soon as practicable upon conclusion of the hearing. The hearing officer shall provide a copy of the recommended decision to the parties by certified mail with return receipt requested.

[1.7.12.20 NMAC - Rp, 1 NMAC 7.12.20, 07/07/01; 1.7.12.20 NMAC - Rn, 1.7.12.19 NMAC, 7-15-05]

1.7.12.21 EXCEPTIONS TO RECOMMENDED DECISION:

A. The parties to a proceeding may file exceptions with supporting briefs to a hearing officer's recommended decision according to a scheduling order issued by the hearing officer.

B. Copies of such exceptions and any briefs shall be served simultaneously on all parties, and a statement of such service shall be furnished to the board's hearing officer.

C. Exceptions to a hearing officer's recommended decision shall cite the precise substantive or procedural issue to which exceptions are taken.

D. Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief in support of exceptions shall not contain matters not related to or within the scope of the exceptions.

[1.7.12.21 NMAC - Rp, 1 NMAC 7.12.21, 07/07/01; 1.7.12.21 NMAC - Rn, 1.7.12.20 NMAC, 7-15-05]

1.7.12.22 DECISIONS OF THE BOARD:

A. As a general rule, the board shall only consider post-hearing briefs, and proposed findings of fact and conclusions of law, the hearing officer's recommended decision, and exceptions to the recommended decision. Where circumstances warrant, the board may review all or a portion of the record before the hearing officer.

B. The board shall not consider any additional evidence or affidavits not in the record before the hearing officer or pleadings not filed in accordance with the hearing officer's scheduling order.

C. The board may consider the record in executive session. Should the board have questions of the hearing officer, the questions shall be put to the hearing officer in open session.

D. Unless otherwise ordered by the board in advance of its consideration of the appeal, the board shall not permit any oral arguments.

E. If the board determines that the credibility of a witness is at issue, it shall review at least as much of the record as is necessary to support its decision.

[1.7.12.22 NMAC - Rp, 1 NMAC 7.12.22, 07/07/01; 1.7.12.22 NMAC - Rn, 1.7.12.21 NMAC, 7-15-05]

1.7.12.23 REINSTATEMENT:

A. The board may order agencies to reinstate appellants with back pay and benefits. Such appellants shall be reinstated to their former position, or to a position of like status and pay, that they occupied at the time of the disciplinary actions.

B. In the event the board's order includes any back pay, the appellant shall provide the agency with a sworn statement of gross earnings, unemployment compensation, and any other earnings, including but not limited to disability benefits received by the appellant since the effective date of the disciplinary action. The agency shall be entitled to offset earnings, unemployment compensation and any other earnings received during the period covered by the back pay award against the back pay due. The hearing officer shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay.

[1.7.12.23 NMAC - Rp, 1 NMAC 7.12.23, 07/07/01; 1.7.12.23 NMAC - Rn, 1.7.12.22 NMAC, 7/15/05; A, 10/15/08; A, 12/1/10]

1.7.12.24 REPORT OF DECISIONS:

When the board renders a final decision in an appeal, the board's decision including the hearing officer's recommended decision will be available to the public pursuant to the

Inspection of Public Records Act, NMSA 1978, Section 14-2-1 (as amended through 2003). Copies of the board's final order and the hearing officer's recommended decision shall be stored at the state personnel office, separate from case files, and will be available to the public when provided to the parties. The director will redact any privileged and confidential information pursuant to state and federal law.

[1.7.12.24 NMAC - Rp, 1 NMAC 7.12.24, 07/07/01; A, 11/14/02; 1.7.12.24 NMAC - Rn, 1.7.12.23 NMAC, 7-15-05; A, 5/15/07]

1.7.12.25 WORKERS' COMPENSATION JUDGES:

A. The board's duly appointed hearing officer shall hear all complaints filed in accordance with the provisions of *NMSA 1978, Section 52-5-2(C)*.

B. Whenever some action is required to be taken within a certain number of calendar days, the hearing officer may extend the time for a reasonable period.

C. Upon receipt of a complaint, the hearing officer shall serve a copy of the complaint on the judge by certified mail.

D. Within 14 calendar days after service of a complaint, the judge shall file an answer with the hearing officer. The facts alleged in the complaint may be deemed admitted if not specifically denied by answer or if no answer is filed within the prescribed time.

E. Upon the filing of an answer or upon the expiration of the time for its filing, the hearing officer shall issue an order directing the parties to submit a stipulated pre-hearing order for the hearing officer's approval and signature, which shall contain at least: a statement of any contested facts and issues; stipulation of those matters not in dispute; the identity of all witnesses to be called and a brief summary of their testimony; a list of exhibits; and requests for subpoenas.

F. The hearing officer has the power to subpoena witnesses, compel their attendance, and require the production of any books, records, documents or other evidence the hearing officer may deem relevant or material.

G. The Hearing:

(1) The hearing officer shall receive evidence admissible under the rules of evidence, that govern proceedings in the courts of the state of New Mexico and oral evidence shall be taken only under oath or affirmation.

(2) The hearing officer shall make procedural rulings.

(3) The formal hearing shall be open unless the hearing officer, for compelling reasons, determines otherwise. Reasons for closing the hearing shall be stated in the record.

(4) A judge shall have the right and reasonable opportunity to defend against the charges by the introduction of evidence, to be represented by counsel and to examine and cross-examine witnesses.

(5) The hearing shall be recorded by a sound recording device under the supervision of the hearing officer.

H. The hearing officer may require post-hearing briefs and proposed findings.

I. The hearing officer shall, within a reasonable time, prepare and submit to the parties a report which shall contain a brief statement of the proceedings and the answer thereto, if any; a summary of the evidence; and findings with respect to the allegations.

J. Within 14 calendar days of receipt of the hearing officer's report, the parties may file objections to the hearing officer's report, setting forth all objections to the report and all reasons in opposition to the findings.

K. The board shall consider the report of the hearing officer and the record made before the hearing officer and in connection therewith make its findings as to whether there was a violation of the code of judicial conduct and transmit its findings to the director of the workers' compensation administration.

[1.7.12.25 NMAC - Rn, 1.7.12.24 NMAC, 7-15-05]

PART 13: RULE MAKING

1.7.13.1 ISSUING AGENCY:

State Personnel Board.

[1.7.13.1 NMAC – Rp, 1 NMAC 7.13.1, 07/07/01]

1.7.13.2 SCOPE:

All state agencies in the classified service.

[1.7.13.2 NMAC – Rp, 1 NMAC 7.13.2, 07/07/01]

1.7.13.3 STATUTORY AUTHORITY:

NMSA 1978, Section 10-9-10(A) (Repl. Pamp. 1995), NMSA 1978, Section 10-9-13 (Repl. Pamp. 1995), NMSA 1978, Section 10-15-1 (Repl. Pamp. 1995) and NMSA 1978, Section 14-4-7.1 (Repl. Pamp. 1995).

[1.7.13.3 NMAC – Rp, 1 NMAC 7.13.3, 07/07/01]

1.7.13.4 DURATION:

Permanent.

[1.7.13.4 NMAC – Rp, 1 NMAC 7.13.4, 07/07/01]

1.7.13.5 EFFECTIVE DATE:

07/07/01 unless a later date is cited at the end of a section.

[1.7.13.5 NMAC – Rp, 1 NMAC 7.13.5, 07/07/01]

1.7.13.6 OBJECTIVE:

The objective of Part 13 of Chapter 7 is: to provide a process for adoption, amendment, or repeal of a State Personnel Board Rule.

[1.7.13.6 NMAC – Rp, 1 NMAC 7.13.6, 07/07/01]

1.7.13.7 DEFINITIONS:

[RESERVED]

[1.7.13.7 NMAC – Rp, 1 NMAC 7.13.7, 07/07/01]

1.7.13.8 NOTICE AND COMMENT:

A. The Director shall provide an opportunity for agencies and interested parties to comment on proposed rule changes at least 30 calendar days prior to the adoption, amendment or repeal of any Rule.

B. At least 30 calendar days prior to the adoption, amendment, or repeal of any Rule, the Director shall publish notice of the proposed action.

(1) The notice shall be published in the *New Mexico Register*.

(2) The notice shall be mailed to broadcast stations licensed by the Federal Communications Commission and newspapers of general circulation that have provided a written request for such notice.

(3) The notice shall be mailed to the last known address of persons and organizations who have made a written and timely request to the Office.

(4) The notice shall state where a copy of the proposed Rule may be obtained.

C. The giving of the notice shall be considered complete upon mailing.

D. One copy of the full text of any proposed Rule shall be made available without cost to any person or organization who requests a copy.

[1.7.13.8 NMAC – Rp, 1 NMAC 7.13.8, 07/07/01]

1.7.13.9 HEARING:

The Board shall hold a public hearing on the proposed action. Interested persons or duly authorized representatives shall have the opportunity to submit written statements or make oral presentations.

[1.7.13.9 NMAC – Rp, 1 NMAC 7.13.9, 07/07/01]

1.7.13.10 EFFECTIVE DATE:

The Board shall determine the effective date of Rules, which shall be filed with the Records Center.

[1.7.13.10 NMAC – Rp, 1 NMAC 7.13.10, 07/07/01]

1.7.13.11 EMERGENCY RULES:

The Board may adopt, amend, or suspend a Rule as an emergency, without compliance with *1.7.13.8 NMAC* and *1.7.13.9 NMAC*, if the Board determines that it is in the public interest. An action to adopt, amend, or suspend a Rule pursuant to this Rule shall not be effective for longer than 120 calendar days.

[1.7.13.11 NMAC – Rp, 1 NMAC 7.13.11, 07/07/01]

1.7.13.12 PUBLICATION OF RULES:

Rules, including emergency Rules, adopted, amended, or repealed by the Board shall be published in the *New Mexico Register*.

[1.7.13.12 NMAC – Rp, 1 NMAC 7.13.12, 07/07/01]

1.7.13.13 DEMONSTRATION PROJECTS:

The Board may authorize demonstration projects which may require the temporary suspension of the Rules when the Office and the agency(ies) agree to utilize such a project to improve operations.

[1.7.13.13 NMAC – Rp, 1 NMAC 7.13.13, 07/07/01]

CHAPTER 8: STATE ETHICS COMMISSION

PART 1: GENERAL PROVISIONS

1.8.1.1 ISSUING AGENCY:

State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

[1.8.1.1 NMAC-N, 1/1/2020; A, 10/27/2020]

1.8.1.2 SCOPE:

The rules of Chapter 8 provide for and govern the organization and administration of the state ethics commission.

[1.8.1.2 NMAC-N, 1/1/2020]

1.8.1.3 STATUTORY AUTHORITY:

Paragraph 2 of Subsection A of Section 10-16G-5, State Ethics Commission Act, Section 10-16G-1 NMSA 1978; Section 10-16-13.1, Governmental Conduct Act, Section 10-16-1 NMSA 1978, Subsection (C) of Section 10-15-1, Open Meetings Act, Section 10-15-1 NMSA 1978.

[1.8.1.3 NMAC-N, 1/1/2020; A, 10/27/2020]

1.8.1.4 DURATION:

Permanent.

[1.8.1.4 NMAC-N, 1/1/2020]

1.8.1.5 EFFECTIVE DATE:

January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.1.5 NMAC-N, 1/1/2020]

1.8.1.6 OBJECTIVE:

The rules of Chapter 8 are promulgated to ensure that the state ethics commission is administered so that it works effectively, efficiently and fairly to achieve its constitutional and statutory mission. That mission is to ensure compliance with all applicable public ethics laws by all public officials, employees, candidates, contractors, lobbyists and others subject to the commission's jurisdiction throughout their employment or dealings with New Mexico state government; and to ensure that the public ethics laws are clear, comprehensive and effective. The rules adopted in Chapter 8 shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.

[1.8.1.6 NMAC-N, 1/1/2020]

1.8.1.7 DEFINITIONS:

A. "Administrative complaint" means an allegation of an actual or potential violation of ethics laws in a sworn complaint, as fully described in Subsection D of Section 10-16G-2 NMSA 1978.

B. "Advisory opinions" are opinions written by the commission responding to questions presented by persons authorized under Paragraph 1 of Subsection A of Section 10-16G-8 NMSA 1978 about how laws within the commission's jurisdiction apply to specific fact situations.

C. "Commission" means the State Ethics Commission.

D. "Ethics laws" means Article IX, Section 14 of the New Mexico Constitution and the statutes set out in Subsection A of Section 10-16G-9 NMSA 1978.

E. "Government agency" means an instrumentality of the United States or an agency of a state, county, or municipal government.

F. "Informal complaint" means an allegation of an actual or potential violation of ethics laws from a person, which is not an administrative complaint.

G. "Interagency agreement" means an agreement between the commission and another state or federal agency, including memoranda of understanding, joint powers agreements, and services agreements.

H. "Joint powers agreement" as used in this part, has the same meaning as it does in the Joint Powers Agreements Act, Section 1-11-1 NMSA 1978.

I. "Person" means any natural person or organization that is not a government agency.

J. "Referral" means any allegation of an actual or potential violation of ethics laws received by the Commission or its staff from a government agency that is not an administrative complaint.

K. Other words and phrases used in this part have the same meaning as found in 1.8.3.7 NMAC or the State Ethics Commission Act, Sections 10-16G-1 to -16 NMSA 1978.

[1.8.1.7 NMAC-N, 1/1/2020; A, 10/27/2020; A, 7/1/2023]

1.8.1.8 DUTIES AND POWERS OF THE DIRECTOR:

Without limiting the duties and powers conferred by statute, the director shall have the power to:

- A.** review complaints filed with the commission for jurisdiction;
- B.** refer complaints over which the commission has jurisdiction to the general counsel for investigation and possible filing of a complaint;
- C.** refer complaints, or parts thereof, to other state or federal agencies with jurisdiction over such complaints, pursuant to the terms of any joint powers agreements or other interagency agreements with any such agency;
- D.** enter into contracts on behalf of the commission, including, with the commission's approval, joint powers agreements;
- E.** with the approval of the commission and at the direction of the commission's chair, petition courts for the issuance and enforcement of subpoenas in relation to:
 - (1)** the general counsel's investigations to determine probable cause in connection with a complaint filed with the commission;
 - (2)** the adjudication of complaints filed with the commission; and
 - (3)** an investigation related to the commission's determination whether to file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;
- F.** with the approval of the commission, file a civil court action to enforce any available civil remedy corresponding to any statute or constitutional amendment over which the commission has jurisdiction;
- G.** select and hire staff, including a general counsel;
- H.** select and contract with hearing officers and other contractors;

- I. recommend to the commission adoption of draft rules, forms or legislative changes;
- J. prepare annual budgets and appropriation requests for commission approval;
- K. authorize the general counsel to administer oaths and take depositions;
- L. during a period of vacancy or extended absence in the office of the general counsel, assign any duties assigned to the general counsel by statute or rule to a qualified attorney who is either on the commission's staff or on contract with the commission;
- M. draft advisory opinions for the commission's approval;
- N. notify parties and the public of commission actions, including dismissals or referrals of complaints;
- O. provide for the confidentiality of all records designated as confidential by law;
- P. with commission approval, delay notification of a complaint to protect the integrity of a criminal investigation;
- Q. perform such other duties as may be assigned from time to time by the commission;
- R. issue standing orders to the extent authorized by the commission; and
- S. delegate the responsibilities as set forth in this section to appropriate commission staff members.

[1.8.1.8 NMAC-N, 1/1/2020]

1.8.1.9 ADVISORY OPINIONS AND INFORMAL ADVISORY OPINIONS:

A. Advisory opinions. The commission may issue advisory opinions on matters related to ethics upon request.

(1) A request for an advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) Upon receiving a request for an advisory opinion, the director or the director's designee:

(a) must provide the requester with a written confirmation of receipt; and

(b) may ask the requester if the requester would prefer to receive an informal advisory opinion.

(3) Within sixty days of receiving a request for an advisory opinion, the commission must either:

(a) issue an advisory opinion;

(b) inform the requester that the commission will not be issuing an advisory opinion and provide an explanation for the commission's decision; or

(c) inform the requester that the commission requires more than sixty days to issue an advisory opinion, and notifies the requester about the status of the request every thirty days thereafter.

(4) Unless amended or revoked, an advisory opinion shall be binding on the commission in any subsequent commission proceedings concerning a person who acted in good faith and in reasonable reliance on the advisory opinion.

(5) At the request of any commissioner, the director or the director's designee shall draft an advisory opinion based on any legal determination issued by the director, the general counsel, or a hearing officer for the commission to consider for issuance as an advisory opinion.

B. Informal advisory opinions. A person may submit the request for an informal advisory opinion to the director or general counsel, who may answer the request.

(1) A request for an informal advisory opinion must be in writing, and must be submitted by a public official, public employee, candidate, person subject to the Campaign Reporting Act or the Governmental Conduct Act, government contractor, lobbyist or lobbyist's employer. The request is confidential and not subject to the provisions of the Inspection of Public Records Act.

(2) An informal advisory opinion is specific to the person who requests the advice and the facts presented in the request.

(3) An informal advisory opinion is not binding on the commission unless and until the commission votes to adopt the informal advisory opinion as an advisory opinion. The director, based on any informal advisory opinion issued, may draft an advisory opinion for the commission to consider for issuance as an advisory opinion.

(4) If the commission determines that a person committed a violation after reasonably relying on an informal advisory opinion and the violation is directly related to

the informal advisory opinion, the commission may consider that the person acted in good faith.

[1.8.1.9 NMAC-N, 10/27/2020; A, 10/26/2021]

1.8.1.10 INFORMAL COMPLAINTS; ASSESSMENTS:

A. Upon receipt of an informal complaint or a referral, the director shall assess whether the informal complaint alleges a violation of the ethics laws and is supported by sufficient evidence for a reasonable person to conclude that a violation has occurred.

B. To complete the assessment provided in Subsection A of this section, the director may seek information, proactively or in response to investigative leads, relating to activities that constitute violations of the ethics laws. In making an assessment, the director may seek and review information that is available to the public. For example, the director may review public social media accounts, make written requests for records under the Inspection of Public Records Act, and interview witnesses. Assessments may result in:

- (1) An investigation pursuant to 1.8.1.11 NMAC;
- (2) A request for the Commission's approval to commence a civil action pursuant to 1.8.1.12 NMAC; or
- (3) A determination of no further action pursuant to 1.8.1.13 NMAC.

C. Before initiating an assessment, the director must determine whether the proposed assessment is based on factors other than activities protected by the First Amendment of the United States Constitution or the race, ethnicity, national origin, religion, political affiliation, or other protected status of the assessment's subject.

[1.8.1.10 NMAC-N, 7/1/2023]

1.8.1.11 INVESTIGATIONS; SUBPOENAS:

A. The director may initiate an investigation if there is an articulable factual basis that reasonably indicates that the subject of the investigation has violated or in the immediate future will violate the ethics laws and the investigation is a reasonable use of Commission resources and personnel. Investigations may result in:

- (1) a request for the Commission's approval to commence a civil action pursuant to 1.8.1.12 NMAC; or
- (2) a determination of no further action pursuant to 1.8.1.13 NMAC.

B. In performing an investigation, the director may take any action available to the director when making an assessment, interview witnesses, and petition a district court for leave to issue and serve subpoenas for evidence pursuant to Paragraph 2 of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection D of this Section.

C. Upon approval of the Commission, the director may file an action in district court for the issuance, service, and enforcement of subpoenas requiring the attendance of witnesses and the production of books, records, documents or other evidence relevant or material to the investigation. The civil action provided for in this paragraph shall be filed under seal in the district court in the county where a witness resides. If a witness neglects or refuses to comply with a subpoena, the director may apply to the district court for an order enforcing the subpoena and compelling compliance. The district court may impose sanctions or other relief permitted by law, including contempt, if a person neglects or refuses to comply with an order enforcing the subpoena and compelling compliance.

[1.8.1.11 NMAC-N, 7/1/2023]

1.8.1.12 CIVIL ACTIONS:

A. If, after an assessment pursuant to 1.8.1.10 NMAC or an investigation pursuant to 1.8.1.11 NMAC, the director concludes that the subject of the investigation has violated or will violate the ethics laws, the director shall ask the Commission to approve the initiation of a civil action under Subsection F of Section 10-16G-9 NMSA 1978 and any other applicable statutory authority or a referral to the house of representatives for impeachment proceedings under Subsection C of Section 10-16-14 NMSA 1978.

B. The approval of the Commission is required to initiate a civil action or to refer a matter to the house of representatives for impeachment proceedings.

C. In seeking approval from the Commission to initiate a civil action or refer a matter for impeachment proceedings, the director shall provide a written explanation of the factual basis for the proposed civil action and the list of remedies sought. In seeking approval from the Commission to refer a matter to the house of representatives for impeachment proceedings, the director shall provide a written explanation of the factual basis for the proposed referral and explain why a referral under Subsection C of Section 10-16-14 NMSA 1978 is appropriate.

[1.8.1.12 NMAC-N, 7/1/2023]

1.8.1.13 NO FURTHER ACTION ON INFORMAL COMPLAINT:

If the director determines that an informal complaint is unsubstantiated, does not imply a violation of the ethics laws, or that the assessment or investigation is not a reasonable use of Commission resources and personnel, the director may decide to take no further action on the informal complaint and close the matter.

[1.8.1.13 NMAC-N, 7/1/2023]

1.8.1.14 REFERENCE TO OTHER DOCUMENTS:

When a rule issued by the commission refers to another rule, regulation or statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute or document.

[1.8.1.14 NMAC-Rn, 1.8.10 NMAC, 7/1/2023]

1.8.1.15 INTERPRETATION OF TERMS:

Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular.

B. Gender. Words used in the neuter gender include the masculine and feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.

[1.8.1.15 NMAC-Rn, 1.8.11 NMAC, 7/1/2023]

1.8.1.16 USE OF PRESCRIBED FORMS:

The director may prescribe forms to carry out specified requirements of these rules or the state ethics commission act. Prescribed forms, or their substantial equivalent, must be used when available, unless these rules state otherwise or the director waives this requirement in writing. The director shall accept filings made on legible copies of prescribed forms.

[1.8.1.16 NMAC-Rn, 1.8.12 NMAC, 7/1/2023]

1.8.1.17 ADDRESS:

A. By mail: Director, State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

B. In person: State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, NM 87106.

C. By email: ethics.commission@sec.nm.gov.

[1.8.1.17 NMAC-Rn, 1.8.13 NMAC, 7/1/2023]

1.8.1.18 COMMISSION MEETINGS:

The time, location, and format of commission meetings is determined in accordance with this section.

A. Time, place, and duration. The commission chair, in consultation with the director, shall determine the time, place, format, and duration of commission meetings necessary to conduct the commission's business.

B. Executive Session. Upon motion and vote of a quorum, the commission may enter into a closed, executive session to discuss matters that are confidential under the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, and as otherwise permitted by the Open Meetings Act, Section 10-15-1 NMSA 1978.

C. Virtual meetings. With the consent of the commission chair, the commission may meet virtually via web or teleconference. In the event the commission meets virtually, the meeting should occur on a platform that allows members of the public to observe and participate. At a virtual or telephonic meeting, each commissioner participating shall be identified when speaking and all meeting participants and members of the public attending must be able to hear every person who speaks during the meeting. The commission staff shall record virtual meetings and make the recordings (except for recordings of closed executive sessions) available for public inspection.

D. Attendance by individual commissioners. An individual commissioner may attend a physical commission meeting virtually, through telephone phone or web conference provided that each commissioner participating by conference telephone can be identified when speaking, and those attending may hear every person who speaks during the meeting.

[1.8.1.18 NMAC-Rn, 1.8.1.14 NMAC, 7/1/2023]

1.8.1.19 COMPUTATION OF TIME:

In computing any period of time prescribed or allowed by these rules, the day from which the period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation, unless it is a Saturday, Sunday or a day on which the state observes a legal holiday or emergency closure. In case of any such closure, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday, legal holiday or emergency closure day is excluded from the computation.

[1.8.1.19 NMAC-Rn, 1.8.1.15 NMAC, 7/1/2023]

1.8.1.20 SEVERABILITY:

If any provision of Chapter 8 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 8 of these rules which can be given effect without the invalidated provisions or applications, and to this end the several provisions of Chapter 8 of these rules are hereby declared severable.

[1.8.1.20 NMAC-Rn, 1.8.1.16 NMAC, 7/1/2023]

PART 2: RECUSAL AND DISQUALIFICATION OF COMMISSIONERS

1.8.2.1 ISSUING AGENCY:

State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, NM 87106.

[1.8.2.1 NMAC-N, 1/1/2020]

1.8.2.2 SCOPE:

This part applies to all proceedings, cases, and hearings before the commission and all parties that appear before the commission, unless a more specific statutory or regulatory provision applies to the specific type of hearing being conducted.

[1.8.2.2 NMAC-N, 1/1/2020]

1.8.2.3 STATUTORY AUTHORITY:

Subsection H of Section 10-16G-7 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

[1.8.2.3 NMAC-N, 1/1/2020]

1.8.2.4 DURATION:

Permanent.

[1.8.2.4 NMAC-N, 1/1/2020]

1.8.2.5 EFFECTIVE DATE:

January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.2.5 NMAC-N, 1/1/2020]

1.8.2.6 OBJECTIVE:

The objective of this part is to ensure that all decisions and actions taken by the state ethics commission are free of undue or unlawful influences of any kind, real or apparent. The rule requires commissioners to evaluate their personal interests and attitudes, and to fairly and honestly consider such issues whether or not raised by parties. When appropriate, commissioners shall withdraw from acting on any matter where a real or apparent conflict of interest could undermine the confidence of the public in the fairness of the commission. The rules adopted in this part shall be interpreted and applied to achieve the purposes and objectives for which the commission has been established.

[1.8.2.6 NMAC-N, 1/1/2020]

1.8.2.7 DEFINITIONS:

A. "Disqualification" means the removal by the commission of a commissioner from involvement in a matter of any kind upon a motion by any party alleging a real or apparent conflict of interest or other cause that reasonably calls into question the commissioner's ability to act impartially in that matter;

B. "Pecuniary interest" means the stricter applicable definition of "financial interest" in Subsection F of Section 10-16-2, the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or in Section 13-1-57 NMSA 1978, the Procurement Code, Section 13-1-28 NMSA 1978;

C. "Personal bias or prejudice" of a commissioner means a predisposition toward or against a person based on a previous or ongoing relationship that renders the commissioner unable to exercise the commissioner's functions impartially;

D. "Recusal" means the withdrawal of a commissioner from a commission matter of any kind on the grounds that it is inappropriate for the commissioner to participate because of an actual or apparent conflict of interest or lack of impartiality in that matter;

E. Other words and phrases used in this part have the same meaning as found in 1.8.1.7 NMAC and 1.8.3.7 NMAC.

[1.8.2.7 NMAC-N, 1/1/2020]

1.8.2.8 RECUSAL AND DISQUALIFICATION OF COMMISSIONERS:

A. GROUNDS FOR RECUSAL: A commissioner shall recuse from a matter in which the commissioner is unable to make a fair and impartial decision, or in which there is reasonable doubt over whether the commissioner can make a fair and impartial decision, because the commissioner:

(1) has, or appears to have, a personal bias or prejudice concerning a party to the matter;

- (2) has prejudged a disputed evidentiary fact involved in the matter;
- (3) has a pecuniary interest in the outcome of the matter;
- (4) has previously served as an attorney, advisor, consultant or witness in the matter in controversy;
- (5) has served as a hearing officer in the matter pursuant to Subsection A of 1.8.3.13 NMAC; or
- (6) believes it is inappropriate to participate in the matter because of an actual or apparent conflict of interest or lack of impartiality in the matter.

B. NOTICE OF RECUSAL: The commissioner shall send notice in writing to the director of a decision to recuse on a matter. That decision shall be communicated to the other commissioners and be publicly disclosed in accordance with the disclosure provisions that apply to commission proceedings.

C. PROCEDURE FOR REQUESTING RECUSAL OR DISQUALIFICATION: When a commissioner subject to recusal under subpart A of this rule does not recuse on his or her own initiative:

- (1) a party may request that the commissioner be disqualified, in a motion setting forth the grounds for the request;
- (2) such a motion shall be filed with the director, not less than 10 days prior to a hearing in which the commissioner may participate, unless the party did not or could not reasonably have known of the alleged grounds for the request at that time;
- (3) the director shall immediately notify the subject commissioner of the motion and ascertain whether the commissioner intends to recuse;
- (4) if the commissioner does not recuse, the commissioner shall provide and make available to the public a full written explanation of the refusal to recuse.

D. APPEAL FROM REFUSAL TO RECUSE:

- (1) The party requesting recusal may appeal to the full commission the decision by the commissioner not to recuse.
- (2) The rest of the commissioners shall, by majority vote, decide whether to disqualify the commissioner who is the subject of the disqualification motion.

1.8.2.9 LIMITATIONS ON PARTICIPATION BY A COMMISSIONER WHO HAS RECUSED OR BEEN DISQUALIFIED:

A. A commissioner who has recused or been disqualified on a matter:

- (1)** shall not participate further in any proceedings relating to the matter;
- (2)** shall be excused from the meeting for any part of the proceedings relating to the matter.

B. The minutes of the commission meetings shall record the name of any commissioner not voting on a matter by reason of disqualification or recusal.

[1.8.2.9 NMAC-N, 1/1/2020]

1.8.2.10 APPOINTMENT OF TEMPORARY COMMISSIONERS WHEN SEVERAL COMMISSIONERS RECUSE OR ARE DISQUALIFIED:

A. Upon recusal or disqualification of two or more commissioners from a proceeding, the remaining commissioners shall, by a majority vote, appoint temporary commissioners to participate in that proceeding.

B. Temporary commissioners shall be appointed in accordance with the political affiliation, geographical representation, cultural diversity and other qualifications set forth in the State Ethics Commission Act.

[1.8.2.10 NMAC-N, 1/1/2020]

PART 3: ADMINISTRATIVE HEARINGS

1.8.3.1 ISSUING AGENCY:

State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 217, Albuquerque, New Mexico 87106.

[1.8.3.1 NMAC-N, 1/1/2020]

1.8.3.2 SCOPE:

State ethics commission (the commission), 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106.

[1.8.3.1 NMAC-N, 01/01/2020; A, 09/14/2021]

1.8.3.3 STATUTORY AUTHORITY:

Paragraphs 2 and 3 of Subsection A of Section 10-16G-5 NMSA 1978; Paragraph 5 of Subsection B of Section 10-16G-6 NMSA 1978; Subsection H of Section 10-16G-7 NMSA 1978; Subsection C of Section 10-16G-12 NMSA 1978; Section 1-19-34.8 of the Campaign Reporting Act, Section 1-19-1 NMSA 1978; Section 2-11-8.3 of the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978; Section 2-15-8 NMSA 1978 ; Sections 10-16-11, 10-16-13, 10-16-14 and 10-16-18 of the Governmental Conduct Act, 10-16-1 NMSA 1978; Sections 10-16A-5, 10-16A-6, and 10-16A-8 of the Financial Disclosure Act, 10-16A-1 NMSA 1978; Section 10-16B-5 of the Gift Act, Section 10-16B-1 NMSA 1978; and Section 13-1-196.1 of the Procurement Code, Section 13-1-28 NMSA 1978.

[1.8.3.3 NMAC-N, 1/1/2020]

1.8.3.4 DURATION:

Permanent.

[1.8.3.4 NMAC-N, 1/1/2020]

1.8.3.5 EFFECTIVE DATE:

January 1, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.3.5 NMAC-N, 1/1/2020]

1.8.3.6 OBJECTIVE:

The objective of this part is to provide general procedural rules for proceedings before the state ethics commission.

[1.8.3.6 NMAC-N, 1/1/2020]

1.8.3.7 DEFINITIONS:

The following terms apply to these rules unless their context clearly indicates otherwise:

A. "Appellant" is a party who requests that the commission review and change the decision of the hearing officer.

B. "Appellee" is a party to an appeal arguing that the hearing officer's decision is correct and should stand.

C. "Blackout period" means the period beginning 60 days before a primary or general election in which a person against whom a complaint is filed is a candidate, and ending on the day after that election.

D. "Brief" is a document summarizing the facts and points of law of a party's case. It may be offered to or requested by a hearing officer or filed in an appeal to the commission. For example, a "brief in chief " is filed with the commission by the appellant. An "answer brief " is filed by the appellee in response to the brief-in-chief.

E. "Candidate" as used in this part, has the same meaning as it does in Subsection G of Section 1-19-26 NMSA 1978 of the Campaign Reporting Act, Section 1-19-25 NMSA 1978.

F. "Case management system" is the commission's electronic filing and notification system for complaints, which may be accessed at <https://sec.nm.gov/proceedings>.

G. "Claim" is a complainant's allegation that a respondent violated a particular provision of law.

H. "Designated district court judge" is an active or pro tempore district judge who has been appointed by the chief justice of the supreme court to consider the issuance and enforcement of subpoenas applied for by the commission.

I. "Discriminatory practice," as used in this part, has the same meaning as it does in Subsection L of Section 28-1-2 of the Human Rights Act, Section 28-1-1 NMSA 1978.

J. "Lobbyist's employer" as used in this part, has the same meaning as it does in Subsection F of Section 2-11-2 of the Lobbyist Regulation Act, Section 2-11-1 NMSA 1978.

K. "Meeting" means a meeting of the commission duly noticed and conducted in compliance with the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978.

L. "Party " and "Parties" means the named persons in a proceeding before the commission or a hearing officer.

M. "Person" means any individual or entity.

N. "Pleading" means any written request, motion, or proposed action filed by a party with the hearing officer or commission.

O. "Qualified hearing officer" means an official appointed by the director in accordance with these rules to conduct an administrative hearing to enable the commission to exercise its statutory powers.

P. "Records" means all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or

characteristics, whether or not the records are required by law to be created or maintained.

[1.8.3.7 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.8 STANDING ORDERS:

The director may issue, or withdraw, standing orders addressing general practice issues and filing protocols for the handling of cases before the commission or its hearing officers. Such standing orders will be displayed publicly at commission facilities, any commission website, and in any applicable information provided with a notice of hearing. The parties appearing before the commission or its hearing officers are expected to comply with standing orders.

[1.8.3.8 NMAC-N, 1/1/2020]

1.8.3.9 COMPLAINTS - FILING REQUIREMENTS AND LIMITATIONS; AMENDMENTS; NOTICE; TIME LIMITATIONS; CONSOLIDATION; COMMISSION-INITIATED COMPLAINTS:

A. The commission shall investigate allegations of violations of any statutes or constitutional provisions over which the legislature gives it jurisdiction. Complaints concerning such violations may be filed against any public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer, or a restricted donor subject to the Gift Act.

(1) The commission may initiate a proceeding before the commission concerning an alleged violation:

(a) through the filing of a complaint with the commission by any person which alleges that the complainant has actual knowledge of the alleged violation of such statutes or constitutional provisions;

(b) by initiating its own complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a person subject to the jurisdiction of the commission, pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978; or

(c) by accepting a complaint filed with another public agency or legislative body and forwarded by that agency or legislative body to the commission pursuant to Subsection B or E of Section 10-16G-9 NMSA 1978.

(2) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, shall:

(a) be filed electronically on the commission's case management system, or on a form prescribed by the commission and provided at no cost to the complainant or in a substantially equivalent form, which the director or the director's designee shall record electronically on the commission's case management system;

(b) state the name and, to the extent known to the complainant, the respondent's mailing address, email address, telephone number, and public office or other position;

(c) set forth in detail the specific claims against the respondent and the supporting factual allegations, including, if known to the complainant, any law that the respondent has allegedly violated;

(d) include any evidence that the complainant has that supports the complaint, which may include documents, records and names of witnesses; and

(e) be signed and sworn to by the complainant, under penalty of false statement.

(3) The director shall reject any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC that fails to state either the respondent's mailing address or email address, or is not signed and sworn to by the complainant, under penalty of false statement and the complainant will have the opportunity to refile the complaint.

(4) A complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC may be amended once as a matter of course at any time before a responsive pleading is served. Otherwise, the complainant may amend the complaint by leave of the director. An amended complaint must be filed within seven days of the director's determination under Paragraph (3) of Subsection C of 1.8.3.10 NMAC that the commission has jurisdiction over the complaint.

(5) Unless the director grants the complainant leave, the commission shall not accept a complaint filed by a complainant who, within the previous calendar year, filed two complaints that were subsequently dismissed. In applying for leave to file a third or subsequent complaint within the same calendar year, the complainant shall explain how, as compared to the dismissed complaints, the proposed complaint concerns different facts, asserts different claims, or asserts claims against different respondents.

(6) By registering and filing a complaint through the commission's case management system, a party agrees to accept electronic service of subpoenas, notices, and other filings as a condition of submitting filings with the commission.

(7) Any party may represent themselves or may be represented by a licensed attorney. Corporations and other non-natural persons must be represented by counsel.

(a) Any attorney representing party shall enter an appearance with the commission and register on the commission's case management system. Upon receipt of the appearance, the commission shall direct all official notices and correspondence to the attorney named in the written appearance, at the address or location stated therein. Any official notice received by any named attorney shall be deemed to have been received by the represented party. An attorney may withdraw from representing a party before the commission only with leave of the director and for a reason provided for by Section B of Rule 16-116 NMRA.

(b) If the respondent is a public official or state public employee subject to a complaint alleging a violation made in the performance of the respondent's duties, the respondent is entitled to representation by the risk management division of the general services department. "Respondent's duties," within the meaning of Subsection K of Section 10-16G-10 NMSA 1978 and this rule, excludes:

(i) conduct undertaken by an elected public official in furtherance of his or her campaign for election or reelection; and

(ii) any duty or obligation that by law is personal, rather than official, in nature.

(8) The commission may proceed with any complaint that is forwarded to the commission by another public agency, or by the legislature or a legislative committee pursuant to Subparagraph (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, according to the terms of any agreement for shared jurisdiction between the commission and the referring agency or the legislative body, pursuant to Subsection E of Section 10-16G-9 NMSA 1978.

(9) No complaint may be accepted or considered by the commission unless the date on which the complaint is received by the commission, or the date on which the commission votes to initiate a complaint, falls within the later of two years from the date:

(a) on which the alleged conduct occurred; or

(b) the alleged conduct could reasonably have been discovered.

(10) For the purpose of applying the two-year statute of limitations established in Subsection A of Section 10-16G-15 NMSA 1978, the date on which a complaint is filed with a public agency that refers the complaint to the commission under the law, or under an agreement for shared jurisdiction, shall be deemed the date of filing with the commission.

B. The commission shall not adjudicate a complaint filed against a candidate, except under the Campaign Reporting Act or Voter Action Act, fewer than 60 days before a primary or general election.

(1) This paragraph does not preclude during the blackout period:

(a) the dismissal of frivolous or unsubstantiated complaints, or dismissal or referral of complaints outside the jurisdiction of the commission, as provided by these rules;

(b) assigning to a hearing officer and making public a complaint that is found to be supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC before the blackout period begins; or

(c) an investigation related to the commission's discretion to file a court action to enforce the civil compliance provisions of any statute or constitutional provision over which the commission has jurisdiction.

(2) For complaints filed during and subject to the blackout period, the director, or the director's designee, shall notify the complainant:

(a) of the provisions of this section regarding the blackout period;

(b) that the complainant may refer allegations of criminal conduct to the attorney general or appropriate district attorney at any time; and

(c) of the deferral of commission action on the complaint for the duration of the blackout period.

(3) The director, or the director's designee, shall within five days notify a candidate named as a respondent in a complaint filed during the 60-day pre-election blackout period of:

(a) the filing of the complaint;

(b) the specific allegations and violations charged in the complaint; and

(c) the deferral of commission action on the complaint for the duration of the blackout period.

C. The commission shall not adjudicate a complaint that alleges conduct occurring only before July 1, 2019. Any complaint filed with the commission or referred to the commission that alleges conduct occurring only before July 1, 2019, shall be dismissed and, if applicable, returned to the referring entity.

D. The director may consolidate a complaint with any other pending complaint involving related questions of fact or laws; provided that the consolidation will not unduly delay resolution of an earlier-filed complaint, unduly prejudice any complainant, or compromise the right of any complainant or respondent to confidentiality under these rules.

E. The Commission may initiate a complaint alleging a violation of any statute or constitutional provision over which the commission has jurisdiction against a public official, public employee, candidate, person subject to the Campaign Reporting Act, government contractor, lobbyist, lobbyist's employer, or a restricted donor subject to the Gift Act, if:

(1) any commissioner or the director presents to the commission information or documents showing a violation of any statute or constitutional provision over which the commission has jurisdiction;

(2) the director determines that the complaint would be within the commission's jurisdiction; and

(3) five commissioners vote to initiate the complaint.

(4) A commissioner's vote to initiate a complaint pursuant to this Subsection E is not grounds for recusal pursuant to Subsection A of 1.8.2.8 NMAC.

F. If the commission initiates any complaint under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the director shall:

(1) provide the respondent with notice of the complaint in accordance with Subsection A of 1.8.3.10 NMAC; and

(2) forward the complaint to the general counsel to initiate an investigation in accordance with 1.8.3.11 NMAC.

G. If the director determines that the complaint, either in whole or in part, is subject to referral to another state or federal agency in accordance with Subsection D of Section 10-16G-9 NMSA 1978, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, within ten days of the referral, provide notice to the respondent of the referral.

H. When the commission initiates its own administrative complaint, the commission may serve in an appellate role after a hearing officer decision, and the commission will be limited to reviewing the record developed at the hearing. As such, except as provided in Subsection E of 1.8.3.9 NMAC, Subsections I & J of Section 10-16G-10 NMSA 1978, Subsection A of Section 10-16G-11 NMSA 1978, Subsection A of 1.8.3.12 NMAC, or Subsection J of 1.8.3.14 NMAC, the commission shall not receive any information related to a complaint filed pursuant to Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC until an appeal is made pursuant to 1.8.3.15 NMAC.

[1.8.3.9 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.10 DIRECTOR'S RESPONSIBILITIES UPON RECEIVING A COMPLAINT; RESPONDENT'S OPPORTUNITY TO RESPOND; JURISDICTIONAL REVIEW; REFERRALS; NOTIFICATION TO PARTIES:

A. Within seven days of receiving a complaint, the director shall notify the respondent of the filing of the complaint; provided that, for any complaint filed pursuant to Subparagraph (a) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall ensure that the complaint satisfies the filing requirements set forth in Paragraph (1) of Subsection A of 1.8.3.9 NMAC before notifying the respondent of the filing of the complaint.

B. Upon receiving a complaint pursuant to Subparagraph (a) or (c) of Paragraph (1) of Subsection A of 1.8.3.9 NMAC, the director shall, within 10 days, review the complaint to determine whether it is within the commission's jurisdiction.

C. If the director determines that a complaint is within the jurisdiction of the commission, unless otherwise provided in Subsection D of this Section, the director shall:

(1) provide the complainant with notice that the commission has jurisdiction for the complaint;

(2) provide the respondent with notice of the complaint and inform the respondent that the respondent may file with the commission a responsive pleading answering the complaint's assertion of facts and presenting arguments that the complaint is frivolous, unsubstantiated or not supported by probable cause within 15 days from the date of receiving the director's notification and serve the same upon the complainant; and

(3) forward the complaint to the general counsel to initiate an investigation. Upon receiving the respondent's responsive pleading, the general counsel may request the complainant to file a reply by a date set out in the request.

D. If the director determines that the complaint, is subject to referral to another state or federal agency, pursuant to Subsection D of Section 10-16G-9, the terms of an agreement entered into pursuant to the terms of Subsection E of Section 10-16G-9 NMSA 1978, Subsection D of Section 10-16-14 NMSA 1978, Subsection C of Section 1-19-34.4 NMSA 1978, or Subsection B of Section 2-11-8.2 NMSA 1978, the director shall refer some or all claims within the complaint to the appropriate agency and, unless a determination is made under Subsection H of Section 10-16G-10 NMSA 1978 to delay notification, within ten days of the referral, shall provide notices to the complainant and the respondent of the referral.

E. If the director determines that the complaint is within the jurisdiction of the commission and recommends that the commission should not act on some or all aspects of the complaint, then the commission shall decide whether to dismiss some or all aspects of the complaint under Subsection C of Section 10-16G-9 NMSA 1978.

F. If the director determines that the complaint is neither within the jurisdiction of the commission nor subject to referral to another agency, the commission shall dismiss the complaint.

G. Subject to Subsection E of Section 1.8.3.15 NMAC, the director shall notify the complainant and respondent in writing of any action taken under Subsections C through F of 1.8.3.10 NMAC, unless notification has been delayed by the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978 and Subsection E of 1.8.3.15 NMAC. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

H. With respect to any complaint filed with or under investigation by the commission, the director shall consult with the attorney general, an appropriate district attorney or the United States attorney if:

(1) when reviewing a complaint for jurisdiction, the director determines that the complaint alleges conduct on the part of the respondent or another that appears reasonably likely to amount to a criminal violation; or

(2) the commission, any commission staff member, or any commission hearing officer finds at any time that a respondent's conduct appears reasonably likely to amount to a criminal violation.

(3) Nothing in Section 10-16G-14 NMSA 1978 or in this section prevents the commission from taking any action authorized by the State Ethics Commission Act or deciding to suspend an investigation pending resolution of any criminal charges.

[1.8.3.10 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.11 GENERAL COUNSEL'S INVESTIGATION:

A. Upon receiving notice of the director's determination that the commission has jurisdiction over the complaint, the general counsel shall determine whether the complaint is frivolous or unsubstantiated, or supported by probable cause.

B. To perform the investigation into whether probable cause supports the complaint, the general counsel, or the general counsel's designee, may administer oaths, interview witnesses under oath, and examine books, records, documents and other evidence

reasonably related to the complaint. The general counsel, or the general counsel's designee, may:

(1) Request to inspect books, records, documents and other evidence reasonably related to a complaint; request the complainant or respondent to admit certain facts; and serve written interrogatories, to be responded to under oath at a time therein specified;

(2) Interview a witness under oath and outside the presence of the parties; and

(3) Notice and take the deposition of any person, including any party, subject to the following provisions:

(a) The general counsel, or the general counsel's designee, may put the witness on oath or affirmation and shall personally, or by someone acting at the general counsel's direction, record the testimony of the witness.

(b) Any objection during a deposition shall be stated concisely in a non-argumentative and non-suggestive manner. Objections to form or foundation may only be made by stating "objection—form" or "objection—foundation". When a question is pending, or a document has been presented to the witness, no one may interrupt the deposition until the answer is given, except when necessary to preserve a privilege.

(c) All objections shall be noted by the general counsel or the general counsel's designee upon the record of the deposition; but the examination shall proceed, with the testimony being taken subject to the objections, except where the objection is based on an assertion of privilege made in good faith.

(d) The general counsel, or the general counsel's designee, shall certify on the deposition that the witness was duly sworn by the general counsel or the general counsel's designee and that the deposition is a true record of the testimony given by the witness.

(e) A witness who appears at a deposition may receive one day's expenses provided by Subsection A of Section 10-8-4 NMSA 1978 as per diem for nonsalaried public officers attending a board or committee meeting and the mileage provided by Subsection D of Section 10-8-4 NMSA 1978. The Commission is not required to tender expenses and mileage before the witness appears at a deposition, and may require the witness to provide information needed to facilitate payment of expenses and mileage (such as IRS form W9) as a condition of payment.

C. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. If a party refuses to respond to the general counsel's request for information or discovery requests, to attend a deposition, or to answer

questions at a deposition noticed under this subsection, unless the party's refusal is based on an assertion of privilege made in good faith, the general counsel, when deciding whether a complaint is supported by probable cause, may draw an adverse inference against the party refusing to testify. If a party fails to provide information or identify a witness in response to a request by the general counsel, the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or on appeal, unless either a hearing officer or the commission determines the failure was substantially justified or is harmless.

[1.8.3.11 NMAC-N, 01/01/2020; A, 09/14/2021; A, 7/1/2023]

1.8.3.12 SUBPOENAS; ENFORCEMENT:

A. If the general counsel determines it is necessary, the director shall request the commission's authority to file a petition with the designated district court judge or other judge pro tempore as designated pursuant to order of the chief judge of the supreme court:

(1) to issue a subpoena to obtain testimony of a person or the production of books, records, documents or other evidence reasonably related to an investigation;

(2) to order enforcement if the person subpoenaed neglects or refuses to comply; or

(3) to resolve any assertion of privilege.

B. Upon the commission's approval, the director, or the director's designee, may petition the designated district court judge, or another district court judge if the designated judge is not available, for a subpoena. The petition shall be filed *ex parte* and under seal pursuant to procedures for filing established by the designated district court judge.

C. If the petition is granted, subpoenas shall be issued by the general counsel and served as follows:

(1) If the subject of the subpoena is the complainant or the respondent, by email to the complainant or respondent if the complainant or respondent has previously agreed to receive notice of filings with the commission by email;

(2) On a department or agency of the state by service on the department or agency's general counsel, or by service in the manner set out by law for serving the department or agency; and

(3) On any other person by handing it to the person or their attorney, leaving it at the person's office or dwelling house with some person of suitable age and discretion then residing there.

D. A subpoena issued pursuant to this Section may command the appearance of a witness at a deposition or at a hearing pursuant to 1.8.3.14 NMAC. A person who is not a party or an officer of a party may not be commanded to travel to a place more than one hundred (100) miles from the place where that person resides, is employed, or regularly transacts business in person unless the subpoena is to attend and give testimony at a hearing. A subpoena ordering a person to attend a deposition via telephone or web conference complies with the requirements of this subsection.

E. A party claiming an interest in the materials responsive to the commission's subpoena or the recipient of the subpoena may serve a written objection on the general counsel or the general counsel's designee within 14 days after service of the subpoena. If an objection is timely served, the person subject to a subpoena need not comply with the subpoena until the commission files a motion to compel compliance pursuant to Subsection F of 1.8.3.12 NMAC and the motion is granted.

F. If a person, including a party, neglects or refuses to comply with a subpoena, the director or the director's designee, upon the commission's approval, may apply to a district court for an order enforcing the subpoena and compelling compliance. The designated district judge or other district court may impose sanctions or other relief permitted by law, including contempt, if a person neglects or refuses to comply with an order enforcing the subpoena and compelling compliance.

[1.8.13.12 NMAC-N, 09/14/2021]

**1.8.3.13 PROBABLE CAUSE DETERMINATIONS AND CONSEQUENCES;
INVESTIGATION REPORTS AND RECOMMENDATIONS TO COMMISSION;
DISPOSITION BY AGREEMENT; NOTICE TO PARTIES:**

A. At the conclusion of the investigation provided by 1.8.3.11 NMAC, the general counsel shall determine whether the complaint is frivolous or unsubstantiated.

(1) If the general counsel determines that a complaint is frivolous or unsubstantiated, a hearing officer must dismiss the complaint. In that event, the complainant and the respondent shall be notified in writing of the decision and the reasons for the dismissal. Neither the complaint nor the action taken on the complaint shall be made public by the commission or any staff member or contractor of the commission, but the complainant or respondent shall not be prevented from making public the complaint or any action taken on the complaint.

(2) If the general counsel determines that a complaint is not frivolous or unsubstantiated, the general counsel shall prepare a summary of the investigation and a specification setting forth all violations reasonably related to the allegations in the complaint. The general counsel shall provide the summary, the specification, and all supporting evidence to the executive director. The executive director shall designate a hearing officer meeting the qualifications set out in Subsection A of 1.8.3.14 NMAC to determine whether the complaint is supported by probable cause.

B. Within 30 days of being appointed pursuant to Paragraph 2 of Subsection A of this Section, the hearing officer shall enter a written decision as to whether the complaint is supported by probable cause. To determine whether the complaint is supported by probable cause, the hearing officer must find that the evidence supports a finding that a violation has occurred. The degree of proof necessary to establish probable cause is more than a suspicion or possibility but less than a certainty of proof.

(1) If the hearing officer decides that the complaint is supported by probable cause, the hearing officer shall prepare a written order to that effect and provide it to the executive director. The executive director shall then promptly notify both the complainant and the respondent of the hearing officer's determination and that a public hearing will be set, *provided* that the notification has not been delayed by order of the commission pursuant to Subsection H of Section 10-16G-10 NMSA 1978.

(2) If the hearing officer decides that the complaint is not supported by probable cause, the executive director shall promptly notify both the complainant and the respondent of the hearing officer's decision and inform the complainant of their right to appeal the hearing officer's decision to the commission pursuant to 1.8.3.15 NMAC.

C. The general counsel may at any time enter into a proposed settlement agreement of the complaint with the respondent. The proposed settlement agreement shall be presented to the commission for approval. If the complaint alleges, or the general counsel has found probable cause to support, a discriminatory practice or action by the respondent against the complainant, no settlement agreement may be reached without prior consultation with the complainant. If approved by the commission, the settlement agreement shall be subject to public disclosure.

D. At any time, the complainant may voluntarily dismiss the complaint, either in whole or in part, by filing a notice of voluntary dismissal with the commission; however, any notice of voluntary dismissal does not diminish the power of the commission to initiate a complaint under Paragraph 1 of Subsection C of Section 10-16G-5 NMSA 1978. If the general counsel has determined the complaint is supported by probable cause, the complainant may dismiss the complaint only on motion and on such terms and conditions as the hearing officer deems proper.

E. If a hearing has not been scheduled concerning the disposition of a complaint within 90 days after the complaint has been received from the complainant or after referral from another agency, whichever is later, the director shall report to the commission at a duly convened meeting on the status of the investigation. The commission and the director shall thereafter proceed in accordance with Section 10-16G-11 NMSA 1978.

F. At any time before or during a hearing, the hearing officer may, at a duly convened public meeting, approve a disposition of a complaint agreed to by the general counsel and the respondent, provided that:

(1) the complainant shall be consulted on the proposed agreement prior to its execution, and

(2) the agreement shall be effective upon approval by the commission at a public meeting.

[1.8.3.13 NMAC-N, 01/01/2020; Rn 1.8.3.12 NMAC & A, 09/14/2021; A, 7/1/2023]

1.8.3.14 HEARING OFFICERS; SUMMARY DISPOSITION; HEARINGS; INTERPRETERS; EVIDENCE:

A. The commission shall authorize the director to contract, for reasonable hourly compensation, with qualified persons to act as hearing officers. Hearing officers shall be assigned to act on or preside over hearings on complaints. Hearing officers must be currently licensed attorneys, or retired judges of the appellate, district, or metropolitan courts of New Mexico or any federal court, who are familiar with the ethics and election laws enforced by the commission. A hearing officer shall conduct a hearing fairly and impartially. A hearing officer who determines whether a complaint is supported by probable cause pursuant to Subsection B of Section 1.8.3.13 NMAC shall not preside over a hearing on the merits of the same complaint.

B. All hearings before the hearing officer will occur in Santa Fe or Albuquerque, or at such other location within the state as may be determined by the hearing officer. In selecting the location of a hearing other than in Santa Fe or Albuquerque, the hearing officer shall consider and give weight to the location and reasonable concerns of the respective parties, witnesses, and representatives in the proceeding. Upon a showing by any party of an undue burden, the hearing officer may move the hearing to a more appropriate venue.

C. If a hearing officer has not already notified the parties of a hearing through the issuance of a scheduling order, the director will notify the parties to the hearing by mail, directed to the address provided by the parties, of the date, time, and place scheduled for the hearing, at least 15 days before the scheduled hearing.

D. The hearing shall be conducted pursuant to the rules of evidence governing proceedings in the state courts, Rule 11-101 NMRA, and these procedural rules. In the event of a conflict between these procedural rules and the rules of evidence governing proceedings in the state courts, these procedural rules control. All hearings shall be open to the public in accordance with the Open Meetings Act, Section 10-15-1 NMSA 1978, except for hearings or portions thereof exempted from the requirements of that Act.

E. Audio recordings shall be made of all hearings conducted pursuant to this section.

F. The parties may be represented by counsel, who shall enter an appearance at the earliest opportunity, pursuant to Paragraph (7) of Subsection A of 1.8.3.9 NMAC.

G. The hearing officer shall permit the general counsel to intervene upon request. If the complaint was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, then the executive director shall represent the commission at the hearing.

H. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

- (1) to administer or have administered oaths and affirmations;
- (2) to cause depositions to be taken;
- (3) to require the production or inspection of documents and other items;
- (4) to require the answering of interrogatories and requests for admissions;
- (5) to rule upon offers of proof and receive evidence;
- (6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;
- (7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;
- (8) to schedule, continue and reschedule hearings;
- (9) to consider and rule upon all procedural and other motions appropriate in the proceeding;
- (10) to require the filing of briefs on specific legal issues prior to or after the hearing;
- (11) to cause a complete audio record of hearings to be made;
- (12) to make and issue decisions and orders; and
- (13) to reprimand, or with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of disruptive or other improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.

I. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter, but may communicate with parties separately solely on scheduling issues if all parties are notified of such communications and do not object to them. An improper *ex parte* communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing despite having received timely notice thereof.

J. Parties who appear at the hearing may:

(1) request the director to request the commission's authority to petition a district court to compel the presence of witnesses. Subpoenas may be requested by the commission from a district court in the same manner as provided for in Subsection J of Section 10-16G-10 NMSA 1978 and Subsections C and D of 1.8.3.11 NMAC;

(2) present evidence and testimony;

(3) examine and cross-examine witnesses; and

(4) introduce evidentiary material developed by the general counsel. Before the hearing, the general counsel shall timely disclose to the parties all evidence in the possession or within the control of the general counsel, other than privileged information.

K. Evidence shall be presented by the parties at the hearing consistent with the terms agreed to in a prehearing conference or as set forth in a scheduling order entered under Subsection H of 1.8.3.14 NMAC. The hearing officer may allow a deviation from the agreed-upon process for good cause.

(1) The general counsel shall present any evidence collected in the investigation relating to the complaint that is relevant to the matters at issue as set forth in the general counsel's findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is allowed by the hearing officer. If the general counsel has intervened as a party pursuant to Section G of 1.8.3.14 NMAC, the general counsel must be afforded a reasonable opportunity to seek prehearing discovery necessary to meet any anticipated defense raised by the respondent to the claims identified in the specification of violations prepared by the general counsel pursuant to Subsection B of 1.8.3.13 NMAC.

(2) The respondent may present evidence that is relevant to the matters at issue as set forth in the general counsel's findings under Subsection A of 1.8.3.12 NMAC; evidence that is agreed to be relevant by the parties; or evidence that is otherwise allowed by the hearing officer.

(3) The general counsel or the general counsel's designee may authenticate evidence produced during an investigation if the source of the evidence declines a request to appear and testify about the evidence and the hearing officer determines that there are no other reasonable means for authenticating the evidence.

L. Any person may timely file an amicus brief, not to exceed ten pages, with the director, for consideration by the hearing officer.

M. Upon reasonable notice by the party to the director, a party needing language interpreter services for translation of one language into another, and any interpreter required to be provided under the American with Disabilities Act, shall be provided for by the commission. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a hearing before the commission must affirm the interpreter's oath applicable in courts across this state.

N. After the termination of the hearing, or in lieu of a hearing if, upon a motion by a party or the general counsel, the hearing officer concludes there is no genuine dispute as to any material facts, the hearing officer shall issue written findings and conclusions on whether the evidence establishes that the respondent's conduct as alleged in the complaint constitutes a violation of any law within the jurisdiction of the commission. The hearing officer's written decision:

(1) may

(a) impose any fines provided for by law; and

(b) recommend to the appropriate authority commensurate disciplinary action against the respondent;

(2) and must

(a) state the reasons for the hearing officer's decision; and

(b) provide the parties with notice of the right of appeal to the commission.

O. Clear and convincing evidence is required to support a finding by a hearing officer that a respondent's conduct was fraudulent or willful.

P. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint constituted a violation of the Governmental Conduct Act and was either unintentional or for good cause, then the hearing officer shall give the respondent 10 days to correct the violation, pursuant to Subsection B of Section 10-16-13.1 NMSA 1978, before taking any action under Subsection N of 1.8.3.14 NMAC.

Q. If the hearing officer finds by a preponderance of the evidence that the respondent's conduct as alleged in the complaint does not constitute a violation of any law within the jurisdiction of the commission, the hearing officer, in a written decision, shall dismiss the complaint and inform the complainant of their right to appeal to the commission.

R. A party may request copies of evidence considered by the hearing officer or a copy of the audio recording of the hearing by submitting a written request to the director. The director may charge a reasonable fee for copies made, consistent with its fee schedule under the Inspection of Public Records Act. The director may also require the requesting party to submit a new, sealed computer storage device, such as a compact disc, dvd disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record. Every party is responsible for paying the cost of any transcription of the audio recording.

[1.8.3.14 NMAC-Rn 1.8.3.13 NMAC & A, 09/14/2021; A, 7/1/2023]

1.8.3.15 APPEALS; ENFORCEMENT:

A. The complainant or respondent may appeal the final decision of the hearing officer within 30 days of the issuance of the decision to the full commission by filing a notice stating:

(1) each party taking the appeal and each party against whom the appeal is taken;

(2) the name, address, telephone number and email address of counsel for the appellant;

(3) the decision or part of a decision from which the party appeals; and

(4) the specific grounds for the appeal, including specific references to any evidence or law interpreted by the hearing officer.

(5) If the hearing officer issued a final decision on a complaint that was initiated by the commission under Paragraph (1) of Subsection C of Section 10-16G-5 NMSA 1978 and Subsection E of 1.8.3.9 NMAC, or where the general counsel has intervened under Section G of 1.8.3.14 NMAC, then the general counsel may appeal the hearing officer's decision within 30 days of the issuance by filing a notice stating the information required in subsections (1) through (4) above.

B. For the purpose of this rule, briefing time shall commence from the date the appellant files a notice of appeal to the full commission. Unless otherwise provided for by the commission,

(1) The appellant shall file and serve a brief in chief within 15 days;

(2) The appellee shall file and serve an answer brief within 15 days after service of the brief of the appellant; and

(3) Neither the brief in chief nor the answer brief shall exceed 10 pages.

C. The commission shall schedule oral arguments, if requested by either party or ordered by the commission within sixty days of the notice of appeal.

D. Any person may timely file an amicus brief, not to exceed ten pages, with the director for consideration by the commission.

E. The commission shall review the whole record of the proceeding and shall, within 180 days of receiving the notice of appeal, issue its decision upholding or reversing the decision of the hearing officer. The commission may reverse all or part of the hearing officer's decision and remand the matter to the hearing officer for further proceedings.

(1) If a hearing officer dismisses a complaint, pursuant to Subsection B of 1.8.3.13 NMAC, following the general counsel's determination that the complaint is [not supported by probable cause] frivolous or unsubstantiated, then the complainant has no right to an appeal of that dismissal to the commission. If the general counsel does not determine that the complaint is frivolous or unsubstantiated but the hearing officer dismisses the complaint for lack of probable cause, the complainant may appeal that decision to the commission.

(2) If the hearing officer decides that a complaint is supported by probable cause pursuant to Subsection G of Section 10-16G-10 NMSA 1978, the respondent has no right to appeal that decision to the commission.

F. A party may seek review of the commission's final decision by filing for a petition of writ of certiorari pursuant to Rule 1-075 NMRA. In any action to review a final decision by writ of certiorari, or, if no petition for writ of certiorari has been timely filed, in a court action in the judicial district where the defendant resides, the commission may move for an order enforcing the commission's final decision pursuant to Subsection F of Section 10-16G-9 NMSA 1978.

[1.8.3.15 NMAC-, Rn 1.8.3.14 NMAC & A, 09/14/2021; A, 7/1/2023]

1.8.3.16 OPEN RECORDS AND CONFIDENTIALITY:

A. Thirty days after the director provides notice pursuant to Subsection A of 1.8.3.13 NMAC to the respondent of the allegations of a complaint, the general counsel's finding of probable cause, and the setting of the public hearing:

(1) the director shall make public the specific allegations of the complaint, the notification to the respondent, any response filed by the respondent, and any related records, *provided* that:

(2) prior to the publication of any commission records pursuant to the preceding subparagraph, any proceedings in district court initiated by the commission to obtain subpoenas shall be sealed, and shall remain so until such time as the commission notifies the court that the commission has made the complaint public or the parties enter into an approved settlement agreement.

B. If a complaint is dismissed because the general counsel has found it to be frivolous or unsubstantiated, as provided in Subsection E of Section 10-16G-10 NMSA 1978, the commission shall not release to the public the complaint, the reason for its dismissal, or any related records. Nothing in this subsection shall prevent the making public of any document by a complainant or respondent to the proceeding.

C. Notwithstanding any other requirement in these rules or the law requiring notification to the complainant or respondent of commission actions on a complaint, the director may delay notifying parties or releasing to the public the complaint and related information if the director deems it necessary to protect the integrity of a criminal investigation.

(1) The director shall, within 10 days of making the decision to delay release of a complaint pursuant to this subsection, present to the commission the records and information to be withheld and the reasons for delaying their release.

(2) The commission may, by a majority vote pursuant to Subsection H of Section 10-16G-10 NMSA 1978, confirm the director's decision in a meeting closed pursuant to the requirements of the Open Meetings Act, Section 10-15-1 NMSA 1978, and the commission's open meetings resolution.

[1.8.3.15 NMAC-N, 01/01/2020; Rn 1.8.3.16 NMAC & A, 09/14/2021]

PART 4: CODE OF ETHICS

1.8.4.1 ISSUING AGENCY:

State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106.

[1.8.4.1 NMAC-N, 1/1/2021]

1.8.4.2 SCOPE:

This part contains a proposed code of ethics for officers and employees of executive and legislative state agencies and other institutions and instrumentalities of the state. Elected statewide executive branch officers and other state agencies must consider this proposed code when adopting either a code of conduct under Subsection C of Section 11 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978, or a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics

Commission Act, Section 10-16G-1 NMSA 1978, for employees subject to the adopting agencies' control. If adopted, this code will apply to all officers and employees of the adopting agency, as well as other persons working for the agency, such as contractors.

[1.8.4.2 NMAC-N, 1/1/2021]

1.8.4.3 STATUTORY AUTHORITY:

Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978; and Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978.

[1.8.4.3 NMAC-N, 1/1/2021]

1.8.4.4 DURATION:

Permanent.

[1.8.4.4 NMAC-N, 1/1/2021]

1.8.4.5 EFFECTIVE DATE:

January 1, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.4.5 NMAC-N, 1/1/2021]

1.8.4.6 OBJECTIVE:

The objective of this part is to provide the executive and legislative branch agencies of state government and other institutions and instrumentalities of the state with a proposed code of ethics to consider when agencies adopt either a code of ethics under Paragraph 4 of Subsection B of Section 5 of the State Ethics Commission Act, Section 10-16G-1 NMSA 1978, or a code of conduct under Sections 11 and 11.1 of the Governmental Conduct Act, Section 10-16-1 NMSA 1978. If adopted, this Code will furnish standards of conduct for the adopting agency's officers and employees, the violation of which could form the basis for discipline by the adopting agency, including dismissal, demotion or suspension, in accordance with state law.

[1.8.4.6 NMAC-N, 1/1/2021]

1.8.4.7 DEFINITIONS:

The following terms apply to this part unless their context clearly indicates otherwise:

A. "Agency" or "this Agency" means the agency that has adopted this proposed code of ethics.

B. "Business" means any person, company or other organization that buys, sells or provides goods or services, including non-governmental or not-for-profit organizations.

C. "Code" means this proposed code of ethics.

D. "Commission" means the State Ethics Commission.

E. "Confidential information" has the same meaning as defined by Subsection B of Section 10-16-2 NMSA 1978, namely, information that by law or practice is not available to the public.

F. "Family member" means a first-degree, second-degree or third-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

G. "Financial interest" means an ownership interest in a business or property; or employment or prospective employment for which negotiations have already begun.

H. "Gift" has the same meaning as defined by Subsection B of Section 10-16B-2 NMSA 1978, namely, any donation or transfer without commensurate consideration of money, property, service, loan, promise or any other thing of value, including food, lodging, transportation and tickets for entertainment or sporting events, but does not include:

(1) any activity, including but not limited to the acceptance of a donation, transfer or contribution, or the making of an expenditure or reimbursement, that is authorized by the Campaign Reporting Act or the Federal Election Campaign Act of 1971, as amended;

(2) a gift given under circumstances that make it clear that the gift is motivated by a family relationship or close personal relationship rather than the recipient's position as a state officer or employee or candidate for state office;

(3) compensation for services rendered or capital invested that is:

(a) normal and reasonable in amount;

(b) commensurate with the value of the service rendered or the magnitude of the risk taken on the investment;

(c) in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office; and

(d) not otherwise prohibited by law;

(4) payment for a sale or lease of tangible or intangible property that is commensurate with the value of the services rendered and is in no way increased or enhanced by reason of the recipient's position as a state officer or employee or candidate for state office;

(5) a commercially reasonable loan made in the ordinary course of the lender's business on terms that are available to all similarly qualified borrowers;

(6) reimbursement for out-of-pocket expenses actually incurred in the course of performing a service for the person making the reimbursement;

(7) any gift accepted on behalf of and to be used by the state or a political subdivision of the state, including travel, subsistence and related expenses accepted by a state agency in connection with a state officer's or employee's official duties that take place away from the state official's or employee's station of duty;

(8) anything for which fair market value is paid or reimbursed by the state officer or employee or candidate for state office;

(9) reasonable expenses for a bona fide educational program that is directly related to the state officer's or employee's official duties; or

(10) a retirement gift.

I. "Immediate family member" means a first-degree or second-degree relative, as those terms are defined at Subsection B of 1.8.4.14 NMAC.

J. "Indirectly" means to perform an act, achieve a result or obtain a benefit through another person, by use of implication, suggestion or passive acceptance.

K. "Market value" means the amount for which a good or service can be sold on the relevant market.

L. "Official act" means any act or omission to act that would not be possible but for the actor's official position or state employment.

M. "Public officer or employee" means any elected or appointed official or employee of a state agency who receives compensation in the form of salary or is eligible for per diem or mileage, but excludes legislators.

N. "Restricted donor" has the same meaning as defined by Subsection D of Section 10-16B-2 NMSA 1978, namely, a person who:

(1) is or is seeking to be a party to any one or any combination of sales, purchases, leases or contracts to, from or with the agency in which the donee holds office or is employed;

(2) will personally be, or is the agent of a person who will be, directly and substantially affected financially by the performance or nonperformance of the donee's official duty in a way that is greater than the effect on the public generally or on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry or region;

(3) is personally, or is the agent of a person who is, the subject of or party to a matter that is pending before a regulatory agency and over which the donee has discretionary authority as part of the donee's official duties or employment within the regulatory agency; or

(4) is a lobbyist or a client of a lobbyist with respect to matters within the donee's jurisdiction.

O. "Sensitive personal information" means confidential identifying information such as: social security numbers or individual tax identification numbers, a person's place and date of birth, a person's status as a recipient of public assistance or as a crime victim, and a person's sexual orientation, physical or mental disability, immigration status, religion, or national origin.

P. "Shall" means must, and **"must"** means shall.

Q. Substantial financial interest" means an ownership interest that is greater than twenty percent.

R. Any other terms shall be defined for purposes of this rule as they are defined in Section 10-16-2 NMSA 1978.

[1.8.4.7 NMAC-N, 1/1/2021]

1.8.4.8 STRUCTURE OF THIS CODE AND CORRESPONDING COMMENTARY:

A. This Code is organized by subject area rather than by the statutes that concern the various subject matters of this code.

B. The Commission publishes and updates extensive commentary and examples corresponding to this Code on the Commission's website. An official or employee of this agency dealing with an ethical issue should identify and consult the relevant sections of this Code. If this Code does not resolve the issue, further guidance might be found in the Commission's separately published commentary.

[1.8.4.8 NMAC-N, 1/1/2021]

1.8.4.9 PRINCIPLES OF PUBLIC ETHICS:

This Code is based on, and should be interpreted to advance, the following principles of public ethics:

A. Honest services. An officer or employee shall conduct government functions in accordance with the law and free from conflicts of interest. Public office is a public trust; as such, an official or employee must take care to ensure that every official act and decision affecting the rights or interests of individuals is based in law and the public interest.

B. Proportionality. When committing an official act or making a decision, an officer or employee shall ensure that the action taken is proportional to the goal being pursued. The officer or employee shall avoid restricting the rights of New Mexicans or imposing burdens on them when those restrictions or burdens are not justified by a public interest.

C. Impartiality and fairness. The conduct of an officer or employee shall be impartial and fair, and shall never be guided by:

- (1) personal, family or financial interests;
- (2) a motivation to benefit or empower an elected official, a candidate for office, or a political party or its members; or
- (3) a motivation to disadvantage or disempower an elected official, a candidate for office, or a political party or its members.

D. Consistency. Like cases shall be treated alike. An officer or employee shall behave consistently with the agency's normal practices, unless there is a legitimate basis for departing from those practices in an individual case and that basis is documented in writing. An officer or employee shall respect the reasonable expectations of the public that the agency will continue to act as it has acted in similar circumstances unless there is a rational basis for the change.

E. Diligence. An officer or employee shall ensure that every decision on a matter is made with care and adequate understanding of the issue, within a reasonable time, and without unnecessary delay.

F. Respect. An officer or employee shall be courteous and accessible to members of the public, co-workers, and their colleagues.

G. Transparency. The official acts and decisions of officers and employees shall be made openly and with adequate opportunity for public review and comment.

H. Fallibility and openness to change. Individuals not only err in judgment but also act in ways that unconsciously benefit some and burden others; accordingly, officers and employees should be open to and invite review, correction and reversal of

their actions when they are mistaken, have failed to take relevant information into account, or are otherwise in violation of the principles of this code or the law.

[1.8.4.9 NMAC-N, 1/1/2021]

1.8.4.10 HONEST SERVICES; AVOIDING CONFLICTS OF INTEREST:

A. Outside employment.

(1) Duty to avoid conflicts from outside employment. An officer or employee of this agency engaged in paid employment for a business shall ensure that the employment does not conflict with the duties of state employment.

(2) Disclosure of outside employment. An officer or employee having permissible outside employment shall:

(a) file with the employee's supervisor, or other officer or employee that this agency designates, a signed statement explaining the outside employment and why it does not create a conflict;

(b) the disclosure statement shall include the name of the officer or employee, the name and general nature of the business, the hours that the officer or employee will work, and the reasons why the work does not create a conflict of interest with the officer's or employee's public duties;

(c) in the disclosure statement, the officer or employee shall additionally commit to disclose any potential conflict of interest that may arise during the officer or employee's work with the business.

B. Disclosure of potential conflicts of interest and disqualification.

(1) Disclosure of financial interests.

(a) Mandatory financial disclosure by officers and agency heads. An officer or head of this agency must disclose financial interests to the Secretary of State on the form provided by the Secretary of State.

(b) Disclosure of financial interests: contents; when filed. The disclosure required by 1.8.4.10.B(1)(a) NMAC shall be filed within 30 days of taking office and each January thereafter and shall disclose the following financial interests of the filing individual and the filing individual's spouse, for the prior calendar year:

(i) current employer and the nature of the business or occupation, including self-employment information;

(ii) all sources of gross income over \$5,000, identified by one of the following general category descriptions that disclose the nature of the income: law practice or consulting operation or similar business, finance and banking, farming and ranching, medicine and health care, insurance (as a business and not as a payment on an insurance claim), oil and gas, transportation, utilities, general stock market holdings, bonds, government, education, manufacturing, real estate, consumer goods sales with a general description of the consumer goods and the category "other," with a general description of the other income source;

(iii) real estate owned in the state other than the personal residence;

(iv) other business interests of \$10,000 or greater value in a New Mexico business or entity, including any position held and a general statement of purpose of the business or entity;

(v) memberships on boards of for-profit businesses in New Mexico;

(vi) New Mexico professional licenses held;

(vii) sales to state agencies exceeding \$5,000 for the prior year; and

(viii) state agencies before which clients were represented or assisted during the prior year.

(c) Officers and employees required to disclose potentially conflicting financial interests; when filed. An officer or employee of this agency must file a disclosure of financial interests when the officer or employee believes, or has reason to believe, that their financial interest may be affected by their official acts or actions of the state agency that employs them. The disclosure must be filed before entering state employment or within ten days of the date when the officer or employee knows, or should know, that a potential conflict has arisen and thereafter each subsequent January, so long as the conflict or potential conflict continues to exist.

(d) Financial disclosure statements are public records. All disclosures required under this subsection are public records.

(2) Disqualification from acts affecting financial interests. An officer or employee of this agency may not take official acts for the purpose of enhancing their financial interests. An officer or employee must be disqualified from any matters that could directly enhance or diminish the officer's or employee's financial interest. If disqualified, then the officer or employee shall refrain from acting on a matter involving the disqualifying financial interest.

(3) Disclosure of non-profit board memberships. An officer or employee of this agency shall disclose within 30 days of taking office and each January thereafter all memberships on non-profit boards.

C. Business with regulated entities.

(1) Sales to regulated persons. An officer or employee of this agency may not directly or indirectly sell goods or services to, or profit from a transaction with, a business or individual over whom this agency has regulatory authority.

(2) No acceptance of job or contract offers from regulated entities. An officer or employee of this agency may not accept an offer of employment from, or a contract to provide goods or services to any entity that this agency regulates. An officer or employee shall disqualify themselves from any official act or decision involving a business in which an immediate family member is employed or in which the officer or employee seeks employment.

(3) Ordinary transactions at market rates allowed. Nothing in this rule prevents an officer or employee from purchasing or contracting for services or goods from a regulated entity on the same bases that are available to other members of the public.

D. Accepting or Giving Gifts.

(1) Gifts from restricted donors.

(a) An officer or employee of this agency may not, directly or indirectly, solicit a gift from a restricted donor.

(b) An officer or employee of this agency may not, directly or indirectly accept, and must decline, an unsolicited gift with a market value in excess of \$250 from a restricted donor or any other person who offers the gift because of the donee's status as an officer or employee of this agency. No more than one such gift or gifts having a total value of \$250 may be accepted by the same officer or employee within a single calendar year, and any such gift must be disclosed as required by paragraph 5 of this subsection.

(2) Gifts and business from subordinates. An officer or employee of this agency may not, directly or indirectly:

(a) accept a gift from an employee having a lower grade or receiving less pay, unless the donor and donee are not in a subordinate-superior relationship and there is a personal relationship between the donor and recipient that would justify the gift.

(b) solicit business from a supervised employee where the business redounds to the financial interest of the officer or employee or an immediate family member.

(3) Soliciting gifts for charities. An officer or employee of this agency may not solicit or require a charitable donation from any business, or an agent of any

business, regulated by or contracting with this agency; nor from any employees that the officer or employee supervises.

(4) Declining permissible gifts. An officer or employee of this agency shall consider declining an otherwise permissible gift if they believe that a reasonable person with knowledge of the relevant facts would question the officer or employee's integrity or impartiality as a result of accepting the gift. Among other relevant factors, the officer or employee shall take into account whether:

(a) the gift has a high market value;

(b) the timing of the gift creates the appearance that the donor is seeking to influence an official action;

(c) the gift is offered by a person or business entity who has interests that may be substantially affected by the performance or nonperformance of the officer or employee's duties; and

(d) acceptance of the gift would provide the donor with significantly disproportionate access to an officer or employee.

(5) Disclosure of offers or gifts from restricted donors. If a restricted donor offers a gift of any value to an officer or employee of this agency, or if an officer or employee of this agency receives a gift of any value from a restricted donor, the officer or employee shall report to their supervisor: the date the offer or gift was made or received, the name of the donor and the donor's relationship to the agency, the nature and value of the gift, and whether the officer or employee accepted or refused the gift.

(6) Certain donations of private funds prohibited. No officer or employee of this agency may give:

(a) a gift from their own funds to any person with whom their agency is doing business, or considering doing business, under circumstances which may appear to favor the recipient over other similarly situated persons; or

(b) a gift to any other state officer or employee when the gift may be, or may appear to be, intended to influence any official decision by the recipient.

(7) Certain donations of public funds prohibited. No officer or employee of this agency may give to any person any gift from public funds, unless the gift:

(a) is a service appreciation award of de minimis value; or

(b) does not violate the Anti-Donation Clause, Section 14 of Article 9 of the New Mexico Constitution.

E. Honoraria; no solicitation or acceptance of honoraria permitted for speaking or writing.

(1) An officer or employee of this agency may not request or receive honoraria for a speech or service that relates to the performance of public duties; provided that an officer or employee of this agency may accept reasonable reimbursement for meals, lodging or actual travel expenses incurred in making the speech or rendering the service.

(2) An officer or employee of this agency may accept payment for services rendered in the normal course of a private business pursuit.

F. Timekeeping, reimbursement, and use of state property.

(1) An officer or employee of this agency must work during the hours required and report time accurately.

(2) An officer or employee of this agency shall not claim reimbursement in excess of what is necessary and incidental to an official duty or action.

(3) An officer or employee of this agency shall limit personal use of state office supplies and assigned equipment, such as computers and telephones, and otherwise shall not use state property or expend state funds for private purposes.

G. Procurement.

(1) **Fair and equitable treatment of persons involved in public procurement.** An officer or employee of this agency shall treat persons involved in public procurement fairly and equitably.

(2) **Maximizing the value of public funds.** An officer or employee of this agency involved in procurement shall endeavor to maximize the purchasing value of public funds.

(3) **Conflicts of interest prohibited; Intra-agency waiver.**

(a) An officer or employee of this agency shall not participate directly or indirectly in a procurement when the officer or employee, or their immediate family member, has a financial interest in a business participating in the procurement.

(b) An officer or employee of this agency who is participating directly or indirectly in procuring goods or services for this agency shall not be concurrently employed by any person or business contracting with this agency.

(c) A conflict of interest under subparagraphs (a) or (b) this Paragraph may be waived by this agency, if the contemporaneous employment or financial interest has

been publicly disclosed, the officer or employee is able to perform procurement functions without actual or apparent bias or favoritism, and the officer or employee's participation is in the best interests of this agency.

(d) This agency may not contract with a business in which any officer or employee of the agency, or a family member, has a substantial financial interest; however, the agency may enter such a contract if the officer or employee publicly discloses the substantial financial interest and the contract is awarded through a competitive process.

(e) The requirement to make public disclosure pursuant to subparagraphs (c) and (d) of paragraph (3) of this subsection shall be satisfied by correspondence to the state purchasing agent and by posting the required disclosure in a prominent place on the webpage of the state agency.

(4) Due diligence by agency.

(a) Participation by person submitting bid or proposal. An officer or employee of this agency, having responsibilities for evaluating or overseeing a bid or proposal shall exercise due diligence in ensuring that any person or parties submitting bids or proposals do not participate or contribute any knowledge, guidance or explanation in the preparation or receive any advance notice of specifications, qualifications or evaluation criteria on which the specific bid or proposal will be based.

(b) Campaign contribution disclosure and prohibition. An officer or employee of this agency who participates, directly or indirectly, in procuring goods or services for this agency shall exercise due diligence to ensure that the prospective contractor:

(i) does not give a campaign contribution or other thing of value to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter; and

(ii) discloses all campaign contributions, where such contributions in the aggregate exceed \$250 in the two years before the beginning of the procurement process, given by the prospective contractor or a family member or representative of the prospective contractor to a person elected to an office or a person appointed to complete a term of elected office who has the authority to award or influence the award of a contract into which the prospective contractor seeks to enter.

H. Former officers and employees.

(1) Contracting. This agency may not contract with or take any other favorable action toward a person or business that is:

(a) represented by a person who was an officer or employee of this agency within two years of the date of the officer's or employee's separation from this agency, or

(b) assisted by a former officer or employee of this agency whose official act while in state employment directly resulted in the contract or action. This subparagraph applies regardless of the length of time since the officer or employee left the agency.

(c) Nothing in this paragraph shall prevent an agency from contracting with a former employee on terms that otherwise comply with state law and the provisions of this code.

(2) Restrictions on former officers or employees representing a person in the person's dealings with this agency.

(a) A former officer or employee of this agency is prohibited from representing anyone in dealings with this agency on any matter in which the officer or employee participated personally and substantially during their employment with this agency.

(b) A former officer or employee of this agency may not, for two years after the termination of their employment with this agency, represent for pay a person on any matter before this agency, regardless of whether they were involved in that matter personally.

[1.8.4.10 NMAC-N, 1/1/2021]

1.8.4.11 OPEN GOVERNMENT AND FREEDOM OF INFORMATION:

A. An officer or employee of this agency should welcome and encourage the public to attend and participate in public meetings.

B. An officer or employee of this agency must permit members of the public to inspect this agency's records, unless the records are confidential under the law.

[1.8.4.11 NMAC-N, 1/1/2021]

1.8.4.12 POLITICAL ACTIVITY:

A. An officer or employee of this agency may not use their official position to pressure others to participate in political activities.

B. An officer or employee of this agency may not use their official position to influence an election or nomination, or otherwise engage in any partisan political activity while on duty.

C. An officer or employee of this agency may not serve as an officer of a political organization.

D. An officer or employee of this agency may not use or allow others to use state money or property to promote a political campaign, candidate for elected office, political party, or other partisan political organization.

E. An officer or employee of this agency who becomes a candidate in a partisan election must take a leave of absence upon filing for or accepting the candidacy.

F. An employee whose salary is paid completely, directly or indirectly, by loans or grants made by the United States or a Federal agency is covered by the provisions of the Hatch Act, 5 U.S.C. Sections 1501 to 1508, and, therefore, may not be a candidate for a partisan political elective office.

G. An officer or employee of this agency may participate in political activities while off duty, including:

(1) donating to political candidates;

(2) volunteering or working for a political campaign or political organization, so long as the officer's or employee's work does not violate any applicable conflict-of-interest provision of this rule or statute; and

(3) being a candidate in an election for or holding non-partisan political office, such as non-partisan county or municipal office or a seat on a local school board.

[1.8.4.12 NMAC-N, 1/1/2021]

1.8.4.13 NON-DISCLOSURE OF CONFIDENTIAL OR SENSITIVE PERSONAL INFORMATION:

A. An officer or employee of this agency shall not use or disclose confidential information acquired by virtue of the officer's or employee's position with the agency for the officer's or employee's or another person's private gain.

B. An officer or employee of this agency shall not disclose to anyone outside the agency sensitive personal information acquired by virtue of the officer's or employee's position with the agency unless disclosure is required by law, necessary to carry out the functions of the agency or expressly authorized by the person whose information would be disclosed.

[1.8.4.13 NMAC-N, 1/1/2021]

1.8.4.14 NEPOTISM:

A. This agency shall not permit the hiring, promotion, or direct supervision of an employee by an individual who is related by blood, adoption or marriage within the first, second or third degree to the employee.

B. For the purposes of Subsection A of this Section:

(1) First-degree relatives include an individual's parents, siblings, and children.

(2) Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, nieces, and half-siblings.

(3) Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles, great aunts, and first cousins.

[1.8.4.14 NMAC-N, 1/1/2021]

1.8.4.15 SEXUAL HARASSMENT:

A. Officers and employees of this agency shall refrain from sexual harassment of any other employee or any other person having business with this agency.

B. Examples of sexual harassment include, but are not limited to:

(1) sexual innuendo or sexually oriented verbal abuse;

(2) sexual jokes, sexist jokes, vulgar jokes or abusive sexual teasing;

(3) unwanted physical contact such as hugging, patting, stroking or grabbing body parts;

(4) statements or acts of a sexual nature about a person's physical attributes or sexual activity;

(5) displaying sexually suggestive pictures, objects or materials;

(6) using disparaging, demeaning or sexist terms to refer to any person; making obscene gestures or suggestive/insulting sounds;

(7) indecent exposure; and

(8) suggesting or demanding sexual favors or activity in relation to any condition of employment.

C. Officers and employees of this agency shall investigate all instances of alleged sexual harassment and sexual assault and take prompt and appropriate action, and make every effort to remove sexual harassment and sexual assault from the workplace.

[1.8.4.15 NMAC-N, 1/1/2021]

1.8.4.16 SUBSTANCE ABUSE:

A. This agency shall appoint a substance abuse coordinator as required by Subsection A of 1.7.8.10 NMAC, who shall be responsible for the agency's drug and alcohol abuse program under 1.7.8 NMAC.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

- (1)** dangers of drug and alcohol abuse;
- (2)** availability of counseling, rehabilitation, and employee assistance programs; and
- (3)** sanctions that may be imposed upon employees as provided in 1.7.8.19 NMAC.

C. The drug abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the drug and alcohol testing duties required by 1.7.8 NMAC.

[1.8.4.16 NMAC-N, 1/1/2021]

1.8.4.17 ENFORCEMENT AND INTERPRETATION:

A. Violations of the provisions of this code of conduct shall constitute cause for dismissal, demotion or suspension as provided by Subsection C of Section 10-16-11 NMSA 1978.

B. This agency shall circulate this code of conduct to all agency officers and employees, require signed acknowledgements that all the agency officers and employees have read this code, and establish a written internal complaint procedure by which employees can seek to remedy violations of the provisions of this agency's code of conduct.

C. Agency complaint procedures shall:

- (1)** provide the respondent to a complaint notice of the complaint and an opportunity to be heard;

- (2) be made available to all officers and employees of the agency;
- (3) ensure that officers and employees have the right to present or make known their complaints, free from interference, restraint, discrimination, coercion, or reprisal;
- (4) ensure that adjudication of internal agency complaints accord with due process; and
- (5) utilize alternative methods of dispute resolution, including mediation, wherever appropriate to resolve conflicts in the workplace and encourage positive working relationships among officers and employees.

D. If an agency adopts a code of conduct that mirrors provisions set forth in 1.8.4 NMAC, then any officer or employee of the adopting agency may request an advisory opinion from the state ethics commission regarding the interpretation or application of any adopted code provision pursuant to Subsection A of Section 10-16G-8 NMSA 1978.

E. Any remedy or discipline available through internal agency complaint procedures established under this provision does not preclude other remedies or sanctions available at law.

[1.8.4.17 NMAC-N, 1/1/2021]

PART 5: COMPLAINTS AGAINST NOTARIES

1.8.5.1 ISSUING AGENCY:

State Ethics Commission, 800 Bradbury Dr. SE, Ste. 215, Albuquerque, New Mexico 87106.

[1.8.5.1 NMAC-N, 7/1/2023]

1.8.5.2 SCOPE:

This part applies to proceedings to revoke, suspend, or impose a condition on a notarial officer pursuant to Subsection A of Section 14-14A-22 NMSA 1978.

[1.8.5.2 NMAC-N, 7/1/2023]

1.8.5.3 STATUTORY AUTHORITY:

Subsection C of Section 14-14A-26 NMSA 1978.

[1.8.5.3 NMAC-N, 7/1/2023]

1.8.5.4 DURATION:

Permanent.

[1.8.5.4 NMAC-N, 7/1/2023]

1.8.5.5 EFFECTIVE DATE:

July 1, 2023, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[1.8.5.5 NMAC-N, 7/1/2023]

1.8.5.6 OBJECTIVE:

The objective of this part is the fair, efficient, and uniform handling and disposition of complaints alleging violations of the Revised Uniform Law on Notarial Acts by a notarial officer.

[1.8.5.6 NMAC-N, 7/1/2023]

1.8.5.7 DEFINITIONS:

The following terms apply to these rules unless their context clearly indicates otherwise:

A. "Adverse action" means the denial of, revocation of, suspension of, or imposition of a condition on a notarial officer's authority to perform notarial acts.

B. "Commission" means the State Ethics Commission.

C. "Complaint" means an allegation of a violation of the Revised Uniform Law on Notarial Acts by a notarial officer.

D. "Complainant" means a person who files a complaint with the commission.

E. "Director" means the executive director of the commission or the executive director's designee.

F. "Notarial act" has the same meaning as that term is defined in Subsection F of Section 14-14A-2 NMSA 1978.

G. "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

H. "Respondent" means a notarial officer alleged in a complaint to have violated the Revised Uniform Law on Notarial Acts.

I. "Person" means any individual or legal entity.

[1.8.5.7 NMAC-N, 7/1/2023]

1.8.5.8 COMPLAINTS:

A. Any person may submit a complaint against a notarial officer alleging an act or omission that, if proven, would justify denial, revocation, suspension, or the imposition of a condition on the notarial officer's authority to perform notarial acts. The complaint shall:

- (1) provide the name and the address of the respondent who is the subject of the complaint;
- (2) attach any supporting documentation related to the complaint's allegations;
- (3) be submitted on a form provided by the commission or on a substantially equivalent form; and
- (4) be submitted by electronic mail to ethics.commission@sec.nm.gov or by U.S. mail to the commission's mailing address.

B. Upon receiving a properly submitted complaint, the director may share the complaint with the office of the secretary of state and request the SOS to provide records related to the respondent; provided that, if the complaint names a respondent who is a judicial officer, the director shall refer the complaint to the judicial standards commission and take no further action on the complaint.

C. After receiving the respondent's file from the secretary of state, the director shall:

- (1) send the complainant a notification of receipt of the complaint;
- (2) send the complaint to the respondent at every address and electronic mail address that either the complainant provided to the commission or the respondent provided to the secretary of state; and
- (3) request that the respondent submit a response in writing within 30 days of the director's sending a copy of the complaint pursuant to Paragraph (2) of this subsection.

D. If the respondent fails to provide a response to the complaint, then the respondent's failure to provide a response will be construed as the respondent's failure to maintain address information with the Secretary of State, as required by Subsection E of 12.9.3.8 NMAC, and the commission may take adverse action, up to and including revocation of the respondent's authority to perform notarial acts, on that basis.

E. After receiving the respondent's response, the director shall conduct an investigation and review the complaint, the response, and any other relevant documents or material that the director may obtain pursuant to an investigation. As part of an investigation, the director may interview witnesses, request documents, and obtain and review any other evidence reasonably related to the complaint.

F. Failure by a complainant or a respondent to participate in the investigation in good faith is a basis for the Commission to draw an adverse inference.

[1.8.5.8 NMAC-N, 7/1/2023]

1.8.5.9 NOTICE OF CONTEMPLATED ACTION; HEARINGS; ADVERSE ACTIONS:

A. After investigating the complaint pursuant to 1.8.5.8 NMAC, the director shall determine whether the facts and the law support taking an adverse action against the respondent.

(1) If the director determines that an adverse action against the respondent is not supported by the facts or the law, the director shall issue a notice to the complainant and the respondent that, subject to the Commission's approval, the Commission will dismiss the complaint.

(2) If the director determines that an adverse action against the respondent is supported by the facts and the law, the director shall send the respondent a notice of contemplated action. The notice of contemplated action gives formal notice that the commission may take an adverse action against the respondent. That notice shall inform the respondent that the respondent may defend against the contemplated action at a hearing before a hearing officer. The notice shall detail the process and rights afforded in an administrative hearing and shall be sent to the respondent in the manner provided by Paragraph (2) of Subsection C of 1.8.5.8 NMAC.

B. If the respondent does not respond to a notice of contemplated action within 30 days, the respondent's failure to respond amounts to a waiver of the respondent's right to a hearing, and the commission may take an adverse action against the respondent's authority to perform notarial acts. The commission's adverse action, if any, shall take place at an open meeting.

C. If the respondent exercises their right to a hearing, a hearing officer shall hold a hearing to determine whether, under a preponderance of the evidence presented, the adverse action specified in the notice of contemplated action should be adopted, modified, or set aside.

D. At any hearing conducted pursuant to these rules, the director and the respondent may call witnesses, present objections, and submit evidence relevant to the hearing officer's disposition of the notice of contemplated action. The hearing need not

be conducted according to the rules of evidence, and any relevant evidence, including hearsay of probative value, is admissible. Oral evidence shall be taken only on oath or affirmation. Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs may be admitted and given probative value. The rules of privilege shall be given effect, and incompetent, immaterial, and unduly repetitious evidence may be excluded. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

E. If, after a hearing, the hearing officer finds the respondent committed an action that supports the notice of contemplated action or other adverse action, the hearing officer shall produce for the commission a report and recommendation, recommending any adverse action available under the Revised Uniform Law on Notarial Acts.

F. Upon receiving the hearing officer's report and recommendation, the commission may take any adverse action against the respondent permitted under the Revised Uniform Law on Notarial Acts, including denial of, suspension of, revocation of, or the imposition of a condition on a notarial officer's authority to perform notarial acts.

G. At any time, the director may enter into a settlement agreement with the respondent. All settlement agreements are subject to approval by the commission.

H. Any decision to take an adverse action against a respondent by the commission will take place at an open meeting. If the commission takes an adverse action against a respondent, the director shall provide the Secretary of State with the order and accompanying case file.

[1.8.5.9 NMAC-N, 7/1/2023]

1.8.5.10 APPEALS OF COMMISSION DECISIONS:

A final decision by the commission on a complaint may be appealed pursuant to Rule 1-075 NMRA.

[1.8.5.10 NMAC-N, 7/1/2023]

CHAPTER 9: [RESERVED]

CHAPTER 10: ELECTIONS AND ELECTED OFFICIALS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-4: [RESERVED]

PART 5: THE USE OF ALTERNATIVE BALLOTS FOR EMERGENCY VOTING PURPOSES [REPEALED]

[This part was repealed on August 28, 2018]

PART 6: PARTY POSITION ON GENERAL ELECTION BALLOT

1.10.6.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.6.1 NMAC - Rp, 1.10.6.1 NMAC, 8/28/2018]

1.10.6.2 SCOPE:

This rule applies to any general election.

[1.10.6.2 NMAC - Rp, 1.10.6.2 NMAC, 8/28/2018]

1.10.6.3 STATUTORY AUTHORITY:

Election Code, Section 1-10-8.1 and Section 1-2-1 NMSA 1978.

[1.10.6.3 NMAC - Rp, 1.10.6.3 NMAC, 8/28/2018]

1.10.6.4 DURATION:

Permanent.

[1.10.6.4 NMAC - Rp, 1.10.6.4 NMAC, 8/28/2018]

1.10.6.5 EFFECTIVE DATE:

August 28, 2018 unless a later date is cited at the end of a section.

[1.10.6.5 NMAC - Rp, 1.10.6.5 NMAC, 8/28/2018]

1.10.6.6 OBJECTIVE:

To provide the procedures to determine the order for political parties for the partisan offices on the general election ballot.

[1.10.6.6 NMAC - Rp, 1.10.6.6 NMAC, 8/28/2018]

1.10.6.7 DEFINITIONS:

[RESERVED]

[1.10.6.7 NMAC - Rp, 1.10.6.7 NMAC, 8/28/2018]

1.10.6.8 PROCEDURES FOR DETERMINING BALLOT POSITION:

A. The names of the candidates of each political party qualified to participate in a general election shall be placed by party on the general election ballot in the order of preference as determined by lot at a drawing held for that purpose.

B. The secretary of state shall send notice to each chairperson of a qualified political party not less than two weeks prior to such drawing.

C. On the last Friday in the month of August in the year in which a general election is to be held, the state chairperson of each political party qualified to participate in the election, or a designated representative with written authorization by such chairperson, shall meet in the office of the secretary of state at a time specified in the notice. At this time, the chairperson, or the designated representative, shall proceed to draw by lot for the position of the chairperson's party on the general election ballot.

D. There shall be placed in a suitable container, capsules containing numbers one through the number that is equivalent to the total number of political parties participating in the general election. The number drawn by each chairperson, or chairperson's designated representative, shall determine the position on the general election ballot that the chairperson's party and the candidates of that party shall occupy, with number one being the first position on the ballot, number two being the second, number three being the third, and so on down the ballot until all parties are placed on the ballot. In the event no state chairperson or designated representative appears as notified for such drawing, the secretary of state shall draw on behalf of that political party.

E. The names of all unaffiliated candidates, or candidates who decline to state a party affiliation shall be printed on the ballot as "Independent" and shall be positioned on the ballot below or after candidates affiliated with a political party, if any. In the event two or more independent candidates run for the same office, their names shall be located on the ballot in alphabetical order.

F. If a person has filed to be a qualified write-in candidate for a particular office, a space shall be printed on the ballot after the listing of other candidates for that office pursuant to Section 1-10-13 NMSA 1978.

[1.10.6.8 NMAC - Rp, 1.10.6.8 NMAC, 8/28/2018]

PART 7: RANDOMIZATION OF CANDIDATE NAMES ON BALLOTS

1.10.7.1 ISSUING AGENCY:

Office of the New Mexico Secretary of State.

[1.10.7.1 NMAC – Rp, 1.10.7.1 NMAC, 2/25/2020]

1.10.7.2 SCOPE:

This rule applies to the printing of names on ballots for all elections conducted pursuant to the Election Code.

[1.10.7.2 NMAC – Rp, 1.10.7.2 NMAC, 2/25/2020]

1.10.7.3 STATUTORY AUTHORITY:

This rule is authorized by Sections 1-8-21.1, 1-10-8.1, and 1-22-3.1 NMSA 1978 of the Election Code.

[1.10.7.3 NMAC – Rp, 1.10.7.3 NMAC, 2/25/2020]

1.10.7.4 DURATION:

Permanent.

[1.10.7.4 NMAC – Rp, 1.10.7.4 NMAC, 2/25/2020]

1.10.7.5 EFFECTIVE DATE:

February 25, 2020, unless a later date is cited at the end of a section.

[1.10.7.5 NMAC – Rp, 1.10.7.5 NMAC, 2/25/2020]

1.10.7.6 OBJECTIVE:

The purpose of this rule is to provide a uniform system of randomization of candidate names for the same office on the ballot in all elections conducted pursuant to the Election Code.

[1.10.7.6 NMAC – Rp, 1.10.7.6 NMAC, 2/25/2020]

1.10.7.7 DEFINITIONS:

A. "Alphabet" means the 26 Roman typeface letters of the standard alphabet used in the United States, without differentiation between upper case and lower case version of each letter.

B. "Auditor" means an auditor qualified by the state auditor to audit state agencies.

C. "Candidate name" and "candidate's name" means the name listed on the candidate's certificate of registration in conformance with the requirements of Subsection (A) of Section 1-10-8 NMSA 1978 and disregarding any punctuation forming a part of a candidate's name; provided that in the case of a ticket for the offices of

president and vice president or of governor and lieutenant governor in a general election, only the name of the presidential or gubernatorial candidate is considered and the name of the vice presidential or lieutenant gubernatorial candidate is disregarded.

D. "Election cycle" the biennial time period described in Subsection (A), of Section 1-1-3.1, NMSA 1978.

E. "First name" means a candidate's given name or forename as listed on the candidate's certificate of voter registration.

F. "Letter" means each of the 26 graphemes of the contemporary alphabet used in the United States: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, and Z; provided that in the case of any of the letters specified in this definition to which a diacritic is applied, the diacritic is disregarded; and provided further that in the case of a digraph, each grapheme forming the digraph is considered a separate letter.

G. "Last name" means a candidate's surname or family name as listed on the candidate's certificate of registration in conformance with the requirements of Paragraph (1), of Subsection (A), of Section 1-10-6 NMSA 1978; the term includes a mononym in the case of a person with a single name.

H. "Middle name" means the initial, initials, name or names as listed on a candidate's certificate of registration in addition to a candidate's first and last names; the term includes a nickname or pseudonym, but does not include honorific, academic or elected titles.

I. "New Mexico election alphabet" means a version of the alphabet in which all letters have been randomized pursuant to this rule.

J. "Secretary" means the secretary of state.

[1.10.7.7 NMAC – Rp, 1.10.7.7 NMAC, 2/25/2020]

1.10.7.8 CREATION OF THE NEW MEXICO ELECTION ALPHABET:

A. Between the day of a general election and the last day of that calendar year, the auditor shall publicly create a randomization of the alphabet utilizing a method in which each letter not yet selected has a statistically equal chance of being the next letter selected.

B. The secretary shall post notice on the secretary's website at least one week in advance, providing the day, time and place of the randomization of the alphabet.

C. The randomized alphabet created by the auditor shall be the New Mexico election alphabet for the next election cycle.

D. By January 10th of each odd-numbered year, the secretary shall post the New Mexico election alphabet. The agency website shall contain the current New Mexico election alphabet and an archive of all previous New Mexico election alphabets.

[1.10.7.8 NMAC – Rp, 1.10.7.8 NMAC, 2/25/2020]

1.10.7.9 ORDER OF CANDIDATE NAMES:

A. The names of candidates for the same office shall be ordered based upon the first letter in each candidate's last name according to the order of letters in the New Mexico election alphabet.

B. When two or more candidates for the same office share the same first letter in each candidate's last name, the order of candidate names is resolved by applying the New Mexico election alphabet to each subsequent letter in each candidate's last name until a discernment can be ascertained between candidate names.

C. When two or more candidates for the same office share the same last name, the order of candidate names is resolved by applying the New Mexico election alphabet to each letter in each candidate's first name until a discernment can be ascertained between candidate names.

D. When two or more candidates for the same office share the same last and first names, the order of candidate names is resolved by applying the New Mexico election alphabet to each letter in each candidate's middle name, if any, until a discernment can be ascertained between candidate names.

E. When two or more candidates for the same office share the same candidate names, the order of candidate names is resolved in favor of the candidate with the higher card drawn on a day, time and location selected by the secretary and administered by the proper filing officer for the office for which the candidates have filed declarations of candidacy. The drawing of cards shall utilize a 52 card deck with jokers, face cards, and aces removed. With regard to the remaining 36 numbered cards, cards are ranked numerically from 2 low to 10 high, and if two cards with the same number are selected, suits are ranked with clubs lowest, diamonds low, hearts high and spades highest.

[1.10.7.9 NMAC – N, 2/25/2020]

1.10.7.10 OFFICES WITH CANDIDATES DESIGNATED BY CONVENTION:

A. Notwithstanding the New Mexico election alphabet, the names of candidates designated and certified by state convention pursuant to Section 1-8-21.1 NMSA 1978 shall be placed on the respective political party primary ballot in descending order of the vote received at the applicable state convention.

B. In the case of two or more candidates designated and certified by state convention who receive an equal number of votes, the order of names for those candidates on the respective political party primary ballot shall be determined using the New Mexico election alphabet and the order provided in 1.10.7.9 NMAC.

C. Names of candidates not designated or certified by state convention pursuant to Section 1-8-21.1 NMSA 1978 shall appear after all convention designated and certified candidates and shall be in the order provided in 1.10.7.9 NMAC.

[1.10.7.10 NMAC – N, 2/25/2020]

1.10.7.11 SELECTION OF AUDITOR:

A. At least 90 days prior to each general election, the secretary of state shall select an auditor to create the New Mexico election alphabet for the subsequent election cycle.

B. The auditor may be the same auditor contracted by the secretary pursuant to Section 1-14-13.2 NMSA 1978.

[1.10.7.11 NMAC – N, 2/25/2020]

1.10.7.12 INITIAL NEW MEXICO ELECTION ALPHABET:

A. Within 31 days following adoption of this rule, the secretary shall select an auditor to create the initial New Mexico election alphabet.

B. The auditor shall publicly create a randomization of the alphabet utilizing a method in which each letter not yet selected has a statistically equal chance of being the next letter selected.

C. The randomized alphabet created by the auditor shall be the New Mexico election alphabet for the remainder of the current election cycle.

D. Once created, the secretary shall post the initial New Mexico election alphabet as soon as practicable on its website.

[1.10.7.12 NMAC – N, 2/25/2020]

PART 8: PROCEDURES FOR STATE AGENCY BASED VOTER REGISTRATION UNDER THE NATIONAL VOTER REGISTRATION ACT

1.10.8.1 ISSUING AGENCY:

Office of the Secretary of State.

[12-15-97; Recompiled 11/30/01]

1.10.8.2 SCOPE:

Motor vehicle division, commission for the blind, commission for the deaf and hard of hearing, children youth and families department, health department, human services department, veteran's service commission, vocational rehabilitation division, all county clerk's offices and certain state funded public libraries, universities and colleges.

[12-15-97; Recompiled 11/30/01]

1.10.8.3 STATUTORY AUTHORITY:

P.L. 103-31 The National Voter Registration Act of 1993 and 1-4-5.2.

[12-15-97; Recompiled 11/30/01]

1.10.8.4 DURATION:

Permanent.

[12-15-97; Recompiled 11/30/01]

1.10.8.5 EFFECTIVE DATE:

December 15, 1997 [unless a later date is cited at the end of a section].

[12-15-97; Recompiled 11/30/01]

1.10.8.6 OBJECTIVE:

To provide persons an opportunity to register to vote or make a change to their voter registration when applying for services or assistance at designated state agencies, armed forces recruitment offices or when applying for or renewing driver's license or personal identification documents.

[12-15-97; Recompiled 11/30/01]

1.10.8.7 DEFINITIONS:

A. "Designated agency" means all offices in the state that provide public assistance, all offices in the state that provide state-funded programs primarily engaged in providing services to persons with disabilities. In addition each state shall designate other offices within the state which may include state or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices that provide services to persons with disabilities, federal and non-governmental offices, with the agreement of such offices.

B. "Mail voter registration application" means the application form prescribed by the federal election commission for the registration of voters in elections for federal office.

C. "Declination form" is the form used to offer a qualified elector the opportunity register to vote at a designated agency.

D. "Registration officer" means the county clerk or the clerk's authorized deputy.

E. "Registration agent" means a state or federal employee who provides voter registration at a state agency or any other individual who assists another person in completion of a voter registration application.

[12-15-97; Recompiled 11/30/01]

1.10.8.8 RULES AND REGULATIONS:

A. Each designated state agency shall advise any applicant for services that voter registration may be made simultaneously with an application for services. Voter registration forms shall be supplied by the office of the county clerk in the county where the agency is situated or located. County clerks must arrange for transmittal or collection of completed voter registration forms within ten (10) calendar days of completion. Each agency and county clerk's office participating in the voter registration program shall maintain sufficient records for the secretary of state to comply with federal reporting requirements. Any records maintained by the agency regarding voter registration activities by that agency are confidential and shall not be released as public records.

B. The specific procedures to be employed by each designated agency have been set forth in the following manuals: motor vehicle division voter registration agent manual (appendix A); New Mexico state agency voter registration agent manual (appendix B); public library voter registration agent manual (appendix C); and university and college voter registration agent manual (appendix D).

[12-15-97; Recompiled 11/30/01]

1.10.8.9 PROHIBITED ACTIVITIES:

A state employee providing the services specified in this rule is prohibited from:

A. seeking to influence the political preference or party registration of a person registering to vote;

B. displaying any political preference or party allegiance;

C. making any statement to a person registering to vote or taking any action the purpose or effect of which is to discourage a person from registering to vote;

D. making any statement to a person registering to vote or taking any action the purpose or effect of which is to lead the person to believe that a decision to register or not to register has any bearing on the availability of services or benefits;

E. seeking or inducing any person to register to vote in any particular manner;

F. revealing the office at which a person registered to vote; and

G. revealing any information on voter registration or declination of voter registration for any purpose other than voter registration purposes.

[12-15-97; Recompiled 11/30/01]

1.10.8.10 MAIL REGISTRATION:

The state of New Mexico shall accept and use the mail voter registration application, meeting all federal criteria, for the registration of all voters in elections for federal office. The mail registration application shall also be accepted for notification of change of address.

[12-15-97; Recompiled 11/30/01]

1.10.8.11 DECLINATION FORM:

Each agency that provides public assistance and state-funded programs providing services to the disabled shall provide a "declination" form to applicants which shall read in English and Spanish:

A. form

B. form in Spanish

[12-15-97; Recompiled 11/30/01]

1.10.8.12 REQUIREMENTS FOR ADMINISTRATION OF VOTER REGISTRATION:

Valid voter registration applications from all participating designated agencies and mail applications shall be accepted by county clerks not later than 28 days prior to the election. Each county clerk shall provide acknowledgement of the disposition of the application to the applicant.

Ineligible voters may be removed from the list of eligible voters only by reason of:

A. the request of the registrant;

B. the death of the registrant;

C. change of residence outside the jurisdiction of the county clerk; as provided by state law in the case of criminal conviction or mental incapacity.

[12-15-97; Recompiled 11/30/01]

1.10.8.13 CONFIRMATION OF VOTER REGISTRATION:

The program conducted by the state of New Mexico to protect the integrity of the electoral process shall be non-discriminatory and in compliance with the Voting Rights Act of 1965 and shall not result in the removal of any registered voter solely for failure to vote. All voter removal programs shall be conducted in accordance with the National Voter Registration Act.

[12-15-97; Recompiled 11/30/01]

1.10.8.14 FEDERAL COORDINATION AND REGULATIONS:

A mail voter registration application form which shall require only such information as necessary to enable the appropriate county election officials to assess the eligibility of the applicant to register to vote and county and state election officials to administer voter registration and other parts of the election process. It shall include a statement that:

- A. specifies each eligibility requirement, including citizenship;
- B. contains an attestation that the applicant meets such requirements; and requires the signature of the applicant under penalty of perjury;
- C. if the applicant declines to register to vote, that declination shall remain confidential and will be used for voter registration purposes only; and
- D. that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and be used for voter registration purposes only.

[12-15-97; Recompiled 11/30/01]

1.10.8.15 DESIGNATION OF CHIEF STATE ELECTION OFFICIAL:

The secretary of state is the chief state election official responsible for coordination of the state's responsibilities under the act.

[12-15-97; Recompiled 11/30/01]

1.10.8.16 PRIVATE RIGHT OF ACTION:

A. A person who is aggrieved by a violation of the National Voter Registration Act may provide written notice of the violation to the office of the secretary of state. The secretary shall initiate an investigation to determine whether a violation occurred. If the secretary of state determines that a violation occurred, necessary steps shall be taken to correct this violation. If the violation is not corrected within 90 days of receipt, or within 20 days after the receipt of the notice if the violation occurred within 120 days before the date of an election for federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory injunctive relief with respect to the violation.

B. If the violation occurred within 30 days before the date of an election for federal office, the aggrieved date of an election for federal office, the aggrieved person need not provide notice to the office of the secretary of state before bringing a civil action.

[12-15-97; Recompiled 11/30/01]

1.10.8.17 CRIMINAL PENALTIES:

A. A person, including a registration officer or registration agent, who knowingly violates any provision of the National Voter Registration Act shall be fined in accordance with title 18 of the United States Code.

[12-15-97; Recompiled 11/30/01]

1.10.8.18 APPENDICES:

A. Motor vehicle division voter registration agent manual

APPENDIX A

COMPLIANCE GUIDE FOR THE NATIONAL VOTER REGISTRATION ACT

MOTOR VEHICLE DIVISION

VOTER

REGISTRATION

AGENT

MANUAL

OFFICE OF THE

SECRETARY OF STATE

STEPHANIE GONZALES

compiled by the

Bureau of Elections

December 1, 1994

ABOUT THIS MANUAL

This manual has been prepared by the Bureau of Elections to assist in the implementation of voter registration activities in state agencies. It is not meant to supersede federal or state laws or rules, nor does it have the force of law. To obtain copies of the National Voter Registration Act or other information about the contents of this reference manual, or to suggest modifications, you may contact:

Bureau of Elections

Office of the Secretary of State

State Capitol, Room 419

Santa Fe, New Mexico 87503

REGISTRATION HOTLINE

For answers to more urgent questions about voter registration rules and procedures, contact your local county clerk (see page 19) or call the Bureau of Elections at either of these numbers:

1-505-827-3620

or

1-800-477-3632

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DEFINITIONS

November 18, 1994

TO: Voter Registration Agents and Site Coordinators

The enactment of the National Voter Registration Act of 1993 (also known as "Motor Voter") represented a response to the need to make voter registration more widely available to the citizens of this country. The act accomplishes this goal by requiring various public agency offices to provide voter registration services.

Governor's Executive Order 94-11 directs designated state agencies throughout New Mexico to cooperate in fully implementing this new law, beginning on January 1, 1995.

Motor vehicle departments, state agencies providing public assistance, armed forces recruitment centers, public libraries, universities and colleges are participating in this endeavor.

The objectives of the NVRA are clear:

increase the number of eligible citizens who register to vote,

protect the integrity of the electoral process by ensuring accurate and current voter registration rolls are maintained, and

enhance voter participation of eligible citizens.

This manual was prepared to assist voter registration agents and coordinators in implementing this historic law. And it is to them that this manual is dedicated. It is they who are the frontline troops in this momentous effort to foster greater voter participation.

Sincerely,

Stephanie Gonzales

Secretary of State

MOTOR VEHICLE-BASED VOTER REGISTRATION:

MVD'S role under NVRA

What is a Registration Agent?

A registration agent is a state employee who provides voter registration at a state agency or any other individual who assists another person in completion of a voter registration application.

Registration Agent qualifications

A registration agent must be able to read and write legibly and be otherwise competent to perform the duties required under the NVRA.

Duties of the Registration Agent

Registration Agents may perform their lawful duties at any location within the State of New Mexico. They shall provide any qualified elector with an opportunity to register to vote regardless of political affiliation, religion or race; and, shall perform their lawful duties without charge as follows:

1. shall assist in the preparation of the voter registration application of qualified electors at the request of the applicant; and

2. may assist a voter in any changes to the voter registration application (i.e. name, address or party affiliation).

Providing assistance - how much is enough?

Motor vehicle offices providing voter registration must provide the same degree of assistance, including bilingual assistance when necessary, to individuals completing a voter registration form as they offer to individuals completing the motor vehicle office forms, unless the applicant refuses such assistance.

Active outreach required

The National Voter Registration Act requires that motor vehicle licensure and voter registration be offered simultaneously. Applicants for a driver's license, renewal, change of address, identification card, or a change of voter registration must always be offered both forms.

What about those who decline to register?

Applicants may decline the opportunity to register to vote by simply refusing to sign the application to register. However, the individual must always be presented with a voter registration application along with the driver's license application (or state-issued I.D.

card). Information regarding an individual's failure to sign cannot be used for any purposes other than voter registration.

Confidentiality

Also, the information on the particular office where an individual registered must remain confidential and be used only for voter registration purposes.

What about changes of address?

Finally, any change of address submitted for a motor vehicle driver's license at the site shall also serve as a change of address for voter registration purposes unless the individual states on the application that the change of address is not for voter registration purposes.

Put someone in charge

Each motor vehicle office must appoint one person to be in charge of and responsible for all motor voter activities (see page 16). This individual will monitor supplies of forms, train new employees and coordinate voter registration activities with local and state election officials. While not a full-time task, it will be continuous.

Collection and transmittal of registrations

Collection or transmittal of completed voter registration applications must take place every 10 days. Careful and regular coordination with county clerks is necessary.

No duplication of information requests made of the applicant

In order to streamline the process, federal law requires that any information needed for motor vehicle purposes C which can also be used for voter registration C be requested of the applicant only once. Thus, the registration procedure is designed to ensure that name, address, gender and social security number information obtained for the applicant's drivers license be saved for subsequent use in filling out the voter registration application.

There is one exception to this rule: the applicant's signature and date (item 6, see page 9). The voter registration application does require the applicant to provide a second signature.

The duplicate information used for driver's license, renewal, change of address, or identification card C which is also required for voter registration C is contained in Items 1 C 3 of the voter registration application (see page 9). The process of capturing this duplicate information is designed to occur automatically. When this information is key-entered for motor vehicle purposes, the computer system will temporarily retain it in memory. Immediately upon completion of motor vehicle processing, the registration

agent should then insert the voter registration application into the printing device. The retained information will automatically be printed out.

The Registration Agent should then present the voter registration application to the applicant, who is directed to complete any remaining items on the form.

THE VOTER REGISTRATION APPLICATION:

Doing it by the Numbers

Applicants May Register if they meet the following requirements:

1. the applicant is a citizen of the United States;
2. the applicant is 18 years of age, or will have reached that age prior to the next election; and
3. the applicant has not been denied the right to vote by reason of mental incapacity or felony conviction.

NOTE: A person may register to be eligible at any time, as there are no residency requirements. However, in order to vote in the next election, the applicant must register at least 28 days prior to that election.

Registration Agents Please Note

the following information is essential

IF A VOTER REGISTRATION APPLICATION

IS TO BE ACCEPTED BY A COUNTY CLERK:

1. name
2. physical address (not a post office box)
3. birth date

Please be aware that an individual cannot be compelled to give their social security number as a qualification for voter registration.

Registration Agents are not responsible for verification of the truth of any information contained in a voter registration application and are only providing an applicant with the opportunity to register to vote. Agency personnel do not determine if the applicant is qualified to register to vote. However, forms should be reviewed to make sure they are filled out completely.

4 THINGS TO REMEMBER

When providing voter registration service to an applicant, please take note of these four considerations:

1. The use of black ink is recommended. Please print legibly.
2. If any applicant is unable to read or write in either the English or Spanish language, or is unable to read or write due to physical disability, the voter registration application shall be filled out by the registration agent, who shall then sign **Item 7** (see page 9) to indicate that assistance was provided.
3. If an error is made while filling out application, the registration agent shall mark voter registration application as "VOID" and it shall be returned with completed voter registration applications to the county clerk.
4. The registration agent shall instruct the applicant to fill out only those items numbered in red. The shaded areas at the bottom of the form are for the use of the county clerk. The shaded area to the right of Item 3 (see page 9) is to be used by the agency for insertion of the agency site code. This item will be filled out by the agency site coordinator if completed at an agency.

THE VOTER REGISTRATION APPLICATION

(PASTE IN)

1. PERSONAL INFORMATION

a) **Name:** Use full name - last name, first name and middle initial, if any. Registration Agents should try to discourage the use of "Mrs. John Doe" and request given names.

b) **Gender:** Use "F" for female, "M" for Male.

c) **Birth date:** Month, day and year.

d) **Social Security Number:** Remember that an individual cannot be compelled to give their social security number as a qualification of voter registration.

2. ADDRESS WHERE YOU LIVE NOW

The information in this item is divided into "street" or "rural address". **DO NOT USE POST OFFICE BOX FOR THIS ITEM.** The physical address is used by the county clerk to determine the applicant's precinct.

Rural Addresses: For rural addresses, use RFD number, if any. Should the applicant know township, range and section numbers, these can be entered. If none of these are available, direct the applicant's attention to the map at the bottom of the application.

3. ADDRESS WHERE YOU GET YOUR MAIL

(if different from above)

Post Office boxes or other non-residential addresses may be entered here.

4. POLITICAL PARTY

Direct the applicant's attention to the language contained in this item and, should there be questions, explain that New Mexico has a closed primary system, which means that only those affiliated with a major political party may vote in primary elections.

If an applicant declines to state a party affiliation or wishes to indicate a status "independent" of party affiliation, instruct the applicant to check the NO PARTY BOX contained in ITEM 4.

Use the following abbreviations for party affiliation:

MAJOR POLITICAL PARTIES (as of November 8, 1994)

Democratic Party DEM

Green Party GRN

Republican Party REP

MINOR POLITICAL PARTIES

American Independent Party AIP

Citizen's Party of New Mexico CNM

First New Mexican Party FNM

Independent New Mexican Party NMI

La Raza Unida de Nuevo MejicoLRU

Libertarian Party LIB

New Mexico Socialist Party SNM

New Party of New Mexico. PNM
Peace and Freedom Party PAF
People's Constitutional Party PCP
Prohibitionist Party PRO
Socialist Labor Party. SLP
Socialist Worker's Party SWP
Worker's World Party WWP

5. TELEPHONE NUMBER

The telephone number is optional and may only be made public for election purposes. The choice is up to the applicant and the voter registration application may not be rejected for refusal to give the telephone number.

6. ATTESTATION OF QUALIFICATION

The applicant should carefully read the attestation before signing. The voter registration application also needs to be dated to the right of the signature line.

7. NAME OF PERSON WHO ASSISTED IN FILLING OUT THIS FORM

This line is to be filled in only if a registration agent provided substantial assistance in filling out the form for the applicant. It **DOES NOT** have to be signed by agency intake personnel unless the assistance provided includes the actual filling out of the form.

Leave all shaded areas at the bottom of the application blank.

These are for county clerk use only.

A & B CHANGE OF ADDRESS OR NAME

This information is on the lower portion of the voter registration application and is for changes only. **Line A** is for those previously registered voters who have moved from another county or state. If a registered voter has moved from an address in the county to a new address in the *same* county, a new registration application must be filled out.

C RURAL ADDRESSES, NON-STREET ADDRESSES, OR NON-TRADITIONAL PLACES

Line C is particularly important if an applicant does not have a physical address. Detailed instructions for drawing a map of the residence's location are provided for the applicant in Item C of the voter registration application.

For Voters Who Request

CANCELLATION OF REGISTRATION

If a voter requests cancellation of registration,
direct them to the Office of the County Clerk for instructions.

See page 19 for roster of county clerks.

RESPONSIBILITIES OF SITE PERSONNEL & COORDINATORS

RESPONSIBILITIES OF MVD PERSONNEL

The 5 Steps

1. After completion of the initial data required from the client and print out of motor vehicle form, place voter registration form in printer to capture information which is identical on both forms. These are items 1 through 3 on the voter registration form.
2. After printing of data on voter registration form, return form to applicant for the completion of items 4 through 6. **THE APPLICANT IS NOT TO FILL IN ANY SHADED AREAS ON THE FORM.**
3. Unless the applicant refuses assistance, provide the same degree of assistance in completion of the voter registration form as would be provided to the applicant in completion of motor vehicle office forms, including bilingual assistance, if necessary.
4. Refusal to sign the completed voter registration application when presented to the applicant serves as the applicant's declination to register to vote.
5. Direct applicant to place completed voter registration form in area designated by site coordinator, whether it is signed or not.

Motor Vehicle Division personnel involved in agency voter registration activity are PROHIBITED from:

- seeking to influence an applicant's political party preference;
- displaying any political preference or party allegiance;

→ making any statement or taking any action whose purpose or effect is to discourage the applicant from completing the voter registration application; or

→ disclosing to any other individual that the applicant has applied to register to vote at a motor vehicle office.

RESPONSIBILITIES OF MVD SITE COORDINATOR

Putting Someone in Charge

1. Monitor supplies of forms and contact the county clerk's office, when necessary (county clerks are instructed to monitor inventories of forms as part of the collection and/or transmittal process and any difficulties encountered should be reported to the Bureau of Elections in Office of the Secretary of State).
2. Create a secure area to store forms for collection or transmittal.
3. Train office personnel in the review of voter registration forms to ensure they are completed in their entirety by applicants who have requested assistance.
4. Ensure that office personnel understand that they may not influence or attempt to coerce applicants to declare a political party preference and may not discourage registration verbally or by attitude.
5. Return all completed or voided voter registration applications to the county clerk within ten (10) calendar days; however return shall not be made later than 5:00 p.m. on the Friday immediately following the closing of the registration books for the upcoming election.

COUNTY CLERKS ROSTER

BERNALILLO COUNTY

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QUAY COUNTY

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Tucumcari, NM 88401
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Tierra Amarilla, NM 87575
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SIERRA COUNTY

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- (1) general elections;
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REGISTRANT - The person who is offering to register to vote or is registered (used synonymously with "applicant").

QUALIFIED ELECTOR - Any person who is a citizen of the United States, a resident of the State of New Mexico, who is or will be 18 years of age at the time of the next election, who has not been denied the right to vote by a court of law by reason of mental incapacity or felony conviction.

REGISTRATION AGENT - A registration agent is a state or federal agency employee who provides voter registration at a state agency or any other individual who assists another person in completion of a voter registration application.

REGISTRATION OFFICER - The county clerk or the clerk's authorized deputy.

RESIDENCE - That place in which a person's habitation is fixed, and to which, whenever absent, the intention is to return. A residence is not a post office box.

STATE - The term "state" means a state of the United States and the District of Columbia.

VOTER - Any qualified elector who is registered under the provisions of the New Mexico Election Code.

VOTER REGISTRATION AGENCY - A voter registration agency is an office designated under Section 7(a)(1) of PL 103-31 to perform voter registration activities.

B. New Mexico State Agency Voter Registration Agent Manual

APPENDIX B

COMPLIANCE GUIDE FOR THE NATIONAL VOTER REGISTRATION ACT

NEW MEXICO STATE AGENCY

VOTER

REGISTRATION

AGENT

MANUAL

OFFICE OF THE

SECRETARY OF STATE

STEPHANIE GONZALES

compiled by the

Bureau of Elections

December 1, 1994

ABOUT THIS MANUAL

This manual has been prepared by the Bureau of Elections to assist in the implementation of voter registration activities in state agencies. It is not meant to supersede federal or state laws or rules, nor does it have the force of law. To obtain copies of the National Voter Registration Act or other information about the contents of this reference manual, or to suggest modifications, you may contact:

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AGENCYBASED VOTER REGISTRATION

Your role under NVRA

THE VOTER REGISTRATION APPLICATION

Doing it by the Numbers

RESPONSIBILITIES of Site Personnel & Coordinators

COUNTY CLERKS

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November 18, 1994

TO: Voter Registration Agents and Site Coordinators

The enactment of the National Voter Registration Act of 1993 (also known as "Motor Voter") represented a response to the need to make voter registration more widely available to the citizens of this country. The act accomplishes this goal by requiring various public agency offices to provide voter registration services.

Governor's Executive Order 9411 directs designated state agencies throughout New Mexico to cooperate in fully implementing this new law, beginning on January 1, 1995.

Motor vehicle departments, state agencies providing public assistance, armed forces recruitment centers, public libraries, universities and colleges are participating in this endeavor.

The objectives of the NVRA are clear:

increase the number of eligible citizens who register to vote,
protect the integrity of the electoral process by ensuring accurate and current voter registration rolls are maintained, and
enhance voter participation of eligible citizens.

This manual was prepared to assist voter registration agents and coordinators in implementing this historic law. And it is to them that this manual is dedicated. It is they who are the frontline troops in this momentous effort to foster greater voter participation.

Sincerely,

Stephanie Gonzales

Secretary of State

AGENCYBASED VOTER REGISTRATION:

Your role under NVRA

What is AgencyBased Voter Registration?

The National Voter Registration Act requires that qualified electors be given an opportunity to complete a voter registration application when applying for or receiving services at:

1. any office in the state that provides public assistance;
2. at or through any office in the state that provides statefunded programs primarily engaged in providing services to persons with disabilities;
3. at certain other offices designated by the state; and
4. at Armed Forces recruitment offices.

When must voter registration be offered?

Individuals must be provided this opportunity not only at the time of their original application for services, but also when filing any recertification, renewal or change of address relating to such services.

Also, if an individual does complete a voter registration application, the particular agency at which the application was completed **may not** be publicly disclosed.

What is a Registration Agent?

A registration agent is a state employee who provides voter registration at a state agency or any other individual who assists another person in completion of a voter registration application.

Registration Agent Qualifications

A registration agent must be able to read and write legibly and be otherwise competent to perform the duties required under the NVRA.

Duties of the Registration Agent

Registration Agents may perform their lawful duties at any location within the State of New Mexico. They shall provide any qualified elector with an opportunity to register to vote regardless of political affiliation, religion or race; and, shall perform their lawful duties without charge as follows:

1. shall assist in the preparation of the voter registration application of qualified electors at the request of the applicant, and;
2. may assist a voter in any changes to the voter registration application (i.e. name, address or party affiliation).

Providing assistance how much is enough

Agencies offering voter registration must offer the same degree of assistance, including bilingual assistance when necessary, to individuals completing a voter registration form as they offer to individuals completing the agency's own forms, unless the applicant refuses such assistance.

Put someone in charge

Each agency site must appoint one person to be in charge of and responsible for all voter registration activities (*see page 16*). This individual will monitor supplies of registration forms, declination forms, train new employees and coordinate voter registration activities with local and state election officials. While not a fulltime task, it will be continuous.

Collection and transmittal of registrations

Collection or transmittal of completed voter registration applications **must** take place every 10 days (*see page 16*). Careful and regular coordination with county clerks is necessary.

What about those who decline to register?

Qualified electors may decline to apply to register to vote, but must do so in writing or by not checking a box on the declination form.

The declination form

The declination form must be provided whenever a registration application is offered and at each contact for services, recertification, renewal or change of address and must be retained in the applicant's file for 22 months. Each subsequent declination must also be retained for 22 months from the date of signing by the applicant.

Confidentiality

No information regarding a person's decision to complete or decline to complete a voter registration application may be used for any purpose other than voter registration.

Agency Site Code

The agency site coordinator will have the responsibility for entering the agency site code on all registration forms delivered by the county clerk. The agency site code is an alphanumeric code specific to your site. The agency site code stamp will be delivered to your office by the Office of the Secretary of State and is permanently assigned to your office. It should not be used by intake employees, rather all forms must be stamped by the coordinator prior to distribution to intake personnel. Federal law requires this code to be kept absolutely confidential. Furthermore, the stamp must be kept in a secure area and must not be misplaced or lost.

Lost stamps shall be replaced by the agency.

THE DECLINATION FORM

(PASTE IN)

THE VOTER REGISTRATION APPLICATION:

Doing it by the Numbers

Applicants May Register

if they meet the following requirements:

1. the applicant is a citizen of the United States;
2. the applicant is 18 years of age, or will have reached that age prior to the next election; and

3. the applicant has not been denied the right to vote by reason of mental incapacity or felony conviction.

NOTE: A person may register to be eligible at any time, as there are no residency requirements. However, in order to vote in the next election, the applicant must register at least 28 days prior to that election.

Registration Agents Please Note

the following information is essential

IF A VOTER REGISTRATION APPLICATION

IS TO BE ACCEPTED BY A COUNTY CLERK:

1. name
2. physical address (not a post office box)
3. birth date

Please be aware that an individual cannot be compelled to give their social security number as a qualification for voter registration.

Registration Agents are not responsible for verification of the truth of any information contained in a voter registration application and are only providing an applicant with the opportunity to register to vote. Agency personnel do not determine if the applicant is qualified to register to vote. However, forms should be reviewed to make sure they are filled out completely.

4 THINGS TO REMEMBER

When providing voter registration service to an applicant, please take note of these four considerations:

1. The use of black ink is recommended. Please print legibly.
2. If any applicant is unable to read or write in either the English or Spanish language, or is unable to read or write due to physical disability, the voter registration application shall be filled out by the registration agent, who shall then sign **Item 7** (see page 9) to indicate that assistance was provided.
3. If an error is made while filling out application, the registration agent shall mark voter registration application as "VOID" and it shall be returned with completed voter registration applications to the county clerk.

4. The registration agent shall instruct the applicant to fill out only those items numbered in red. The shaded areas at the bottom of the form are for the use of the county clerk. The shaded area to the right of Item 3 (see page 9) is to be used by the agency for insertion of the agency site code. This item will be filled out by the agency site coordinator if completed at an agency.

THE VOTER REGISTRATION APPLICATION

(PASTE IN)

1. PERSONAL INFORMATION

a) **Name:** Use full name last name, first name and middle initial, if any. Registration Agents should try to discourage the use of "Mrs. John Doe" and request given names.

b) **Gender:** Use "F" for female, "M" for Male.

c) **Birth date:** Month, day and year.

d) **Social Security Number:** Remember that an individual cannot be compelled to give their social security number as a qualification of voter registration.

2. ADDRESS WHERE YOU LIVE NOW

The information in this item is divided into "street" or "rural address". **DO NOT USE POST OFFICE BOX FOR THIS ITEM.** The physical address is used by the county clerk to determine the applicant's precinct.

Rural Addresses: For rural addresses, use RFD number, if any. Should the applicant know township, range and section numbers, these can be entered. If none of these are available, direct the applicant's attention to the map at the bottom of the application.

3. ADDRESS WHERE YOU GET YOUR MAIL

(if different from above)

Post Office boxes or other nonresidential addresses may be entered here.

4. POLITICAL PARTY

Direct the applicant's attention to the language contained in this item and, should there be questions, explain that New Mexico has a closed primary system, which means that only those affiliated with a major political party may vote in primary elections.

If an applicant declines to state a party affiliation or wishes to indicate a status "independent" of party affiliation, instruct the applicant to check the NO PARTY BOX contained in ITEM 4.

Use the following abbreviations for party affiliation:

MAJOR POLITICAL PARTIES (as of November 8, 1994)

Democratic Party DEM

Green Party GRN

Republican Party REP

MINOR POLITICAL PARTIES

American Independent Party AIP

Citizen's Party of New Mexico CNM

First New Mexican Party. FNM

Independent New Mexican Party NMI

La Raza Unida de Nuevo MejicoLRU

Libertarian Party LIB

New Mexico Socialist Party SNM

New Party of New Mexico. PNM

Peace and Freedom Party PAF

People's Constitutional Party PCP

Prohibitionist Party PRO

Socialist Labor Party. SLP

Socialist Worker's Party SWP

Worker's World Party WWP

5. TELEPHONE NUMBER

The telephone number is optional and may only be made public for election purposes. The choice is up to the applicant and the voter registration application may not be rejected for refusal to give the telephone number.

6. ATTESTATION OF QUALIFICATION

The applicant should carefully read the attestation before signing. The voter registration application also needs to be dated to the right of the signature line.

7. NAME OF PERSON WHO ASSISTED IN FILLING OUT THIS FORM

This line is to be filled in only if a registration agent provided substantial assistance in filling out the form for the applicant. It **DOES NOT** have to be signed by agency intake personnel unless the assistance provided includes the actual filling out of the form.

Leave all shaded areas at the bottom of the application blank.

These are for county clerk use only.

A & B CHANGE OF ADDRESS OR NAME

This information is on the lower portion of the voter registration application and is for changes only. **Line A** is for those previously registered voters who have moved from another county or state. If a registered voter has moved from an address in the county to a new address in the *same* county, a new registration application must be filled out.

C RURAL ADDRESSES, NONSTREET ADDRESSES, OR NONTRADITIONAL PLACES

Line C is particularly important if an applicant does not have a physical address. Detailed instructions for drawing a map of the residence's location are provided for the applicant in Item C of the voter registration application.

For Voters Who Request

CANCELLATION OF REGISTRATION

If a voter requests cancellation of registration,

direct them to the Office of the County Clerk for instructions.

See page 19 for roster of county clerks.

RESPONSIBILITIES OF SITE PERSONNEL & COORDINATORS

RESPONSIBILITIES OF AGENCY INTAKE PERSONNEL

The 5 Steps

1. Offer the opportunity to apply to register to vote to each applicant at the time of their original application for services, at recertification, renewal or change of address.
2. Unless the applicant refuses, provide the same degree of assistance in completion of voter registration forms as provided in completion of agency forms, including bilingual assistance, if necessary.
3. Review the completed voter registration form to ensure it is completed in its entirety and that the form is signed by the applicant.
4. Should the applicant decline to apply to register to vote, provide the applicant with a declination form for their signature. Should the applicant refuse to sign, make a notation on the form that they refused to sign. Place the declination form in the applicant's file to be retained for 22 months from the date of signature. Any subsequent declinations received from the same applicant must also be retained for 22 months from the date of signature.
5. Place completed voter registration form in area designated by site coordinator.

RESPONSIBILITIES OF AGENCY SITE COORDINATOR

Putting Someone in Charge

1. Care and keeping of confidential agency site code stamp.
2. Enter the agency site code on all voter registration forms received from the county clerks office.
3. Monitor supplies of forms and contact the county clerk's office, when necessary (county clerks are instructed to monitor inventories of forms as part of the collection and/or transmittal process and any difficulties encountered should be reported to the Bureau of Elections in Office of the Secretary of State).
4. Create a secure area to store forms for collection or transmittal.
5. Train office personnel in the review of voter registration forms to ensure they are completed in their entirety by applicants whenever necessary.
6. Ensure that office personnel do not coerce applicants to declare a political party preference, discourage registration verbally or by attitude or lead an applicant to believe that completing a voter registration application or declination will have any bearing on benefits they might receive.
7. Instruct office personnel on filling out and retaining the declination form.

8. Return all completed or voided voter registration applications to the county clerk within ten (10) calendar days; however return shall not be made later than 5:00 p.m. on the Friday immediately following the closing of the registration books for the upcoming election.

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C. Public Library Voter Registration Agent Manual

APPENDIX C

COMPLIANCE GUIDE FOR THE NATIONAL VOTER REGISTRATION ACT

PUBLIC LIBRARY

VOTER

REGISTRATION

AGENT

MANUAL

OFFICE OF THE

SECRETARY OF STATE

STEPHANIE GONZALES

compiled by the Bureau of Elections

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Stephanie Gonzales

Secretary of State

LIBRARYBASED VOTER REGISTRATION:

Your role under NVRA

Why Library BasedBased Voter Registration?

The National Voter Registration Act requires the State of New Mexico to offer qualified electors the opportunity to register to vote at certain agencies designated by the state.

When must voter registration be offered?

Public library patrons are provided with the opportunity apply to register to vote simultaneously when applying for a library card or changing their address.

Providing assistance how much is enough?

Public libraries offering voter registration activities must provide the same degree of assistance, including bilingual assistance when necessary, to individuals completing a voter registration form as they offer to patrons in completion of the application for a library card, unless the patron refuses.

What is a Registration Agent?

A registration agent is a library employee who provides voter registration at a public library or any other individual who assists another person in completion of a voter registration application.

Registration Agent Qualifications

A registration agent must be able to read and write legibly and be otherwise competent to perform the duties required under the NVRA.

Duties of the Registration Agent

Registration Agents may perform their lawful duties at any location within the State of New Mexico. They shall provide any qualified elector with an opportunity to register to vote regardless of political affiliation, religion or race; and, shall perform their lawful duties without charge as follows:

1. shall assist in the preparation of the voter registration application of qualified electors at the request of the applicant, and;
2. may assist a voter in any changes to the voter registration application (i.e. name, address or party affiliation).

Put someone in charge

Each public library must appoint one person to be in charge of and responsible for all voter registration activities (see page 16). This individual will monitor supplies of registration forms, train other employees when necessary and coordinate voter registration activities with local and state election officials. While not a fulltime task, it will be continuous.

Entering the Site Code

The public library coordinator will have the responsibility of entering the library's site code on all registration forms delivered by the county clerk. The site code is an alphanumeric code specific to each site and will be delivered to your library by the Office of the Secretary of State. It is permanently assigned to your library and should not be used by any other library personnel, rather all forms should be stamped by the coordinator prior to distribution to library employees. **Federal law requires this code to be absolutely confidential.** Furthermore, the stamp must be kept in a secure area and not misplaced or lost.

Collection and transmittal of registrations

Collection or transmittal of completed voter registration applications **must** take place every 10 days (see page 16). Careful and regular coordination with county clerks is necessary.

THE VOTER REGISTRATION APPLICATION:

Doing it by the Numbers

Applicants May Register if they meet the following requirements:

1. the applicant is a citizen of the United States;
2. the applicant is 18 years of age, or will have reached that age prior to the next election; and
3. the applicant has not been denied the right to vote by reason of mental incapacity or felony conviction.

NOTE: A person may register to be eligible at any time, as there are no residency requirements. However, in order to vote in the next election, the applicant must register at least 28 days prior to that election.

Registration Agents Please Note

the following information is essential

IF A VOTER REGISTRATION APPLICATION

IS TO BE ACCEPTED BY A COUNTY CLERK:

1. name
2. physical address (not a post office box)
3. birth date

Please be aware that an individual cannot be compelled to give their social security number as a qualification for voter registration.

Registration Agents are not responsible for verification of the truth of any information contained in a voter registration application and are only providing an applicant with the opportunity to register to vote. Agency personnel do not determine if the applicant is qualified to register to vote. However, forms should be reviewed to make sure they are filled out completely.

4 THINGS TO REMEMBER

When providing voter registration service to an applicant, please take note of these four considerations:

1. The use of black ink is recommended. Please print legibly.
2. If any applicant is unable to read or write in either the English or Spanish language, or is unable to read or write due to physical disability, the voter registration application shall be filled out by the registration agent, who shall then sign **Item 7** (see page 9) to indicate that assistance was provided.
3. If an error is made while filling out application, the registration agent shall mark voter registration application as "VOID" and it shall be returned with completed voter registration applications to the county clerk.
4. The registration agent shall instruct the applicant to fill out only those items numbered in red. The shaded areas at the bottom of the form are for the use of the county clerk. The shaded area to the right of Item 3 (see page 9) is to be used by the agency for insertion of the agency site code. This item will be filled out by the agency site coordinator if completed at an agency.

THE VOTER REGISTRATION APPLICATION

(PASTE IN)

1. PERSONAL INFORMATION

a) **Name:** Use full name last name, first name and middle initial, if any. Registration Agents should try to discourage the use of "Mrs. John Doe" and request given names.

b) **Gender:** Use "F" for female, "M" for Male.

c) **Birth date:** Month, day and year.

d) Social Security Number: Remember that an individual cannot be compelled to give their social security number as a qualification of voter registration.

2. ADDRESS WHERE YOU LIVE NOW

The information in this item is divided into "street" or "rural address". **DO NOT USE POST OFFICE BOX FOR THIS ITEM.** The physical address is used by the county clerk to determine the applicant's precinct.

Rural Addresses: For rural addresses, use RFD number, if any. Should the applicant know township, range and section numbers, these can be entered. If none of these are available, direct the applicant's attention to the map at the bottom of the application.

3. ADDRESS WHERE YOU GET YOUR MAIL

(if different from above)

Post Office boxes or other nonresidential addresses may be entered here.

4. POLITICAL PARTY

Direct the applicant's attention to the language contained in this item and, should there be questions, explain that New Mexico has a closed primary system, which means that only those affiliated with a major political party may vote in primary elections.

If an applicant declines to state a party affiliation or wishes to indicate a status "independent" of party affiliation, instruct the applicant to check the NO PARTY BOX contained in ITEM 4.

Use the following abbreviations for party affiliation:

MAJOR POLITICAL PARTIES (as of November 8, 1994)

Democratic Party DEM

Green Party GRN

Republican Party REP

MINOR POLITICAL PARTIES

American Independent Party AIP

Citizen's Party of New Mexico CNM

First New Mexican Party. FNM
Independent New Mexican Party NMI
La Raza Unida de Nuevo MejiroLRU
Libertarian PartyLIB
New Mexico Socialist Party SNM
New Party of New Mexico.PNM
Peace and Freedom Party PAF
People's Constitutional PartyPCP
Prohibitionist PartyPRO
Socialist Labor Party. SLP
Socialist Worker's Party SWP
Worker's World PartyWWP

5. TELEPHONE NUMBER

The telephone number is optional and may only be made public for election purposes. The choice is up to the applicant and the voter registration application may not be rejected for refusal to give the telephone number.

6. ATTESTATION OF QUALIFICATION

The applicant should carefully read the attestation before signing. The voter registration application also needs to be dated to the right of the signature line.

7. NAME OF PERSON WHO ASSISTED IN FILLING OUT THIS FORM

This line is to be filled in only if a registration agent provided substantial assistance in filling out the form for the applicant. It **DOES NOT** have to be signed by agency intake personnel unless the assistance provided includes the actual filling out of the form.

Leave all shaded areas at the bottom of the application blank.

These are for county clerk use only.

A & B CHANGE OF ADDRESS OR NAME

This information is on the lower portion of the voter registration application and is for changes only. **Line A** is for those previously registered voters who have moved from another county or state. If a registered voter has moved from an address in the county to a new address in the *same* county, a new registration application must be filled out.

C RURAL ADDRESSES, NONSTREET ADDRESSES, OR NONTRADITIONAL PLACES

Line C is particularly important if an applicant does not have a physical address. Detailed instructions for drawing a map of the residence's location are provided for the applicant in Item C of the voter registration application.

For Voters Who Request

CANCELLATION OF REGISTRATION

If a voter requests cancellation of registration,
direct them to the Office of the County Clerk for instructions.

See page 19 for roster of county clerks.

RESPONSIBILITIES OF SITE PERSONNEL & COORDINATORS

RESPONSIBILITIES OF LIBRARY REGISTRATION PERSONNEL

The 4 Steps

1. **Offer the opportunity to apply to register** to vote to each library patron when request is made for a library card or change of address.
2. Provide voter registration forms to patrons and offer the same degree of assistance as is provided in filling out the library's forms, including bilingual assistance, if necessary.
3. Review the completed voter registration form to ensure it is completed in its entirety and that the form is signed by the applicant.
4. Place completed voter registration form in area designated by coordinator.

Library Voter Registration Personnel are PROHIBITED from:

seeking to influence an applicant's political party preference;

displaying any political preference or party allegiance;

making any statement or taking any action whose purpose or effect of is to discourage the applicant from completing the voter registration application;

making any statement or taking any action whose purpose or effect is to lead the applicant to believe that a decision whether or not to apply to register to vote has any bearing on the services the applicant may receive from the library; or

disclosing to any other individual that the applicant completed a voter registration application at a library.

RESPONSIBILITIES OF LIBRARY SITE COORDINATOR

Putting Someone in Charge

1. Care and keeping of confidential library site code stamp.
2. Enter the library site code on all voter registration forms received from the county clerks office.
3. Monitor supplies of forms and contact the county clerk's office, when necessary (county clerks are instructed to monitor inventories of forms as part of the collection and/or transmittal process and any difficulties encountered should be reported to the Bureau of Elections in Office of the Secretary of State).
4. Create a secure area to store forms for collection or transmittal.
5. Train library personnel in the review of voter registration forms to ensure they are completed in their entirety by applicants whenever necessary.
6. Ensure that library personnel do not coerce applicants to declare a political party preference, discourage registration verbally or by attitude or lead an applicant to believe that voter registration might have any bearing on the services they receive from the library.
7. Return all completed or voided voter registration applications to the county clerk within ten (10) calendar days; however return shall not be made later than 5:00 p.m. on the Friday immediately following the closing of the registration books for the upcoming election.

COUNTY CLERKS ROSTER

BERNALILLO COUNTY

Judy D. Woodward
One Civic Plaza, 6th Fl.
Albuquerque, NM 87103
(505) 7684090

CATRON COUNTY

Sharon Armijo
Box 197
Reserve, NM 87830
(505) 5336400

CHAVES COUNTY

Rhoda C. Goodloe
Box 580
Roswell, NM 88202
(505) 6246614

CIBOLA COUNTY

Patricia A. Aragon
515 W. High
Grants, NM 87020
(505) 2879431, ext. 147

COLFAX COUNTY

Barbara Castillo
Box 159
Raton, NM 87740
(505) 4455551

CURRY COUNTY

Coni Jo Lyman
Box 1168
Clovis, NM 881021168
(505) 7635591

DE BACA COUNTY

Shana L. Cleaver
Box 347
Fort Sumner, NM 88119
(505) 3552601

DONA ANA COUNTY

Rita Torres
251 W. Amador Avenue
Las Cruces, NM 88005
(505) 5256659

EDDY COUNTY

Karen Davis
Box 850
Carlsbad, NM 88221
(505) 8853383

GRANT COUNTY

Rena Madrid Cope
Box 989
Silver City, NM 88062
(505) 5382979

GUADALUPE COUNTY

Mary Silva
420 Park Avenue
Santa Rosa, NM 88435
(505) 4723791

HARDING COUNTY

Elizabeth Martinez
Box 1002
Mosquero, NM 87733
(505) 6732301

HIDALGO COUNTY

Belinda C. Chavez
300 S. Shakespeare St.
Lordsburg, NM 88045
(505) 5429213

LEA COUNTY

Pat Chappelle
Box 1507

Lovington, NM 88260
(505) 3968531

LINCOLN COUNTY

Martha McKnight Proctor
Box 338
Carrizozo, NM 88301
(505) 6482394

LOS ALAMOS COUNTY

Nita K. Taylor
P.O. Box 30
Los Alamos, NM 87544
(505) 6228010

LUNA COUNTY

Natalie Pacheco
Box 1838
Deming, NM 88031
(505) 5460491

MCKINLEY COUNTY

Carol K. Sloan
Box 1268
Gallup, NM 87301
(505) 8636866

MORA COUNTY

Pauline G. Espinoza
Box 360
Mora, NM 87732
(505) 3872448

OTERO COUNTY

Mary D. Quintana
1000 New York Ave., Rm. 108
Alamogordo, NM 883106932
(505) 4374942

QUAY COUNTY

Jeanette Maddaford
Box 1225
Tucumcari, NM 88401
(505) 4610510 or 0513

RIO ARRIBA COUNTY

David S. Chavez
Box 158
Tierra Amarilla, NM 87575
(505) 5887724

ROOSEVELT COUNTY

Maudene Haragan
Roosevelt County Courthouse
Portales, NM 88130
(505) 3568562

SANDOVAL COUNTY

Sally G. Padilla
Box 40
Bernalillo, NM 87004
(505) 8672209

SAN JUAN COUNTY

Carol Bandy
Box 550
Aztec, NM 87410
(505) 3349471

SAN MIGUEL COUNTY

Rebecca A. Medina
San Miguel County Courthouse
Las Vegas, NM 87701
(505) 4259331

SANTA FE COUNTY

Jona G. Armijo
Box 1985
Santa Fe, NM 87504
(505) 9866280

SIERRA COUNTY

Lupe Armijo Carrejo
311 Date Street
T or C, NM 87901
(505) 8942840

SOCORRO COUNTY

Carmen D. Gallegos
Box I
Socorro, NM 87801
(505) 8350423

TAOS COUNTY

Carmen M. Medina
Box 676
Taos, NM 87571
(505) 7588836

TORRANCE COUNTY

Carla M. Clayton
Box 48
Estancia, NM 87016
(505) 3842221

UNION COUNTY

Freida J. Birdwell
Box 430
Clayton, NM 88415
(505) 3749491

VALENCIA COUNTY

Kandy Cordova
Box 969
Los Lunas, NM 87031
(505) 8662073

DEFINITIONS

APPLICANT The person who is offering to register to vote.

CITIZEN A U.S. citizen, by birth or naturalization.

ELECTION As used in this manual, "election" means:

- (1) general elections;
- (2) primary elections;
- (3) statewide special elections;
- (4) elections to fill vacancies in the office of representative in congress;
- (5) school district elections;
- (6) municipal officer or municipal bond elections and
- (7) special district officer or special district bond or other special district elections.

FALSE SWEARING Taking any oath required by the Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

FEDERAL OFFICE President, vicepresident, United States senator or United States representative.

GENERATION Family line of succession, i.e. Jr., II, III, etc.

MOTOR VEHICLE DRIVER'S LICENSE The term "motor vehicle driver's license" includes any personal identification document issued by a state motor vehicle authority.

PERJURY The deliberate and willful giving of false, misleading, or incomplete testimony under oath or affirmation.

REGISTRANT The person who is offering to register to vote or is registered (used synonymously with "applicant").

QUALIFIED ELECTOR Any person who is a citizen of the United States, a resident of the State of New Mexico, who is or will be 18 years of age at the time of the next election, who has not been denied the right to vote by a court of law by reason of mental incapacity or felony conviction.

REGISTRATION AGENT A registration agent is a state or federal agency employee who provides voter registration at a state agency or any other individual who assists another person in completion of a voter registration application.

REGISTRATION OFFICER The county clerk or the clerk's authorized deputy.

RESIDENCE That place in which a person's habitation is fixed, and to which, whenever absent, the intention is to return. A residence is not a post office box.

STATE The term "state" means a state of the United States and the District of Columbia.

VOTER Any qualified elector who is registered under the provisions of the New Mexico Election Code.

VOTER REGISTRATION AGENCY A voter registration agency is an office designated under Section 7(a)(1) of PL 10331 to perform voter registration activities.

D. University and College Voter Registration Agent Manual

APPENDIX D

COMPLIANCE GUIDE FOR THE NATIONAL VOTER REGISTRATION ACT

UNIVERSITY & COLLEGE

VOTER REGISTRATION AGENT MANUAL

OFFICE OF THE SECRETARY OF STATE

STEPHANIE GONZALES

compiled by the Bureau of Elections

December 1, 1994

ABOUT THIS MANUAL

This manual has been prepared by the Bureau of Elections to assist in the implementation of voter registration activities in state agencies. It is not meant to supersede federal or state laws or rules, nor does it have the force of law. To obtain copies of the National Voter Registration Act or other information about the contents of this reference manual, or to suggest modifications, you may contact:

Bureau of Elections

Office of the Secretary of State

State Capitol, Room 419

Santa Fe, New Mexico 87503

REGISTRATION HOTLINE

For answers to more urgent questions about voter registration rules and procedures, contact your local county clerk (see page 19) or call the Bureau of Elections at either of these numbers:

1-505-827-3620

or

1-800-477-3632

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COUNTY CLERKS

DEFINITIONS

November 18, 1994

TO: Voter Registration Agents and Site Coordinators

The enactment of the National Voter Registration Act of 1993 (also known as "Motor Voter") represented a response to the need to make voter registration more widely available to the citizens of this country. The act accomplishes this goal by requiring various public agency offices to provide voter registration services.

Governor's Executive Order 94-11 directs designated state agencies throughout New Mexico to cooperate in fully implementing this new law, beginning on January 1, 1995.

Motor vehicle departments, state agencies providing public assistance, armed forces recruitment centers, public libraries, universities and colleges are participating in this endeavor.

The objectives of the NVRA are clear:

- increase the number of eligible citizens who register to vote,
- protect the integrity of the electoral process by ensuring accurate and current voter registration rolls are maintained, and
- enhance voter participation of eligible citizens.

This manual was prepared to assist voter registration agents and coordinators in implementing this historic law. And it is to them that this manual is dedicated. It is they who are the frontline troops in this momentous effort to foster greater voter participation.

Sincerely,

Stephanie Gonzales

Secretary of State

UNIVERSITY & COLLEGE BASED VOTER REGISTRATION:

Your role under NVRA

Why University & College-Based Voter Registration?

The National Voter Registration Act requires the State of New Mexico to offer qualified electors the opportunity to register to vote at certain agencies designated by the state.

When must voter registration be offered?

University students are provided with the opportunity apply to register to vote simultaneously with their registration at a university or college.

Providing assistance - how much is enough?

Universities and colleges offering voter registration activities must provide the same degree of assistance, including bilingual assistance when necessary, to students completing a voter registration form as they offer to students in completion of the school's own forms, unless the student refuses.

What is a Registration Agent?

A registration agent is a school employee who provides voter registration at a university or college or any other individual who assists another person in completion of a voter registration application.

Registration Agent Qualifications

A registration agent must be able to read and write legibly and be otherwise competent to perform the duties required under the NVRA.

Duties of the Registration Agent

Registration Agents may perform their lawful duties at any location within the State of New Mexico. They shall provide any qualified elector with an opportunity to register to vote regardless of political affiliation, religion or race; and, shall perform their lawful duties without charge as follows:

1. shall assist in the preparation of the voter registration application of qualified electors at the request of the applicant, and;
2. may assist a voter in any changes to the voter registration application (i.e. name, address or party affiliation).

Put someone in charge

Each university and college must appoint one person to be in charge of and responsible for all voter registration activities (see page 16). This individual will monitor supplies of registration forms, train other employees when necessary and coordinate voter registration activities with local and state election officials.

Entering the Site Code

The school voter registration coordinator will have the responsibility of entering the school's site code on all registration forms delivered by the county clerk. The site code is an alphanumeric code specific to each site and will be delivered to your institution by the Office of the Secretary of State. It is permanently assigned to your institution and should not be used by any other institution personnel, rather all forms should be stamped by the coordinator prior to distribution to employees. Federal law requires this code to be absolutely confidential. Furthermore, the stamp must be kept in a secure area and not misplaced or lost.

Collection and transmittal of registrations

Collection or transmittal of completed voter registration applications must take place every 10 days (*see page 16*). Careful and regular coordination with county clerks is necessary.

IMPORTANT NOTE about residency requirements

Voter registration is not a method to satisfy specific residency requirements for tuition purposes at New Mexico universities and colleges. Out-of-state students at New Mexico

universities and colleges may already be registered in their home state, but if not, they may be registered on the National Voter Registration Form.

THE VOTER REGISTRATION APPLICATION:

Doing it by the Numbers

Applicants May Register if they meet the following requirements:

1. the applicant is a citizen of the United States;
2. the applicant is 18 years of age, or will have reached that age prior to the next election; and
3. the applicant has not been denied the right to vote by reason of mental incapacity or felony conviction.

NOTE: A person may register to be eligible at any time, as there are no residency requirements. However, in order to vote in the next election, the applicant must register at least 28 days prior to that election.

Registration Agents Please Note

the following information is essential

IF A VOTER REGISTRATION APPLICATION

IS TO BE ACCEPTED BY A COUNTY CLERK:

1. name
2. physical address (not a post office box)
3. birth date

Please be aware that an individual cannot be compelled to give their social security number as a qualification for voter registration.

Registration Agents are not responsible for verification of the truth of any information contained in a voter registration application and are only providing an applicant with the opportunity to register to vote. Agency personnel do not determine if the applicant is qualified to register to vote. However, forms should be reviewed to make sure they are filled out completely.

4 THINGS TO REMEMBER

When providing voter registration service to an applicant, please take note of these four considerations:

1. The use of black ink is recommended. Please print legibly.
2. If any applicant is unable to read or write in either the English or Spanish language, or is unable to read or write due to physical disability, the voter registration application shall be filled out by the registration agent, who shall then sign **Item 7** (see page 9) to indicate that assistance was provided.
3. If an error is made while filling out application, the registration agent shall mark voter registration application as "VOID" and it shall be returned with completed voter registration applications to the county clerk.
4. The registration agent shall instruct the applicant to fill out only those items numbered in red. The shaded areas at the bottom of the form are for the use of the county clerk. The shaded area to the right of Item 3 (see page 9) is to be used by the agency for insertion of the agency site code. This item will be filled out by the agency site coordinator if completed at an agency.

THE VOTER REGISTRATION APPLICATION

(PASTE IN)

1. PERSONAL INFORMATION

- a) **Name:** Use full name - last name, first name and middle initial, if any. Registration Agents should try to discourage the use of "Mrs. John Doe" and request given names.
- b) **Gender:** Use "F" for female, "M" for Male.
- c) **Birth date:** Month, day and year.
- d) **Social Security Number:** Remember that an individual cannot be compelled to give their social security number as a qualification of voter registration.

2. ADDRESS WHERE YOU LIVE NOW

The information in this item is divided into "street" or "rural address". **DO NOT USE POST OFFICE BOX FOR THIS ITEM.** The physical address is used by the county clerk to determine the applicant's precinct.

Rural Addresses: For rural addresses, use RFD number, if any. Should the applicant know township, range and section numbers, these can be entered. If none of these are available, direct the applicant's attention to the map at the bottom of the application.

3. ADDRESS WHERE YOU GET YOUR MAIL

(if different from above)

Post Office boxes or other non-residential addresses may be entered here.

4. POLITICAL PARTY

Direct the applicant's attention to the language contained in this item and, should there be questions, explain that New Mexico has a closed primary system, which means that only those affiliated with a major political party may vote in primary elections.

If an applicant declines to state a party affiliation or wishes to indicate a status "independent" of party affiliation, instruct the applicant to check the NO PARTY BOX contained in ITEM 4.

Use the following abbreviations for party affiliation:

MAJOR POLITICAL PARTIES (as of November 8, 1994)

Democratic Party DEM

Green Party GRN

Republican Party REP

MINOR POLITICAL PARTIES

American Independent Party AIP

Citizen's Party of New Mexico CNM

First New Mexican Party. FNM

Independent New Mexican Party NMI

La Raza Unida de Nuevo Mejico LRU

Libertarian Party LIB

New Mexico Socialist Party SNM

New Party of New Mexico. PNM

Peace and Freedom Party PAF

People's Constitutional Party PCP
Prohibitionist Party PRO
Socialist Labor Party. SLP
Socialist Worker's Party SWP
Worker's World Party WWP

5. TELEPHONE NUMBER

The telephone number is optional and may only be made public for election purposes. The choice is up to the applicant and the voter registration application may not be rejected for refusal to give the telephone number.

6. ATTESTATION OF QUALIFICATION

The applicant should carefully read the attestation before signing. The voter registration application also needs to be dated to the right of the signature line.

7. NAME OF PERSON WHO ASSISTED IN FILLING OUT THIS FORM

This line is to be filled in only if a registration agent provided substantial assistance in filling out the form for the applicant. It **DOES NOT** have to be signed by agency intake personnel unless the assistance provided includes the actual filling out of the form.

Leave all shaded areas at the bottom of the application blank.

These are for county clerk use only.

A & B CHANGE OF ADDRESS OR NAME

This information is on the lower portion of the voter registration application and is for changes only. **Line A** is for those previously registered voters who have moved from another county or state. If a registered voter has moved from an address in the county to a new address in the *same* county, a new registration application must be filled out.

C RURAL ADDRESSES, NON-STREET ADDRESSES, OR NON-TRADITIONAL PLACES

Line C is particularly important if an applicant does not have a physical address. Detailed instructions for drawing a map of the residence's location are provided for the applicant in Item C of the voter registration application.

For Voters Who Request

CANCELLATION OF REGISTRATION

If a voter requests cancellation of registration, direct them to the Office of the County Clerk for instructions.

See page 19 for roster of county clerks.

RESPONSIBILITIES OF SITE PERSONNEL & COORDINATORS

RESPONSIBILITIES OF STUDENT REGISTRATION PERSONNEL

The 4 Steps

1. **Offer the opportunity to apply to register** to vote to each student at the time of their registration for semester classes.
2. Unless assistance is refused, offer the same degree of assistance that is provided in filling out the school's forms, including bilingual assistance, if necessary.
3. Review the completed voter registration form to ensure it is completed in its entirety and that the form is signed by the applicant.
4. Place completed voter registration form in area designated by coordinator.

Student Voter Registration Personnel are PROHIBITED from:

seeking to influence an applicant's political party preference;

displaying any political preference or party allegiance;

making any statement or taking any action whose purpose or effect of is to discourage the applicant from completing the voter registration application;

making any statement or taking any action whose purpose or effect is to lead the applicant to believe that a decision whether or not to apply to register to vote has any bearing on the services the student may receive from the university or college; or

disclosing to any other individual that the applicant completed a voter registration application at a university or college.

RESPONSIBILITIES OF UNIVERSITY & COLLEGE COORDINATOR

Putting Someone in Charge

1. Care and keeping of confidential university/college site code stamp.

2. Enter the site code stamp on all voter registration forms received from the county clerks office.
3. Monitor supplies of forms and contact the county clerk's office, when necessary (county clerks are instructed to monitor inventories of forms as part of the collection and/or transmittal process and any difficulties encountered should be reported to the Bureau of Elections in Office of the Secretary of State).
4. Create a secure area to store forms for collection or transmittal.
5. Train student registration personnel in the review of voter registration forms to ensure they are completed in their entirety by applicants whenever necessary.
6. Ensure that student registration personnel do not coerce applicants to declare a political party preference, discourage registration verbally or by attitude or lead an applicant to believe that voter registration might have any bearing on the services they receive from the university or college.
7. Return all completed or voided voter registration applications to the county clerk within ten (10) calendar days; however return shall not be made later than 5:00 p.m. on the Friday immediately following the closing of the registration books for the upcoming election.

COUNTY CLERKS ROSTER

BERNALILLO COUNTY

Judy D. Woodward
One Civic Plaza, 6th Fl.
Albuquerque, NM 87103
(505) 768-4090

CATRON COUNTY

Sharon Armijo
Box 197
Reserve, NM 87830
(505) 533-6400

CHAVES COUNTY

Rhoda C. Goodloe
Box 580
Roswell, NM 88202
(505) 624-6614

CIBOLA COUNTY

Patricia A. Aragon
515 W. High
Grants, NM 87020
(505) 287-9431, ext. 147

COLFAX COUNTY

Barbara Castillo
Box 159
Raton, NM 87740
(505) 445-5551

CURRY COUNTY

Coni Jo Lyman
Box 1168
Clovis, NM 88102-1168
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DE BACA COUNTY

Shana L. Cleaver
Box 347
Fort Sumner, NM 88119
(505) 355-2601

DONA ANA COUNTY

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251 W. Amador Avenue
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EDDY COUNTY

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GRANT COUNTY

Rena Madrid Cope
Box 989

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GUADALUPE COUNTY

Mary Silva
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LUNA COUNTY

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RIO ARRIBA COUNTY

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Tierra Amarilla, NM 87575
(505) 588-7724

ROOSEVELT COUNTY

Maudene Haragan
Roosevelt County Courthouse
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SANDOVAL COUNTY

Sally G. Padilla
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Bernalillo, NM 87004
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SAN JUAN COUNTY

Carol Bandy
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SAN MIGUEL COUNTY

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TAOS COUNTY

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TORRANCE COUNTY

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UNION COUNTY

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VALENCIA COUNTY

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DEFINITIONS

APPLICANT - The person who is offering to register to vote.

CITIZEN - A U.S. citizen, by birth or naturalization.

ELECTION - As used in this manual, "election" means:

- (1) general elections;
- (2) primary elections;
- (3) statewide special elections;
- (4) elections to fill vacancies in the office of representative in congress;
- (5) school district elections;
- (6) municipal officer or municipal bond elections and
- (7) special district officer or special district bond or other special district elections.

FALSE SWEARING - Taking any oath required by the Election Code with the knowledge that the thing or matter sworn to is not a true and correct statement.

FEDERAL OFFICE - President, vice-president, United States senator or United States representative.

GENERATION - Family line of succession, i.e. Jr., II, III, etc.

MOTOR VEHICLE DRIVER'S LICENSE - The term "motor vehicle driver's license" includes any personal identification document issued by a state motor vehicle authority.

PERJURY - The deliberate and willful giving of false, misleading, or incomplete testimony under oath or affirmation.

REGISTRANT - The person who is offering to register to vote or is registered (used synonymously with "applicant").

QUALIFIED ELECTOR - Any person who is a citizen of the United States, a resident of the State of New Mexico, who is or will be 18 years of age at the time of the next election, who has not been denied the right to vote by a court of law by reason of mental incapacity or felony conviction.

REGISTRATION AGENT - A registration agent is a state or federal agency employee who provides voter registration at a state agency or any other individual who assists another person in completion of a voter registration application.

REGISTRATION OFFICER - The county clerk or the clerk's authorized deputy.

RESIDENCE - That place in which a person's habitation is fixed, and to which, whenever absent, the intention is to return. A residence is not a post office box.

STATE - The term "state" means a state of the United States and the District of Columbia.

VOTER - Any qualified elector who is registered under the provisions of the New Mexico Election Code.

VOTER REGISTRATION AGENCY - A voter registration agency is an office designated under Section 7(a)(1) of PL 103-31 to perform voter registration activities.

[12-15-97; Recompiled 11/30/01]

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 STATUTORY 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 DURATION:

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]

PART 10: BALLOT POSITION; SUPREME COURT OR COURT OF APPEALS [REPEALED]

[This part was repealed on April 24, 2018]

PART 11: ORDER OF OFFICES ON THE BALLOT

1.10.11.1 ISSUING AGENCY:

Office of the Secretary of State (SOS).

[1.10.11.1 NMAC - Rp, 1 NMAC 10.11.1, 2/12/2016]

1.10.11.2 SCOPE:

This rule applies to any statewide primary or general election.

[1.10.11.2 NMAC - Rp, 1 NMAC 10.11.2, 2/12/2016]

1.10.11.3 STATUTORY AUTHORITY:

Election Code, Section 1-10-8 NMSA 1978.

[1.10.11.3 NMAC - Rp, 1 NMAC 10.11.3, 2/12/2016]

1.10.11.4 DURATION:

Permanent.

[1.10.11.4 NMAC - Rp, 1 NMAC 10.11.4, 2/12/2016]

1.10.11.5 EFFECTIVE DATE:

February 12, 2016, unless a later date is cited at the end of a section.

[1.10.11.5 NMAC - Rp, 1 NMAC 10.11.5, 2/12/2016]

1.10.11.6 OBJECTIVE:

To establish the order of offices and to standardize the appearance of candidate names on the paper ballots in a primary or general election.

[1.10.11.6 NMAC - Rp, 1 NMAC 10.11.6, 2/12/2016]

1.10.11.7 DEFINITIONS:

A. "Judicial offices in partisan contest" means the non-retention, partisan election of supreme court justice and judge of the court of appeals as well as district court judges (13 districts), magistrate court judges and metropolitan court judges.

B. "Non-judicial state offices to be voted on at large" means the governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor and commissioner of public lands.

C. "Other district offices" means districted offices including the public regulation commissioner (five districts), public education commissioner (10 districts), and district attorneys (13 districts).

D. "Other questions" means those ballot questions to be placed on the ballot which are authorized by a law other than Section 1-10-8 NMSA 1978 including general obligation bonds, constitutional amendments, and other propositions.

[1.10.11.7 NMAC - Rp, 1 NMAC 10.11.7, 2/12/2016]

1.10.11.8 ORDER OF OFFICES ON THE STATEWIDE BALLOT:

A. The ballot used in the primary and general elections shall contain, when applicable, the offices to be voted on in the following order:

- (1) president and vice president;
- (2) United States senator;
- (3) United States representative;

B. Non-judicial state offices, when applicable, shall be in the following order on the primary election ballot. The order of the non-judicial state offices on the general election ballot shall be the same as in the primary election except, per New Mexico state constitution Article 5, Section 1, the governor and lieutenant governor shall be elected jointly by the casting by each voter of a single vote applicable to both offices.

- (1) governor;
- (2) lieutenant governor;
- (3) secretary of state;
- (4) state auditor;
- (5) state treasurer;
- (6) attorney general;
- (7) commissioner of public lands.

C. When applicable, the ballot used in the primary and general elections shall continue in the following order:

- (1) state senator;
- (2) state representative.

D. When applicable, other districted offices shall be in the following order on the primary and general election ballot:

- (1) public regulation commissioner;
- (2) public education commissioner;
- (3) district attorney.

E. Judicial offices in partisan contests, when applicable, shall be in the following order on the primary and general election ballot:

(1) supreme court justice in the order in which the position became vacant designated for purposes of ballot order by numerical position (Position 1, Position 2, Position 3, etc.);

(2) court of appeals judge in the order in which the position became vacant designated for purposes of ballot order by numerical position (Position 1, Position 2, Position 3, etc.);

(3) district court judge, in numerical order by division;

(4) magistrate or metropolitan court judge, when applicable, in numerical order by division.

F. When applicable, the ballot used in the primary and general elections shall continue in the following order:

- (1)** county commissioners or county councilors, in numerical order by district;
- (2)** county clerk;
- (3)** county treasurer;
- (4)** county assessor;
- (5)** county sheriff;
- (6)** probate judge.

G. When applicable, the ballot used in the general elections shall continue with other questions. At least 63 days before each general election, the SOS shall determine the order of each category of other questions, taking into account the need for a common back side for ballots in certain counties to reduce costs and to increase the efficiency of the check-in procedure for voters when using on demand ballot printing systems. The categories of other questions are:

- (1)** statewide judicial offices in retention elections, including supreme court and court of appeals, when applicable, in the order of seniority of each judicial officer;
- (2)** district court retention elections, when applicable, in numerical order by division;
- (3)** metropolitan court retention elections, when applicable, in numerical order by division;
- (4)** constitutional amendments, in the order passed by the legislature;
- (5)** general obligation bonds, in the order described in the chaptered General Obligation Bond Act;
- (6)** other statewide questions, otherwise authorized by law for placement on the ballot;
- (7)** local government ballot questions, in the order prescribed by the applicable county commission or county council.

[1.10.11.8 NMAC - N, 2/12/2016; A, 04/24/2018]

1.10.11.9 APPEARANCE OF NAME ON THE BALLOT:

A candidate's name appearing on the ballot shall be printed as it appears on the candidate's certificate of registration, notwithstanding the following:

- A.** The last name printed on the ballot must match the candidate's legal last name.
- B.** Academic, honorific, and elected titles will not be printed on the ballot.
- C.** Periods after initials will not be printed on the ballot.
- D.** Punctuation common to names, other than periods, will be printed on the ballot as it appears on the candidate's certificate of registration.
- E.** Only letters and punctuation utilized in roman typefaces will be printed on the ballot.

[1.10.11.9 NMAC - N, 2/12/2016]

1.10.11.10 CANDIDATES FOR GOVERNOR AND LIEUTENANT GOVERNOR ON THE BALLOT:

Pursuant to the New Mexico state constitution Article 5, Section 1, the governor and lieutenant governor shall be elected jointly by the casting by each voter of a single vote applicable to both offices.

A. Primary Election Ballot. In the event that at least one candidate of the same major party fails to file or does not qualify for both the office of governor and lieutenant governor, then no candidate for either position shall appear on the primary election ballot for that party in order to comply with the New Mexico state constitution Article 5, Section 1.

B. General Election Ballot. In the event that at least one independent candidate or candidate for the same minor party fails to file for or does not qualify for both the office of governor and lieutenant governor, then no candidate for either position shall appear on the general election ballot for that party in order to comply with the New Mexico state constitution Article 5, Section 1. For example, if an independent candidate for governor files and otherwise qualifies for appearance on the ballot but no independent candidate files for lieutenant governor, then the candidate for governor shall not appear on the ballot.

C. If an odd number of independent candidates for governor and lieutenant governor file and otherwise qualify to appear on the general election ballot, the qualifying candidates may choose to designate one another, on a form prescribed by the secretary of state, in order to determine which candidates will appear on the general ballot in compliance with the New Mexico state constitution Article 5, Section 1. For example, if two independent candidates for governor file and otherwise qualify for appearance on the ballot and only one independent candidate for lieutenant governor

files and otherwise qualifies for appearance on the ballot, two of the candidates would complete the prescribed form in order to designate one another to determine which one of the two candidates for governor will appear with the candidate for lieutenant governor on the general election ballot. Failure to designate, will result in the drawing by lot as described in subsection D.

D. As an alternative to subsection C, if the independent candidates for governor and lieutenant governor fail to designate one another, a drawing by lot will be conducted by the secretary of state to determine the candidates to appear on the general ballot. The drawing by lot will be conducted on the first Wednesday in the month of September in the year in which a general election is to be held.

[1.10.11.10 NMAC - N, 04/24/2018]

PART 12: ABSENTEE VOTING

1.10.12.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.12.1 NMAC - Rp, 1.10.12.1 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.2 SCOPE:

This rule applies to any election covered under the Election Code, Section 1-1-19, NMSA 1978 and the Special Election Act, NMSA 1978.

[1.10.12.2 NMAC - Rp, 1.10.12.2 NMAC, 4/24/2018]

1.10.12.3 STATUTORY AUTHORITY:

Election Code, Section 1-2-1; Section 1-6-5.6; Section 1-6-16. 1; Section 1-9-7.1; and Section 1-21A-8 NMSA 1978.

[1.10.12.3 NMAC - Rp, 1.10.12.3 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.4 DURATION:

Permanent.

[1.10.12.4 NMAC - Rp, 1.10.12.4 NMAC, 4/24/2018]

1.10.12.5 EFFECTIVE DATE:

April 24, 2018 unless a later date is cited at the end of a section.

[1.10.12.5 NMAC - Rp, 1.10.12.5 NMAC, 4/24/2018]

1.10.12.6 OBJECTIVE:

The objective of this rule is to establish procedures for protecting the integrity, security and secrecy of the absentee ballot, to establish procedures for establishing mobile alternate voting locations in rural areas of the state, to establish procedures for electronic ballot delivery of mailed ballots for visually impaired voters, and to establish procedures for mailed ballot delivery to government official buildings designated by Indian nations, tribes or pueblos.

[1.10.12.6 NMAC - Rp, 1.10.12.6 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.7 DEFINITIONS:

A. "Absentee" means the ability of the voter to receive, mark and return a ballot at a place and time other than a polling location on the day of the election.

B. "Absentee ballot register" means a listing kept by the county clerk for each election with the information specified in the Election Code, Section 1-6-6 NMSA 1978.

C. "Adjudicate" means a decision made by an election board, in accordance with the Election Code, of a ballot signifying a voter's intent to mark their selection for a candidate contest or ballot question.

D. "Alternate voting location" means a location outside the office of the county clerk, established by the county clerk, where a voter may cast an early in person ballot on voting tabulator pursuant to Section 1-6-5.7 of the Election Code. This includes mobile alternate voting locations.

E. "Application" means a mailed ballot application, prescribed by the secretary of state pursuant to the Election Code, Section 1-6-4 NMSA 1978.

F. "Ballot markers" means the grid pattern around the voting response area on the ballot face used by the voting tabulator to distinguish the ballot style and voter's selection of alternatives allowed in any candidate contest or ballot question to record, count and produce a tabulation of votes cast.

G. "Blank ballot" means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

H. "Challenger" means a voter of a precinct located in that county to which the voter is appointed in conformance with the Election Code, Section 1-2-21 to 1-2-22 NMSA 1978 for the purpose of carrying out such duties as prescribed in the Election Code, Section 1-2-23 to 1-2-26 NMSA 1978.

I. "County canvassing board" means the board of county commissioners in each county or the board of registration if designated by the board of county commissioners pursuant to Section 1-13-1 NMSA 1978, convened for the purposes of conducting the county canvass.

J. "Early voter" means a voter who votes in person before election day, and not by mail.

K. "Early voting daily report" means a physical form, or its digital equivalent, used to certify the daily early voting activity at the office of the county clerk, alternate voting location and mobile alternate voting location; the form shall be prescribed by the office of the secretary of state to be completed and filed daily during early voting, consisting of the voting tabulator serial number, beginning public counter number, ending public counter number, total number of ballots cast early per tabulator and those to be hand tallied.

L. "Electronically transmitted ballot" means a ballot provided through an electronic transmission system to federal qualified electors pursuant to Section 1-6B-7 NMSA 1978 or to blind or visually impaired voters as provided in Section 1-9-7.1 NMSA 1978.

M. "Inner envelope" means the official envelope, prescribed by the secretary of state, given to the voter along with an absentee or provisional ballot into which the voter places the ballot after it is voted and which is used to preserve the secrecy of the voter's ballot.

N. "Mailed ballot" means a ballot that is sent to a voter pursuant to the provisions of the Election Code and does not include a ballot that is provided to a voter an early voting location.

O. "Official transmittal envelope" means the official envelope used by the county clerk to send mailed ballot materials, to include the inner and outer envelopes.

P. "Outer envelope" means the official envelope, prescribed by the secretary of state, which has information that will identify the voter and contains a sworn affidavit, into which the voter places the inner envelope, containing a mailed ballot.

Q. "Overvoted ballot" means a ballot on which the voter has selected more than the number of candidates to be elected for that contest, or in both the affirmative and negative on a ballot question.

R. "Provisional ballot envelope" means the official envelope, prescribed by the secretary of state, which has information that will identify the provisional voter, purpose the provisional ballot was issued and contains a sworn affidavit and a blank voter registration certificate, into which the provisional voter places the inner envelope.

S. "Replacement ballot" means:

(1) a ballot that is processed as a provisional ballot, provided to a voter whose name appears on the absentee ballot register or signature roster as having been issued a mailed ballot and who has affirmed that the mailed ballot was not received or voted on pursuant to the Election Code, Section 1-6-16 NMSA 1978. The ballot shall be placed in a provisional ballot envelope prescribed by the secretary of state and processed within the timeframe specified in the Election Code, Section 1-6-16 NMSA 1978; or

(2) a ballot issued at the office of the county clerk, an alternate voting location, a mobile alternate voting location, or at a polling location on election day, to be filled out and fed by the voter into the electronic voter tabulator if that voter affirms that their mailed ballot was not voted and returned.

T. "Undervoted ballot" means a ballot that is not a blank ballot and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

U. "Voting response area" means the place on a ballot the voter is instructed to mark the voter's selection for a candidate or question.

[1.10.12.7 NMAC - Rp, 1.10.12.7 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

1.10.12.8 APPLICATION:

A. An application for a mailed ballot shall be made on the official form prescribed by the secretary of state, either on paper with an original signature or through the official electronic mailed ballot application portal. The form may not be altered, to include the pre-population of voter information, without prior approval from the secretary of state. Completed applications shall require the information specified in the Election Code, Section 1-6-4 NMSA 1978.

B. Upon receipt of a mailed ballot application, the county clerk shall review it for completeness in accordance with the Election Code, Section 1-6-5 NMSA 1978. When it is determined that the applicant does not have a valid certificate of registration on file in that county or the application is not completed or has incorrect information, the application shall be marked "rejected". The county clerk shall notify the applicant in writing of the reasons for rejection and include the internet address for the official electronic absentee application portal and may also include the paper form mailed ballot application.

C. An application by a federal qualified elector as defined in the Election Code, Section 1-1-4.1 NMSA 1978, consists of one of the methods listed in the Election Code Section 1-6B-3 NMSA 1978.

(1) The county clerk shall review each application by a federal qualified elector for completeness and compliance with the voter registration requirements prescribed in the Election Code, Section 1-6B-5 NMSA 1978 and determine whether the requirements are met. The county clerk shall immediately notify the federal qualified elector if the application is rejected, to include the reasons for rejection, according to the applicant's preferred method of communication, pursuant to the Election Code, Section 1-6B-7 NMSA 1978.

(2) An application for a mailed ballot or a military overseas ballot received by the office of the county clerk or secretary of state for a voter registered in a differing county shall be forwarded within 24 hours of receiving the application, or if received less than seven days before the election, shall be electronically transmitted to the appropriate county clerk.

[1.10.12.8 NMAC - Rp, 1.10.12.8 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.9 ABSENTEE VOTING:

A. A voter shall have the right to vote by absentee ballot for all candidate contests and ballot questions as if the voter were casting the ballot in person at their election day polling place. Absentee voting is provided as follows:

(1) By mail - by completing and signing an application as provided in the Election Code, Section 1-6-5 NMSA 1978 and received by the office of the county clerk, pursuant to the Election Code, Section 1-6-10 NMSA 1978 during the regular hours and days of business.

(a) A voter who is required to present identification and has not done so at the time the voter's ballot is to be mailed to them, shall be sent a ballot that is processed as a provisional ballot, and shall include instructions on how to provide the required identification pursuant to the Election Code, Section 1-4-5.1 NMSA 1978.

(b) A blind or visually impaired voter pursuant to the Election Code, Section 1-9-7.1 NMSA 1978, may request an electronically transmitted ballot by completing an absentee application and executing a statement certifying blindness. The county clerk shall provide a mailed ballot through electronic transmission, enabling the use of one's personal nonvisual or low vision access technology to independently mark the ballot. The electronic transmission shall also include instructions on how the voter accesses the ballot, marks their selections, returns the ballot, as well as, the voter certificate as required in the Election Code, Subsection C of Section 1-6-8 NMSA 1978, which shall be completed, signed and included with the returned ballot, in the outer envelope.

(i) The secretary of state shall prescribe an official transmittal envelope such that the blind or visually impaired voter can distinguish it for the purposes of returning the mailed ballot.

(ii) Delivery of electronically transmitted ballots shall be by a computer system secured by intrusion detection and protection systems.

(2) Early - by completing and signing an application at the office of the county clerk beginning 28 days before the election, or 20 days prior to the election at an alternate voting location or mobile alternate voting location in accordance with the Election Code, Section 1-6-5 NMSA 1978.

(a) Each county clerk shall ensure that the employee issuing ballots at the office of the county clerk and election board members at the alternate voting location or mobile alternate voting location are trained on the accessible voting device of the voting tabulator so that any voter may mark a ballot independently.

(b) A voter who is required to present a physical form of identification and does not submit it upon requesting to vote early shall be issued a provisional ballot in accordance with the Election Code, Section 1-12-7.1 NMSA 1978.

(3) A federal qualified elector or emergency response provider may apply for a mailed ballot in accordance with the Uniform Military and Overseas Voter Act.

B. Unless the voter is certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act, a voter who has been issued a mailed ballot by mail or via electronic delivery shall not be allowed to vote, other than under the following conditions:

(1) In accordance with the Election Code, Section 1-6-16 NMSA 1978, a voter who has not received, or if received, has not voted the ballot, may request a replacement ballot and shall be issued and mailed a replacement ballot that shall be processed as a provisional ballot. The replacement ballot may be mailed to the voter seven or more days before election day, to include express mail, if the county clerk deems necessary. Once voted, the voter shall place the replacement ballot in an inner envelope, then in an outer envelope and shall enclose a completed and signed sworn affidavit.

(2) If the county clerk does not have real-time synchronization between a voting location and the qualification of mailed ballots, the voter, by executing a sworn affidavit at the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling place affirming that they have not received, or if received, have not voted the ballot, shall be issued a replacement absentee ballot that is processed as a provisional ballot, along with a provisional ballot envelope prescribed by the secretary of state.

A replacement absentee ballot issued pursuant to this section must be voted on prior to the voter leaving the premises of the office of the county clerk, alternate voting location, mobile alternate voting location or election day polling, provided however, that the ballot shall be not be cast in the voting tabulator, but placed and sealed in a

provisional ballot envelope prescribed by the secretary of state to undergo the subsequent provisional qualification process by the county clerk.

(3) If the county clerk does have real-time synchronization between the voting location and the qualification of mailed ballots, the voter, by executing a sworn affidavit affirming that they did not and will not vote the mailed ballot that was issued, may appear at the office of the county clerk, an alternate voting location a mobile alternate voting location, or election day voting location and be issued a replacement ballot to be filled out and fed by the voter into the electronic vote tabulator.

(4) A voter who is certified to participate in the confidential substitute address program pursuant to the Confidential Substitute Address Act shall not vote in person but may request and receive a replacement ballot by appearing in person only at the office of the county clerk and by executing an affidavit pursuant to Subsection C of Section 1-6C-6 NMSA 1978 stating that the voter participant wishes to void any previously mailed ballot that was mailed in that election.

[1.10.12.9 NMAC - Rp, 1.10.12.9 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

1.10.12.10 ABSENTEE PAPER BALLOTS:

Except as otherwise provided in the Election Code, there shall be one uniform paper ballot.

[1.10.12.10 NMAC - Rp, 1.10.12.10 NMAC, 4/24/2018]

1.10.12.11 ALTERNATE VOTING LOCATIONS AND MOBILE ALTERNATE VOTING LOCATIONS:

A. Alternate voting locations are established by the county clerk for early voting and shall meet the standards set out in the Election Code, Sections 1-6-5.6 to 1-6-5.7 NMSA 1978.

(1) 90 days prior to the beginning of early voting, the county clerk shall notify the secretary of state of the dates, times of operations, and addresses of the established alternate voting locations or mobile alternate voting locations and shall publicize the information using media outlets directed to, and appropriate for, the voters of that area.

(2) Alternate voting locations and mobile alternate voting locations shall be staffed in accordance with the Election Code, Section 1-2-12 NMSA 1978 and may not be staffed by the county clerk if the county clerk's name appears on the ballot or by the county clerk's deputy if the county clerk's deputy's name appears on the ballot.

(3) The county clerk shall prepare a list of authorized individuals who have access to each alternate voting location or mobile alternate voting location, to include

authorized custodians of the voting tabulator or ballot box keys. Access to each alternate voting location or mobile alternate voting location for those authorized shall not be controlled by any third party. A copy of the list shall be provided to the office of the secretary of state and, in a primary, general or special election for U.S. representative, the chairs of each county's political parties.

B. Lawfully appointed challengers, watchers and observers shall be allowed in an alternate voting location or mobile alternate voting location as provided in the Election Code.

(1) An interposed challenge shall be handled in accordance with the Election Code, Section 1-12-20 to 1-12-22 NMSA 1978.

(2) Challengers, watchers or observers shall not violate the permitted or prohibited provisions as outlined in the Election Code including Sections 1-2-23, 1-2-29, 1-2-25, 1-2-31 and 1-2-32 NMSA 1978. If a violation occurs, the incident shall be documented in reasonable detail by the of the presiding judge and election judges of an election board on a form prescribed by the secretary of state and retained by the county clerk pursuant to Subsection C of Section 1-2-22 NMSA 1978. The presiding judge and election judges of an election board who unanimously vote to remove a challenger, watcher or observer as a result of a violation shall sign and record the vote of the board on the violation form.

[1.10.12.11 NMAC - N, 4/24/2018; A, 8/31/2023]

1.10.12.12 VOTING TABULATOR PROGRAMMING, CERTIFICATION, CUSTODY AND SECURITY:

A. Each certified voting tabulator designated for use during an election, shall be programmed, tested for accuracy and used for the tabulation of ballots in accordance the Election Code, Section 1-9-1 to 1-9-22 NMSA 1978.

(1) Official tabulator envelopes for each voting tabulator shall be prepared and shall contain the tabulator serial number, seal number, a printed and signed results reporting tape indicating the clearing of any votes recorded on the tabulator's removable storage media device cartridge and set at zero, and any keys or tokens needed to access, operate and secure the tabulator. Such envelopes shall be provided to the presiding judge of the alternate voting location or mobile alternate voting location.

(2) At least one day before each voting tabulator is deployed for mailed ballot tabulation and early voting, the county clerk shall provide the voting tabulator type and serial number to the secretary of state and the county chair of each political party represented on the ballot.

(a) Each certified voting tabulator deployed to an alternate voting location or mobile alternate voting location shall be transported with the care and custody set out in

the Election Code, Section 1-9-12 NMSA 1978, delivered in accordance with the Election Code, Section 1-11-11 NMSA 1978 and shall be secured by a lock, key and seal.

(b) The placement of each voting tabulator used for absentee or early voting shall safeguard the secrecy of each voted ballot, protect the security of the voting tabulator and shall be compliant with accessibility requirements of the Americans with Disabilities Act.

(3) Each day during the early voting period, the county clerk or election board member shall, in the presence of one other county clerk employee or election board member, unlock the office where the voting tabulator, ballot box, preprinted paper ballots or voting systems needed to issue ballots are located and unlock the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

(4) Each day upon close of the early voting location, the above procedure shall be followed to lock and secure the voting tabulator, ballot box or other container securing preprinted paper ballots or voting systems needed to issue ballots.

(5) Assigned user names and passwords needed to access voting systems used to issue ballots or the voting tabulator shall not be shared or disclosed to any person other than the intended user.

(6) Immediately after unlocking or locking the early voting location, the county clerk or election board member present shall complete and sign the early voting daily report and shall submit it to the office of the secretary of state for the previous day's activity. Any discrepancy between the daily number of ballots issued and the number of ballots cast shall be reconciled prior to the submission of the early voting daily report.

B. A voting tabulator shall be used for the entire early voting period for the casting of ballots. The tabulator shall remain in open status and the result reporting tape shall be prompted only by the absent voter election board, when convened, for the counting and recording of mailed and early voted ballots.

(1) If a voting tabulator is inadvertently prompted to close, the presiding judge shall notify the county clerk immediately. The county clerk, after determining that the tabulator should be reopened, shall dispatch a voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, shall enable the reopen polls function and verify the number of ballots counted on the tabulator screen. An audit log of the reopen polls transaction will be recorded by the voting tabulator and will be visible on the results reporting tapes. The results reporting tapes shall be signed by the presiding judge and two election judges, one of a differing party than the presiding judge, and remain connected to the voting tabulator.

(a) If the number of ballots counted does not match the number of ballots cast prior to the inadvertent close of the voting tabulator, the county clerk shall instruct the voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, to clear the removable storage media device cartridge, removing all previously recorded votes and reopen the polls of the voting tabulator. The presiding judge and two election judges, one of a differing party than the presiding judge, will inspect the generated results reporting tapes to ensure the ballots cast number and all candidate contests and ballot questions are cleared and set to zero. The presiding judge and two election judges, one of a differing party than the presiding judge shall sign the certificate at the end of the generated results reporting tapes, affirming their inspection and reinsert the ballots from within the bin into the voting tabulator. The results reporting tapes shall remain connected to the voting tabulator. Once complete, the presiding judge and two election judges, one of a differing party than the presiding judge will verify the ballots cast on the public counter of the voting tabulator matches the total ballots cast on the voting tabulator prior to the inadvertent close.

(b) The voting tabulator may then be put back into use and the county clerk shall immediately notify the office of the secretary of state, in writing, of the occurrence. The presiding judge will provide the results reporting tapes from the inadvertent tabulator closure to the voting technician, who will deliver the results reporting tapes directly to the county clerk to be filed and kept confidential.

(2) If a voting tabulator is inadvertently closed, generating the results reporting tapes during the days and hours of operation of early voting, the presiding judge shall immediately notify the county clerk and ensure the voting tabulator, ballots within the bin and results reporting tapes are not tampered with.

(a) The county clerk shall dispatch a voting technician, who in the presence of the presiding judge and two election judges, one of a differing party than the presiding judge, will instruct the presiding judge to verify the total number of ballots cast on the voting tabulator before it was inadvertently closed. The voting technician will clear the removable storage media device cartridge, removing all previously recorded votes and reopen the polls of the voting tabulator. The presiding judge and two election judges, one of a differing party than the presiding judge, will inspect the generated results reporting tapes to ensure the ballots cast number and all candidate contests and ballot questions are cleared and set to zero. The presiding judge and two election judges, one of a differing party than the presiding judge shall sign the certificate at the end of the generated results reporting tapes, affirming their inspection and reinsert the ballots from within the bin into the voting tabulator. The results reporting tapes shall remain connected to the voting tabulator. Once complete, the presiding judge and two election judges, one of a differing party than the presiding judge will verify the ballots cast on the public counter of the voting tabulator matches the total ballots cast on the voting tabulator prior to the inadvertent close.

(b) The voting tabulator may then be put back into use and the county clerk shall immediately notify the office of the secretary of state, in writing, of the occurrence. The presiding judge will provide the results reporting tapes from the inadvertent tabulator closure to the voting technician, who will deliver the results reporting tapes directly to the county clerk to be filed and kept confidential.

[1.10.12.12 NMAC - N, 4/24/2018; A, 8/31/2023]

1.10.12.13 VOTE TABULATION:

A. Ballots shall be tabulated for the reporting of votes pursuant to the Election Code, Section 1-12-70 NMSA 1978.

(1) Early voted ballots, not by mail, cast on a voting tabulator shall be counted separately from mailed ballots in accordance with the Election Code and recorded in the early vote by machine counting group.

(a) If an early voted ballot is returned by the voting tabulator as overvoted or blank, the ballot shall be accepted by the voting tabulator only after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is.

(b) An early voter who declares their intent to cast the overvoted or blank ballot, shall have their ballot cast on the voting tabulator. For overvoted ballots, only those contests receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be tabulated; for blank ballots, no votes will be tabulated.

(c) An early voter who declares their intent to not cast the overvoted or blank ballot shall have their ballot rejected by the voting tabulator without the tabulation of votes. The overvoted ballot shall be spoiled in conjunction with Section 1-12-62 NMSA 1978. The county clerk or election board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return the spoiled ballot envelope to the county clerk. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator.

(i) In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the overvoted ballot shall be delivered to the absent voter election board, after the close of early voting, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group; or,

(ii) If deemed necessary by the county clerk, a high-speed central cast tabulator may be designated, programmed and certified for the tabulation of such

ballots. The absent voter election board will adjudicate the overvoted or blank ballot and count and record it in the early vote by hand tally counting group.

(d) If an early voted ballot cast is misread after being fed into the voting tabulator, the voter shall be instructed to insert the ballot in a different orientation. If the ballot is misread again, the ballot will be spoiled, and the county clerk or election board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope and return it to the county clerk in conjunction with the Election Code, Section 1-12-62 NMSA 1978. The voter shall then be issued a new ballot, be instructed how to mark their selection of alternatives allowed in any candidate contest or ballot question in the voting response area and how to personally feed the ballot into the voting tabulator. In the event the voter does not wish to spoil their voted ballot and declines a new ballot, the misread ballot shall be delivered to the absent voter election board, after the close of the early voting period, by the election board, to be hand tallied in accordance with 1.10.23 NMAC. The ballot will be counted and recorded in the early vote by hand tally counting group.

(2) Mailed ballots, either returned by mail or hand-delivered, shall be fed into a voting tabulator by an absent voter election board member in accordance with the Election Code, Sections 1-6-11 and 1-6-14 NMSA 1978 as follows:

(a) An overvoted or blank mailed ballot shall be accepted by the voting tabulator after it has been adjudicated by the absent voter election board. The ballot will be counted and recorded in the absentee by machine counting group.

(b) If a mailed ballot is misread after being fed into a voting tabulator, an absent voter election board member shall feed it into the voting tabulator a second time. A mailed ballot that is rejected after two attempts shall be adjudicated by the absent voter election board, hand tallied by precinct as provided in 1.10.23 NMAC and counted and recorded in the absentee by hand tally counting group.

(c) Returned mailed ballots that were issued via electronic transmission to a blind or visually impaired voter will not contain programmed ballot markers necessary for tabulation by the voting tabulator. These ballots shall be hand tallied by the absent voter election board, by precinct and shall be counted and recorded in the absentee by hand tally counting group.

(3) Returned military-overseas ballots, either mailed back or electronically submitted shall be counted separately from all other mailed or early voted ballots. The county clerk shall determine whether returned military-overseas ballots are to be hand-tallied, or if necessary, to designate, program and certify a voting tabulator for the tabulation of such ballots.

(a) Returned military-overseas ballots that do not contain programmed ballot markers necessary for tabulation by a voting tabulator, shall be hand tallied by the

absent voter election board, by precinct and shall be counted and recorded in the federal overseas hand tally counting group.

(b) When a voting tabulator is used for the tabulation of military-overseas ballots that contain programmed ballot markers, the ballots shall be fed into the voting tabulator by an absent voter election board member and the votes shall be counted and recorded in the federal overseas by machine counting group.

(c) An overvoted or blank military-overseas ballot shall be accepted by the voting tabulator after it has been adjudicated by the absent voter election board. The ballot will be counted and recorded in the federal overseas by machine counting group.

(d) If a military-overseas ballot is misread after being fed into a voting tabulator, an absent voter election board member shall feed it into the voting tabulator a second time. A military-overseas ballot that is rejected after two attempts shall be adjudicated by the absent voter election board, hand tallied by precinct as provided in 1.10.23 NMAC and counted and recorded in the federal overseas hand tally counting group.

(4) Undervoted ballots shall be accepted by the voting tabulator, regardless of either being cast early at the county clerk's office, an alternate voting location or mobile alternate voting location or mailed ballot and only those contests or ballot questions receiving a selection by the voter will be tabulated.

B. The public counter number of the voting tabulator will not increase in the above scenarios involving an overvoted or blank ballot, unless the ballot is accepted by the voting tabulator after requesting and receiving a declaration by the voter of their intent to cast the overvoted or blank ballot as is or by adjudication of the absent voter election board. An undervoted ballot fed into the voting tabulator will increase the public counter number.

C. Overvoted, blank, undervoted or misread ballots required to be hand tallied shall be recorded on the prescribed hand tally sheet, by precinct, as follows:

(1) Each ballot shall increase the ballots cast count by one;

(2) On an overvoted ballot, only those candidate contests or ballot questions receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied;

(3) No votes for either candidate contests or ballot questions will be hand tallied on a blank ballot;

(4) On an undervoted ballot, only those candidate contests or ballot questions receiving a selection by the voter will be hand tallied; and,

(5) Only those contests receiving no fewer, nor more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied on a misread ballot.

D. An overvoted, blank or undervoted ballot cast by a voter, after going through the above process shall be recorded as a "ballot cast" and proper voting credit shall be given on the respective voter registration record on file with the county clerk.

E. In accordance with the Election Code, Section 1-12-70 NMSA 1978, the reporting of vote totals by precinct and voting method shall be combined to the extent necessary to protect the secrecy of each voter's ballot.

[1.10.12.13 NMAC - Rp, 1.10.12.13 NMAC and 1.10.12.14 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

1.10.12.14 [RESERVED]

1.10.12.15 ELECTION BOARD, COUNTY CLERK AND COUNTY CANVASS BOARD DUTIES:

A. An absent voter election board shall be created for the purpose of determining voter eligibility, counting and tabulating mailed and early voted ballots cast. The board shall be comprised of election board members in accordance with the Election Code, Section 1-2-12 NMSA 1978 provided that the counting and tabulation of mailed ballots shall remain separate from early voted ballots.

(1) Pursuant to the Election Code, Section 1-6-11 NMSA 1978, the mailed ballots shall be delivered along with all necessary supplies, including red pencils or red pens, to be used as a writing instrument, for absent voter election board members. Only the presiding judge shall be issued a black or blue ink pen for signing and filling out required documents.

(2) Before opening the outer envelope, the presiding judge and the election judges shall determine that the county clerk has verified the required information by reviewing the outer envelope for the presence of a signature and the presence of the last four digits of a social security number and by reviewing the clerk's confirmation of verification on the absentee ballot register. If the information under the privacy flap appears to need further review by the county clerk, the absent voter election board shall immediately notify the county clerk, and the county clerk shall verify the information under the privacy flap.

(3) The processing of mailed ballots shall be in accordance with the Election Code, Sections 1-6-10 and 1-6-14 NMSA 1978.

(a) A mailed ballot inner envelope containing two ballots shall be counted if the determination can be made that the outer envelope is signed by both voters, the absentee ballot register confirms the county clerk verified that both voters provided the last four digits of their social security numbers, the absentee ballot register confirms the issuance of mailed ballots to the voters who signed, and it has been determined that the voters have not already voted in the election. Mailed ballot envelopes not in compliance with one or more of the above requirements shall be changed to "rejected" in the absentee ballot register, with the reason for rejection.

(b) A mailed ballot inner envelope containing no ballot shall be "accepted" if the outer envelope is signed by the voter, the absentee ballot register confirms the issuance of the ballot to the voter who signed the outer envelope, the absentee ballot register confirms the county clerk verified that the voter provided the last four digits of their social security number, and the voter has not voted in any other manner during the election. Mailed ballot envelopes not in compliance with one or more of the above requirements shall be changed to "rejected" in the absentee ballot register, with the reason for rejection.

(4) Pursuant to the Election Code, Subsections C and D of Section 1-6-14 NMSA 1978, a mailed ballot envelope may be challenged by a lawfully appointed challenger. A voter who satisfies the reason for the affirmed challenge before the conclusion of the county canvass shall have their ballot accepted and counted. The voter's record on the absentee ballot register shall be changed from "rejected" to "accepted", and the notation "challenged-affirmed" on the mailed ballot envelope shall be crossed out, signed and dated by either the presiding judge of the absent voter election board or a member of the county canvassing board, dependent upon when the voter satisfies the reason for the affirmed challenge. If the ballot is hand tallied it shall be recorded in the mailed ballot hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the mailed ballot machine counting group.

(5) A lawfully appointed challenger or watcher shall not be permitted to take pictures or otherwise make copies of documents containing protected personal information.

(6) A mailed ballot, processed as a provisional ballot, in a provisional ballot envelope, prescribed by the secretary of state because the first-time voter did not provide the required form of physical identification prior to the ballot issuance, shall be separated from all other mailed ballots and provided to the county clerk. The county clerk shall perform the required provisional qualification process to the ballots in accordance with the Election Code, Section 1-6-14 NMSA 1978 and with 1.10.22 NMAC.

B. Upon the last day to early vote, all early voted ballots shall be delivered to the county clerk, who will transfer custody to the absent voter election board. A receipt containing the serial number and public counter number indicating the votes recorded on the voting tabulator, number of ballot boxes, number of provisional ballots, number of

ballots to be hand tallied and the signature of the respective alternate or mobile alternate voting location presiding judge shall be provided. After verifying the information for accuracy, the county clerk or absent voter election board presiding judge shall sign the receipt indicating custody of the early voting returns, voting tabulator and ballot boxes. Keys to the alternate or mobile alternate voting location and the key or security token to access the voting tabulator shall also be transferred to the county clerk. The receipt shall be maintained on file with the county clerk.

(1) The absent voter election board shall process early voted ballots cast by closing the polls and running the results reporting tapes for each voting tabulator used during the early voting period. The absent voter election board shall be responsible for hand tallying any early voted candidate contest or ballot question not tabulated by the voting tabulator in accordance with the Election Code, Section 1-1-5.2 NMSA 1978.

(2) Provisional ballots issued during early voting in the office of the county clerk, alternate voting location or mobile alternate voting location for the reasons set out in the Election Code, shall be provided to the county clerk.

C. The county canvassing board shall canvass the election returns and ascertain whether any discrepancies, omissions or errors appear on the face of the election returns, in accordance with the Election Code, Section 1-13-1 to 1-13-22 NMSA 1978.

D. All provisional ballots issued to absent or early voters are subject to requalification in the event of a recount or contest as prescribed in the Election Code, Section 1-14-22 NMSA, 1978.

[1.10.12.15 NMAC - Rp, 1.10.12.15 NMAC, 4/24/2018; A, 4/7/2020; A, 8/31/2023]

1.10.12.16 MAILED BALLOT CURING PROCESS:

A. Within one day of receipt of a mailed ballot, the county clerk shall remove the privacy flap to verify that the voter signed the outer envelope and to confirm that the last four digits of the social security number provided by the voter matches the information on the voter's certificate of registration pursuant to Subsection B of Section 1-6-10 NMSA 1978.

(1) If either voter's signature or the last four digits of the voter's social security number are not provided, the county clerk shall reject the mailed ballot and make a notation of "rejected" in the absentee ballot register and provide the applicable rejection reason, either "no signature" or "incomplete," and shall transfer the ballot the special deputy for mailed ballots for delivery to the absent voter election board in accordance with Subsection F of Section 1-6-10 NMSA 1978.

(2) If the last four digits of the social security number do not match the electronic voter registration certificate, the following procedures shall be followed:

(a) The county clerk shall review the original voter registration application to ensure the mismatch is not the result of a typographical error in the voter database. If the error is in the electronic voter registration record, the voter record shall be corrected, and the ballot will not require a curing process.

(b) If the issue is deemed not to be a typographical error in the electronic voter registration record, the county clerk shall query the driver history record system through the New Mexico department of taxation and revenue using the name and date of birth of the voter. If the query returns the same social security number as provided by the voter under the privacy flap, the ballot shall be accepted.

B. The county clerk shall immediately attempt to contact a voter whose ballot qualification was rejected to provide notice to the voter of the rejection, opportunity to satisfy the reason for the rejection, and the process for curing reason for the rejection.

(1) The county clerk shall contact the voter by phone and email, if this information is available.

(2) If contact is not made by email or phone, the county clerk shall send a notice by regular mail with a postage pre-paid envelope.

(3) If a voter requests translation, the county clerk must provide translation in the voter's preferred language.

C. Voters may cure a rejected ballot in-person at the county clerk's office of the county where the ballot was issued or by electronic means or by regular mail by completing one of the following procedures:

(1) If either the voter's signature is missing or the voter did not provide the last four digits of the voter's social security number, the voter shall complete the required information under the privacy flap or complete and sign an affidavit.

(2) If the last four digits of the provided social security number do not match the electronic voter registration record and cannot be ascertained through Subsection A of this section, the voter shall be required to complete and sign an affidavit on a form prescribed by the secretary of state and provided further documentation in order to affirm the required voter identification information.

D. Pursuant to Subsection F of Section 1-6-10 NMSA 1978, if the required information is submitted by the voter, the clerk shall update the absentee ballot register record as "accepted" and shall transfer the ballot, affidavit, and any other document that evidences the cured mailed ballot to the special deputy for mailed ballots for delivery to the absent voter election board or an election board appointed for the preparation of the county canvass. County clerks shall conceal or redact the full social security number and full date of birth on any provided documents prior to transferring those materials.

E. All documents containing personal protected information shall be kept in a secure place by the county clerk and the absent voter election board.

[1.10.12.16 NMAC - N, 8/31/2023]

1.10.12.17 PAPER BALLOT TRANSFER:

A. Paper ballots cast in a voting tabulator for early voting shall remain in the custody of the election board assigned to the alternate voting location or mobile alternate voting location in either the ballot holding bin of the voting tabulator, or if deemed necessary, in a locked ballot box with two padlocks or numbered seals, designated for the specific tabulator.

B. Paper ballots removed from the ballot holding bin of the voting tabulator on a daily basis shall only be removed after voting hours by the presiding judge and two election judges, one of a differing political party than the presiding judge. The ballots shall be placed into a locked ballot box, with two padlocks or numbered seals designated for the specific tabulator.

(1) Those ballots diverted to the write-in holding bin and those ballots placed in the hand tally bin shall also be removed daily. Tabulated, write-in and hand tally ballots shall be kept separate from each other, but shall be retained by date and specific to the tabulator.

(2) The presiding judge and two election judges, one of a differing party than the presiding judge must execute a certificate containing the date and voting tabulator serial number for each ballot type, after the transfer of ballots on a daily basis.

(3) The locked ballot box shall be placed in a locked room at the county clerk's office, alternate voting location or mobile alternate voting location. If a location does not have a locked room, the county clerk shall either provide a cabinet with a locking device to be placed at the location for the presiding judge to place the ballot box, or the county clerk shall take possession of the locked ballot box and store it at the county clerk's office until it is transferred to the absent voter election board. The presiding judge or county clerk shall have sole possession of the key to the locked room.

C. Paper ballots that remain in the ballot holding bin of the voting tabulator for the duration of voting, shall be checked daily before voting hours begin by two election judges, one of a differing party than the presiding judge, and in the presence of the presiding judge. If the ballots are touching or near the diverter device, they shall be laid down in a stack, as to avoid a jam in the diverter.

(1) If the ballot holding bin of the voting tabulator becomes full during voting hours, the presiding judge and two election judges, one of a differing party than the presiding judge, shall unlock the bin and transfer the ballots to a locked ballot box, with

two padlocks or numbered seals, specific to the tabulator. The presiding judge shall, in an audible tone, explain the reason for the removal and transfer of ballots.

(2) The presiding judge and two election judges, one of a differing party than the presiding judge must execute a certificate containing the date and voting tabulator serial number for each ballot type, after the transfer of the ballots. Those ballots diverted to the write-in holding bin and those ballots placed in the hand tally bin shall also be removed, kept separate from each other and specific to the tabulator.

(3) The locked ballot box shall be placed in a locked room at the county clerk's office, alternate voting location or mobile alternate voting location. If a location does not have a locked room, the county clerk shall either provide a cabinet with a locking device to be placed at the location for the presiding judge to place the ballot box or shall take possession of the locked ballot box and stored at the county clerk's office until transferred to the absent voter election board. The presiding judge or county clerk shall have sole possession of the key to the locked room.

D. After the transfer, recording and securing of ballots in accordance with this section, the voting tabulator will remain in open polls status, put back into use for the duration of the voting period and the removable storage media device cartridge will not be cleared out.

[1.10.12.17 NMAC - Rp, 1.10.12.17 NMAC, 4/24/2018; A, 8/31/2023]

1.10.12.18 SECURITY FOR UNVOTED PRE-PRINTED BALLOTS AT ALTERNATE VOTING LOCATION:

A. No sooner than one day, nor later than one hour before the first day of voting at the alternate voting location or mobile alternate voting location, the county clerk shall provide the presiding judge pre-printed paper ballots, in a locked box with two padlocks or numbered seals.

(1) The county clerk shall open the ballot box, and together with the presiding judge, shall complete an affidavit verifying the number of ballots by style or precinct to be issued. The affidavit shall be signed by the county clerk and the presiding judge and shall be retained on file with the county clerk.

(2) The county clerk shall instruct the presiding judge to distribute one key for each padlock on the ballot box to two election judges, one of differing party than the presiding judge. One key shall be for one padlock and the other key for the other padlock. The keys shall remain in the assigned election judge's custody until the early voting period ends and must be returned to the county clerk, as instructed.

B. At the end of each day of early voting at the alternate voting location or mobile alternate voting location, the presiding judge and the two election judges, one of a differing party than the presiding judge, shall verify and document the number of the

unvoted ballots and place them in the ballot box. The ballot box shall be locked with the two padlocks or numbered seals by the two election judges, one of a differing party than the presiding judge and placed in a locked room at the alternate voting location or mobile alternate voting location. The presiding judge or county clerk shall have sole possession of the key to the locked room. If a location does not have a locked room, the county clerk shall provide a cabinet with a locking device to be placed on at the location for the presiding judge to place the ballot box.

(1) At the beginning of each day until the final day of early voting at the alternate voting location or mobile alternate voting location, the presiding judge shall unlock the room. The presiding judge, and the two election judges, one of a differing party than the presiding judge shall open the padlocks or numbered seals on the ballot box to retrieve the unvoted ballots to be used.

(2) The beginning ballot number for that day must match the ending ballot number from the prior day. If it does not match, the county clerk must be notified immediately. No voting at that alternate voting location or mobile alternate voting location shall be allowed until the discrepancy has been resolved to the satisfaction of the county clerk.

[1.10.12.18 NMAC - Rp, 1.10.12.18 NMAC, 4/24/2018]

1.10.12.19 USE OF GOVERNMENTAL AND OFFICIAL BUILDING AS MAILING ADDRESSES ON MAILED BALLOT APPLICATIONS:

A. Upon written request from an Indian nation, tribe or pueblo, the secretary of state may designate a government or official building for the delivery of mailed ballots or for use on voter registrations for members of that Indian nation, tribe or pueblo. The written request must be in compliance with Subsection D of Section 1-21A-1 NMSA 1978,

B. The written request designating the government or official building shall be submitted to the secretary of state in March or April of any year. It should include the common name for the building, the mailing address of the building, and the name(s) and phone number(s) of lead person(s) charged with the oversight of the mailed ballot process at the building.

C. Upon receipt of a written request, the secretary of state shall perform a security evaluation of the building to ensure the building has a space to safely keep the official mailing envelope in a locked and number-sealed ballot box or envelope. The secretary of state shall respond in writing within 60 days of the request.

D. An approved designation will take effect at the general election or regular local election of the year in which the request was approved.

E. If the request is approved and upon implementation, the secretary of state shall send a notification of new designations in writing and shall provide an updated list of

approved government and official buildings by county to each county clerk with an Indian nation, tribe or pueblo in the county.

(1) The lead person(s) designated pursuant to Section B of this section shall ensure that mailed ballots received at the designated location are secured safely in a locked and number-sealed ballot box or envelope until they are retrieved by voters.

(2) Only a voter who requested a mailed ballot may retrieve a mailed ballot at a designated and approved government or official building.

(3) A chain of custody form shall be completed by the voter collecting their mailed ballot every time a ballot is collected. A copy of the chain of custody form shall be sent to the county clerk who issued the mailed ballot within 24 hours. The chain of custody form shall be prescribed by the secretary of state and shall include:

- (a) the location of the officially designated building;
- (b) date and time of arrival;
- (c) printed full name of the person retrieving the ballot;
- (d) signature of the person retrieving the ballot;
- (e) printed full name of the person providing the ballot to the voter;
- (f) signature of the person providing the ballot to the voter;

(4) The lead person(s) designated pursuant to Section B of this section shall maintain a log of the number of mailed ballots received each day and the names of the voters reflected on the outer envelopes of received mailed ballots. The log shall be prescribed by the secretary of state and a lead person shall send a copy of the updated log to the county clerk who issued the mailed ballots each week beginning 28 days prior to the election and on the Saturday following an election day.

(5) The lead person(s) designated pursuant to Section B of this section shall return any ballots not retrieved by voters to the county clerk by the Friday following an election day.

[1.10.12.19 NMAC - N, 8/31/2023]

1.10.12.20 [RESERVED]

PART 13: CAMPAIGN FINANCE

1.10.13.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.13.1 NMAC - N, 10/10/2017]

1.10.13.2 SCOPE:

This rule applies to all persons, candidates and committees covered by the Campaign Reporting Act, Sections 1-19-25 through 1-19-37 NMSA 1978.

[1.10.13.2 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.3 STATUTORY AUTHORITY:

This rule is authorized by Section 1-2-1 NMSA 1978 and Section 1-19-26.2 of the Campaign Reporting Act, Sections 1-19-25 through 1-19-37 NMSA 1978.

[1.10.13.3 NMAC - N, 10/10/2017]

1.10.13.4 DURATION:

Permanent.

[1.10.13.4 NMAC - N, 10/10/2017]

1.10.13.5 EFFECTIVE DATE:

October 10, 2017, unless a later date is cited at the end of a section.

[1.10.13.5 NMAC - N, 10/10/2017]

1.10.13.6 OBJECTIVE:

The objective of this rule is to provide clear guidance regarding the application and implementation of the provisions of the Campaign Reporting Act, Sections 1-19-25 through 1-19-36 NMSA 1978 to affected parties while also providing for clear and specific guidance to the secretary of state in administering and enforcing the law.

[1.10.13.6 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.7 DEFINITIONS:

A. "Agent" means a person with express or implied authorization to engage in campaign related activities on behalf of a candidate or committee.

B. "Aggregate contributions" means the sum total of all contributions given to a candidate, campaign committee, or political committee by the same donor in a primary or general election cycle. Aggregate contributions may not exceed contribution limits.

C. "Clearly identified" means: (1) the name of the candidate or ballot question appears; (2) a photograph or drawing of the candidate appears; or (3) the identity of the candidate or ballot question is otherwise apparent by unambiguous reference.

D. "Committee" means a political committee or campaign committee covered under the Campaign Reporting Act.

E. "Contribution or coordination political committee" means a type of political committee that makes contributions or coordinated expenditures to candidates or committees.

F. "Debt" means an outstanding expenditure or loan which is not fully paid at the time it is reported in the campaign finance information system and is therefore reported as unpaid debt.

G. "Donor" means contributor.

H. "Earmarking" means making a contribution in which the original donor expresses an intention for the contribution to pass through some other person to a specific candidate or committee or to be used for a specific purpose, such as funding independent expenditures.

I. "Expressly advocate" means that the communication contains a phrase including, but not limited to, "vote for," "re-elect," "support," "cast your ballot for," "candidate for elected office," "vote against," "defeat," "reject," or "sign the petition for," or a campaign slogan or words that in context and with limited reference to external events, such as the proximity to the election, can have no reasonable meaning other than to advocate the election, passage, or defeat of one or more clearly identified ballot questions or candidates.

J. "Final report" means the last report electronically filed under the Campaign Reporting Act in accordance with Subsection F of Section 1-19-29 NMSA 1978 indicating that:

- (1) there are no outstanding campaign debts
- (2) all money has been expended in accordance with the provisions of Section 1-19-29.1 NMSA 1978; and
- (3) the bank accounts have been closed.

K. "Finding" means a determination made by the secretary of state based upon an administrative examination or inquiry.

L. "Foreign nationals" means an individual who is not a citizen or a national of the United States (as defined in 8 U.S.C. §1101(a)(22)) and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

M. "In-kind contributions" means goods or services or anything of value contributed to a candidate or committee other than money. The provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services is an in-kind contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.

N. "Legislative Caucus Committee" means a political committee established by the members of a political party in a chamber of the legislature pursuant to the provisions of Subsection O of Section 1-19-26 NMSA 1978 and Section 2-21-1 NMSA 1978. A legislative caucus committee is also a political committee pursuant to Subsection Q of Section 1-19-26 NMSA 1978.

O. "Loan" means an extension of credit to a candidate or committee by any person, including the candidate themselves, for use as monies spent toward the election of a candidate or other political purpose.

P. "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, and either:

- (1) have some financial attachment to the membership organization; or
- (2) pay membership dues at least annually, of a specific amount predetermined by the organization; or
- (3) have an organizational attachment to the membership organization that includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

Q. "Membership organization" means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

- (1) is composed of members;
- (2) expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;
- (3) makes its articles, bylaws, constitution or other formal organizational documents available to its members;
- (4) expressly solicits persons to become members;
- (5) expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and
- (6) is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for offices covered under the Campaign Reporting Act.

R. "Mixed purpose political committee" means a type of political committee that makes independent expenditures and coordinated expenditures or contributions and that segregates funds used for coordinated expenditures and contributions subject to contribution limits into a separate bank account from funds used for independent expenditures.

S. "Pledge" means a promise from a contributor to send or deliver a contribution by a specified time.

T. "Primary purpose" means the purpose for which an entity or committee:

- (1) was created, formed or organized; or
- (2) has made more than fifty percent of its expenditures during the current election cycle exclusive of salaries and administrative costs; or
- (3) has devoted more than fifty percent of the working time of its personnel during the current election cycle.

U. "Relevant electorate" means the constituency eligible to vote for the candidate or ballot question.

V. "Solicit" means to ask that another person make a contribution, donation, transfer of funds, or otherwise provide anything of value, whether it is to be made or provided directly to the candidate or committee, or through a conduit or intermediary.

W. "Sponsoring organization" means an organization that has provided more than twenty-five percent of the total contributions to a political committee as of the time the committee is required to register under this rule.

X. "Special event" means a barbeque, tea, coffee, dinner, reception, dance, concert or similar fundraiser where tickets costing twenty-five dollars (\$25) or less are sold and no more than one thousand dollars (\$1,000) net contributions are received.

Y. "Statement of no activity" means the prescribed form used by a reporting individual to indicate that no contributions were raised or expenditures were made during a particular reporting period.

Z. "Treasurer" means an individual explicitly designated by a candidate or committee to authorize disbursements, receive contributions, maintain a proper record of the campaign finances, and who, along with the candidate, is personally liable for discrepancies in the finances and reports of the committee.

AA. "Unresolved discrepancy" means a finding of an actual or perceived inconsistency, conflict, or contradiction that is not resolved after attempts to seek voluntary compliance.

[1.10.13.7 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.8 CANDIDATE CAMPAIGN COMMITTEE REGISTRATIONS:

A. A candidate for a non-statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending one thousand dollars (\$1,000) or more for campaign expenditures or filing a declaration of candidacy; whichever occurs earlier.

B. A candidate for statewide office shall register the candidate's campaign committee with the secretary of state within 10 days of receiving contributions or expending three thousand dollars (\$3,000) or more or filing a declaration of candidacy; whichever occurs earlier.

C. All candidates shall complete a campaign committee registration form online via the registration process in the campaign finance information system (CFIS). Following acceptance of the campaign committee registration form, the secretary of state will create a user account for the candidate in CFIS and will issue the candidate a unique CFIS user identification.

D. A candidate is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the candidate's liability regarding fines and civil actions against the candidate or public official related to campaign reporting.

E. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the candidate must, at all times, maintain a valid email address on file with the secretary of state.

F. A candidate may serve as the candidate's own treasurer. If the candidate does not serve as the candidate's own treasurer, then the candidate shall appoint a treasurer who shall be jointly responsible as a reporting individual with the candidate for the campaign committee.

G. If the candidate does not serve as the candidate's own treasurer, in the event of a vacancy in the position of treasurer, the candidate shall appoint a successor treasurer within 10 days of the vacancy by updating the information electronically in CFIS.

H. The candidate is deemed to have authorized and approved each report entry submitted to CFIS.

I. A candidate may only have one campaign committee at a time unless the candidate is seeking public financing and must keep a previous campaign account open and separated.

J. A candidate seeking re-election to the same office is not required to submit a new campaign committee registration form if the candidate already has an open campaign account.

K. A candidate seeking election to a new office covered by the campaign reporting act than what the candidate previously registered is required to submit a new campaign committee registration form. If a new candidate campaign committee registration form is submitted by a candidate with an open campaign committee for a new office, the candidates shall expend all funds in accordance with the Campaign Reporting Act or transfer any remaining funds from the old campaign committee to the new campaign committee and file a final report to close the old campaign committee within ten days from the date the registration form is accepted by the secretary of state unless the candidate is seeking public financing and must keep a previous campaign account open and separated.

[1.10.13.8 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.9 WITHDRAWING FROM CANDIDACY:

If a candidate files a statement of withdrawal, the candidate must file a final report in CFIS no later than the next report deadline or continue to file CFIS reports pursuant the schedule defined by Section 1-19-29 NMSA 1978.

[1.10.13.9 NMAC - N, 10/10/2017]

1.10.13.10 POLITICAL COMMITTEE REGISTRATIONS:

A. Registration.

(1) Prior to receiving or making any contribution or expenditure for a political purpose. All political committees shall complete a political committee registration form/statement of organization online via the registration process in CFIS and submit the completed form, along with a fifty dollar (\$50) filing fee, to the secretary of state. The form shall include:

(a) the full name of the political committee, which shall fairly and accurately reflect the identity of the committee, including any sponsoring organization;

(b) the physical address of the political committee, a mailing address if different from the physical address, and an email address;

(c) a statement of the purpose for which the political committee was organized; under this section, the committee shall designate the type of expenditures it will be making; the committee will have the option of registering as:

(i) an independent expenditure political committee;

(ii) a contribution or coordination political committee; or

(iii) a mixed purpose political committee;

(d) the names and addresses of the officers of the committee;

(e) an identification of the bank(s) used by the committee for all expenditures or contributions made or received; this shall include the name of the bank(s), business address(es) of the branch office(s) where the account(s) was/were opened, and telephone number for the bank(s); and

(f) the treasurer's name, mailing address, email address, and contact information.

(2) Following acceptance of the political committee registration form, the secretary of state will issue the treasurer a unique CFIS user identification.

(3) The provisions of this section do not apply to a political committee that is located in another state and is registered with the federal election commission (FEC). If the political committee is located in another state and reports to the FEC, the committee shall file a copy of either the full report or the cover sheet and the portions of the federal reporting forms that contain the information on expenditures for and contributions made to reporting individuals in New Mexico with the secretary of state within 10 days of filing the report to the FEC.

(4) If a political committee is located in another state and is making contributions and expenditures to New Mexico reporting individuals, but is not registered with the FEC, then the out-of-state political committee must register and report its New Mexico contributions and expenditures in accordance with the provisions of the Campaign Reporting Act and this rule.

(5) If a political committee is located in New Mexico and is required to register as a political committee under this rule, the political committee must register with the secretary of state even if it is also registered with the FEC.

(6) The political committee's treasurer is responsible for carrying out the duties described in the Campaign Reporting Act and this rule and may be personally liable if he or she knowingly and willfully violates the Campaign Reporting Act.

(7) An individual who resigns as treasurer of a political committee shall submit a resignation statement on a form prescribed by the secretary of state. An individual's resignation is not effective until a replacement treasurer is appointed, and the treasurer's information is updated electronically in CFIS.

(8) A political committee shall not continue to receive or make any contributions or expenditures unless the name of the current treasurer is on file with the secretary of state by updating the information in CFIS.

(9) A political committee is responsible for entering accurate and current contact information in CFIS, including mailing address and email address. Failure to provide accurate or current contact information does not limit the political committee's liability regarding fines and civil actions related to campaign reporting.

(10) Any changes to the information provided in the registration form/statement of registration shall be filed in CFIS within 10 days.

B. Section 1-19-27 NMSA 1978 requires that all campaign finance reports be filed electronically with the secretary of state's office. In order to file electronically, the political committee must maintain a valid email address on file with the office.

C. Political party registration: Qualified political parties that file rules in accordance with Article 7 of the Election Code with the secretary of state or county clerk are required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act and this rule.

D. Legislative caucus committee registration: a legislative caucus committee is required to complete and file the political committee registration form with the secretary of state and must adhere to the provisions of the Campaign Reporting Act.

E. Notice of cancellation:

(1) A political committee, other than a political party or a legislative caucus committee, that has not received any contribution or made any coordinated or independent expenditures for a continuous period of at least one year pursuant to Subsection G of Section 1-19-29 NMSA 1978 shall be advised of their right to cancel the political committee's registration without obligation to file a final report. The political committee shall notify the secretary of state of the political committee's intention to remain active or will otherwise be marked as inactive by January 1 of the next even numbered year.

(2) A political committee that has cancelled its registration pursuant to Subsection G of Section 1-19-29 NMSA 1978, shall submit a new registration within 24 hours of receiving any contribution or making any expenditure for a political purpose. A new registration shall include:

(a) current bank account balance(s); and

(b) a certification that no contributions have been received or any expenditures made for a political purpose during the period wherein the political committee's registration was cancelled pursuant to Subsection G or Section 1-19-29 NMSA 1978.

[1.10.13.10 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.11 REPORTING OF INDEPENDENT EXPENDITURES:

A. A person reporting an independent expenditure that is not otherwise required to register as a political committee or report under the Campaign Reporting Act shall complete the online registration process in CFIS for setting up an account as an independent expenditure filer.

B. Time requirements:

An independent expenditure is considered to be made on the first date on which the communication or advertisement is published, broadcast or otherwise publicly disseminated.

C. No person may make contributions or expenditures with an intent to conceal the names of persons who are the true source of funds used to make independent expenditures, or the true recipients of the expenditure.

D. Both a person who makes an independent expenditure pursuant to Section 1-19-27.3 NMSA 1978 or a registered political committee that files reports in accordance with Section 1-19-29 NMSA 1978 is required to disclose the candidate(s) or ballot question(s) being supported or opposed by each independent expenditure made.

E. If a person declines to identify a contributor pursuant to Paragraph (2) of Subsection D of Section 1-19-27.3 NMSA 1978 on the basis that the contributor requested in writing that the contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee, the person making the independent expenditure shall, contemporaneously with the filing of the report required under this Section and Section 1-19-27.3 NMSA 1978, submit to the secretary of state a statement under penalty of perjury that:

(1) a contributor requested that a contribution not be used to fund independent or coordinated expenditures or to make contributions to a candidate, campaign committee, or political committee; and

(2) the person making the independent expenditure, coordinated expenditures, or contributions to a candidate, campaign committee or political committee did not use any of the funds received from the contributor for those purposes.

[1.10.13.11 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.12 GENERAL REPORTING RULES:

A. Candidate campaign committees.

(1) All campaign committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight mountain time on the date of filing without penalty. In the event that a filing deadline falls on a state holiday, the report shall be made on the following day. Beginning after 12:01 a.m. mountain time on the day after the due date of the report, penalties for late filing shall begin to accrue.

(2) Campaign committees shall report all contributions, in-kind contributions known to the campaign committee, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) Coordinated expenditures made on behalf of the candidate or campaign committee shall be reported by the campaign committee as in-kind contributions received from the coordinating political committee and are subject to contribution limits. Any committee reporting an expenditure that is in-kind to another committee registered pursuant to the Campaign Reporting Act is required to disclose the name of the committee benefiting from the in-kind contribution.

(4) Candidates must file all required reports while they are an active candidate and continue to file timely reports until such time as they meet the requirements to file a final report. For example, a primary election candidate that loses the primary election must file all reports included in the primary election cycle and

continue to file reports until the candidate files a final report. Losing an election does not terminate a candidate's requirement to file under the Campaign Reporting Act.

(5) A candidate's personal funds spent in support of a candidate's own campaign are considered a contribution and shall be disclosed by filing the required reports in CFIS; however, these funds are not subject to contribution limits.

(6) Upon request by the secretary of state, the campaign committee shall provide a copy of bank statements, for all accounts, for any reporting period.

(7) Candidates benefiting from independent expenditures or in-kind contributions the candidate has no knowledge of have no obligation to report the item as a contribution to the candidate's campaign committee.

B. Political committees.

(1) Political committees shall file reports according to the schedule set forth in Section 1-19-29 NMSA 1978. Reports shall be accepted until midnight on the date of filing deadline without penalty. In the event that a filing deadline falls on a state holiday, the report shall be made on the following day. Beginning after 12:01 a.m. mountain time on the date after the filing deadline of the report, penalties for late filing shall begin to accrue.

(2) Political committees shall report all contributions, in-kind contributions known to the political committee, loans, expenditures, loan repayments, and debt forgiven by the lender.

(3) In addition to disclosing the information required by the Campaign Reporting Act for expenditures, a political committee making coordinated expenditures, including in-kind, shall also disclose the name of the candidate, campaign committee, or political committee with whom the expenditure is being coordinated or is benefiting.

(4) Upon request by the secretary of state, the political committee shall provide a copy of bank statements, for all accounts, for the political committee for any reporting period.

C. Hardship waivers.

(1) All reports required by these rules shall be filed electronically in the manner and on forms as prescribed by the secretary of state. Reporting individuals required to file reports may apply to the secretary of state for exemption from electronic filing in case of hardship by submitting a hardship waiver request form prescribed by the secretary of state. The secretary of state may approve or deny this request. Approval may be granted at the discretion of the secretary of state only if the reporting individual has no way to access CFIS.

(2) Upon approval of a hardship waiver, the reporting individual shall submit the report on a prescribed paper form. Approval of a hardship waiver by the secretary of state, authorizes the secretary of state to enter the report into the electronic system on behalf of the reporting individual. A copy of the electronic report entered by the secretary of state will be mailed to the reporting individual once it has been entered into CFIS.

(3) Submission of a hardship waiver request does not constitute meeting the reporting requirements including the statutory reporting deadlines. Failure to adhere to a report deadline may still result in fines pursuant to Section 1-19-35 NMSA 1978. Reporting individuals shall make arrangements for hardship approval with the secretary of state in advance of report deadlines to ensure timely filing.

[1.10.13.12 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.13 NO ACTIVITY:

A. All candidates are required to register and file reports in CFIS according to the reporting schedule outlined in the Campaign Reporting Act once a declaration of candidacy has been filed, even if the candidate does not raise or spend any funds. Candidates who have collected no contributions and made no expenditures shall file a statement of no activity.

B. Candidates who do not raise funds are not required to open a campaign bank account.

C. Receiving funds as a publicly financed candidate pursuant to the Voter Action Act is considered raising funds for the purpose of this rule.

D. Candidates who maintain a zero balance in CFIS for the duration of a primary or general election cycle shall be administratively closed by the secretary of state.

[1.10.13.13 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.14 SUPPLEMENTAL REPORTS:

A. Certain candidates must report in CFIS contributions and pledges to contribute that are received beginning the Thursday before an election through the election in CFIS using supplemental reports in accordance with Subparagraph 5 of Subsection B of Section 1-19-29 NMSA 1978.

B. If a candidate receives a pledge during the time period specified in Subparagraph 5 of Subsection B of Section 1-19-29 NMSA 1978 but does not receive the contribution as pledged, the candidate may later amend the campaign committee's supplemental report.

[1.10.13.14 NMAC - N, 10/10/2017]

1.10.13.15 LATE FILING OF REPORTS:

A. If a reporting individual or person required to file a report pursuant to Section 1-19-27.3 NMSA 1978 fails to timely file a report in CFIS, or fails to file a report, a written notice will be sent by the secretary of state to the reporting individual or person required to file a report explaining the violation and the fine imposed.

B. The reporting individual or person required to file a report is afforded 10 working days from the date of the written notice to file, if needed, and provide a written explanation within CFIS indicating why the violation occurred.

C. If a timely explanation is provided and the report is filed within the timeframe provided by the notice, the secretary of state will make a determination whether good cause exists to fully or partially waive the fine.

D. If the reporting individual or person required to file the report fails to provide a written response or fails to file a report within the timeframe provided by the notice, the secretary of state shall issue a notice of final action requiring the reporting individual or person required to file the report to file the late report, provide a written explanation of why the violation occurred, and pay the fine owed.

E. Fines for late filing will accrue beginning the day after the filing deadline until the report is filed at the statutory rate of fifty dollars (\$50) per day up to a maximum fine pursuant to Subsection H of Section 1-19-35 NMSA 1978 per report. Candidates required to file supplemental reports are subject to additional fines pursuant to Subsection C of Section 1-19-35 NMSA 1978.

F. If a reporting individual or person required to file a report desires to come into voluntary compliance after a notice of final action has been issued but prior to a referral pursuant to Section 1-19-34.6 NMSA 1978, the secretary of state may, at the secretary of state's sole discretion, file a petition with the court requesting the court to waive fines for good cause.

G. Failure to respond to the notice of final action shall result in a referral to the state ethics commission.

[1.10.13.15 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.16 LOANS:

A. All loans made to a candidate or committee, including loans sourced from a candidate's own personal funds must be reported.

B. Contribution limits apply to loans, unless the loan is sourced from the candidate's own personal funds in accordance with Subsection H of Section 1-19-34.7 NMSA 1978.

C. If a spouse of a candidate co-signs a commercial loan to a candidate pledging community assets as collateral, it is not considered a contribution from the spouse to the candidate as long as the candidate's interest in the community asset meets or exceeds the amount of the loan.

D. Loan repayments and forgiven loans must be reported separately from other expenditures within the loan module of CFIS.

[1.10.13.16 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.17 CAMPAIGN DEBTS:

A. Campaign debts may not exceed available campaign funds unless the debt is a loan. Loans from a third party must conform to contribution limits.

B. Following the date of the primary or general election, if a candidate has outstanding debts after expending all available campaign funds, the candidate may collect contributions for the sole purpose of paying those debts.

C. The contributions will apply to the primary or general election cycle for which the campaign debt was incurred for purposes of computing allowable contribution limits.

D. A candidate who does not have net outstanding campaign debt may not collect contributions for a primary or general election cycle that has ended.

E. A candidate may not transfer funds collected specifically to satisfy campaign debt to a subsequent primary or general election cycle. Accordingly, contributions collected for the purpose of paying off outstanding campaign debts may not exceed the amount of the outstanding debts.

[1.10.13.17 NMAC - N, 10/10/2017]

1.10.13.18 IN-KIND CONTRIBUTIONS:

A. In-kind contributions must be reported with the actual value of the contribution. If an actual value is not available, an estimated value of the contribution may be used.

B. Coordinated expenditures are treated as in-kind contributions and must be reported as such.

C. If a committee or person makes an in-kind contribution that benefits multiple candidates, each candidate must report the estimated benefit received per person.

D. Goods, such as facilities, equipment, or supplies, are valued at the price the item or facility would have cost, given its age and condition, at the time the contribution was made.

E. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged to the candidate or committee.

F. The value of in-kind contributions from a political party or legislative caucus committee to a candidate nominated by that party in a general election cycle do not apply to the limitations on contributions to candidates or campaign committees.

G. If a committee makes an expenditure that is reported as coordinated or in-kind to another campaign or political committee, the committee making the expenditure must disclose the candidate or political committee that is benefitting from the expenditure.

[1.10.13.18 NMAC - N, 10/10/2017; A, 10/29/2019; A, 9/28/2021; A, 3/22/2022]

1.10.13.19 VOLUNTEERS:

A. Volunteer work performed for a candidate or committee is not considered a contribution. An individual may volunteer his or her own personal services to a campaign or candidate if the services are not compensated by the candidate, campaign or any other person. If a third party pays a person to volunteer for a candidate or committee, the payment constitutes an in-kind contribution to the campaign committee which must be reported by the campaign committee.

B. Individuals may use their own homes, recreation or meeting rooms of complexes, or other facilities to conduct volunteer activities for a campaign committee without reporting the rental value of the premises as a contribution.

C. Candidates and campaigns may reimburse volunteers for out of pocket expenses other than the value of their time. Any expense reimbursed by the candidate or committee must be reported by the candidate or committee.

[1.10.13.19 NMAC - N, 10/10/2017]

1.10.13.20 CONTRIBUTIONS:

A. The entire amount paid by a donor to attend a political fundraiser or other political event or to purchase a fundraising item sold by a candidate is a contribution and counts against the donor's limit for political contributions, except for special events pursuant to Subsection C of Section 1-19-34 NMSA 1978.

B. Contributions received as a result of special events shall be reported cumulatively on the special events form in CFIS. Reporting individuals shall report the sponsor of the event, the amount received (gross proceeds), the expenditures incurred, the estimated number of persons in attendance, and the net amount received after deducting the expenditures incurred in conducting the event (net proceeds).

C. For all other fundraising events at which the price of admission exceeds twenty five dollars (\$25), or which raise more than one thousand dollars (\$1,000) in net proceeds, the reporting individual must report each individual contribution pursuant to Section 1-19-31 NMSA 1978.

D. No single anonymous contribution may be accepted in excess of one hundred dollars (\$100). No more than five hundred dollars (\$500) may be accepted in aggregate anonymous contributions for any non-statewide candidate in a primary or general election cycle. No more than two thousand dollars (\$2000) may be accepted in aggregate anonymous contributions for any statewide campaign committee or political committee in a primary or general election cycle.

E. A candidate's spouse and family are subject to the same contribution limits to the candidate's campaign as other contributors, provided, however, that a candidate may contribute from a joint account with a spouse or family member without limit if the funds would otherwise be available to the candidate in the regular course of business, or as community property or as a joint tenant.

F. The personal funds of a candidate include:

(1) assets which the candidate has the legal right of access to or control over, and which he or she has legal title to or an equitable interest in, at the time of candidacy;

(2) income from employment, including self-employment;

(3) dividends and interest from, and proceeds from, sale or liquidation of stocks, real estate or other investments;

(4) income from trusts, if established before the commencement of a primary or general election cycle;

(5) bequests to the candidate, if established before the commencement of a primary or general election cycle;

(6) personal gifts that have been customarily received by the candidate prior to the commencement of a primary or general election cycle; and

(7) proceeds from lotteries or games of chance.

G. The reporting individual is responsible for ensuring that all contributions are lawful. If the reporting individual has reason to suspect that a contribution is excessive or prohibited, he or she must, within 10 days of receiving the contribution, validate the legality of the contribution and correct any discrepancy, if necessary, in order to comply with the law.

[1.10.13.20 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.21 [RESERVED]

[1.10.13.21 NMAC - N, 10/10/2017; Repealed, 3/22/2022]

1.10.13.22 EXCESSIVE OR PROHIBITED CONTRIBUTIONS:

A. Excessive or prohibited contributions shall be returned to the donor upon receipt, without penalty to the reporting individual. However, if the secretary of state discovers a discrepancy or otherwise makes a finding that an excessive or illegal contribution has been received by a candidate or committee, the candidate or committee shall forfeit the excessive or illegal contribution in accordance with Subsection G of Section 1-19-34.7 NMSA 1978. A candidate or political committee shall disclose refunds of contributions or expenditures to the public election fund in CFIS in the reporting period in which the refund was made.

B. Excess anonymous funds pursuant to Subsections B and C of Section 1-19-34 NMSA 1978 shall be donated pursuant to the requirements of Subsection D of Section 1-19-34 NMSA 1978. The candidate or political committee shall disclose the details of the disbursement of excess anonymous funds in CFIS in the reporting period in which the disbursement was made.

C. The reporting individual must check committee records regularly to reasonably ensure that aggregate contributions from one contributor do not exceed the contribution limits of the Campaign Reporting Act.

D. When an excessive contribution is made via written instrument with more than one individual's name on it, but only has one signature, the permissible portion may be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit.

E. An excessive contribution which is not designated for either the primary or general election cycle, and which is made after the primary, but before the general election, may be applied to the outstanding debts from the primary election cycle if the campaign committee has more net debts outstanding from the primary election cycle than the excessive portion of the contribution. The re-designation must not cause the contributor to exceed any contribution limits.

F. Contributions and donations may not be solicited, accepted, received from, or made directly or indirectly by, foreign nationals who do not have permanent residence in the United States.

[1.10.13.22 NMAC - N, 10/10/2017; A, 10/29/2019; A, 3/22/2022]

1.10.13.23 DATE CONTRIBUTION IS MADE VS DATE OF RECEIPT:

A. A contribution is "made" by the contributor when the contributor relinquishes control over it. If the contributor hand delivers a contribution, the contribution is made on the delivery date. If mailed, a contribution is made on the date of the postmark. An in-kind contribution is made on the date that the goods or services are provided by the contributor. A contribution made via the internet is considered made on the date the contributor electronically confirms the transaction.

B. The date of receipt is the date the candidate, committee or person acting on the committee's behalf, actually receives the contribution. This is the date that shall be used to report the contribution. The date of deposit is not used for reporting or contribution limit purposes.

C. When a contribution is received through debit or credit card charges, the date of receipt is the date on which the contributor's signed or electronic authorization to charge the contribution is received by the candidate, committee or a person acting on the committee's behalf.

D. The date of receipt of in-kind contributions is the date the goods or services are provided to the recipient.

[1.10.13.23 NMAC - N, 10/10/2017]

1.10.13.24 EARMARKING:

A. It is unlawful for a person to make a contribution in the name of another person and no reporting entity shall knowingly accept a contribution from one person in the name of another person.

B. A reporting individual shall not knowingly accept a contribution which was earmarked by an original donor for contribution from a subsequent donor to the candidate or committee unless the original donor is disclosed in the committee's reporting.

C. All contributions made by a person, either directly or indirectly, including contributions that are in any way earmarked or otherwise directed through another person, shall be treated as contributions from the person who originally made the contribution.

1.10.13.25 CANDIDATE EXPENDITURES:

A. Candidates who use the candidate's own personal funds for expenditures of the campaign committee must report the funds as either contributions to the campaign committee, which cannot be repaid to the candidate, or as loans to the campaign committee, which can be repaid from other campaign contributions received by the campaign committee. A candidate may also pay for expenditures of the campaign committee out of personal funds and obtain reimbursement from the campaign committee, but the campaign committee must itemize the expenditures reimbursed and otherwise comply with the disclosure requirements of Section 1-19-31 NMSA 1978 including disclosure of the original payee. A candidate may not, for instance, report a single payment to a credit card in lieu of reporting each individual expenditure paid for out of personal funds. Use of a credit card specifically designated for campaign expenses is permissible but expenditures must be itemized when reported.

B. Permissible expenditures.

(1) Use of campaign funds must be in accordance with Section 1-19-29.1 NMSA 1978. Candidates and committees must provide a purpose or description detailed enough to associate the expense to the campaign. For example, an expense of "taxi" is not appropriately descriptive to determine that it is related to a campaign. Such an expense should be reported as "taxi for travel to campaign meeting."

(2) Expenditures that are reasonably attributable to the candidate's campaign and not to personal use or personal living expenses are permissible campaign expenditures. Personal use of campaign funds is any use of funds in a campaign account to fulfill a commitment, obligation or expense of any candidate or legislator that would exist regardless of the candidate's campaign or responsibilities as a legislator. If the expense would exist even in the absence of the candidacy, or even if the legislator were not in office, then it is not considered to be a campaign-related expenditure. The following is a non-exhaustive list of items considered to be per se personal use and are, therefore, not allowable expenditures:

(a) household food items or supplies;

(b) funeral, cremation, or burial expenses except those incurred for a candidate or an employee or volunteer of an authorized committee whose death arises out of, or in the course of, campaign activity;

(c) clothing, other than items of de minimis value that are used in the campaign, such as campaign t-shirts or caps with campaign slogans;

(d) tuition payments, other than those associated with training campaign staff;

(e) mortgage, rent or utility payments:

(i) for any part of any personal residence of the candidate or a member of the candidate's family; or

(ii) for real or personal property that is owned by the candidate or a member of the candidate's family and is used for campaign purposes, to the extent the payments exceed the fair market value of the property usage.

(f) admission to a sporting event, concert, theater or other form of entertainment, unless part of a specific campaign or officeholder activity;

(g) dues, fees, or gratuities at a country clubs, health club, recreational facility or other nonpolitical organizations, unless they are part of the costs of a specific fundraising event that takes place on the organization's premises;

(h) payments to candidate's family unless the family member is providing a bona fide service to the campaign. If a family member provides bona fide services to the campaign, any salary payment in excess of the fair market value of the services provided is personal use; and

(i) a vacation.

(3) Legal expenses reasonably attributable to the candidate's campaign are permissible campaign expenditures.

(4) Candidates and political committees may use campaign funds to satisfy fines and other non-criminal penalties as a result of violating a provision of the Campaign Reporting Act.

(5) Wear and tear on a vehicle is a permissible expense of the campaign and candidates shall claim mileage rather than actual repairs for travel solely related to the campaign. Mileage shall be calculated at no more than the published rate pursuant to the Mileage and Per Diem Act. Candidates must keep a log for the candidate's own records regarding miles traveled for campaign purposes and calculate the per diem based on this log. Mileage rates are meant to account for both wear and tear on a vehicle as well as costs for gas; therefore, candidates may not charge for both gas and mileage.

[1.10.13.25 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.26 CHARITABLE DONATIONS:

A. Donations to charity from campaign funds permitted under Paragraph 4 of Subsection A of Section 1-19-29.1 NMSA 1978 may be paid only to organizations

recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986.

B. The candidate or committee making a charitable donation is responsible for determining whether the charity has the permissible tax status prior to making the donation.

[1.10.13.26 NMAC - N, 10/10/2017]

1.10.13.27 [RESERVED]

[1.10.13.27 NMAC - N, 10/10/2017; A, 04/24/2018; Repealed, 10/29/2019]

1.10.13.28 COORDINATED EXPENDITURES:

A. A coordinated expenditure shall be treated as an in-kind contribution from the person who made the expenditure to the candidate or committee at whose request or suggestion, or in cooperation, consultation or concert with whom, the expenditure was made, and shall be subject to all the limits, prohibitions and reporting requirements that are applicable to such contributions under the Campaign Reporting Act.

B. Candidates for office may endorse other candidates. Endorsements do not constitute a coordinated expenditure unless the endorser pays for an advertisement that constitutes a coordinated expenditure.

C. A candidate's or committee's response to an inquiry or questionnaire about that candidate's positions on legislative or policy issues, which does not include discussion of campaign plans, projects, activities or needs, does not constitute a coordinated expenditure.

D. Persons may use publicly available information and materials in creating, producing or distributing an advertisement, and such use does not, in and of itself, constitute coordination with the candidate or campaign. However, expenditures funding the republication of materials produced by a candidate's campaign shall be reported as coordinated expenditures subject to contribution limits. The following is a non-exhaustive list of factors which will be considered in determining whether an expenditure shall be treated as a coordinated expenditure:

(1) whether the person making the expenditure is also an agent of the candidate or committee receiving the contribution;

(2) whether any person authorized to accept receipts or make expenditures for the person making the expenditure is also an agent of the candidate or committee receiving the contribution;

(3) whether the person making the expenditure has been established, financed, maintained, or controlled by any of the same persons that have established, financed, maintained, or controlled a political committee authorized by the candidate;

(4) whether the reporting individual shares or rents space for a campaign-related purpose with or from the person making the expenditure;

(5) whether the reporting individual, or any public or private office held or entity controlled by the reporting individual, including any governmental agency, division, or office, has retained the professional services of the person making the expenditure or a principal member or professional or managerial employee of the entity making the expenditure, during the same election cycle, either primary or general, in which the expenditure is made; or

(6) whether the reporting individual and the person making the expenditure have each consulted or otherwise been in communication with the same third party or parties, if the reporting individual knew or should have known that the reporting individual's communication or relationship to the third party or parties would inform or result in expenditures to benefit the reporting individual.

[1.10.13.28 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.29 RECORDS RETENTION:

A. A reporting individual shall obtain and preserve all records, including bank statements and receipts, necessary to substantiate the campaign finance reports required pursuant to the Campaign Reporting Act for a period of two years from the date of the filing of the report containing such items.

B. A reporting individual shall make such records available to the secretary of state, state ethics commission, attorney general or district attorney upon written request.

[1.10.13.29 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.30 RANDOM REPORT SELECTION AND REPORT REVIEW PROCESS:

A. Pursuant to Section 1-19-32.1 NMSA 1978, a randomly selected list of current and past candidates and political committees is computer generated by the secretary of state.

B. The secretary of state conducts a review of the reports filed during the election year or reporting period being reviewed for compliance with 1.10.13 NMAC and the Campaign Reporting Act. Areas of review during the report examination include:

(1) Campaign committees or political committees who fail to register or fail to register timely.

(2) Contributions, including loans and anonymous contributions, which exceed allowable contribution limits.

(3) Expenditures that may not be permissible.

(4) To the extent possible, cross checking with other reporting entities including those filing under the Lobbyist Regulation Act.

(5) Other report errors such as incomplete reporting or failure to disclose the originating donor of a contribution.

C. Pursuant to Section 1-19-32.1 NMSA 1978, the secretary of state shall notify potential violators that a possible discrepancy has been found and allow the candidates or committees 10 working days from the date of the notice to submit a written explanation and come into voluntary compliance.

D. After the secretary of state deems efforts at voluntary compliance have been exhausted and upon completion of the random review, the secretary of state shall prepare a report that includes the committees included in the random examination, the outcome of voluntary compliance efforts, and any unresolved discrepancies. The report shall be maintained and forwarded pursuant to the requirements set forth in Subsection B of Section 1-19-32.1 NMSA 1978.

[1.10.13.30 NMAC - N, 10/10/2017; A, 3/22/2022]

1.10.13.31 DISCLAIMER NOTICES ON ADVERTISEMENTS:

A. The disclaimers on campaign advertising mandated by Section 1-19-26.4 NMSA 1978 are required for:

(1) advertisements that are disseminated by a candidate, a campaign committee or a political committee, including a legislative caucus committee, registered pursuant to 1.10.13.8 NMAC or at the request or suggestion of, or in cooperation, consultation or concert with, a candidate, a candidate's campaign committee or a political committee, including a legislative caucus committee registered pursuant to 1.10.13.8 NMAC; and,

(2) advertisements that are disseminated by a person who has made independent expenditures in an aggregate amount exceeding one thousand dollars (\$1,000) during the current election cycle, and that either:

(a) expressly advocate the election or defeat of a clearly identified candidate or the passage or defeat of a clearly identified ballot question, or

(b) refer to a clearly identified candidate or ballot question and are disseminated to the relevant electorate within 30 days before the primary election or 60

days before the general election at which the candidate or ballot question is on the ballot.

B. The requirements of Subsection A of this section do not apply to the following:

(1) bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed; or

(2) skywriting, water towers, wearing apparel or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impractical.

C. The disclaimer statements required by Subsection A of this section shall be set forth legibly on any advertisement that is disseminated or displayed by visual media. If the advertisement is transmitted by audio media, the statement shall be clearly spoken during the advertisement. If the advertisement is transmitted by audiovisual media, the statement shall be both written legibly and spoken clearly during the advertisement.

D. The disclaimer statements required for advertisements described in Paragraph A of this section shall clearly state the name of the candidate, committee or other person who authorized and paid for the advertisement.

E. Any printed disclosure statement described in Subsection D of this section shall:

(1) be of sufficient type size to be clearly readable by the recipient of the communication;

(2) be contained in a printed box set apart from the other contents of the communication; and

(3) be printed with a reasonable degree of color contrast between the background and the printed statement.

F. Any disclosure statement described in Subsection D of this section which is transmitted through radio shall include, in addition to the requirements of that paragraph, an audio statement that identifies the candidate by name and clearly states the name of the candidate, committee or other person who authorized and paid for the advertisement and if applicable, states that the candidate has approved the communication.

G. Any disclosure described in Subsection D of this section which is transmitted through television shall include, in addition to the requirements of that paragraph, a statement that identifies the candidate by name and if applicable, states that the candidate has approved the communication. Such statement shall be conveyed by:

(1) an unobscured, full-screen view of the candidate making the statement, or

(2) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(3) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds.

[1.10.13.31 NMAC - N, 10/10/2017; A, 10/29/2019]

1.10.13.32 LEGISLATIVE CAUCUS COMMITTEE:

A. Only one legislative caucus committee may exist for the majority and minority of each legislative chamber.

B. The speaker and the minority floor leader of the house of representatives and the majority floor leader and the minority floor leader of the senate shall be the designated leaders of the legislative caucus committees for the members of their political party in their legislative chamber unless:

(1) two-thirds of the members of a political party in a legislative chamber vote to designate a different leader from among their members; and

(2) the results of that vote are recorded with the secretary of state.

C. A legislative caucus committee must comply with all statutes and rules applicable to political committees, with the exception of in-kind contributions from a legislative caucus committee to a candidate nominated by that party in a general election cycle, which do not apply to limitation on contributions.

D. No funds belonging to a legislative caucus committee shall be expended by the committee unless a current designated leader of the committee is on file with the secretary of state using the campaign registration form prescribed by the secretary of state.

E. Funds belonging to a legislative caucus committee shall be managed by the designated leader or the leader's designee as designated on the campaign registration form prescribed by the secretary of state.

F. A legislative caucus committee cannot be dissolved or cancel its registration as a political committee pursuant to Subsection G of Section 1-19-29 NMSA 1978.

[1.10.13.32 NMAC – N, 10/29/2019; A, 3/22/2022]

1.10.13.33 PROHIBITED PERIOD:

Candidates and officeholders impacted by the prohibited period pursuant to Section 1-19-34.1 NMSA 1978 are not required to cancel or pause automatic recurring contributions that were solicited and established prior to the start of the prohibited period.

[1.10.13.33 NMAC – N, 3/22/2022]

PART 14 RANKED CHOICE VOTING AND TOP-TWO RUNOFF ELECTION

1.10.14.1 ISSUING AGENCY:

The Office of the New Mexico Secretary of State.

[1.10.14.1 NMAC - N, 9/10/2019]

1.10.14.2 SCOPE:

This rule applies to runoff elections covered under the Election Code.

[1.10.14.2 NMAC - N, 9/10/2019]

1.10.14.3 STATUTORY AUTHORITY:

This rule is authorized by Sections 1-2-1 and 1-22-16 NMSA 1978, of the Election Code.

[1.10.14.3 NMAC - N, 9/10/2019]

1.10.14.4 DURATION:

Permanent.

[1.10.14.4 NMAC - N, 9/10/2019]

1.10.14.5 EFFECTIVE DATE:

September 10, 2019, unless a later date is cited at the end of a section.

[1.10.14.5 NMAC - N, 9/10/2019]

1.10.14.6 OBJECTIVE:

The purpose of this rule is to provide effective procedures for runoff elections.

[1.10.14.6 NMAC - N, 9/10/2019]

1.10.14.7 DEFINITIONS:

A. "Choice" means an indication on a ballot of a voter's assigned ranking of candidates for any single office according to the voter's preference. The standards for what constitutes a vote is codified in 1.10.23.12 NMAC and is incorporated by reference.

B. "Continuing ballot" means a ballot with votes that count towards a continuing candidate.

C. "Continuing candidate" means a candidate that has not been eliminated, including a candidate in the first round.

D. "Duplicate ranking" means a voter has ranked the same candidate at multiple rankings for the office being counted.

E. "Exhausted ballot" means a ballot that cannot be advanced because no further continuing candidates are ranked on that ballot.

F. "Incorrectly marked ballot" means a ballot showing an overvote or duplicate ranking.

G. "Majority of votes" means more than half of the votes cast for a continuing candidate.

H. "Next ranked" means the highest ranked choice for a continuing candidate.

I. "Overvote" means a voter has ranked more than one candidate at the same ranking.

J. "Ranked choice voting" means an election system in which voters rank the candidates for office in order of preference, and the votes cast for that office are counted in rounds that simulate a series of runoffs until one candidate receives a majority of votes. Ranked choice voting is also known as "instant runoff voting."

K. "Round" means a step in the counting process during which votes for all continuing candidates are tabulated for the purpose of determining whether a candidate has achieved a majority of votes cast for a particular office and, absent a majority, which candidate or candidates must be eliminated.

L. "Skipped ranking" means a voter has left a ranking blank and ranks a candidate in a subsequent ranking.

M. "Undervote" means an office on a ballot in which the voter did not rank any candidates for that office.

N. "Unused ranking" means the voter has ranked at least one but not all candidates.

O. "Vote" means a choice that is counted toward the election of a candidate in a runoff election.

[1.10.14.7 NMAC - N, 9/10/2019]

1.10.14.8 FORM OF RANKED CHOICE RUNOFF BALLOT:

A. The ranked choice voting ballot shall allow voters to rank all candidates in order of choice. The ranked choice voting ballot shall also contain a space on the ballot for a qualified write-in candidate to be ranked.

B Instructions on the ballot shall conform substantially to the following specifications and appear only once on the top of the ballot: "Vote by indicating your first choice candidate and ranking additional candidates in order of choice. Rank as many candidates as you wish. Marking additional choices will not count against your first choice."

C. Sample ballots illustrating the procedures for ranked choice voting shall be posted in or near the voting booth, included in the instruction materials for mailed ballots, and posted on the secretary of state's website.

D. Upon submission of an incorrectly marked ballot, the voting machine shall provide a detailed warning message to the voter with a "cast" or "return" option and require confirmation of the voter's choice. A person who spoils or erroneously prepares the ballot may return the spoiled or erroneously prepared ballot to the election judge and receive a new ballot.

E. If any ballot is physically damaged so that it cannot properly be counted by the vote tabulation system, a true duplicate copy shall be made publicly of the damaged ballot and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the damaged or incorrectly marked ballot, and be counted in lieu of the damaged ballot. After a ballot has been duplicated, the damaged ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied by the tabulator with the other ballots for that precinct.

F. Ranked choice voting is only applicable to elections in which the governing body has chosen to elect its officers by ranked choice. Any other candidate contest or question on a ballot will not be chosen by ranked choice voting.

[1.10.14.8 NMAC - N, 9/10/2019]

1.10.14.9 TABULATION FOR SINGLE WINNER ELECTION:

A. In the first round every ballot shall count as a vote towards the first choice candidate. During each successive round of counting, each continuing ballot contains one vote. All first choices are votes and lower ranked choices are potential runoff votes that may, in accordance with the requirements of this section, become votes and subsequently credited to a continuing candidate.

B. After any round, if any candidate receives a majority of votes in that round, that candidate shall be declared the winner and the tabulation is complete.

C. If no candidate receives a majority of votes in that round, the candidate receiving the fewest number of votes shall be eliminated.

D. Ballots for which a vote counted towards a now eliminated candidate shall be transferred to the next ranked continuing candidate. All the continuing ballots for all continuing candidates shall be counted again in a new round.

E. If after the first round of transferring votes, no continuing candidate has received a majority of votes, the process of eliminating candidates, transferring votes, and tabulating revised results shall continue until one continuing candidate receives a majority of the votes cast.

F. If a tie between candidates occurs at any stage in the tabulation, the tie shall be resolved in favor of the candidate who received the greatest number of combined first choice votes and transferred votes at the previous stage of tabulation. If the first round tabulation results in a tie between candidates, the tie shall be resolved against the candidate who received the least number of combined second choice votes.

G. In tabulating duplicate rankings, the highest ranking for the candidate is valid and any lower rankings of that candidate shall be ignored.

H. In tabulating an overvote, the voter's rankings shall be counted in order of preference, stopping at the point where the ballot contains the same ranking for more than one candidate.

I. In tabulating a skipped ranking, the skipped ranking will be ignored and the next indicated ranking on that ballot will be valid.

[1.10.14.9 NMAC - N, 9/10/2019]

1.10.14.10 TABULATION FOR MULTIPLE WINNER ELECTION:

A. In any contest in which more than one officer position is conducted by ranked choice voting, the tabulation proceeds in rounds. If, in the initial tabulation, the number of continuing candidates is less than or equal to the number of offices to be elected, then all continuing candidates are elected and tabulation is complete. Otherwise, each round proceeds sequentially, until tabulation is complete, as follows:

(1) Each ballot shall count, at its current transfer value, for the highest-ranked continuing candidate on that ballot. If the sum of the number of elected candidates and the number of continuing candidates is equal to the sum of one and the number of offices to be elected, then the candidate with the fewest votes is defeated, all other continuing candidates are elected, and tabulation is complete.

(2) If at least one continuing candidate has more votes than the election threshold for the contest, then each such candidate is elected. Each ballot counting for an elected candidate is assigned a new transfer value by multiplying the ballot's current transfer value by the surplus fraction for the elected candidate, rounded down to four decimal places and ignoring any remainder. Each candidate elected under this subsection is deemed to have a number of votes equal to the election threshold for the contest in all future rounds. A new round begins with Paragraph (1) of Subsection A of this section.

(3) If no candidate is elected under Paragraph (2) of Subsection A of this section, then the continuing candidate with the fewest votes is defeated, and a new round begins with Paragraph (1) of Subsection A of this section.

B. If a tie between candidates occurs at any stage in the tabulation, the tie shall be resolved in favor of the candidate who received the greatest number of combined first choice votes and transferred votes at the previous stage of tabulation.

[1.10.14.10 NMAC - N, 9/10/2019]

1.10.14.11 REPORTING OF RESULTS FOR RUNOFF ELECTIONS:

A. The configuration of voting machine settings for a ranked choice or a top-two runoff election shall be determined by the secretary of state.

B. At a minimum, election results shall be posted online in the statewide reporting system.

[1.10.14.11 NMAC - N, 9/10/2019]

1.10.14.12 TOP-TWO RUNOFF ELECTION:

A. If no candidate receives the percentage of votes required by the laws of the municipality to be elected in the first round of voting for the particular office in question, a runoff election shall be held no sooner than 21 days nor later than 45 days after approval of the report of the canvass of the election in question as now provided by the election code.

B. The top two candidates who receive the highest number of votes cast for the office in question shall automatically become the candidates at the runoff election. The top two candidates do not need to file declarations of candidacy for the runoff election.

C. If a top-two runoff election is required pursuant to this section, only the election day polling locations in the affected district, alternate polling locations in the affected district, and the county clerk's office are required to be open. It is up to the county clerk, in consultation with the municipal clerk, to determine if any other polling locations are to be opened during a top-two runoff election.

D. The automatic recount provisions under Paragraph (3) of Subsection A of Section 1-14-24 NMSA 1978, apply to the first round of voting, only when a candidate has received a percentage of votes required by the laws of the municipality to be elected or in a top-two runoff election. The automatic recount provisions are not applicable to the first round of voting, where two candidates receiving the greatest number of votes for an office will proceed to a top-two runoff election.

[1.10.14.12 NMAC - N, 9/10/2019]

1.10.14.13 SEVERABILITY CLAUSE:

If any part of this rule is declared unconstitutional by a court of competent jurisdiction, the remaining parts shall survive in full force and effect.

[1.10.14.13 NMAC - N, 9/10/2019]

PART 15 ALTERNATIVE AND ELECTION DAY VOTING ADMINISTRATION

1.10.15.1 ISSUING AGENCY:

Office of the New Mexico Secretary of State.

[1.10.15.1 NMAC - N, 9/29/2020]

1.10.15.2 SCOPE:

This rule applies to the administration of all elections conducted pursuant to the Election Code.

[1.10.15.2 NMAC - N, 9/29/2020]

1.10.15.3 STATUTORY AUTHORITY:

This rule is authorized by Section 1-2-1 NMSA 1978 of the Election Code.

[1.10.15.3 NMAC - N, 9/29/2020; A, 8/24/2021]

1.10.15.4 DURATION:

Permanent.

[1.10.15.4 NMAC - N, 9/29/2020]

1.10.15.5 EFFECTIVE DATE:

September 29, 2020, unless a later date is cited at the end of a section.

[1.10.15.5 NMAC - N, 9/29/2020]

1.10.15.6 OBJECTIVE:

The purpose of this rule is to provide a uniform system of handling and challenging mailed ballots consistent with the Election Code.

[1.10.15.6 NMAC - N, 9/29/2020; A, 8/24/2021]

1.10.15.7 DEFINITIONS:

[RESERVED]

[1.10.15.7 NMAC – N, 9/29/2020]

1.10.15.8 [RESERVED]

[1.10.15.8 NMAC - N, 9/29/2020; Repealed, 8/24/2021]

1.10.15.9 INTERPOSING ELECTION CHALLENGES:

A. A properly appointed challenger or member of the election board may interpose challenges only for the specific reasons outlined in Sections 1-12-20 and Subsection C of Section 1-6-14 NMSA 1978.

B. The election board shall allow a challenger to view the application to vote form, signature roster, precinct voter list, and the voting machine pursuant to Section 1-2-23 NMSA 1978. The county clerk and the presiding judge have the discretion regarding whether the signature roster or precinct voter list be provided in electronic or paper form, however, under no circumstance will a challenger be allowed to view a voter's full date of birth or any portion of the voter's social security number. A challenger may view a voting machine only before the polls are opened to ensure that the public counter is at zero, that the results tape contains no votes and that there are no voted ballots in the voting machine bins.

C. In accordance with Subsection C of Section 1-6-14 NMSA 1978, a challenger may view the official mailing envelope prior to the time that it is opened by the election board.

D. Challengers must conduct themselves in an orderly manner at all times. A challenger can be expelled from the precinct for unnecessarily obstructing or delaying

the work of the election inspectors; touching ballots, election materials or voting equipment; campaigning; or acting in a disorderly manner.

E. Challenges may not be made indiscriminately or without good cause. Doing so constitutes disrupting a polling place.

F. Challengers do not have the authority to approach voters or talk to voters inside the polling location.

G. Challengers do not have the right to use video cameras or recording devices inside a polling location.

H. County clerks must ensure that they include training on the rules and statutes relating to interposing election challenges at their school of instruction for all election board members.

[1.10.15.9 NMAC - N, 9/29/2020; A, 8/24/2021]

1.10.15.10 ABSENT VOTER ELECTION BOARD; CHALLENGES; DISPOSITION:

A. Challenges in front of the absent voter election board are handled in accordance with Subsections C and D of Section 1-6-14 NMSA 1978.

B. If a challenge is made in front of the absent voter election board, a designated election board member shall notate "challenged" on the absentee ballot envelope but the absent voter election board does not have to rule on the challenge at that time, and may do so when it is otherwise convenient.

C. If the challenge is unanimously affirmed by the absent voter election board, an election board member shall mark "affirmed" on the ballot envelope and mark "rejected" on the absent voter's record on the absentee register. A unanimously affirmed challenged ballot shall not be opened but placed in a container provided for challenged ballots.

D. If the reason for the challenge is satisfied by the voter before the conclusion of the county canvass or as part of an appeal, the voter's record on the absentee ballot register shall be changed from "rejected" to "accepted," the notation "challenge affirmed" on the absentee ballot envelope shall be crossed out and signed and dated by the presiding judge and the county clerk, and the official mailing envelope shall be opened and the vote counted by an election board convened by the county clerk. If the ballot is hand tallied it shall be recorded in the absentee by-mail hand tally counting group. If the ballot is tabulated by a voting tabulator, it shall be recorded in the absentee by-mail machine counting group. If the ballot is counted after the county canvass report has been adopted, the county canvass board shall reconvene to amend the report prior to the state canvassing board convening. If the county canvass board is unable to convene prior to the date of the meeting of the state canvassing board due to

the date of the appeal, the county clerk shall provide the information to the secretary of state to present to the state canvassing board. The state canvassing board shall review and adopt the change to the county canvass report in lieu of the county canvass board reconvening, however, if the change results in a change to the winner of a single-county candidate contest or ballot question, the state canvassing board shall order the county canvassing board to reconvene to adopt the change to the county canvassing report.

[1.10.15.10 NMAC - N, 9/29/2020; A, 8/24/2021]

PART 16 BALLOT QUESTIONS

1.10.16.1 ISSUING AGENCY:

Office of the New Mexico Secretary of State.

[1.10.16.1 NMAC - N, 9/10/2019]

1.10.16.2 SCOPE:

This rule applies to all state and local ballot questions.

[1.10.16.2 NMAC - N, 9/10/2019]

1.10.16.3 STATUTORY AUTHORITY:

This rule is authorized by Sections 1-16-7 and 1-2-1, NMSA 1978.

[1.10.16.3 NMAC - N, 9/10/2019]

1.10.16.4 DURATION:

Permanent.

[1.10.16.4 NMAC - N, 9/10/2019]

1.10.16.5 EFFECTIVE DATE:

September 10, 2019, unless a later date is cited at the end of a section.

[1.10.16.5 NMAC - N, 9/10/2019]

1.10.16.6 OBJECTIVE:

The purpose of this rule is to provide uniform guidelines on how state and local ballot questions are to appear on a ballot.

[1.10.16.6 NMAC - N, 9/10/2019]

1.10.16.7 DEFINITIONS:

A. "Ballot question" means a question submitted to the voters of the state or a local government on a ballot pursuant to the provisions of the Election Code and does not include a candidate nomination, election contest or nonpartisan judicial retention election.

B. "Form of ballot question" means the final format of the ballot question as it will appear on the ballot.

C. "Election official" means either the county clerk or municipal clerk.

D. "Local government ballot question" means any:

(1) tax authorization for bond issues, mill levy or gross receipts tax, as provided by law;

(2) recall of county, school board or certain municipal officers, as provided by law or by municipal home rule charter;

(3) petition for the creation of a special district or consideration of a statutory local option, as provided by law;

(4) referendum on local government taxation authority, as provided by law;

(5) referendum on local government ordinances, as provided by the charter of a home rule municipality, by an incorporated or urban county, or otherwise provided by law;

(6) change in the laws of a home rule municipality, as provided by the municipal charter or by law;

(7) changes in the charter of an incorporated or urban county, as provided by the charter of the incorporated or urban county or by law; and

(8) other questions, as provided by state statute or the constitution of New Mexico.

E. "State ballot question" means any:

(1) proposed amendment to the constitution of New Mexico, as provided in a joint resolution passed by the legislature;

(2) tax authorization for general obligation bonds or mill levy, as provided by law;

(3) referendum, as provided in Article 4, Section 1 of the constitution of New Mexico; and

(4) other questions, as provided by state statute or the constitution of New Mexico.

[1.10.16.7 NMAC - N, 9/10/2019]

1.10.16.8 THE FORM OF BALLOT QUESTION:

A. The form of ballot question shall be stated as a question that seeks permission of the voters to accomplish an act with a legal consequence. The form of the ballot question shall contain such information necessary to give a reasonably prudent voter notice of the act proposed to be taken by the state or local government proposing the ballot question. The full text of the act, resolution, charter amendment, or ordinance itself is not part of the form of the ballot question and shall not be printed on the ballot.

B. The secretary of state shall approve the form of ballot question to be placed on a ballot.

C. The ballot question must be written in the form of a question, which must be answerable with a "Yes" or "No," unless otherwise required by state law. The ballot question must be styled in such a manner that an affirmative answer to the ballot question will indicate approval and a negative answer to the ballot question will indicate rejection.

D. The appropriate election official shall submit the proposed form of a ballot question to the secretary of state pursuant to Subsection B of Section 1-16-3 NMSA 1978. The proposed form of a ballot question shall include the required information in Subsection G of Section 1.10.16.8 NMAC. The proposed form of the ballot question need not contain language that amounts to an advisory question. When an election official submits a proposed form of a ballot question to the secretary of state, the election official must also submit the full text of the act, resolution, charter amendment, or ordinance. The proposed form of the condensed text for a ballot question must be received by the secretary of state at least 67 days before the election on which the ballot question shall appear.

E. The full text of the act, resolution, charter amendment, or ordinance shall be posted on the secretary of state's website for a state ballot question or, for a local government ballot question, on the proposing local government's website and be made available at the election official's office for inspection 10 days after the certification of the ballot question. The full text of the act, resolution, charter amendment, or ordinance may also be posted on the elections official's website.

F. A copy of the full text of the proposed ballot question shall be posted in every polling place in a location that is easily accessible to the voters.

G. Each ballot question shall appear on the ballot containing the following information:

- (1)** a question number;
- (2)** a brief designation of the source of the question;
- (3)** a brief descriptive title in boldface type;
- (4)** the form of ballot question; and
- (5)** the voting choices available to the voter.

H. For a proposed constitutional amendment, the form of the ballot question shall include the full title of the joint resolution proposing the constitutional amendment and the constitutional amendment number assigned to the joint resolution by the secretary of state.

[1.10.16.8 NMAC - N, 9/10/2019]

1.10.16.9 BALLOT POSITION:

Ballot questions shall be printed on the ballot in the order provided in Subsection D of Section 1-10-8 NMSA 1978.

[1.10.16.9 NMAC - N, 9/10/2019]

1.10.16.10 SEVERABILITY CLAUSE:

If any part of this rule is declared unconstitutional by a court of competent jurisdiction, the remaining parts shall survive in full force and effect.

[1.10.16.10 NMAC - N, 9/10/2019]

PART 17: [RESERVED]

PART 18: ADMINISTRATIVE COMPLAINT PROCEDURE

1.10.18.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.18.1 NMAC - N, 03-15-2004]

1.10.18.2 SCOPE:

This rule applies to any statewide special election, general election, primary election, county-wide election or election to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).

[1.10.18.2 NMAC - N, 03-15-2004]

1.10.18.3 STATUTORY AUTHORITY:

Election Code, Section 1-2-1 NMSA 1978, Section 1-2-2.1 NMSA 1978, Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall adopt rules for an administrative procedure for hearing complaints on violations of Title III of the Help America Vote Act of 2002, including provisions relating to voting system standards, provisional voting procedures, voter registration procedures and operational standards of the statewide voter registration system.

[1.10.18.3 NMAC - N 03-15-2004]

1.10.18.4 DURATION:

Permanent.

[1.10.18.4 NMAC - N, 03-15-2004]

1.10.18.5 EFFECTIVE DATE:

March 15, 2004 unless a later date is cited at the end of a section.

[1.10.18.5 NMAC - N, 03-15-2004]

1.10.18.6 OBJECTIVE:

The Election Code (Section 1-1-1 through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003. The purpose of the amendment is compliance with the provisions of PL 107-252, effective October 29, 2002, which requires New Mexico to establish a state-based administrative complaint procedure to remedy grievances under Title III of the Help America Vote Act.

[1.10.18.6 NMAC - N, 03-15-2004]

1.10.18.7 DEFINITIONS:

Unless otherwise defined below, the terms used in these procedures share the same definitions and meanings as the HAVA Act.

A. "Administrative procedures" means the procedures stated in this rule. These procedures will be available in alternative languages and formats.

B. "Bureau" means the New Mexico secretary of state's bureau of elections.

C. "Complaint form" means a template form created by the bureau that will be available in hard copy in county clerk's offices. A copy will also be made available by mail and available on the office of the secretary of state's website.

D. "HAVA" means the Help America Vote Act of 2002 (Public Law 107-252).

E. "HAVA Title III" means the section of Public Law 107-252 titled "Uniform and Nondiscriminatory Election Technology and Administration Requirements".

F. "HAVA Title III violation" means an act contrary to a party's statutory rights regarding voting systems standards, provisional voting procedures, voter registration procedures, and operational standards of the statewide voter registration system as found in NMSA 1978, Section 1-2-2.1 and HAVA Title III. It does not mean non-Title III election law matters, such as a candidate's ballot access or campaign reporting requirements.

[1.10.18.7 NMAC - N, 03-15-2004]

1.10.18.8 INITIATING A COMPLAINT:

A. Any person who believes a HAVA Title III violation has occurred, is occurring, or is about to occur may file a written complaint, on the bureau's complaint form, that states the name of the alleged violator and a specific description of the alleged HAVA Title III violation.

B. The complaint must be signed and sworn or affirmed by the complainant and it must be notarized.

C. The complainant may check a box on the complaint requesting an on-the-record hearing or no hearing.

D. If the bureau determines that the complaint is incomplete, the bureau shall promptly notify the complainant who may be permitted to amend the complaint, in the sole discretion of the bureau.

E. If the bureau receives duplicative or repetitive complaints, the bureau may consolidate these for assessment, investigation and resolution purposes.

[1.10.18.8 NMAC - N, 03-15-2004]

1.10.18.9 INVESTIGATION OF A COMPLAINT:

A. The bureau shall aspire to complete an initial investigation within thirty (30) days of the bureau's receipt of the complaint. If the complaint is made against the bureau, a representative of the district attorney shall aspire to complete an initial investigation within the same time period.

B. The investigation may include the following steps as deemed appropriate under the circumstances: sending an acknowledgement letter to the complainant; seeking a response from the election official against whom a complaint is made; providing the complainant with a copy of any response received from the election official against whom a complaint is made and give the complainant an opportunity to reply; engaging in informal resolution with the parties through a meeting, teleconference, or other means; or dismissing the complaint based on its clear failure to allege a Title III violation.

C. All written documents that are part of these administrative procedures, including the investigation, are public documents unless otherwise provided by law.

[1.10.18.9 NMAC - N, 03-15-2004]

1.10.18.10 HEARING ON A COMPLAINT:

A. If the complainant requests a hearing and the bureau does not dismiss the complaint, the bureau will appoint a hearing officer to conduct a hearing on-the-record.

B. If the complainant did not request a hearing and the bureau does not dismiss the complaint, the bureau shall make a final determination in accordance with the remedies provision of these administrative procedures.

C. If the complaint is made against the bureau, the office of the secretary of state shall provide a neutral hearing officer who has no working or personal relationship with the office of the secretary of state.

D. For all other complaints, the office of the secretary of state shall provide a hearing officer. It may be, but is not limited to, an employee of the office of the secretary of state.

E. The bureau shall provide a time, date and location for the hearing and shall send written notice to complainant and alleged violator at least fifteen (15) days prior to the hearing. If there is an expedited hearing, the hearing officer shall provide telephonic and facsimile notice.

F. Upon written request to another party, any party may ask to obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing and inspect and copy any documents that the other party will or may introduce in evidence at the hearing. The party to whom such a request is made should comply

with it within ten (10) days after the receipt of the request. The hearing officer, however, has no statutory power to force the parties to comply with these requests.

G. If there is a hearing on the record, the record will include, at a minimum: the written complaint; written responses to the complaint; documentation provided in support of or in defense of the complaint; and written or audio record of any hearing or pre-hearing proceedings conducted by the hearing officer with regard to the complaint.

H. The hearing officer has the discretion to grant continuances, to take testimony or to examine witnesses. The hearing officer may also hold conferences before or during the hearing for the settlement or simplification of the issues.

I. The hearing officer may admit any evidence and may give probative effect to evidence that is of a kind commonly relied on by reasonably prudent people in the conduct of serious affairs. The hearing officer may, in his discretion, exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

J. The bureau shall provide a tape recording of any on-the-record hearing. If a party wants a court reporter, that party must pay the cost.

K. If a person who has requested a hearing does not appear, and no continuance has been granted, the hearing officer may hear the evidence of such witnesses as may have appeared, and the hearing officer may proceed to consider the matter and dispose of it on the basis of the evidence before it. Where, because of accident, sickness or other cause, a person fails to appear for a hearing that he has requested, the person may, within ten (10) days, apply in writing to the hearing officer to reopen the proceeding, and the hearing officer upon finding sufficient cause shall immediately fix a time and place for a hearing and give the person notice as required above.

[1.10.18.10 NMAC - N, 03-15-2004]

1.10.18.11 REMEDIES:

A. The hearing officer shall make a final determination regarding the complaint within ninety (90) days after the complaint has been filed with the bureau unless the complainant agrees in writing to extend the deadline.

B. If a party, agency or hearing officer would like to extend the deadline, it must receive written approval from the complainant. If the complainant does not give approval, the complainant will automatically proceed to alternative dispute resolution as found in the New Mexico Governmental Dispute Act, NMSA 1978, Sections 12-8A-1 through 12-8A-5. The office of the secretary of state, if not a party, must adopt the agreement reached by the parties to the alternative dispute resolution procedure within sixty (60) days after the complaint is referred to resolution.

C. The final determination shall be in writing and shall be sent by return receipt requested mail to the complainant and alleged violator.

D. The final determination may dismiss the case or provide a remedy appropriate to the violation. In no event shall the remedy involve either the payment of money to the complainant or a finding that an election official is subject to civil penalties. An appropriate remedy may include, but is not limited to any or all of the following: written finding that Title III has been violated; a plan for rectifying the particular violation, an assurance that additional training will be provided to election officials so as to ensure compliance with HAVA Title III and the New Mexico Election Code; and a commitment to better inform voters of their rights.

E. By posting a notice on its website and by distributing news releases as it deems appropriate, the office of the secretary of state shall publicize the results of its assessment and investigation of the complaint that results in a finding that a Title III violation has or has not occurred.

[1.10.18.11 NMAC - N, 03-15-2004]

1.10.18.12 RIGHT OF APPEAL:

These procedures do not grant a statutory right of review.

[1.10.18.12 NMAC - N, 03-15-2004]

PART 19: SECURED CONTAINERS

1.10.19.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.19.1 NMAC – N, 8/24/2021]

1.10.19.2 SCOPE:

This rule applies to any election covered under the Election Code, Section 1-1-19 NMSA 1978.

[1.10.19.2 NMAC - N, 8/24/2021]

1.10.19.3 STATUTORY AUTHORITY:

This rule is authorized by Section 1-2-1 and Section 1-6-9 NMSA 1978.

[1.10.19.3 NMAC - N, 8/24/2021; A, 8/29/2023]

1.10.19.4 DURATION:

Permanent.

[1.10.19.4 NMAC - N, 8/24/2021]

1.10.19.5 EFFECTIVE DATE:

August 24, 2021, unless a later date is cited at the end of a section.

[1.10.19.5 NMAC - N, 8/24/2021]

1.10.19.6 OBJECTIVE:

The objective of this rule is to provide clear guidance and uniform standards in the application, operation, and interpretation of the law related to secured containers and mailed ballot delivery as prescribed by Section 1-6-9 NMSA 1978.

[1.10.19.6 NMAC - N, 8/24/2021]

1.10.19.7 DEFINITIONS:

A. "Permanent ballot drop box" means the same thing as "secured container," and the terms may be used synonymously.

B. "Secured container" means a permanent and secure receptacle, that meets the requirements of Subsection E of Section 1-6-9 NMSA 1978, and is established by the county clerk whereby voters and those authorized to deliver a voted mailed ballot pursuant to Section 1-6-10.1 NMSA 1978 may return an official mailing envelope to the election official from whom it was obtained.

C. "Temporary ballot drop box" means a secure receptacle supervised by election workers or county employees located inside the office of the county clerk, an alternate voting location, a mobile voting location, or election day voting location to collect official mailing envelopes dropped off pursuant to Subsection D of Section 1-6-9 NMSA 1978.

D. "Video surveillance" means internet security systems or internet protocol cameras that use the internet by networking to send and receive data.

E. "Sensors" means a device which detects or measures physical property and records, and indicates, or otherwise responds to them.

F. "Sensor alert" means when a device detects events that are not part of the normal working environment and then sends signals to warn of abnormality.

[1.10.19.7 NMAC – N, 8/24/2021; A, 8/31/2023]

1.10.19.8 CAPACITY REQUIREMENTS:

A. To meet the requirement of Subsection E of Section 1-6-9 NMSA 1978, which provides that all voters have the option to use a secured container to return official mailing envelopes, county clerks shall provide one ballot box per 25,000 registered voters in the county with a minimum of two secured containers required per county. County clerks may request a waiver from the secretary of state to the minimum requirement set by the formula with consideration given for special geographic or security constraints.

B. Secured containers shall be located in a manner that provides the greatest convenience and accessibility to voters. County clerks may consider providing secured containers at main county or city office buildings. Other locations to consider include college campuses, libraries, community centers, and other public buildings with adequate accessibility, lighting, and network access to install the required video surveillance system.

C. When possible, secured containers should be placed in such a way to be accessible to voters with disabilities. For example, the secured container should be placed along an accessible path near an Americans with Disabilities Act compliant parking space. If there is no accessible pathway from the parking lot, there should be signs directing the voter to the nearest accessible secured container.

D. In accordance with Paragraph (1) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk shall set the days and times the secured containers are available. To maximize the convenience to the voters, the county clerk shall, whenever possible, make secured containers available for use by a voter 24 hours a day starting 28 days before an election and on election day.

E. A temporary ballot drop box shall be made available to drop off official mailing envelopes inside all in-person voting locations pursuant to Subsection D of Section 1-6-9 NMSA 1978. This is to ensure that a dedicated receptacle is available to secure and isolate voted mailed ballots being returned to a voting location.

F. Only ballots secured in the absentee official mailing envelope placed inside of a permanent and temporary ballot drop box shall be counted. Under no circumstance should provisional ballots, hand tally sheets, or ballots voted in person be intermingled with voted mailed ballots collected in the drop boxes.

[1.10.19.8 NMAC – N, 8/24/2021; A, 8/31/2023]

1.10.19.9 SECURED CONTAINER SECURITY REQUIREMENTS:

A. A county clerk shall request approval from the secretary of state prior to installation of a secured container to ensure it meets minimum security requirements. The secretary of state shall respond to such requests within 14 days.

B. A secured container shall be permanently bolted to the ground in accordance with the instructions provided by the container manufacturer. A secured container shall be constructed of weather-resistant metal and capable of securely receiving and holding voted mailed ballots. A secured container shall have network accessibility and shall have installed heat, humidity and motion sensors.

C. A secured container and monitoring network hardware shall be secured and locked at all times. Only the county clerk or deputy county clerk, election board member or appointed messenger shall have access to the keys or combination of the lock. The county clerk shall maintain a key control log on a form prescribed by the secretary of state to document the utilization of and to account for secured container keys. All keys issued by the secretary of state shall be controlled, accounted for, and not easily accessible. Upon the election or appointment of a new county clerk and after each U.S. presidential election, lock combinations shall be changed and documented on a form prescribed by the secretary of state. All forms utilized pursuant to this section shall be retained by the county clerk as a record related to voting pursuant to Subsection G of Section 1-12-69 NMSA 1978.

D. In addition to locks, all secured containers shall be sealed with one or more tamper-evident seals while in use. Lock combinations shall be changed when a new clerk is appointed or elected and after each U.S. presidential election. Combination lock changes shall be documented by the county clerk.

E. Secured containers shall be installed in a lighted area and monitored by a centralized video surveillance camera system provided by the secretary of state. The video surveillance system shall otherwise be monitored and controlled by the county clerk through a video surveillance dashboard. The county clerk shall immediately review video surveillance footage upon receiving a report of an irregular or illegal incident or upon receipt of a sensor alert and:

(1) beginning 28 days prior to election day and through the certification of the county canvass, the county clerk shall log into the video surveillance dashboard each day. During all other weeks of a calendar year, the county clerk shall log into the video surveillance dashboard on a weekly basis.

(2) The county clerk shall maintain a list of the clerk's office personnel with access to the video surveillance dashboard and shall notify the secretary of state's office of any changes to the list. The county clerk shall contact the secretary of state for required training and shall ensure that all persons granted dashboard access complete required training, provided by the secretary of state, prior to utilizing the dashboard.

F. The county clerk shall contact the secretary of state's office with security or operational concerns immediately upon discovery.

G. When secured containers are not in use and immediately after 7:00 P.M. on election day as is practical, the county clerk shall install the slot closer on the secured

container to prevent access. Covers may also be placed over the secured container to protect the container when not in use.

[1.10.19.9 NMAC – N, 8/24/2021; A, 8/31/2023]

1.10.19.10 VIDEO SURVEILLANCE RECORD RETENTION:

A. Video recordings shall operate during the start of absentee voting through election day for all elections conducted under the election code.

B. Video recordings shall be maintained as a record related to voting pursuant to the provisions of Section 1-12-69 NMSA 1978, except that recordings shall be retained beyond the normal retention period pending the resolution of any reported incident.

C. The relevant county clerk is responsible for maintaining all camera recordings, is the proper custodian of these recordings, and is responsible for fulfilling public record requests associated with these video recordings.

[1.10.19.10 NMAC – N, 8/24/2021]

1.10.19.11 SECURED CONTAINER ELECTION PREPARATIONS:

Prior to every election, county clerks shall conduct the following preparations to ensure secured containers are available:

A. Provide notice to voters pursuant to Paragraph (1) of Subsection E of Section 1-6-9 NMSA 1978;

B. Recruit, hire, and train additional staff members to monitor, maintain, and collect ballots;

C. Plan daily driving routes for ballot collection;

D. Ensure video surveillance system is working properly;

E. Ensure adequate supplies are available including security seals, keys, chain of custody logs, and ballot transport containers; and

F. Inspect, clean, and otherwise ensure the secured container is in proper working order to receive ballots as soon as ballots are mailed.

[1.10.19.11 NMAC – N, 8/24/2021]

1.10.19.12 TEMPORARY BALLOT DROP BOX REQUIREMENTS:

A. A temporary ballot drop box shall be under the direct supervision of county clerk staff or election board member.

B. When not in use, a temporary ballot drop box shall be placed in an area that is inaccessible to the public and otherwise secured and safeguarded.

C. A temporary ballot drop box shall be secured and locked at all times. Only an election official, messenger, or someone designated to retrieve ballots shall have access to the keys or combination of the lock. In addition to locks, all temporary ballot drop boxes shall be sealed with one or more tamper-evident seals.

D. All temporary ballot drop boxes shall be emptied by the end of each day in accordance with a defined chain of custody process in Subsection D of Section 1.10.19.13 NMAC. Only personnel designated to retrieve the ballots may transport the retrieved ballots.

[1.10.19.12 NMAC – N, 8/24/2021]

1.10.19.13 BALLOT RETRIEVAL PROCEDURES:

A. Pursuant to Paragraph (5) of Subsection E of Section 1-6-9 NMSA 1978, the county clerk, deputy county clerk, election board member or an appointed messenger shall collect the ballots from a secured container. One or more deputy county clerks may be hired by the county clerk on a temporary basis to fulfill this requirement for the time period in which a secured container is available for use. Only personnel designated to retrieve the ballots may transport the retrieved ballots.

B. The county clerk shall provide the approximate time the ballots will be collected from a secured container. Ballots shall be collected at least once every three days beginning 28 days prior to election day through 7:00 P.M. on election day.

C. Ballots shall be transported in a secure ballot transport container.

D. A chain of custody form shall be completed by the person collecting the ballots every time ballots are collected. A separate chain of custody form is required for each permanent or temporary drop box. The chain of custody form shall be prescribed by the secretary of state and shall include:

- (1) the location of the drop box;
- (2) date and time of arrival;
- (3) number of ballots retrieved;
- (4) security seal number when box is opened;

- (5) security seal number when box is locked and sealed again;
- (6) full name of the person retrieving the ballots; and
- (7) any other observations of note to include any appearance of tampering or damage to the drop box.

E. The person collecting the ballots from the permanent or temporary drop box shall also record the date, time, drop box location, and identity of the person collecting the boxes on each of the official mailing envelopes collected.

F. Upon the arrival of the collected ballots at the office of the county clerk or other designated ballot intake or central count location, the county clerk or designee shall receive the ballots and complete the bottom of the chain of custody form to include:

- (1) date and time of receipt;
- (2) number of ballots received (which should match the number in the upper section of the form provided by the person collecting the ballots);
- (3) a verified comparison to the previous days seal number, if applicable; and
- (4) full name and signature of the receiving staff member.

G. Any ballots retrieved from a permanent or temporary ballot drop box shall be processed and secured in the same manner as those absentee ballots otherwise delivered to the office of the county clerk, such as by the United States postal service.

H. All temporary ballot drop boxes and ballot transport containers shall be numbered and kept in a log to ensure all are returned at the end of a voting day and on election night.

[1.10.19.13 NMAC – N, 8/24/2021; A, 8/31/2023]

1.10.19.14 REIMBURSEMENT BY THE SECRETARY OF STATE:

A. County clerks may request reimbursement from the secretary of state for purchasing approved containers and supplies related to maintaining permanent and temporary ballot drop boxes.

B. Requests for reimbursement made to the secretary of state are required to be submitted in a manner prescribed by the secretary of state no later than 45 days after election day.

C. The secretary of state shall reimburse county clerks for all expenses deemed by the secretary of state to be in compliance with this section.

[1.10.19.14 NMAC – N, 8/24/2021; A, 8/31/2023]

PART 20: ADOPTION OF VOTING MACHINE STANDARDS

1.10.20.1 ISSUING AGENCY:

New Mexico Secretary of State.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.2 SCOPE:

This rule applies to all state agencies, county and local government divisions that are subject to the New Mexico Election Code using voting machines in elections for public office in New Mexico. This is a new rule.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.3 STATUTORY AUTHORITY:

A First, Section 1-9-1 NMSA 1978 directs the Secretary of State to study, examine, and approve all voting machines used in elections for public office in New Mexico.

B. Second, Section 1-9-14 NMSA 1978 directs the Secretary of State to

(1) test and evaluate internal computers designed for the purpose of recording and tabulating votes within polling places in New Mexico;

(2) upon completion of all tests and examinations of all test reports, the Secretary of State shall make a written report of the results of the Findings of the Secretary of State's recommendations regarding the suitability and reliability of such equipment in the conduct of elections under the Election Code and the report shall be a public record; and

(3) the Secretary of State shall prescribe by regulation promulgated under the provisions of the State Rules Act specifications for internal computers designed for the purpose of providing a uniform system of internal computers for recording and tabulating votes within polling places.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.4 DURATION:

Permanent.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.5 EFFECTIVE DATE:

May 8, 1984, filed May 9, 1984, unless a later date is cited at the end of a section.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.6 OBJECTIVE:

The objective of this rule is to adopt standards for voting machines to be used in elections for public office in New Mexico.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.7 DEFINITIONS:

A. **"Recording and tabulating"** equipment means a type of voting machine which is a single unit designed to permit a voter to "enter" the privacy booth of a voting machine and both cast his ballot on the machine and record the ballot as cast by the voter.

B. **"Vote tabulating"** equipment means a type of voting machine which is a single unit designed to count (record) the votes cast on a pre-printed ballot which is filled in by a voter casting his ballot on the pre-printed paper ballot.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.8 FILING OF REPORT:

Pursuant to the requirements contained in Section 1-9-14 NMSA 1978, the Secretary of State contemporaneously with the filing of this Regulation for the "Adoption of Voting Equipment Standards" has submitted a "Report on Testing and Analysis of Electronic Voting Equipment and Adoption of Voting Equipment Standards" to the State Records Center to be retained as a public record.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.9 STANDARDS FOR "RECORDING AND TABULATING" VOTING MACHINES:

A. The electronic voting machine shall be a "recording and tabulating" voting machine which has been submitted for testing and tested pursuant to Section 1-9-14 NMSA 1978.

B. The electronic voting machine shall be a computer (microprocessor) controlled direct electronic tabulation system.

C. The operating software shall be stored in a non-volatile memory "firmware" and shall include internal quality checks such as purity or error detection and/or correction codes. The firmware shall include comprehensive diagnostics to insure that failures do not go undetected.

D. The voting system shall be a battery back-up system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures.

E. The system shall have as a standard or as an option, software/hardware provisions for remote transmission of election results to a central location by a common carrier (telephone networks).

F. Subsistence, i.e., printer, power sources, microprocessor, switch and indicator matrices, etc., shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards. The unit shall be supplied with dust and moisture-proof cover for transportation and storage purposes.

G. Specifications:

- (1) Operating temperature - 50°F to 90°F.
- (2) Storage temperature - 0°F to 120°F.
- (3) Humidity - 30% to 80% non-condensing.
- (4) Line voltage - 115 VAC +/- 15%, 60 HZ.

H. The system shall record and document the total time polls are open at a precinct location.

I. The system shall prevent any voter from selecting more than the allowable number of candidates for any office (no over-voting).

J. The voting machine shall be capable of operating continuously for a minimum time period of sixteen hours without external power (115 VAC).

K. The tabulation of votes on the voting machine shall be stored, ballot by ballot, in three (3) or more memory locations (separate integrated circuit chips) and shall be electronically compared throughout the election. Any differences between votes tabulated and stored in these multiple storage locations shall be detected immediately and generate an error message defining required maintenance on the voting machine before it can continue to be used in the election.

L. The entire ballot shall be visible to the voter on a single page.

M. The voting machine shall have a privacy booth in which the voter casts his vote and the privacy booth shall be an integral part of the machine.

N. The voting machine shall have a forward brace or rest that will permit a precinct official to tilt the voting machine forward and lock the voting machine in a forward position in such a manner that it rests upon four legs or some similar stable device to permit the physically disabled voter to cast his ballot.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.10 STANDARDS FOR "VOTE TABULATOR" VOTING MACHINES:

A. The electronic voting machine shall be a "vote tabulator" voting machine which has been submitted testing and tested pursuant to Section 1-9-14 NMSA 1978.

B. The electronic voting machine shall be a computer (microprocessor) controlled direct electronic tabulation system.

C. The operating software shall be stored in a non-volatile memory "firmware" and shall include internal quality checks such as purity or error detection and/or correction codes. The firmware shall include comprehensive diagnostics to insure that failures do not go undetected.

D. The voting system shall be a battery back-up system that will, as a minimum, retain voter information and be capable of retaining and restoring processor operating parameters in the event of power failures.

E. Shall provide alpha/numeric printouts of the vote totals at the closing of the polls.

F. The machine shall have as a standard or as an option, software/hardware provisions for remote transmission of election results to a central location by a common carrier (telephone networks).

G. Subsistence, i.e., printer, power sources, microprocessor, switch and indicator matrices, etc., shall be modular and pluggable. Electronic components shall be mounted on printed circuit boards. The unit shall be supplied with dust and moisture-proof cover for transportation and storage purposes.

H. Specifications:

- (1) Operating temperature - 50°F to 90°F.
- (2) Storage temperature - 0°F to 120°F.
- (3) Humidity - 30% to 80% non-condensing.

(4) Line voltage - 115 VAC +/- 15%, 60 HZ.

I. The memory pack is able to accept over 1,500 voting positions and tabulate over 65,000 votes for each position.

J. The machine shall accept a ballot inserted in any orientation and one which is six inches wide and twenty-four inches long, dual column, and printed on both sides. The ballot should be able to hold a maximum of 520 candidate positions.

K. The tabulator must recognize all errors and be able to reject or return the erred ballot. The tabulator is automatically able to detect an over voted ballot.

L. The vote tabulator must contain an RS-232 data communications capability to transmit totals over regular voice grade telephone lines.

M. The vote tabulator must contain a public display counter to record number of ballots processed.

N. The tabulator should be programmable with control cards.

O. Since this machine will only be utilized as a counting device for absentee ballots and emergency ballots, no privacy booths are required and no privacy booth standards have been established.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.11 APPROVAL OF "RECORDING AND TABULATING" VOTING MACHINES:

The Secretary of State hereby approves the "recording and tabulating" machine which meets the standards contained in Paragraph G above [now 1.10.20.9 NMAC] above for use in elections for public office in New Mexico at polling places where the voter votes in person on the voting machine during the period polls are open. The Secretary of State also hereby approves the "recording and tabulating" machine which meets the Standards contained in Paragraph G [now 1.10.20.9 NMAC] for absentee balloting.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.12 APPROVAL OF "VOTE TABULATING" VOTING MACHINES:

The Secretary of State hereby approves the "vote tabulator" voting machine which meets the standards contained in Paragraph H [now 1.10.20.10 NMAC] above for use to count absentee ballots or emergency paper ballots. This type of equipment is not approved for use for voting in person at the polling place on election day.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.13 CONTINUED USE OF EXISTING VOTING EQUIPMENT:

The Secretary of State hereby approves and continues the prior approval of the AVM fully mechanical, fifty column, print-a-matic, lever type machines for use in all elections for public office in New Mexico during a transition period.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

1.10.20.14 EXCEPTIONS:

There are no exceptions to this rule.

[SOS 84-1, 05-08-84; Recompiled 11/30/01]

PART 21: VOTING SYSTEM ACQUISITION

1.10.21.1 ISSUING AGENCY:

State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM.

[1.10.21.1 NMAC - N, 8-31-2000]

1.10.21.2 SCOPE:

All voting systems and necessary support equipment purchased for use in elections for public office in New Mexico.

[1.10.21.2 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.3 STATUTORY AUTHORITY:

A. Section 1-9-5 (B) NMSA 1978 provides that the secretary of state shall provide to the county clerk of each county at least one voting system for use in each polling location in the general and primary elections.

B. Section 1-9-7 NMSA 1978 provides:

(1) The secretary of state shall provide to the county clerk of each county a sufficient number of voting systems as required by the Election Code for the conduct of primary and general elections.

(2) When authorized by the state board of finance, the board of county commissioners may acquire new or previously owned voting systems. No less than ninety days prior to each primary and general election, the board of county commissioners of each county may make application to the state board of finance for any additional voting systems to be acquired by a county in excess of the number of

voting systems required by the Election Code for the conduct of primary and general elections,

(3) The additional voting systems shall be of a type certified by the secretary of state. They shall be purchased by the state board of finance. The cost of the voting systems, including all transportation costs, shall be paid out of the voting system revolving fund. The state board of finance shall cause to be delivered to each county clerk the additional voting systems.

C. Section 1-9-17 NMSA 1978 provides:

(1) The state board of finance shall execute a lease-purchase contract with the county for purchase of additional voting systems and necessary support equipment upon receipt of the application of the board of county commissioners pursuant to Section 1-9-7 NMSA 1978.

(2) The lease-purchase contract shall include, but not be limited to, the following terms:

(a) The county agrees to purchase from the state board of finance the specified number of voting systems and necessary support equipment.

(b) The county will pay for the cost of the systems and support equipment including reimbursement for costs of transportation.

(c) The term of the lease-purchase contract shall not exceed ten years.

(d) The care, custody and proper storage of such systems and support equipment pursuant to the specifications issued by the secretary of state are the responsibility of the county clerk.

(e) Upon good cause shown, the terms of the lease-purchase contract may, at any time, be renegotiated.

D. Section 1-9-18 NMSA 1978 provides:

(1) The department of finance and administration and the board of county commissioners shall budget annually for as many years as may be necessary from county funds in each county acquiring voting systems and support equipment an amount sufficient to enable the county to pay to the state board of finance installment payments required to be paid under the terms of the lease-purchase contract.

(2) The board of county commissioners of each county having a lease-purchase contract with the state board of finance shall pay such payments, at the times and in the amounts as provided by the terms of the lease-purchase contract. The state board of finance shall deposit the payments into the severance tax bonding fund if the

voting systems and support equipment were originally purchased with severance tax bond proceeds. The state board of finance shall deposit the payments into the voting system revolving fund if the voting systems were originally purchased with money from the voting system revolving fund.

E. Section 1-9-19 NMSA 1978 creates the voting system revolving fund which may be used:

(1) by the secretary of state to pay for hardware, software, firmware, maintenance and support of voting systems, whether state- or county-owned, certified for use in state elections; and

(2) by the counties to finance, by contract, the purchase of voting systems and necessary support equipment under the conditions stated in Section 1-9-17 NMSA 1978; provided that no expenditure shall be made for this purpose if it would result in a fund balance of less than one million dollars.

[1.10.21.3 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.4 DURATION:

Permanent.

[1.10.21.4 NMAC - N, 8-31-2000]

1.10.21.5 EFFECTIVE DATE:

August 31, 2000, unless a later date is cited at the end of a section.

[1.10.21.5 NMAC - N, 8-31-2000]

1.10.21.6 OBJECTIVE:

This rule governs all acquisitions of voting systems that are in addition to the number of voting systems required by the Election Code for the conduct of primary and general elections by counties and sets forth the procedures that must be followed in such acquisitions.

[1.10.21.6 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.7 DEFINITIONS:

A. "Board" means state board of finance.

B. "Clerk" means the clerk acting on behalf of a county acquiring or selling a voting system.

C. "Fund" means the voting system revolving fund.

D. "Lease-purchase contract" means the contract executed between the board and the county for the purchase of voting systems that are in addition to the number of voting systems required by the Election Code for the conduct of primary and general elections as further outlined in Paragraph (2) of Subsection C of 1.10.21.3 NMAC.

E. "Secretary" means secretary of state.

F. "Voting system" means a combination of mechanical, electromechanical or electronic equipment, including the software and firmware required to program and control the equipment, that is used to cast and count votes, and also including any type of system that is designed to print or to mark ballots at a polling location; equipment that is not an integral part of a voting system, but that can be used as an adjunct to it, is considered to be a component of the system.

[1.10.21.7 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.8 APPROVAL OF ADDITIONAL VOTING SYSTEM PURCHASES:

A. The clerk must select voting systems to be acquired in addition to the number required by the Election Code for the conduct of primary and general elections from a list of voting systems certified by the secretary for use in elections for public office in New Mexico. The county commissioners must adopt a resolution, passed by a majority of the commission, approving the purchase of additional voting systems and authorizing the county commission chairperson to enter into a lease-purchase contract with the board for that purchase.

B. The clerk must submit a letter of request to purchase additional voting systems to the secretary, along with the resolution adopted by the county commission. If the purchase is from another county, both the county selling and the county acquiring the additional voting systems are to submit a letter indicating the serial numbers and attaching the resolution or a copy of the signed minutes indicating approval of sale (seller) or purchase (acquirer). All letters of requests must include:

- (1) number of voting systems to be purchased and the reason for purchase;
- (2) manufacturer and model of voting systems to be purchased (indicate if new or previously owned);
- (3) price per voting system and total amount of purchase;
- (4) indication of desired term of the lease-purchase contract; counties with sufficient funds to acquire voting systems must elect to have a thirty-day term for the lease-purchase contract; counties requiring financing may elect to have the term of the lease-purchase contract be up to ten years;

(5) total number of voting systems the county currently has;

(6) the number of voting systems the county is required to have under New Mexico's Election Code.

C. The secretary must submit a written recommendation to the board to be considered at the board's next regularly scheduled monthly meeting. In addition to items in Subsection B of 1.10.21.8 NMAC as stated above, the recommendation must include:

(1) verification that vendors used for purchases are listed on the state procurement list;

(2) verification that the manufacturer and the model of voting systems have been certified by the secretary for use in elections for public office in New Mexico;

(3) verification that the voting systems will be acquired pursuant to a competitive bid process in accordance with the provisions of the New Mexico Procurement Code;

(4) verification that the voting systems to be acquired are in addition to the number required by the Election Code for the conduct of primary and general elections.

D. Upon receiving recommendations from the secretary, the board staff shall submit them for review to the local government division to ascertain ability to make the payments called for by the lease-purchase contract prior to submission to the board for action.

E. The board or its staff may request any other supplemental information to aid in its consideration of the request.

[1.10.21.8 NMAC - N, 8-31-2000; A, 10-17-2011]

1.10.21.9 ACQUISITION OF ADDITIONAL VOTING SYSTEMS:

A. Upon approval by the board to acquire voting systems in addition to the number required by the Election Code for the conduct of primary and general elections, board staff will send the county a lease-purchase contract to be signed by the county commission chairperson. A lease-purchase contract must be entered into regardless of the term of the contract and shall include, but not be limited to, the following terms set out in Paragraph (2) of Subsection C of 1.10.21.3 NMAC.

B. Upon receipt of the signed lease-purchase contract, board staff will order the additional voting systems and send copies of the purchase order and the signed lease-purchase contract to the county.

C. In no event shall the county purchase additional voting systems directly from vendors.

D. Once additional voting systems are delivered, the county shall promptly notify the board staff and the secretary. The secretary will inspect the voting systems and notify board staff by way of the "delivery confirmation of voting systems" form.

E. Board staff will then submit payment to the vendor and send a copy of the voucher to the county along with a payment schedule. Since voting systems are purchased by the fund, payments by the county must adhere to the conditions set out in the lease-purchase contract. Annual lease-purchase contract payments must be received by December 31 of each year unless otherwise specified. Upon receipt of final payment, title to the voting systems is transferred from the board to the county.

[1.10.21.9 NMAC - N, 8-31-2000; A-10-17-2011]

PART 22: PROVISIONAL VOTING

1.10.22.1 ISSUING AGENCY:

Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87501.

[1.10.22.1 NMAC - Rp, 1.10.22.1 NMAC, 4/24/2018]

1.10.22.2 SCOPE:

This rule applies to any election covered under the Election Code, Section 1-1-19 NMSA 1978 and the Special Election Act, NMSA 1978.

[1.10.22.2 NMAC - Rp, 1.10.22.2 NMAC, 4/24/2018]

1.10.22.3 STATUTORY AUTHORITY:

Election Code, Section 1-2-1; Section 1-6-5; Section 1-6-16; Section 1-6-16.1; 1-12-25.2; Section 1-12-25.3; Section 1-12-25.4; 1-12-27.1 NMSA 1978 and Public Law 107-252, The Help America Vote Act of 2002.

[1.10.22.3 NMAC - Rp, 1.10.22.3 NMAC, 4/24/2018]

1.10.22.4 DURATION:

Permanent.

[1.10.22.4 NMAC - Rp, 1.10.22.4 NMAC, 4/24/2018]

1.10.22.5 EFFECTIVE DATE:

April 24, 2018 unless a later date is cited at the end of a section.

[1.10.22.5 NMAC - Rp, 1.10.22.5 NMAC, 4/24/2018]

1.10.22.6 OBJECTIVE:

The Help America Vote Act, PL 107-252, effective October 29, 2002, requires the casting of a provisional ballot in the following circumstances; a voter whose name does not appear on the roster at the polling place, on the county voter file, or a new voter who has not provided the required identification to vote. The Election Code also provides for the use of a provisional ballot qualification process in the instance of an affirmed challenge or when a replacement ballot for an absent voter is required or in the event of an emergency, as defined in Section 1-6-16.2 NMSA 1978. This rule creates uniform criteria for the issuance and reporting of all provisional ballots and offers consistency in the qualification process and for the counting and canvassing of provisional ballots. The rule also provides for the secrecy of a provisional voter's ballot during each stage of the election process, extending through a recount or contest of the election and the ensuing requalification of the provisional ballots.

[1.10.22.6 NMAC - Rp, 1.10.22.6 NMAC, 4/24/2018]

1.10.22.7 DEFINITIONS:

A. "Adjudicate" means a decision made by a precinct board, in accordance with the Election Code, of a ballot signifying a voter's intent to mark their selection for a candidate contest or ballot question.

B. "Alternate voting location" means a location outside the office of the county clerk, established by the county clerk, where a voter may cast an early in person ballot on voting tabulator. This includes mobile alternate voting locations.

C. "Blank ballot" means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

D. "Canvass" means the process of qualifying and verifying paper ballots and counting and tallying votes for each precinct beginning upon the closing of the polls and ending with the certification and announcement of the results by the county canvassing board pursuant to Subsection F of Section 1-2-31 NMSA 1978.

E. "Challenger" means a voter of a precinct located in that county, who has completed the required training pursuant to Section 1-2-22 NMSA 1978, and to which the voter is appointed in conformance with the Election Code, for the purpose of carrying out such duties as prescribed in the Election Code.

F. "Contest" means court litigation that seeks to overturn the outcome of an election pursuant to the Election Code, Section 1-14-1 NMSA 1978.

G. "County canvass observer" a voter of the county, who has completed the required training pursuant to Section 1-2-22 NMSA 1978, and to which they are appointed, in accordance with the Election Code, Section 1-2-31 NMSA 1978, and permitted to be present at any time from the time the county canvassing begins until the completion of the canvass, and strictly limited to observing and documenting the canvassing process.

H. "County canvassing board" means the board of county commissioners in each county, convened for the purposes of conducting the county canvass or the board of registration as designated by the board of county commission pursuant to Section 1-13-1 NMSA 1978.

I. "County voter file" means the computerized version of the county register, comprising a portion of the statewide voter file.

J. "Health care provider" means an individual licensed, certified or permitted by law to provide health care in the ordinary course of business or practice of a profession.

K. "Inner envelope" means the official envelope, prescribed by the secretary of state, given to the voter along with a mailed or provisional ballot into which the voter places the ballot after it is voted and which is used to preserve the secrecy of the voter's ballot.

L. "Naked ballot" means a provisional or mailed ballot that has not been placed in the inner envelope by the voter.

M. "Overvoted ballot" means a ballot on which the voter has selected more than the number of candidates to be elected for that contest, or has voted in both the affirmative and negative on a ballot question.

N. "Precinct" means a designated division of a county for election and redistricting.

O. "Provisional ballot envelope" means the official envelope, prescribed by the secretary of state, which has information that will identify the provisional voter, purpose the provisional ballot was issued and contains a sworn affidavit and a blank voter registration certificate, into which the provisional voter places the inner envelope.

P. "Provisional ballot transmission envelope" means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

Q. "Qualification process" means the process used by a county clerk to determine the qualifications of a voter who voted on a provisional ballot.

R. "Replacement absentee ballot" means a ballot that is processed as a provisional ballot, that is provided to a voter whose name appears on the absentee ballot register or signature roster as having been issued an absentee ballot, and who has affirmed that the ballot was not received or voted on pursuant to the Election Code, Section 1-6-16 NMSA 1978. The ballot shall be placed in a provisional ballot envelope prescribed by the secretary of state and processed within the timeframe specified in the Election Code, Section 1-6-16 NMSA 1978.

S. "Signature roster" means a physical or electronic copy of a voter list with space provided opposite each voter's name for the voter's signature or witnessed mark.

T. "Tally sheet" means a form prescribed by the secretary of state used for the counting and tallying of votes cast on a ballot that has not been fed into a voting tabulator.

U. "Undervoted ballot" means a paper ballot that is not a blank ballot, and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, 4/24/2018; A, 8/31/2023]

1.10.22.8 PROVISIONAL BALLOT ISSUANCE AND PRECINCT BOARD PROCEDURES:

A. A person offering to vote shall be allowed to vote on a provisional ballot in accordance with the Election Code.

B. When issuing a provisional ballot, the precinct board shall ensure the following:

(1) a provisional voter places the ballot in the inner envelope and provisional ballot envelope prescribed by the secretary of state and shall fill out all required information on the provisional ballot envelope;

(2) the name of a provisional voter is entered in the signature roster on the line immediately following the last entered voter's name, or in its electronic equivalent when consolidated precincts are used, pursuant to the Election Code;

(3) a provisional voter completes the certificate of voter registration attached to the provisional ballot envelope, and that the certificate of registration remains attached to the provisional ballot envelope and returned to the county clerk;

(4) a provisional voter is not permitted to place the voted ballot into the voting tabulator;

(5) a provisional voter is not subject to a challenge at the time of voting under the procedures provided in the Election Code;

(6) the required physical form of identification provided by a provisional voter who returned to the alternate voting location, mobile alternate voting location or election day polling place, after already casting a provisional ballot, shall be placed with the provisional ballot envelope to be used by the county clerk during the provisional ballot qualification process, in accordance with the Election Code, Section 1-12-7.1 NMSA 1978; and,

(7) a provisional ballot shall not be placed in the ballot box designed for tabulated ballots, but rather, shall be deposited in a special sealed provisional ballot transmission envelope, pouch or ballot box designated by the county clerk for the sole use of securing provisional ballots.

C. After the period allowed for voting at the office of the county clerk, alternate voting location, mobile alternate voting location, or, upon close of the election day polling place, all provisional ballots shall be delivered and transferred to the county clerk. A receipt indicating the date and time, the total number of provisional ballots, the name of the alternate voting location, mobile alternate voting location or election day polling place, and the signature of the presiding judge shall be prepared. After verification of the total number of provisional ballots received, the county clerk shall sign the receipt indicating custody of the ballots.

[1.10.22.8 NMAC - Rp, 1.10.22.8 NMAC, 4/24/2018]

1.10.22.9 COUNTY CLERK PROCEDURES:

A. The county clerk is charged with, and authorized to, determine the qualification of provisional ballots issued for the election, and must notify provisional voters of the qualification determination and count and record qualified provisional ballots.

(1) The provisional ballots shall be kept separate by each voting method - absentee, early or election day, as well as, by the name of the alternative voting location, mobile alternate voting location or election day polling place. The provisional ballot envelopes shall not be opened until the county clerk has completed the qualification process.

(2) A provisional ballot shall be qualified if the voter has provided all the information under the Election Code, Section 1-12-25.3 NMSA 1978, and the provisions set out in the Election Code, Section 1-12-25.4 NMSA 1978 have been met.

B. The provisional ballot qualification process shall be conducted by the county clerk, as follows:

(1) read aloud the name and address on the provisional ballot envelope;

(2) determine, by use of the statewide voter file, the registration status, county of registration and correct precinct of the provisional voter, or if the required physical form of identification is attached; and,

(3) publicly announce whether the provisional ballot is qualified or disqualified and the reasons for that determination.

C. A county canvass observer, pursuant to the Election Code, Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification and canvass.

(1) During the provisional ballot qualification process and canvass, the observer shall wear a self-made badge designating the observer as an authorized observer of a candidate or organization.

(2) The observer shall not wear any other form of identification and all campaign and electioneering materials are prohibited.

(3) The observer shall not perform any duty of the county clerk, handle any material, or interfere with the orderly conduct of the provisional ballot qualification or canvass.

(4) The observer shall not be in the view of the provisional ballot envelope, so as to maintain the privacy of the voter's social security number or full date of birth, nor shall the use of cell phones or electronic recording equipment be allowed while observing.

(5) Observers are permitted to take written memoranda for later reference.

D. The determination of the provisional ballot disposition, along with the research done by the county clerk, shall be noted on the provisional ballot envelope by the county clerk to include the following:

(1) notation of qualified or disqualified status;

(2) the voter's correct voting precinct, if registered;

(3) the voter's correct party designation, if registered;

(4) if the voter is registered in a different party than that of the issued ballot, a notation of "Different Party" shall be made;

(5) if the voter is registered in a different county within the state, a notation of "Out of County" shall be made;

(6) if the voter is not registered in the state, a notation of "Not Registered" shall be made;

(7) if the voter's record shows that a ballot for the election has already been received, a notation of "Already Voted" shall be made;

(8) if the voter's record shows it has been cancelled in accordance with the Election Code, a notation of "Cancelled" along with the reason for cancellation shall be made; and,

(9) when consolidated precincts are not used, the relevant districts in which the voter is registered shall be listed so that only the votes for those candidate contests or ballot questions for which the voter is eligible to vote shall be counted.

E. The county clerk, after the qualification process, shall separate qualified provisional ballot envelopes from unqualified provisional ballot envelopes, while keeping them arranged by voting method - absentee, early or election day - and sorted by each alternative voting location, mobile alternate voting location or election day polling place. Unqualified provisional ballot envelopes shall not be opened and shall be deposited in an envelope or ballot box marked "unqualified provisional ballots" and retained pursuant to the Election Code, Section 1-12-69 NMSA 1978.

(1) The provisional ballot envelope for qualified provisional paper ballots shall be opened and attached to the inner envelope and ballot, until the time period for an election recount or contest has expired, pursuant to the Election Code, Section 1-14-1 to 1-14-25 NMSA 1978. The county clerk shall place naked ballots in an individual envelope to replace the inner envelope.

(2) After the counting of qualified provisional ballots, the county clerk shall deposit the provisional ballots with attached outer and inner envelopes in an envelope or ballot box marked "counted provisional ballots". The provisional ballots shall be retained pursuant to the Election Code, Section 1-12-69 NMSA 1978.

(3) At no time shall the county clerk or members of the canvassing board disclose the votes of a provisional voter.

[1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, 4/24/2018]

1.10.22.10 TABULATION AND CANVASSING OF QUALIFIED PROVISIONAL BALLOT PROCEDURES:

A. Qualified provisional ballots shall be counted for the reporting of votes by precinct and voting method for each candidate contest or ballot question, as specified in the Election Code, Section 1-12-70 NMSA 1978. Only the votes for those candidate contests or ballot questions for which the voter is eligible to vote shall be counted, as follows:

(1) A qualified mailed ballot, processed as a provisional ballot, in a provisional ballot envelope prescribed by the secretary of state because the first time voter did not

provide the required form of physical identification prior to the ballot issuance, shall be hand tallied and recorded in the absentee provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such specific use, and recorded in the absentee provisional by machine counting group.

(2) A qualified absentee replacement ballot, processed as a provisional ballot, in a provisional ballot envelope prescribed by the secretary of state because the absentee voter did not receive, or if received, did not vote the mailed ballot, shall be hand tallied and recorded in the absentee provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such specific use, and recorded in the absentee provisional by machine counting group.

(3) A qualified provisional ballot issued during early voting in the office of the county clerk, alternate voting location or mobile alternate voting location shall be hand tallied and recorded in the early voting provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such specific use, and recorded in the early voting provisional by machine counting group.

(4) A qualified provisional ballot issued on election day shall be hand tallied and recorded in the election day provisional by hand tally counting group, or tabulated by a voting tabulator designated, programmed and certified for such use, and recorded in the election day provisional by machine counting group.

(5) A qualified federal write-in absentee ballot shall be hand tallied and shall be counted and recorded in the federal overseas hand tally counting group.

(6) The hand tally of votes from qualified provisional ballots shall be conducted in accordance with 1.10.23 NMAC by a team of at least two persons. The team shall consist of one reader and one marker, not of the same political party, if possible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read each vote from the ballot; the marker shall then mark the tally sheet of the precinct, voting method and voting location where the ballot was cast, and the reader shall observe whether the marker correctly marked the tally sheet. The hand tally team shall observe the following:

(a) Only the votes for the candidates or ballot questions from the precinct the voter is eligible to vote for shall be counted;

(b) Each ballot shall increase the ballots cast count by one;

(c) Only those contests receiving no more than the allotted selections for the number of candidates to be elected or ballot questions where there is one selection for either the affirmative or negative will be hand tallied on overvoted ballots;

(d) No votes for either candidate contests or ballot questions will be hand tallied for blank ballots;

(e) Only those candidate contests or ballot questions receiving a selection by the voter will be hand tallied on an undervoted ballot; and,

(f) Overvoted, blank or undervoted ballots cast by voters, after going through the above process shall be recorded as a "ballot cast" and proper voting credit shall be given on the respective voter registration record on file with the county clerk.

(7) When a voting tabulator is used for the counting and recording of qualified provisional ballots of voters who were issued a ballot for their correct voting precinct, a member of the county canvassing board shall feed the ballots into the voting tabulator.

(a) An overvoted or blank provisional ballot shall be accepted by the voting tabulator after it has been adjudicated by the county canvassing board. The ballot will be counted and recorded in the appropriate machine counting group, as detailed above.

(b) If a provisional ballot is misread after being fed into a voting tabulator, a county canvass board member shall feed it into the voting tabulator a second time. A provisional ballot that is rejected after two attempts shall be adjudicated by the county canvass board, hand tallied, counted and recorded in the appropriate hand tally counting group, as detailed above.

B. During the counting of qualified provisional ballots, the county clerk shall ensure that observers are not permitted to see the identity of any voter whose ballot is being tallied. If, in the instance of only one provisional ballot cast in an alternate voting location, mobile voting location or election day polling place, the observer may know the identity of the voter, but may not observe the tally of the ballot.

C. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional ballot results to the office of the secretary of state in accordance with the Election Code, Subsection H of Section 1-12-25.4 NMSA 1978, and the county canvassing board shall direct the county clerk to prepare the required provisional ballot report.

D. If there is a discrepancy in the number of provisional ballots returned based on the number of provisional ballots issued, the county canvassing board shall follow the procedures set out in the Election Code, Section 1-13-1 to 1-13-22 NMSA 1978.

[1.10.22.10 NMAC - N, 4/24/2018; A, 8/31/2023]

1.10.22.11 PROVISIONAL VOTER NOTIFICATION AND HEARING PROCESS:

A. In accordance with Section 1-12-25.2 NMSA 1978, the county clerk shall notify each provisional voter whose provisional ballot was rejected and inform the voter of the right to appeal such rejection and provide information or documentation to cure the reason the ballot was rejected until the Friday prior to the meeting of the state canvassing board. The appeal process shall be conducted as follows:

(1) the voter shall submit a written request for a hearing to appeal the rejection, and at any time up to and including the appeal hearing, the voter may provide information or documentation to satisfy the reason the ballot was rejected;

(2) the county clerk shall select a hearing officer(s) from staff or a person who is not affiliated with any candidate to be voted for at the election and knowledgeable of election law;

(3) the county clerk shall provide a disability accessible room for the appeal hearing to be held;

(4) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;

(5) the voter may appear with an advocate;

(6) the appeal hearing shall be a public meeting, but the voter's date of birth and social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;

(7) the county clerk and the public may make a brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;

(8) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision explaining the decision by citing a provision of the Election Code;

(9) if the voter prevails, the hearing officer shall direct the county clerk to handle the ballot as a qualified provisional ballot.

B. The county clerk shall notify the county canvassing board of the completion and results of the appeals process.

[1.10.22.11 NMAC - N, 4/24/2018; A 8/31/2023]

1.10.22.12 SECRETARY OF STATE PROCEDURES:

A. Provisional voters wishing to determine the disposition of their provisional ballot may call the office of the secretary of state 14 days after the election. The secretary of state shall make the agency toll free number available to county clerks for the purpose of determining the status of provisional ballots, and shall establish a web-based computer program for the same purpose. The secretary of state, prior to providing information to a voter on the disposition of the voter's ballot, shall verify the identity of the voter.

B. The secretary of state shall not discuss the disposition of any provisional ballot with any person other than the provisional voter

[1.10.22.12 NMAC - Rp, 1.10.22.10 NMAC, 4/24/2018]

1.10.22.13 [RESERVED]

PART 23: PROCEDURES FOR RECOUNTS, AUDITS, RECHECKS AND CONTESTS

1.10.23.1 ISSUING AGENCY:

Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.

[1.10.23.1 NMAC - N/E, 10/2/2008]

1.10.23.2 SCOPE:

This rule applies to recounts, rechecks, audits, and contests conducted pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

[1.10.23.2 NMAC - N/E, 10/2/2008]

1.10.23.3 STATUTORY AUTHORITY:

Election Code, Sections 1-2-1, and 1-14-1 *et seq.* NMSA 1978.

[1.10.23.3 NMAC - N/E, 10/2/2008]

1.10.23.4 DURATION:

Permanent.

[1.10.23.4 NMAC - N/E, 10/2/2008]

1.10.23.5 EFFECTIVE DATE:

October 2, 2008, unless a later date is cited at the end of a section.

[1.10.23.5 NMAC - N/E, 10/2/2008]

1.10.23.6 OBJECTIVE:

The purposes of this rule is to provide procedures for conducting audits, contests, rechecks, and recounts pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

[1.10.23.6 NMAC - N/E, 10/2/2008]

1.10.23.7 DEFINITIONS:

A. "Absentee ballot" means a method of voting by mail, accomplished by a voter who is absent from the voter's polling place on election day. "Absentee ballot" has the same definition under the Absent Voter Act as a mailed ballot.

B. "Absentee provisional ballot" means the paper ballot issued to a provisional absentee voter.

C. "Audit" means a check of the voting systems conducted pursuant to Section 1-14-13.2 NMSA 1978.

D. "Ballot" means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

E. "Contest" means court litigation that seeks to overturn the outcome of an election pursuant to Sections 1-14-1 *et seq.* NMSA 1978.

F. "County canvassing board" means the board of county commissioners in each county.

G. "Designated polling place" means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

H. "High speed central count ballot tabulator" means a self-contained optical scan vote tabulating system that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

I. "Observer" means a voter of a county who has been appointed by a candidate, political party chair, or election related organization pursuant to the provisions of the Election Code.

J. "Optical scan" or "EVT ballot" means a ballot used on an optical scan vote tabulating system or EVT voting system.

K. "Optical scan vote tabulating system" or "electronic vote tabulating (EVT) voting system" means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot imprinted on either or both faces with text and voting response areas, and includes a high-speed central count ballot tabulator. The optical scan vote tabulating system records votes by means of marks made in the voting response areas.

L. "Overvote" means the selection by a voter of more than the number of alternatives allowed in a voting response area.

M. "Provisional absentee voter" means a voter who votes on an absentee provisional ballot after initially attempting to vote by absentee ballot but whose name does not appear on the signature roster or has failed to meet the voter identification requirements in the Election Code.

N. "Provisional ballot" means a ballot that is marked by a provisional voter.

O. "Provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code.

P. "Recheck" shall have the meaning given in Subsection A of Section 1-1-6 NMSA 1978.

Q. "Recount" shall have the meaning given in Subsection B of Section 1-1-6 NMSA 1978 and shall include hand recounts conducted pursuant to this part.

R. "Recount precinct board" means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

S. "Signature roster" means the certified list of voters at a polling place which is signed by a voter when presenting himself on election day.

T. "Tally sheet" means a document prepared by the county clerk and used for the counting of ballots that are electronically tabulated.

U. "Undervote" means the failure of a voter to select any of the alternatives in a voting response area.

V. "Vote" shall have the meaning given in Section 1-1-5.2 NMSA 1978.

W. "Voter" means any qualified elector or federal qualified elector who is registered under the provisions of the Election Code.

X. "Voting response area" means the place on a ballot where the voter is instructed to mark his preference for a candidate or question.

[1.10.23.7 NMAC - N/E, 10/2/2008; A/E, 11/3/2008; A, 4/7/2020]

1.10.23.8 PUBLIC NOTICE AND OBSERVATION OF AUDITS, VOTING SYSTEM CHECKS, RECHECKS AND RECOUNTS:

A. Public notice. In addition to the notice required to be provided by Section 1-14-16 NMSA 1978 for rechecks and recounts, at least three days prior to an audit, voting

system check, recount or recheck, the county clerk shall post, in at least one conspicuous place in the county, the time and location of the audit, voting system check, recount or recheck. In addition, if the county clerk has a web site, at least three days prior to an audit, voting system check, recount or recheck, the county clerk shall post the time and location on its web site.

B. Public observation. Consistent with Subsection A of Section 1-14-13.2 NMSA 1978, county canvass observers may be present during the audit process and shall be subject to Section 1-2-31 NMSA 1978. Pursuant to Section 1-14-16 NMSA 1978, members of the public may be present during a recheck or recount. The county clerk shall provide instructions to all observers, watchers and members of the public regarding any rules governing their conduct during an audit, voting system check, recheck, or recount. At all times during an audit process, those present to observe shall wear self-made badges designating themselves as an authorized observer of the organization or candidate which they represent or as a member of the public. Those present to observe shall not:

- (1) wear any identification other than the badge described above;
- (2) wear any party or candidate pins;
- (3) perform any duty of the recount, recheck, or audit workers;
- (4) handle any election material;
- (5) interfere with the orderly conduct of workers conducting the process; or
- (6) use cell phones, audio, or video tape equipment while observing the process.

[1.10.23.8 NMAC - N/E, 10/2/2008; A/E, 10/15/2010]

1.10.23.9 VOTING SYSTEM CHECK PROCEDURES:

This section applies to voting system checks for all federal offices, for governor, and for the statewide elective office other than the office of the governor for which the winning candidate won by the smallest percentage margin of all candidates for statewide office in New Mexico, as required by Section 1-14-13.2 NMSA 1978.

A. Auditor functions

(1) **Selection of precincts for the voting system check.** The number of precincts to be selected for each contest shall be based on the margin between the top two candidates as determined in Table 1 of Section 1-14-13.2 NMSA 1978. (The calculations for determining the number of precincts in the sample assume that the maximum margin shift in any precinct will not exceed thirty percent. Achieving the ninety

percent probability of detection with the number of precincts in the sample as indicated in Table 1 requires that the probability of selecting a precinct is proportional to the precinct size.)

(a) By no later than 12 calendar days after the election, the auditor shall select the precincts for the voting system check pursuant to the precinct selection process set forth in Section 1-14-13.2 NMSA 1978.

(b) The auditor will conduct an agreed upon procedures engagement in accordance with AICPA statements on standards for attestation engagements for procedures set forth in Section 1-14-13.2 NMSA 1978 and 1.10.23.9 NMAC.

(c) Precincts will be randomly selected using a process that is visually observable, such as rolling dice or selecting pieces of paper from a box, with the probability of selection being proportional to the number of persons registered to vote in the last election in each precinct.

(d) The random sampling process shall be open to public observation. At least seven days prior to the random sampling conducted pursuant to this subsection, the secretary of state shall post notice on its web site of the time, date, and location of the random sampling.

(2) Notification of the county clerks: By no later than 13 days after the election the auditor shall notify the county clerks of the precincts that have been selected for the voting system check.

(a) The auditor shall provide the county clerks with tally sheets for the offices to be subjected to voting system checks in the selected precincts.

(b) The auditor shall reference rules and guidelines that have been provided in advance by the secretary of state for conducting the hand counts and reporting the results to the auditor.

(3) Analysis of results: The auditor shall compare the hand count results with the vote tabulator results to determine if further sampling or a full hand count is needed for any office being subjected to the voting system check.

(a) The auditor determines within 26 days after the election if further sampling is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in the sample as reported by the vote tabulators and the hand counts divided by the votes cast for the office in the sample as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative

second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds ninety percent of the reported margin between the first and second place candidates, a voting system check must be conducted on an additional sample of the same size as the original sample. The procedures in subsection A are repeated for selecting the additional sample and notifying the county clerks. If the result in 3) does not exceed ninety percent of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(b) If a second sample was required, the auditor determines within 39 days after the election if a full hand count is required. The determination is made by 1) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative first place candidate, 2) calculating the difference between the vote tabulator counts divided by the votes cast for the office in both samples as reported by the vote tabulators and the hand counts divided by the votes cast for the office in both samples as reported by the hand counts for the putative second place candidate, and 3) subtracting the result in 2) for the putative second place candidate from the result in 1) for the putative first place candidate. For any office being subjected to the voting system check, if the result in 3) exceeds ninety percent of the reported margin between the first and second place candidates, a full hand count of all precincts must be conducted for the contest. If the result in 3) does not exceed ninety percent of the reported margin between the first and second place candidates, the auditor reports to the secretary of state that no further checking of voting systems for that office pursuant to Section 1-14-13.2 NMSA 1978 is required.

(4) Reporting results: The auditor shall, within three days of receiving the hand counting results from the county clerks for the initial sample, an additional sample, if applicable, and a full hand recount, if applicable, submit a report to the secretary of state and to the public that shall include, for each office subject to the voting system check, the numbers and names of the precincts in the initial sample and, if applicable, the second sample for each office; the outcome of full recounts, if conducted; a comparison of the vote tabulator results with the hand counts in each precinct in the samples and the full recount, if conducted; a comparison of the vote tabulator results with the hand counts for all precincts; a comparison of the reported margin between the first and second place candidates with the error rates in the first sample and, if applicable, in both samples and for a full recount, if conducted. Within 30 days of receiving the hand counting results from the county clerks, a final report to the secretary of state and to the public shall also include a description of the procedures used for the voting system check.

B. Secretary of state functions: The secretary of state shall contract with an auditor whose firm name appears on the state auditor's list of independent public accountants approved to perform audits of New Mexico government agencies.

(1) Within 28 days of the closing of voter registration, the secretary of state shall provide the auditor with the number of registered voters in each precinct in the state.

(2) Upon receipt of the county canvass results and no later than 10 days after the date of the election, the secretary of state shall provide the auditor with the voting results from each county to be used to determine the size of the random sample of precincts for the voting system check.

(3) The secretary of state shall provide a venue and the necessary supplies and equipment for use by the auditor in publicly selecting precincts for each office subject to the voting system check.

(4) The secretary of state shall provide the auditor with the forms or templates to be used by the county clerks and by the auditor for recording, reporting and analyzing results of the voting system check. These forms or templates may include those used for notifying county clerks of the precincts selected for each office, for tallying hand counts, for reporting hand count results to the auditor, for analyzing results of the voting system check by the auditor, and for reporting results of the voting system check to the secretary of state and state canvassing board. The secretary of state shall provide tally sheets to the auditor for only those precincts and offices being tallied as part of the voting system check.

(5) The secretary of state shall arrange for the communications channels and terminals to be used by the auditor for communications of information related to the voting system check to and from the county clerks.

(6) The secretary of state shall provide guidelines to the county clerks for conducting the hand counts and reporting the results to the auditor.

(7) The secretary of state shall post on the web the intermediate and final results reported by the auditor as soon as they are available.

C. County clerk functions

(1) Early voting, absentee voting and election day voting ballots counted by vote tabulators by the time of closing of the polls on election night will be subject to the voting system check. Therefore, it is recommended that sorting of these ballots by precinct should be done in advance.

(a) Within 10 days of the notice to conduct the voting system check, the county clerk shall report their results to the auditor.

(b) The county clerk shall choose a location for the voting system check that is accessible to the public.

(c) The county clerk or her designee shall arrange for transportation of ballots to the site of the voting system check and contact the sheriff or state police to move the ballot boxes from the current place of storage to the site of the voting system check.

(d) At least one person in addition to the county clerk shall witness all movement of ballots during the voting system check, and all movement of ballots from and to the ballot box during the voting system check shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted and the identity of the witness shall be documented.

(e) Prior to conducting the voting system check, the county clerk shall have a district judge present when opening those ballot boxes containing ballots from the precincts selected for the voting system check.

(f) The county clerk shall assign counting teams of at least two members (a reader and a marker) and preferably three, to particular precincts. The third member, if present, verifies that what the reader reads is correct and is what the marker marks. The team members shall consist of at least two distinct political parties, if possible.

(2) Hand counting procedures. The ballots from the precincts selected for auditing shall be hand tallied pursuant to the procedures in this subsection.

(a) For election day voting, and when possible, for absentee and early voting, the counting team shall ensure that the serial number for the voting system and the type of ballot to be counted are prominently displayed on the tally sheet. When multiple vote tabulators are used for a precinct as in early voting and absentee voting, this rule may be ignored.

(b) To count the votes by a two person team, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. With a three person team the third person verifies that the marker marks correctly and the reader reads correctly. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader with the verifier shall confirm these amounts. The marker, the reader and, if present, the verifier shall sign the tally form.

(c) If a two person counting team is used, it is recommended that the ballots be counted again using the sort and stack method. With this method, the ballots are sorted into stacks by candidate, undervotes and overvotes. The stacks are then hand counted. The results of the sort and stack method shall be compared to the hand tally method. Any discrepancies may require the processes in (b) and (c) to be repeated. The reasons for the discrepancies shall be noted on the tally sheet.

(d) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall make the appropriate determination as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot.

(e) Upon completion of the hand counting of the initial sample of precincts included in the voting system check, and of subsequent samples, if conducted, the results of the hand counting shall be reported to the auditor within 10 days of the notice to conduct the voting system check. If a full hand count is required pursuant to Section 1-14-13.2 NMSA 1978, the results shall be reported as soon as practicable.

[1.10.23.9 NMAC - N/E, 10/2/2008; A/E, 10/16/2008; A/E, 11/3/2008; A/E, 10/15/2010; A, 4/7/2020]

1.10.23.10 RECOUNT AND RECHECK PROCEDURES:

This section applies to rechecks and recounts conducted pursuant to Sections 1-14-14 and 1-14-24 NMSA 1978, and recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. The recheck and recount procedures in this section shall be used in conjunction with the procedures in Sections 1-14-16 and 1-14-18 through 1-14-23 NMSA 1978, along with guidance from the secretary of state.

A. Time and place; ballot security.

(1) Pursuant to Subsection A of Section 1-14-16 NMSA 1978, the recount or recheck shall be held at the county seat.

(2) The county clerk shall arrange for transportation of ballots to the recount or recheck site and contact the sheriff or state police to move the ballot boxes from the current place of storage to the recount or recheck site.

(3) The county clerk shall convene the recount precinct board no more than 10 days after the filing of the application for a recount or recheck, notice of an automatic recount, or notice of a recount required by Subsection B of Section 1-14-13.2 NMSA 1978.

(4) The presiding judge of the recount precinct board shall assign counting teams of at least two members, of opposite political parties if possible, to particular precincts.

(5) At least one person in addition to the district judge or presiding judge shall witness all movement of ballots during the recount, and all movement of ballots from and to the ballot box during the recount process shall be logged. Each time that ballots are removed from or returned to a ballot box, the number of ballots shall be determined and compared to the number of ballots that should be in that particular ballot box. Any discrepancies shall be noted.

B. Random selection of ballots to determine whether the recount shall be hand tallied or electronically tabulated. This subsection does not apply to recounts resulting from audits performed under Section 1-14-13.2 NMSA 1978. To determine whether votes shall be recounted using optical scan vote tabulating systems pursuant to Section 1-14-23 NMSA 1978, the recount precinct board shall electronically tabulate recount ballots from the precincts to be recounted in accordance with the procedures in this subsection.

(1) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into an optical scan vote tabulating system. A summary zeros results report shall be generated and certified by the precinct board.

(2) Recount ballots equal to at least the number required by Subsection B of Section 1-14-23 NMSA 1978 shall be fed into the optical scan vote tabulating system. Any recount ballots rejected by the optical scan vote tabulating system shall be placed back into the ballot boxes and additional recount ballots shall be inserted until the number of ballots tabulated by the system is equal to at least the amount required by Subsection B of Section 1-14-23 NMSA 1978. If the recount precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedure in Paragraph (1) of this subsection shall be repeated for each precinct being tabulated.

(3) The recount precinct board shall then hand tally the votes from the same ballots counted by the optical scan vote tabulating system in accordance with the procedures in Section 1-14-23 NMSA 1978.

C. Electronic recount procedures.

(1) If the remaining ballots in a non-class A county are to be re-tabulated using optical scan vote tabulating systems, the recount precinct board shall use optical scan vote tabulating systems selected at random by the county clerk in accordance with the procedures in this paragraph.

(a) A separate results cartridge programmed with ballot configurations for all precincts in the county or the ballot configuration for the precinct to be tabulated shall be inserted into the optical scan vote tabulating system chosen by the county clerk.

(b) A summary zeros report shall be generated and certified by the precinct board.

(c) The ballots for the ballot type (e.g., absentee ballots, election day ballots, early in-person ballots) and precincts to be recounted shall be fed into the optical scan vote tabulating system.

(d) All ballots rejected by the tabulator shall be tallied by hand in accordance with the procedures in Subsection E of this section.

(e) A machine report shall be generated and certified by the recount precinct board.

(f) If the recount precinct board uses a results cartridge programmed with ballot configurations for all precincts in the county, then the procedures in this paragraph shall be repeated for each ballot type being recounted. If the recount precinct board uses a results cartridge programmed with only the ballot configuration for the precinct being tabulated, then the procedures in this paragraph shall be repeated for each precinct being tabulated.

(2) If the voted ballots in a precinct are unavailable or incomplete for recount, the district judge, in consultation with the county clerk, may order that a results tape or report be regenerated from the results cartridge that was used to tabulate the voted ballots.

D. Review of rejected ballots and re-tally of provisional, in-lieu of absentee ballots and other paper ballots in a recount.

(1) The district judge shall orally order that any ballot boxes, envelopes, or containers that hold provisional, in-lieu of absentee, and absentee provisional ballots be opened one at a time.

(2) The presiding judge shall count the total number of provisional, absentee provisional, and in-lieu of absentee ballots in each precinct and the number shall be compared to the previously certified signature roster count in that precinct and noted. Any discrepancies shall be noted.

(3) The county clerk shall review the qualification of all rejected provisional, absentee provisional, and in-lieu of absentee ballots pursuant to Section 1-12-25.4 NMSA 1978 and 1.10.22 NMAC.

(4) The recount precinct board shall review the qualification of all rejected absentee ballots in accordance with 1.10.12.15 NMAC and any other rejected ballots in accordance with applicable law.

(5) All previously and newly qualified ballots (including provisional, absentee provisional, in-lieu of absentee ballots, absentee ballots and other paper ballots) shall be recounted and the votes shall be added to the tally of the appropriate precinct.

(6) If any voting data changes as a result of this review, the county clerk shall update the report required in Subsection I of 1.10.22.9 NMAC.

E. Hand counting procedures for recounts. This subsection applies to hand recounts. The secretary of state shall provide tally sheets for only those races being recounted, and shall include options for marking undervotes and overvotes.

(1) The counting team shall ensure that the precinct and the ballot type (eg., election day, early in-person, absentee, in-lieu of absentee, and provisional) being counted are prominently displayed on the tally sheet.

(2) To recount the votes, the reader shall read the vote to the marker and the marker shall observe whether the reader has correctly read the vote; the marker shall then mark the tally sheet of the appropriate precinct, and the reader shall observe whether the marker correctly marked the tally sheet. Upon completion of the recount of a precinct, the marker shall add the total number of votes for each candidate as well as any undervotes or overvotes. The reader shall confirm these amounts. Both the marker and the reader shall sign the tally form.

(3) If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

(4) If a recount for an office selected for a voting system check is conducted pursuant to the provisions of Chapter 1, Article 14 NMSA 1978, the vote totals from the hand count of ballots for that office in precincts selected for the voting system check may be used in lieu of recounting the same ballots for the recount.

F. Recount and recheck reconciliation procedures.

(1) Upon completion of a recount, the district judge or presiding judge shall tabulate the total vote count from the machine generated tapes or reports and the tally sheets from the hand recount.

(2) The county clerk or secretary of state in a statewide race shall compare the results of each recount or recheck to the results of the county or statewide canvass. County clerks shall make available to the public and provide to the secretary of state the results of the recount or recheck within five days of the completion of the recount or recheck. The secretary of state shall combine the county files and place the results on the secretary of state's website.

(3) Pursuant to Subsection A of Section 1-14-18 NMSA 1978, the recount precinct board shall send the certificate of recount or recheck executed pursuant to Subsection D of Section 1-14-16 NMSA 1978 to the proper canvassing board.

(4) In the event of a recount or recheck conducted pursuant to Section 1-14-14 NMSA 1978, if no error or fraud appears to be sufficient to change the winner, the

county clerk may provide documentation of costs to the secretary of state, or directly to the candidate, for reimbursement from the money provided pursuant to Section 1-14-15 NMSA 1978.

[1.10.23.10 NMAC - Rn & A/E, 1.10.22.11 & 12 NMAC, 10/2/2008; A/E, 11/3/2008; A/E, 10/15/2010; A, 4/7/2020]

1.10.23.11 CONTEST PROCEDURES:

A. An election contest shall be conducted pursuant to the provisions of the Election Code under Sections 1-14-1 *et seq.* NMSA 1978.

B. In any election contest the court may order the re-tallying of ballots. The county clerk shall provide tally sheets for the purpose of the contest.

C. In any election contest the court may order comparison of results cartridges from any optical scan vote tabulating systems.

D. No rejected ballot subject to review in an election contest shall be disqualified solely because the signature on the outer envelope or affidavit contains an abbreviated name, lack of a middle initial, or lack of a suffix, provided that the voter can be identified with information provided on the outer envelope or voter's affidavit.

E. If a tally of qualified provisional or other ballots is required in an election contest, the court may summon the county clerk to re-tally all qualified provisional or other ballots and review all rejected provisional or other ballots pursuant to Subsection D of 1.10.23.10 NMAC.

[1.10.23.11 NMAC - Rn & A/E, 1.10.22.13 NMAC, 10/2/2008]

1.10.23.12 [RESERVED]

[1.10.23.12 NMAC - N/E, 11/3/2008; Repealed, 4/7/2020]

1.10.23.13 [RESERVED]

[1.10.23.13 NMAC - N/E, 12/2/2014; Repealed, 4/7/2020]

PART 24: REFERENDUM PETITION PROCEDURES

1.10.24.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.24.1 NMAC - N, 04-15-2004]

1.10.24.2 SCOPE:

This rule applies to any referendum petition submitted or filed with the office of the secretary of state pursuant to Article IV, Section 1 of the Constitution of New Mexico and pursuant to the provisions of Section 1-17-1 through 1-17-14, NMSA 1978.

[1.10.24.2 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.3 STATUTORY AUTHORITY:

Subsection B of Section 1-2-1 NMSA 1978 and Article 17 of the Election Code.

[1.10.24.3 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.4 DURATION:

Permanent.

[1.10.24.4 NMAC - N, 04-15-2004]

1.10.24.5 EFFECTIVE DATE:

April 15, 2004 unless a later date is cited at the end of a section.

[1.10.24.5 NMAC - N, 04-15-2004]

1.10.24.6 OBJECTIVE:

The objective of this rule is to establish administrative procedures for the review of submitted draft referendum petitions prior to circulation and to establish administrative procedures for the review of signatures on completed referendum petitions.

[1.10.24.6 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.7 DEFINITIONS:

A. "Certified list" means the alphabetized listing of registered voters of a county that is under the signature and seal of the secretary of state.

B. "Designated agent" means the sole individual authorized by the referendum sponsors to act on behalf of sponsors.

C. "Fictitious, forged or otherwise clouded signatures" means signatures including, but not limited to, the names of celebrities and actors that are not registered voters or qualified electors of New Mexico, cartoon characters, historical figures, animal companions or livestock, or any signature where the address is not legible and the signer could not be sufficiently identified by a judge.

D. "Petition" means the referendum form, approved, certified, and circulated pursuant to Article 17 of the Election Code.

E. "Petitioner" means an individual, group of persons or organization circulating a referendum petition pursuant to Article IV, Section 1 of the New Mexico Constitution and the provisions of Article 17 of the Election Code.

F. "Qualified elector" means any resident of this state who is qualified to vote under the provisions of the Constitution of New Mexico and the Constitution of the United States and includes any qualified resident.

G. "Registered voter" means a qualified elector, registered to vote pursuant to the provisions of the Election Code.

H. "Signer" means a qualified elector or registered voter who signs his name to a referendum petition.

I. "Solicitor" means a person who circulates a referendum petition and requests the signatures of qualified electors or registered voters.

J. "Sponsor" means the individual, group of persons or organization circulating a referendum petition pursuant to Article IV, Section 1 of the New Mexico Constitution and the provisions of Article 17 of the Election Code.

[1.10.24.7 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.8 COMPLETED PETITION FILING:

A. Only the designated agent shall file the petition on behalf of the sponsors.

B. A completed referendum petition filed pursuant to Section 1-17-10 NMSA 1978, shall not be withdrawn nor added to at the time of initial filing, but may be later amended subject to the provisions of Section 1-17-12 NMSA 1978.

C. At the time of filing, the designated agent shall submit a certified list or the registered voters of each county represented in the petition. The secretary of state shall provide the certified lists to the designated agent upon completion of a request affidavit on a form prescribed by secretary of state. The affidavit shall inform the designated agent of the requirement to comply with Section 1-5-5.6 and Subsection A of Section 1-5-22 NMSA 1978. The certified list shall be provided electronically.

D. If a signer of a referendum petition is a qualified elector, but not a registered voter pursuant to the provisions of the Election Code the qualified elector shall write "qualified elector" in lieu of a voting precinct on the petition page, and the designated agent shall submit documentation that the signer is 18 years of age and a resident of the county listed above the signature of the signer. Acceptable documentation consists

of a government issued verification of the age of the signer and other documents that indicate county of residence.

E. The secretary of state shall determine the acceptability of any documents submitted.

[1.10.24.8 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.9 COMPLETED PETITION VERIFICATION:

A. The secretary of state shall examine each page of the petition to determine the validity of signatures consistent with the requirements of Article 17 of the Election Code.

B. Fictitious, forged or otherwise clouded signatures shall be deleted from the petition consistent with Section 1-17-11, NMSA 1978.

[1.10.24.9 NMAC - N, 4/15/2004; A, 8/31/2023]

1.10.24.10 PETITION APPROVAL BEFORE CIRCULATION:

A. Before any referendum petition is circulated for signatures, the sponsors shall submit the original draft thereof to the secretary of state to determine if it meets the requirements of law for referendum petitions pursuant to Section 1-17-1, Section 1-17-2, Section 1-17-5, Section 1-17-6, Section 1-17-8 NMSA 1978 and Article IV, Section 1 of the Constitution of New Mexico.

B. Requirements as outlined in Section 1-17-2 and Subsection E of Section 1-17-5 NMSA 1978 shall appear on the front of the petition page, as only the required certificate shall appear on the back of each petition page pursuant to Section 1-17-6 NMSA 1978.

C. Pursuant to Section 1-2-1.1 NMSA 1978, the secretary of state shall contact the attorney general for review of referendum petition submissions and request signature for petitions certified as meeting all requirements of law for referendum petitions as required by Section 1-17-8 NMSA 1978.

D. The secretary of state shall respond to the draft submission in accordance with Subsection B of Section 1-17-8 NMSA 1978 within 30 days of submission.

[1.10.24.10 NMAC – N, 8/31/2023]

PART 25: THIRD-PARTY REGISTRATION AGENTS

1.10.25.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.25.1 NMAC - N, 8-15-2005]

1.10.25.2 SCOPE:

This rule applies to any special statewide election, general election, primary election, county wide election or elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).

[1.10.25.2 NMAC - N, 8-15-2005]

1.10.25.3 STATUTORY AUTHORITY:

Election Code, Section 1-2-1 NMSA 1978; Chapter 270, Laws 2005. The issuing authority shall issue rules to ensure the integrity of the registration process and require that organizations account for all voter registration forms used by their registration agents.

[1.10.25.3 NMAC - N, 8-15-2005]

1.10.25.4 DURATION:

Permanent.

[1.10.25.4 NMAC - N, 8-15-2005]

1.10.25.5 EFFECTIVE DATE:

August 15, 2005 unless a later date is cited at the end of a section.

[1.10.25.5 NMAC - N, 8-15-2005]

1.10.25.6 OBJECTIVE:

The Election Code (Chapter 1, Article 4) was amended by Chapter 270, Laws 2005. The purpose of the amendment is to define and regulate third-party voter registration agents and to set forth procedures, provide for reports and set penalties for violations.

[1.10.25.6 NMAC - N, 8-15-2005]

1.10.25.7 DEFINITIONS:

A. "Voter registration organization" means one or more persons organized as a group that are engaged in voter registration activities and includes, but is not limited to,

political parties, candidate committees, political action committees, political advertising campaigns, campaign committees and non-partisan interest groups.

B. "Registrant" means a qualified elector who has completed and subscribed a new or existing certificate of voter registration.

C. "Registration agent" means a state, county or federal employee who provides voter registration at a state agency (a/k/a registration officer), or tribal registration officer, or any other individual who assists another person in completion of a voter registration application.

D. "Third-party registration agent" means any individual who solicits and provides substantive assistance to another person (who is not his or her family member) in the completion of a certificate of voter registration on behalf of a voter registration organization that is not a state, county or federal agency.

E. "Assist" or "assistance" means taking physical possession of a certificate of voter registration completed by a registrant. An individual who engages in conduct intentionally designed to either disenfranchise a potential or current voter or defraud the state of New Mexico through the voter registration process shall be deemed to have assisted a voter.

F. "Voter's receipt" means the receipt for the certificate of voter registration, provided to the voter by a third-party registration agent.

G. "A person having decision-making authority involving the organization's voter registration activities" means a person who organizes or directs voter registration drives.

[1.10.25.7 NMAC - N, 8-15-2005; A/E, 9-21-2010]

1.10.25.8 SECRETARY OF STATE PROCEDURES:

A. All voter registration organizations shall register with the secretary of state or a county clerk, prior to the provision of substantive assistance to a registrant, on a prescribed form that will be made available on the internet on the secretary of state's website and at county clerk offices. The form may be hand-delivered, hand-delivered by another person, or delivered by mail or as a portable document format (.pdf) file via email to the secretary of state's office. The form must bear a legible notary seal or the equivalent.

B. All third-party registration agents shall register with the secretary of state or a county clerk, prior to the provision of substantive assistance to a registrant, on a prescribed form that will be made available on the internet on the secretary of state's website and at county clerk offices. The form may be hand-delivered, hand-delivered by another person, or delivered by mail or as a portable document format (.pdf) file via

email to the secretary of state's office. The form must bear a legible notary seal or the equivalent. Third-party voter registration agents shall not be required to fill out the requisite forms in person at the secretary of state's or a county clerk's office.

C. The secretary of state's office shall time and date stamp each completed voter registration form received before sending the form to the appropriate county for entry into the voter registration database.

D. Beginning March 1, 2011, the secretary of state shall prescribe a certificate of voter registration that includes a receipt for voter registration that shall be provided to the voter by the third-party registration agent. The voter's receipt shall include language informing the voter that the third-party registration agent is responsible for returning the original certificate of voter registration to the secretary of state or county clerk if he or she assists in completing the form - *i.e.*, if he or she takes possession of the completed form - and that failure of the third-party registration agent to do so will result in the voter not being registered to vote in elections in New Mexico.

E. The secretary of state shall keep a record of all certificates of voter registration with a traceable number that is provided to voter registration organizations. The secretary of state shall also provide New Mexico voter registration forms in quantities of twenty (20) per third party voter registration agent. The secretary of state retains discretion to increase these quantities for special events and circumstances. Any member of a voter registration organization may pick up blank New Mexico voter registration forms, including on behalf of other third party voter registration agents in the organization, provided, however, that any agent picking up forms for another agent must produce the absent agent's completed log pursuant to Subsection H of 1.10.25.8 NMAC. The secretary of state shall also keep a list of all third-party registration agents which will be available on the secretary of state's website.

F. For purposes of computing any time period specified in this rule, the secretary of state's office and its agents shall exclude intermediate Saturdays, Sundays, and federal or state holidays.

G. All third party voter registration agents must complete training regarding the use of voter registration forms, the requirements that Section 1-4-49 NMSA 1978, places on third party voter registration agents, and the penalties for failing to comply with Section 1-4-49 NMSA 1978. Such training will be offered in person, both from the secretary of state's office and from each county clerk in the state of New Mexico, but training must also be made available to all third party voter registration agents who cannot attend in person, including making training available through the internet on the secretary of state's website.

H. Each third party voter registration agent shall maintain a log regarding the use of each blank state of New Mexico voter registration card the agent receives from the secretary of state or a county clerk. The log, the form of which will be available on the secretary of state's website, shall include the unique identification number associated

with each form, whether the registrant or the third party voter registration agent took possession of the form upon completion by the registrant, and, if the third party voter registration agent took possession of the form upon completion by the registrant, the date the form was completed by the registrant. Third party voter registration agents shall produce a completed log when requesting additional blank voter registration forms from the secretary of state or a county clerk.

[1.10.25.8 NMAC - N, 8-15-2005; A/E, 9-21-2010]

1.10.25.9 PRESCRIBED FORMS:

A. Prescribed form for voter registration organizations.

- (1) Name of voter registration organization.
- (2) Permanent or temporary address, if any, of the voter registration organization.
- (3) Telephone number of the voter registration organization.
- (4) Names of the officers of the voter registration organization.
- (5) A printed notification that the prescribed form completed by voter registration organizations is a public record.
- (6) A signed, sworn statement by a representative of the voter registration organization that the organization and its agents will obey all state laws and rules regarding the registration of voters. The sworn statement shall contain language advising the organization of the criminal penalties associating with submitting a false registration.
- (7) A printed notification that completed certificates of voter registration must be placed in the mail or delivered to the secretary of state or county clerk within forty-eight (48) hours of the voter registration organization or its agents taking possession of a certificate of voter registration completed by a registrant. The notification shall specify that the forty-eight (48) hour deadline excludes intermediate Saturdays, Sundays, and federal or state holidays.

B. Prescribed form for third-party registration agents.

- (1) Name of organization.
- (2) Permanent address of the organization.
- (3) Telephone number of the organization.

- (4) Name of the third-party registration agent.
- (5) Permanent or temporary addresses, if any, of third-party registration agent.
- (6) Date of birth of third-party registration agent.
- (7) Social security number of third-party registration agent.
- (8) Telephone number of third-party registration agent (optional).
- (9) A signed, sworn statement by each third-party registration agent that the agent will obey all state laws and rules regarding the registration of voters. The sworn statement shall contain language advising the agent of criminal penalties provided for false registration.
- (10) A printed notification that completed certificates of voter registration must be placed in the mail or delivered to the secretary of state or county clerk within forty-eight (48) hours of the third-party registration agent taking possession of a certificate of voter registration completed by a registrant. The notification shall specify that the forty-eight (48) hour deadline excludes intermediate Saturdays, Sundays, and federal or state holidays.
- (11) A printed notification that the form is a public record, except for the social security number and date of birth.

[1.10.25.9 NMAC - N, 8-15-2005; A/E, 9-21-2010]

1.10.25.10 COUNTY CLERK PROCEDURES:

A. The secretary of state may designate county clerks as agents in the registration of voter registration organizations and third-party registration agents. The secretary of state shall provide all prescribed forms to county clerks, along with directions for their completion and maintenance.

B. The county clerk shall keep a record of all certificates of voter registration with a traceable number that is provided to voter registration organizations. A county clerk shall also provide New Mexico voter registration forms in quantities of twenty (20) per third party voter registration agent. The county clerk retains discretion to increase these quantities for special events or circumstances. Any member of a voter registration organization may pick up blank New Mexico voter registration forms, including on behalf of other third party voter registration agents in the organization, provided, however, that any agent picking forms up for another agent must produce the absent agent's completed log pursuant to Subsection H of 1.10.25.8 NMAC.

C. The county clerk shall promptly forward to the secretary of state copies of all documents required of voter registration organizations and third-party registration agents and file originals in the office of the county clerk.

[1.10.25.10 NMAC - N, 8-15-2005; A/E, 9-21-2010]

1.10.25.11 PENALTIES:

A. A person will be found guilty of a petty misdemeanor for violation of Section 1-4-49 NMSA 1978 only if the violation was intentional.

B. A person will be subject to civil penalties for violation of Section 1-4-49 NMSA 1978 only if the violation was intentional or if the person has engaged in a pattern or practice of violating Section 1-4-49 NMSA 1978.

[1.10.25.11 NMAC - N/E, 9-21-2010]

PART 26: INACTIVE VOTER LIST [REPEALED]

[This part was repealed effective March 15, 2012]

PART 27: VOTER ACTION ACT

1.10.27.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.27.1 NMAC - N, 9-30-2005]

1.10.27.2 SCOPE:

This rule applies to any special statewide election, general election, primary election, countywide election or elections to fill vacancies in the office of United States representative, municipal, special district elections and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).

[1.10.27.2 NMAC - N, 9-30-2005]

1.10.27.3 STATUTORY AUTHORITY:

Election Code, Section 1-2-1 NMSA 1978; Section 1-19A-1 to 1-19A-17 NMSA 1978.

[1.10.27.3 NMAC - N, 9-30-2005]

1.10.27.4 DURATION:

Permanent.

[1.10.27.4 NMAC - N, 9-30-2005]

1.10.27.5 EFFECTIVE DATE:

September 30, 2005 unless a later date is cited at the end of a section.

[1.10.27.5 NMAC - N, 9-30-2005]

1.10.27.6 OBJECTIVE:

The secretary of state shall adopt rules to ensure effective administration of the Voter Action Act (Section 1-19A-1 to 1-19A-17 NMSA 1978) pursuant to Section 1-19A-15 NMSA 1978. The rules shall include procedures for qualifications, certification and disbursement of revenues and return of unspent fund revenues; obtaining qualifying contributions; certification of candidates; collection of revenues; and return of fund disbursements and other money to the fund.

[1.10.27.6 NMAC - N, 9-30-2005]

1.10.27.7 DEFINITIONS:

A. "Applicant candidate" means a candidate who is running for a covered office and who is seeking to be a certified candidate in a primary or general election.

B. "Certified candidate" means a candidate running for a covered office who chooses to obtain financing pursuant to the Voter Action Act and is certified as a Voter Action Act candidate. An applicant candidate becomes a certified candidate upon submittal and the secretary of state determination under Sections 1-19A-4 to 1-19A-6 NMSA 1978.

C. "Election cycle" means the period beginning on January 1 after the last general election and ending on December 31 after the general election.

[1.10.27.7 NMAC - N, 9/30/2005; A, 10/15/2007; A, 7/1/2023]

1.10.27.8 QUALIFICATIONS AND CERTIFICATION:

A. A candidate choosing to obtain financing pursuant to the Voter Action Act shall abide by Section 1-19A-3 NMSA 1978 to become an applicant candidate.

B. A candidate choosing to become a certified candidate shall abide by Section 1-19A-4 NMSA 1978 for obtaining qualifying contributions.

C. A candidate choosing to become a certified candidate may abide by Section 1-19A-5 NMSA 1978 for obtaining seed money.

D. A candidate choosing to become a certified candidate shall abide by Section 1-19A-6 NMSA 1978 for submittal of certification documents. A candidate shall submit the qualifying contributions by a consolidated cashiers check or by cash.

E. The secretary of state shall determine whether an applicant candidate shall become a certified candidate pursuant to Section 1-19A-6 NMSA 1978.

[1.10.27.8 NMAC - N, 9-30-2005; A, 10-15-2007]

1.10.27.9 DETERMINATION OF FUND DISTRIBUTION:

A. On August 1, of every odd year, the secretary of state shall determine the amount of funds available for distribution pursuant to Section 1-19A-13 NMSA 1978.

B. To determine the amount available for a contested primary election, the secretary of state shall follow Subsection B of Section 1-19A-13 NMSA 1978.

C. To determine the amount available for an uncontested primary election, the secretary of state shall follow Subsection C of Section 1-19A-13 NMSA 1978.

D. To determine the amount available for a contested general election, the secretary of state shall follow Subsection D of Section 1-19A-13 NMSA 1978.

E. To determine the amount available for an uncontested general election, the secretary of state shall follow Subsection E of Section 1-19A-13 NMSA 1978.

F. The Voter Action Act does not include judicial retention elections.

[1.10.27.9 NMAC - N, 9-30-2005; A, 10-15-2007]

1.10.27.10 DISTRIBUTION OF FUND:

A. Once the certification for candidates for the primary election has been completed, the secretary of state shall calculate the total amount of money to be distributed in the primary election cycle based on the number of certified candidates and allocations specified in 1.10.27.9 NMAC.

B. The secretary of state shall abide by Subsection F of Section 1-19A-13 NMSA 1978 if the total needs to be adjusted.

C. The secretary of state shall calculate the total amount of money to be distributed in the general election pursuant to 1.10.26.9 NMAC and Subsection F of Section 1-19A-13 NMSA 1978.

D. If the allocation specified in Subsection F of Section 1-19A-13 is greater than the total amount available for distribution, then the amounts to be distributed to individual candidates shall be reduced pursuant to Subsection G of Section 1-19A-13 NMSA 1978.

E. The secretary of state shall abide by Section 1-19A-14 NMSA 1978 if the total needs to be adjusted due to the actions of a noncertified candidate.

[1.10.27.10 NMAC - N, 9-30-2005]

1.10.27.11 FUND REVENUES:

A. The legislature has set up the public election fund pursuant to Section 1-19A-10 NMSA 1978 governing the collection of revenues to provide for the fund.

B. A certified candidate shall return to the fund unspent fund revenues and any other relevant funds pursuant to Subsection E of Section 1-19A-5, Subsections B to E of Section 1-19A-7 and Subsection D of Section 1-19A-16 NMSA 1978.

[1.10.27.11 NMAC - N, 9-30-2005]

1.10.27.12 ELECTRONIC FUND TRANSFER:

A. Pursuant to Subsection I of Section 1-19A-2 NMSA 1978, qualifying contributions may be accepted by the candidate via an electronic form of payment. The following kinds of electronic transactions may be accepted by the candidate: debit and credit card, direct bank to bank transfers or online or mobile payment services such as PayPal, Apple Pay, Google Pay, or Venmo.

B. The qualifying candidate may only accept a qualifying contribution made by a credit card or a debit card via the internet or where the card is not physically present if, at the time the qualifying contribution is made, the contributor provides the card security code assigned to and printed or imprinted on the card and the billing address associated with the card.

C. The candidate or their representative may accept an electronic fund transfer ("EFT") but the qualifying contribution shall be kept separate from the candidate's bank account established pursuant to the Campaign Reporting Act. A dedicated bank account shall be created by the candidate's campaign committee to accept the electronic transfer of funds for purposes of collecting qualifying contributions.

D. The candidate shall collect a qualifying contribution receipt as is used for other forms of payment.

E. If the EFT service provider collects a transaction fee, the qualifying candidate shall provide an accounting of the transaction fee on the qualifying contribution receipt.

F. At the time of the qualifying appointment with the secretary of state, the qualifying candidate shall submit a check that includes all electronic payments received, payable to the public election fund. Based upon the information on the qualifying receipts and the total amount of the check, the secretary of state shall verify that the qualifying contributions minus any transaction fees have been accounted for.

G. Additionally, the qualifying candidate shall submit a separate check, payable to the public election fund, to reimburse the fund for any transaction fees deducted from the qualifying contribution by the EFT service provider. The qualifying candidate shall also report this expense as an expenditure of the campaign on the report required pursuant to the Campaign Reporting Act.

[1.10.27.12 NMAC - N, 7/1/2023]

PART 28: DISTRIBUTION OF VOTER INFORMATION [REPEALED]

[This part was repealed effective March 15, 2012]

PART 29: [RESERVED]

PART 30: NATIVE AMERICAN VOTING

1.10.30.1 ISSUING AGENCY:

Office of the Secretary of State, 325 Don Gaspar, Suite 300, Santa Fe, New Mexico, 87503.

[1.10.30.1 NMAC - N/E, 10-31-08]

1.10.30.2 SCOPE:

This rule applies to any special statewide election, general election, primary election of elections to fill vacancies in the office of United States representative and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978).

[1.10.30.2 NMAC - N/E, 10-31-08]

1.10.30.3 STATUTORY AUTHORITY:

Election Code, Sections 1-2-1, 1-2-3, 1-6-5.6 and 1-6-5.8 NMSA 1978.

[1.10.30.3 NMAC - N/E, 10-31-08]

1.10.30.4 DURATION:

Permanent.

[1.10.30.4 NMAC - N/E, 10-31-08]

1.10.30.5 EFFECTIVE DATE:

October 31, 2008, unless a later date is cited at the end of a section.

[1.10.30.5 NMAC - N/E, 10-31-08]

1.10.30.6 OBJECTIVE:

The purpose of this rule is to establish procedures for voting on Indian nation, tribe or pueblo lands in New Mexico.

[1.10.30.6 NMAC - N/E, 10-31-08; A/E, 5-28-10]

1.10.30.7 DEFINITIONS:

A. Alternate site means an alternate early voting location or mobile alternate voting location that is situated on the land of an Indian nation, tribe or pueblo as provided for in this rule.

B. Ballot means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

C. Voter means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

D. Costs means the reasonable monetary fees set by New Mexico law for compensation of personnel who are necessary to run a Native American early voting location.

E. Voting equipment means a combination of mechanical, electromechanical or electronic equipment, including software and firmware required to program and control the equipment that is used to tabulate votes.

F. Precinct board means one presiding judge, one precinct official and one interpreter/language translator.

[1.10.30.7 NMAC - N/E, 10-31-08; A/E, 5-28-10]

1.10.30.8 REQUESTS:

Requests for alternate sites shall be made by the Indian nation, tribe or pueblo in writing to the county clerk no later than the first Monday in November of each odd-numbered year. The request shall specify the location and proposed dates of the requested alternate site.

[1.10.30.8 NMAC - N/E, 10-31-08; A/E, 5-28-10]

1.10.30.9 ACTION FOLLOWING RECEIPT OF A REQUEST:

A. Location of alternate site. An alternate site located on the land of an Indian nation, tribe or pueblo shall conform to the same requirements applicable to other alternate voting locations for early voting in the county, except as specified in Section 1-6-5.8 NMSA 1978 and this rule.

B. Staffing of alternate site. The county clerk shall provide one presiding judge, one precinct official and one federally mandated interpreter/language translator.

C. Hours for operating alternate site. Except as provided in this subsection, pursuant to Section 1-6-5.7 NMSA 1978, beginning on the third Saturday before election day, an alternate site shall be open for early voting for at least eight consecutive hours through the Saturday immediately preceding the election. A county clerk may request and the secretary of state may grant a modification of these hours of operation from the secretary of state because of a hardship arising from inadequate facilities, difficulties with making appropriate personnel available or other exigent circumstances, provided the county clerk justifies in writing to the secretary of state the need for a modification.

D. Early voting procedures at alternate sites. Except as otherwise provided by law, county clerks shall use the same procedures for voting at alternate sites that are used at early voting sites not situated on the land of an Indian nation, tribe or pueblo.

[1.10.30.9 NMAC - N/E, 10-31-08; A/E, 5-28-10]

1.10.30.10 ALTERNATE SITES. RESPONSIBILITIES OF COUNTY CLERKS AND RESPONSIBILITIES OF SECRETARY OF STATE:

A. The county clerk shall provide all transportation, setup and maintenance of all voting equipment to be used in a Native American early voting location.

B. The secretary of state shall sustain the cost of all ballots, provide adequate voting equipment, and reimburse the equivalent cost for early voting site personnel designated in each respective county, which shall consist of one presiding judge, one precinct official and one interpreter/language translator. Said personnel shall be hired and supervised by the county clerk.

C. The county clerk shall execute a written agreement with the Indian nation, tribe or pueblo to provide early voting services, personnel and equipment on Indian lands. Such agreement shall indicate hours of operation, dates of early voting and location of the site for the county to maintain early voting locations on Indian lands. The agreement shall be approved by the secretary of state prior to the commencement of early voting.

[1.10.30.10 NMAC - N/E, 10-31-08; Repealed/E, 5-28-10; 1.10.30.10 NMAC - N/E, 5-28-10]

1.10.30.11 VOTING SUPPORT FOR MEMBERS OF INDIAN NATIONS, TRIBES OR PUEBLOS:

A. Voting materials in Native American languages. County clerks in counties covered under 42 U.S.C. Section 1973aa-1a(b) shall provide all registration and voting notices, forms, instructions, assistance, and other information relating to the electoral process in the language or languages of the applicable Indian nation, tribe, or pueblo.

B. Dissemination of voting information through the media. If a minority language is historically unwritten, county clerks in counties covered under 42 U.S.C. Section 1973aa-1a(b) shall orally disseminate information relating to the electoral process, including voting procedures and ballot information, in the language of the applicable minority group through public service announcements on radio or television. The public service announcements shall be broadcast during daylight hours on radio and television stations available in the areas where the Indian nations, tribes or pueblos being targeted are located.

[1.10.30.11 NMAC - N/E, 10-31-08; A/E, 5-28-10]

PART 31 FINANCIAL DISCLOSURE REPORTING PROCEDURES

1.10.31.1 ISSUING AGENCY:

Office of the Secretary of State

[1.10.31.1 NMAC - N, 1/1/2022]

1.10.31.2 SCOPE:

The rule applies to all persons required to file financial disclosure statements in accordance with the Financial Disclosure Act, Chapter 10, Article 16A NMSA 1978.

[1.10.31.2 NMAC - N, 1/1/2022]

1.10.31.3 STATUTORY AUTHORITY:

This rule is authorized by Section 10-16A-9 NMSA 1978.

[1.10.31.3 NMAC - N, 1/1/2022]

1.10.31.4 DURATION:

Permanent

[1.10.31.4 NMAC - N, 1/1/2022]

1.10.31.5 EFFECTIVE DATE:

January 1, 2022, unless a later date is cited at the end of a section.

[1.10.31.5 NMAC - N, 1/1/2022]

1.10.31.6 OBJECTIVE:

The objective of the rule is to establish uniform procedures for the filing of financial disclosure statements and clarify undefined terms.

[1.10.31.6 NMAC - N, 1/1/2022]

1.10.31.7 DEFINITIONS:

A. "Business interest" means any direct or indirect financial interest or financial obligation of \$10,000 or more such as an owner, member, partner, lessor, investor, or shareholder in a business or where the filer is at risk of losing \$10,000 or more.

B. "Consulting" means giving expert advice in professional, technical, financial, legal, and business matters.

C. "Employer" means a person or organization that hires and pays another person in exchange for work.

D. "External complaint" means a complaint filed by a person and not instituted by either the secretary of state or the state ethics commission.

E. "Filer" means the person obligated to file a financial disclosure statement.

F. "Financial disclosure statement (FDS)" means the pdf form prescribed by the secretary of state that is generated upon a filer filing a report in the electronic system provided by the secretary of state.

G. "Income" means money that a person receives in exchange for working, producing a product or service, or investing capital. For purposes of financial disclosure statements, per diem is considered income when it is deemed taxable by the Internal Revenue Service.

H. "Income source" means the broad categories as described pursuant Paragraph (2) of Subsection D of Section 10-16A-3 NMSA 1978.

I. "Internal compliance violation" means a violation of the Financial Disclosure Act identified by the secretary of state or the state ethics commission based on incomplete, misleading, false, or incorrect financial disclosure statement.

J. "Major areas of specialization" means the areas of law or consulting for which a person concentrates to earn an income.

K. "State agency head" means the principal officer of any executive or legislative agency receiving an annual appropriation in either Section 4 of the General Appropriations Act or an annual appropriations bill appropriating funds to legislative agencies.

L. "Title" means the name given to a position of employment by an employer.

M. "Professional license" means an official process, administered by a state-level authority, that is required by law for an individual to practice or work in a regulated profession.

N. "Voluntary compliance" means a filer's correction of all violations alleged in a complaint or a notification from the secretary of state or the state ethics commission of an internal compliance violation.

[1.10.31.7 NMAC - N, 1/1/2022]

1.10.31.8 REQUIRED DISCLOSURES:

A. The proper filing officer for filing a FDS is the secretary of state. The secretary of state has prescribed the use of an electronic filing system which shall be used by all persons required to file a FDS. Paper form submissions will not be accepted.

B. Contact information (Section 1). The filer shall disclose the filer's full name, residential address, and mailing address on the FDS. If a filer is currently married, the filer shall disclose the full name of the filer's spouse on the FDS.

C. Current filing status (Section 2). The FDS shall disclose:

(1) if the filer is a candidate or public official, the name of the office held or sought and the start date of the first term of office held or sought;

(2) if the filer is a state agency head, the name of the agency and the first day the filer held the position of state agency head;

(3) if the filer is a member of a board or commission, the name of the board or commission and the first day the filer held the position as a board or commission member;

(4) if the filer is a member of the insurance nominating committee or member of the state ethics commission, the name of the commission and the first day the filer held the position on the commission; or

(5) if the filer is an employee of the state and is required to file pursuant to Subsection A of Section 10-16A-4 NMSA 1978, the name of the state agency and the first day the filer held a position at the state agency.

D. Employer information (Section 3). The filer shall disclose the employer's name, phone number, address, title, and nature of business or occupation for every employer of the filer on the FDS. The filer shall include the filer's current employer(s) and any previous employer(s) from the prior calendar year.

E. Spouse's employer information (Section 4). If the filer is married, the filer shall disclose the employer's name, phone number, address, title, and nature of business or occupation for every employer of the filer's spouse on the FDS. The filer shall include the current employer(s) and any previous employer(s) from the prior calendar year.

F. Sources of gross income over \$5,000 (Section 5). The filer shall disclose all sources of gross income over \$5,000 during the prior calendar year for the filer and the filer's spouse listed by income source and whether the income was earned by the filer or the filer's spouse on the FDS. For example, if the filer makes over \$5,000 on two different real estate holdings, the filer must list the income source category of "real estate" once. If both the filer and the filer's spouse each earn an income source from the same category, the filer shall list one line item for each, the filer and the filer's spouse. In the case that a single income source is earned jointly, the filer shall list the income source once and list the filer as the income holder.

G. Law practice, consulting operation, or similar business (Section 6). If a filer or filer's spouse is employed as an attorney or a consultant, the filer shall describe each major area of specialization for the filer and filer's spouse. Using the general term of "law" or "consulting" is not descriptive enough for this section of the FDS. The filer shall use the income sources listed pursuant to Paragraph (2) of Subsection D of Section 10-16A-3 NMSA 1978 or a description that is equally or more descriptive.

H. Lobbying clients (Section 7). If a filer, filer's spouse, or other person associated with a business interest of the filer or filer's spouse is a registered lobbyist in the current or prior calendar year, the filer shall disclose the following on the FDS:

(1) the name of the lobbyist; and

(2) the name and address of the client represented by the lobbyist.

I. Real estate owned in New Mexico (Section 8). The filer shall disclose a general description of the type of property and the county in which it is located for all real estate owned by the filer and the filer's spouse in New Mexico other than the filer's personal residence. If a property is owned jointly with other persons, the filer shall list the owner as the filer on the FDS. The use of "house," "farmland," or "vacant lot" are acceptable examples of a general description pursuant to this section.

J. Other New Mexico business interests over \$10,000 (Section 9). The filer shall disclose all business interests not already listed in another section of the FDS for the filer and the filer's spouse. The information required for a business interest is the name of the business, the position held by the filer or filer's spouse, a description of the business purpose, and whether the business interest is that of the filer or the filer's spouse. If both the filer and the filer's spouse hold a business interest in the same business, the filer shall make an entry for each person on the FDS for that business.

K. For-profit board membership (Section 10). The filer shall disclose the name of all for-profit business(es) for which the filer or the filer's spouse are a board member regardless of any financial interest.

L. New Mexico professional licenses (Section 11). The filer shall disclose the type of license(s) held at the time the FDS is filed by the filer or the filer's spouse.

M. Goods or services to state agency over \$5,000 (Section 12). The filer shall disclose the name of every state agency that the filer or filer's spouse provided over \$5,000 in goods or services in the prior calendar year.

N. State agency representation (Section 13). The filer shall disclose the name of every state agency, other than a court, in which a person listed on the FDS either represented or assisted clients in the course of the filer's employment in the prior calendar year.

O. General information/memo field (Section 14). The filer may provide further details regarding any financial or business interests not otherwise disclosed on the FDS.

P. This rule shall not be construed to prohibit a filer from disclosing more information than is required on their FDS.

Q. The FDS shall be electronically signed by the filer under penalty of perjury that the information provided is true, accurate and complete to the best of the filer's knowledge.

[1.10.31.8 NMAC - N, 1/1/2022]

1.10.31.9 TIME OF FILING:

A. A filer shall file an amended FDS at any time to reflect a significant change in the filer's or filer's spouse's business and financial interests in the current calendar year.

B. A person holding a legislative or statewide office shall file a FDS in January of every year by January 31 at midnight.

C. A candidate for legislative or statewide office, that has not already filed a FDS in the same year, shall file a FDS with the secretary of state within three days of filing a declaration of candidacy. Pursuant to Subsection H of Section 10-16A-2 NMSA 1978, a candidate for legislative or statewide offices who does not file a FDS before the date for qualification of the person as a candidate shall be disqualified by the proper filing officer as a candidate.

D. A state agency head or board or commission member required to file a FDS, shall file within 30 days of being hired or appointed and by January 31 at midnight each year thereafter as long as the filer holds the same position.

E. A person who is required to file a FDS for more than one reason, for example the filer is appointed to multiple boards, shall only file one FDS upon the filer's first appointment and in January each year thereafter for as long as the filer maintains at least one position that requires a FDS. The filer shall list all positions held or offices sought on the filer's FDS.

[1.10.31.9 NMAC -N, 1/1/2022]

1.10.31.10 RESPONSIBILITIES OF THE SECRETARY OF STATE:

A. The secretary of state shall maintain training materials regarding compliance with the Financial Disclosure Act and the use of the electronic filing system used to file a FDS on the secretary of state's website.

B. If the secretary of state receives an external complaint about a person required to file under the Financial Disclosure Act or otherwise becomes aware of a potential violation or discrepancy, the secretary of state shall provide the filer ten business days to come into voluntary compliance with the Financial Disclosure Act before referring the matter to the state ethics commission.

C. The secretary of state shall notify the filer of an internal compliance violation and provide the person ten business days to correct the matter. If the filer responsible for the internal compliance violation does not correct the matter within ten business days of receiving a notice from the secretary of state, the secretary of state shall notify the state ethics commission and transmit to the state ethics commission any documents related to the internal compliance violation.

D. The secretary of state shall conduct annual reviews for compliance with the Financial Disclosure Act.

[1.10.31.10 NMAC -N, 1/1/2022]

PART 32: [RESERVED]

PART 33: VOTE TOTALS BY PRECINCT

1.10.33.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.33.1 NMAC - N/E, 10-15-10]

1.10.33.2 SCOPE:

This rule applies to any special statewide election, general election, primary election, countywide election or elections to fill vacancies in the office of United States representative.

[1.10.33.2 NMAC - N/E, 10-15-10]

1.10.33.3 STATUTORY AUTHORITY:

Election Code, Section 1-2-1 NMSA 1978; Section 1-12-70, NMSA 1978.

[1.10.33.3 NMAC - N/E, 10-15-10]

1.10.33.4 DURATION:

Permanent.

[1.10.33.4 NMAC - N/E, 10-15-10]

1.10.33.5 EFFECTIVE DATE:

October 15, 2010 unless a later date is cited at the end of a section.

[1.10.33.5 NMAC - N/E, 10-15-10]

1.10.33.6 OBJECTIVE:

The purpose of this rule is to provide procedures to secure the secrecy of the ballot when reporting early and absentee vote totals by precinct pursuant to the constitution of New Mexico, Article VII, Section 1 and Section 1-12-70 NMSA 1978.

[1.10.33.6 NMAC - N/E, 10-15-10]

1.10.33.7 DEFINITIONS:

A. "Absentee ballot" means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

B. "Ballot" means a paper ballot card that is tabulated on an optical scan vote tabulating system or hand tallied.

C. "Early voter" means a voter who votes in person before election day and not by mail.

D. "Election" means any special statewide election, general election, primary election or special election to fill vacancies in the office of United States representative.

E. "Precinct" means a contiguous and compact electoral area having clearly definable boundaries and complying with the Precinct Boundary Adjustment Act.

F. "Voter" means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the state of New Mexico.

[1.10.33.7 NMAC - N/E, 10-15-10]

1.10.33.8 SECRETARY OF STATE AND COUNTY CLERK PROCEDURES:

A. The secretary of state shall notify the county clerks to report the results on election night as a total vote for each candidate or question by precinct, and not by the method voters have cast their ballots.

B. Following completion of the county canvass, the county clerks shall report to the secretary of state the voting data by precinct as required by Section 1-12-70, NMSA 1978. This data is not a public record and shall not be released to any other person.

C. The secretary of state shall compile the voting data by precinct, as follows:

(1) in any precinct where fewer than 5 voters voted on election day, or by absentee ballot or as early voters, the total votes in that precinct shall be reported as a single total, and not by the type of method by which voters cast their ballot;

(2) in any precinct not described in Paragraph (1) of this subsection, the voting totals for each precinct may be reported by the type of method by which voters cast their ballot.

D. The secretary of state shall not release the canvass of the election, and it shall not be a public record, until vote totals compromising the secrecy of any individual voter's ballot have been combined in accordance with Subsection C of this section.

[1.10.33.8 NMAC - N/E, 10-15-10; A/E, 1-13-11]

PART 34: VOTING SYSTEMS STORAGE, CUSTODY AND MAINTENANCE

1.10.34.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.34.1 NMAC - N, 10/1/2011]

1.10.34.2 SCOPE:

This rule applies to all counties in New Mexico using state or county-owned voting systems in the conduct of elections held pursuant to the provisions of the New Mexico Election Code (Chapter 1, Articles 1 through 24, NMSA 1978.

[1.10.34.2 NMAC - N, 10/1/2011]

1.10.34.3 STATUTORY AUTHORITY:

Election Code, Section 1-2-1 NMSA 1978; Section 1-9-7.6, NMSA 1978.

[1.10.34.3 NMAC - N, 10/1/2011]

1.10.34.4 DURATION:

Permanent.

[1.10.34.4 NMAC - N, 10/1/2011]

1.10.34.5 EFFECTIVE DATE:

October 1, 2011 unless a later date is cited at the end of a section.

[1.10.34.5 NMAC - N, 10/1/2011]

1.10.34.6 OBJECTIVE:

The purpose of this rule is to provide specifications for the storage, custody and maintenance of voting systems used by New Mexico counties.

[1.10.34.6 NMAC - N, 10/1/2011]

1.10.34.7 DEFINITIONS:

A. "Adequate security" means security commensurate with the risk and the magnitude of harm resulting from the loss, misuse, unauthorized access to, or modification of, information.

B. "Election officials" means a group of people associated with election administration, including county clerk's staff, precinct board members, voting system technicians and those responsible for the installation, operation and maintenance of voting systems.

C. "Primary election" means the election held in each county of the state on the first Tuesday after the first Monday in June of each even-numbered year.

D. "Storage facility" means an enclosed, temperature-controlled structure, or portion of a structure, providing for secure storage and retrieval of state or county-owned voting systems.

E. "Voting system" means a system, whether state or county owned, as defined in Section 1-9-1 NMSA 1978, as it may be from time to time amended. A voting system does not include storage bins.

F. "Voting system technician" means any person who is trained and certified to program, inspect, properly store and troubleshoot voting systems.

[1.10.34.7 NMAC - N, 10/1/2011]

1.10.34.8 SECURITY REQUIREMENTS:

A. The storage facility used for county storage of voting systems shall employ a sign-in and sign-out sheet to document each individual entering or leaving the facility, to include election officials.

B. Unless located in a secure, locked area in the county clerk's office, the storage facility used for county storage of voting systems:

(1) shall be provided with an intrusion detection alarm system and a video surveillance system meeting ISO or ANSI standards; and

(2) shall be provided with exterior lighting of sufficient intensity to afford observers immediate recognition of illegal acts such as breaking and entering or unauthorized removal of equipment during non-working hours; switches for exterior lights shall be installed only in the interior of the building; exterior lights shall be protected from damage or replaced if damaged within 72 (seventy-two) hours of such occurrence; and

(3) shall have access doors for the storage facility constructed of materials that will render forcible entry extremely difficult in a period of 5 minutes;

(4) in addition, the county clerk shall limit unescorted access to the storage facility to election officials, individuals authorized by the county clerk and those individuals permitted access under the provisions of the New Mexico Election Code (Chapter 1, Articles 1 through 24, NMSA 1978); and

(5) the county clerk and county clerk staff shall have unlimited access to the storage facility and access shall not be controlled by any third party.

C. During transit from the storage facility to or from a polling place, vehicles transporting voting systems shall not be left unlocked if unattended. Moving companies contracted with by a county for the transport of voting systems shall be insured and bonded.

D. The storage facility shall include a locked and restricted access area for removable storage media devices, which will preserve the integrity of the devices. If the voting system's removable storage media devices are to be programmed outside of the storage facility, chain of custody documentation shall be preserved by the county clerk.

E. The board of county commissioners shall be responsible for the costs of the security requirements associated with properly storing state or county-owned voting systems in the custody of the county clerk.

[1.10.34.8 NMAC - N, 10/1/2011]

1.10.34.9 ENVIRONMENTAL REQUIREMENTS:

A. Voting systems shall be stored at a temperature range from 32° to 100° fahrenheit with humidity levels from 40-55%, except for brief seasonal variations.

B. The storage facility shall be free of debris, dust, vermin and vibration, not to exceed federal standards for voting systems.

C. Voting systems shall be provided with dust and moisture proof covers.

D. Voting systems which are stacked for storage shall not exceed manufacturers' height recommendations for stacking.

E. The storage facility shall be provided with sufficient electrical power to permit simultaneous battery charging of all voting systems stored at the facility.

F. The board of county commissioners shall be responsible for the costs of the environmental requirements associated with properly storing state-owned voting systems in the custody of the county clerk.

[1.10.34.9 NMAC - N, 10/1/2011]

1.10.34.10 MAINTENANCE REQUIREMENTS:

A. County clerks and county voting machine technicians shall be responsible for keeping all machines free of dust, adjustment of wheels and screws on the outside of the voting system and performing other maintenance as trained and directed by the secretary of state.

B. County clerks and county voting machine technicians shall be responsible for ensuring that all machines are stored with a full battery charge and recharged according to the schedule recommended by the manufacturer or vendor.

C. County clerks and county voting machine technicians shall be responsible for ensuring that all removable storage media devices have a sufficient supply of replacement batteries.

D. The secretary of state shall contract with a company authorized to perform intensive maintenance between 100 and 45 days prior to each primary election.

[1.10.34.10 NMAC - N, 10/1/2011]

PART 35: VOTER RECORDS SYSTEM

1.10.35.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.35.1 NMAC - N, 3/15/2012]

1.10.35.2 SCOPE:

This rule applies to the uniform operation and maintenance of the statewide computerized voter registration system in each of the 33 county clerk offices of New Mexico and the office of the secretary of state (SOS).

[1.10.35.2 NMAC - N, 3/15/2012; A, 2/12/2016]

1.10.35.3 STATUTORY AUTHORITY:

The Election Code, Sections 1-2-1, 1-4-18.1 and Subsection C of 1-5-31 NMSA 1978, Public Law 103-31, The National Voter Registration Act of 1993; Public Law 107-252, The Help America Vote Act of 2002. The issuing authority shall issue rules to establish and administer the statewide computerized voter registration system and to require deadlines and timelines for the updating of voter files and shall adopt rules establishing a uniform and nondiscriminatory process to match the information contained in the voter registration election management system with the database of the motor vehicle division

of the taxation and revenue department (TRD) or the federal social security administration for electronic certificates of registration.

[1.10.35.3 NMAC - N, 3/15/2012; A, 2/12/2016]

1.10.35.4 DURATION:

Permanent.

[1.10.35.4 NMAC - N, 3/15/2012]

1.10.35.5 EFFECTIVE DATE:

March 15, 2012, unless a later date is cited at the end of a section.

[1.10.35.5 NMAC - N, 3/15/2012]

1.10.35.6 OBJECTIVE:

The Election Code was amended by Chapter 270, Laws 2005. The purpose of the amendment is to require the secretary of state to adopt such rules as are necessary to establish and administer the statewide computerized voter registration system and to require timelines for the updating of voter files. It is also the objective of this rule to provide for uniform administrative practices to carry out the provisions of the Election Code.

[1.10.35.6 NMAC - N, 3/15/2012; A, 8/31/2023]

1.10.35.7 DEFINITIONS:

A. "Active voter" means a registered voter who has not been declared an inactive voter.

B. "Board of registration" means the voters of a county who are appointed by the board of county commissioners and serve under the provisions of Sections 1-4-34 NMSA 1978.

C. "Cancelled" means the status of a person's voter registration record when that person is no longer eligible to vote due to death; transfer of residence to another county or state; felony conviction while the person is in a correctional facility; or at the voter's request.

D. "Certificate of registration" means the form, prescribed by the SOS or the federal form complying with the National Voter Registration Act of 1993, used by qualified electors or by federal qualified electors to register to vote.

E. "Confirmation card" means a postage prepaid and preaddressed notice, with language in compliance with the National Voter Registration Act of 1993 and Subsection C of Section 1-4-28 NMSA 1978, sent by forwardable mail, with a postage prepaid return postcard on which a voter may state the voter's current address.

F. "Confirmation mailing" means a non-discriminatory mass mailing; conducted by the office of the SOS to voters flagged as NVRA on the statewide voter file and to voters who have filed a change of address request with the postal service since the last confirmation mailing.

G. "County" means an administrative district of the state of New Mexico.

H. "County register" means a physical file of voter registration records kept in fire resistant containers at the county clerk's office.

I. "County voter file" means the computerized version of the county register, comprising each county's portion of the statewide voter file.

J. "Data recording media" means physical material that holds data expressed in any existing electronic format.

K. "District" means a distinct territorial subdivision containing a body of eligible voters within the represented area.

L. "Duplicate search" means the process of verifying that voters are not registered in more than one county of the state, or registered more than once in a single county.

M. "Election" means a statewide election that is a general election, political party primary election, local elections included in the Local Elections Act, or elections to fill vacancies in the office of United States representative.

N. "File maintenance" means the total activities undertaken by county or state election officials to ensure the accuracy and integrity of the statewide voter file.

O. "Inactive voter" means a voter who has been mailed a confirmation card in accordance with 52 U.S.C. 20501 to 20511, and who has either failed to respond or has failed to vote in any election conducted after the mailing of the confirmation card.

P. "Initial mailing" means the first non-discriminatory mailing to a voter, by the county clerk or SOS, which is returned as undeliverable by the postal service.

Q. "Mailing address" means the address at which a voter receives correspondence; it is the address in the "physical street address where you live now" box on the certificate of registration, unless the voter's address has been updated by the county clerk and the updated address is attached to the certificate of registration, or

unless a voter has entered a different mailing address in the "address where you get your mail (if different from above) box on the certificate of registration.

R. "Module" means a portion of the statewide voter records system program that carries out a specific function and may be used alone or combined with other modules of the same program.

S. "New registrant" means a voter who has never been registered in any county within the state.

T. "Non-standard address" means an unnamed street, unknown structure or directional address not on the county street file.

U. "NVRA" means National Voter Registration Act and is a designation in the statewide voter file indicating a voter was sent an initial mailing other than a confirmation mailing, which was returned to the county clerk as undeliverable.

V. "Online voter registration system" means the system authorized by the SOS for the purpose of accepting voter registration applications through the internet.

W. "Physical address" means the location of a voter's residence even if provided in the form of a map or geographic description pursuant to Section 1-4-5.3 NMSA 1978.

X. "Positive match" means that two records match based on a strong match or that a match has been determined to exist based on further investigation by a county clerk of a weak match.

Y. "Precinct" means a part of a county with definite boundaries established for electoral administrative functions.

Z. "Precinct part" means the designation given when a precinct is divided by one or more districts.

AA. "Precinct voter list" means a voter list arranged in alphabetical order of voter surname within and for each precinct.

BB. "Public service request" means information prepared for an individual or organization requesting certain information from the voter records system.

CC. "Registrant detail" means all data entered into the voter records system for an individual voter.

DD. "Removable" means the designation in the statewide voter file for the voter registration record of a person registered to vote whose voter registration has been cancelled due to death, transfer of residence to another state, felony conviction while the person is in a correctional facility, at the voter's request, or, if after 45 days, a

county clerk is unable to fulfill an incomplete application received online or electronically.

EE. "Scanned image" means the digital capture of the certificate of registration and any other physical documents relating to the voter's record.

FF. "Select groups" means a group of voters selected based upon their party registration, or lack thereof, gender, residence, age, or any other protected class as defined by law.

GG. "Special voter list" means a prepared list of selected voters arranged in the order in which requested.

HH. "State agency that provides public assistance or services to persons with disabilities" means a designated agency pursuant to 1.10.8 NMAC and Section 1-4-5.2 NMSA 1978.

II. "Street file" means a method of geocoding or manually managing street segments, including address ranges, road networks and providing for incremental updates in the statewide voter registration system.

JJ. "Strong match" means that two records in different databases have: (1) the same name, (2) same date of birth (DOB), and (3) the same full social security number (SSN).

KK. "Suspense status" means an applicant for voter registration whose status as a voter is held in abeyance until certain voter qualifications are met.

LL. "Undeliverable mailing" means correspondence sent to a voter and returned by the postal service indicating that the voter no longer receives mail at that address.

MM. "Voter" means any qualified elector or federal qualified elector who is registered under the provisions of the Election Code.

NN. "Voter data" means selected information from the voter file.

OO. "Voter file" means all voter information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on the voter records system and certified by the county clerk as the source of all information required by the Voter Records System Act.

PP. "Voter history" means extracted voter information from the voter file indicating the jurisdiction where a voter voted, election and date, political party, if any, precinct or precinct part, location and method of voting.

QQ. "Voter list" means any prepared list of voters.

RR. "Voter records system" means the statewide computerized voter registration system and database, in compliance with the Help America Vote Act of 2002, developed, implemented, established, supervised and maintained by the SOS. The system is used by the SOS to exchange electronic information with the county clerks.

SS. "Weak match" means that two records in different databases have any of the two following matching: (1) name, (2) DOB, (3) SSN, or (4) address.

[1.10.35.7 NMAC - N, 3/15/2012; A, 2/12/2016; A, 4/7/2020; A, 8/31/2023]

1.10.35.8 PROCESSING VOTER REGISTRATION CERTIFICATES:

A. Adding and transferring voters.

(1) Upon receipt of a voter registration certificate, the county clerk shall run a duplicate search to determine if the voter is already registered in the registration records of the county. To determine if a record already exists in the statewide voter registration system, the duplicate search criteria shall be based on a strong match. The county clerk may also conduct additional duplicate searches using different criteria to minimize the chance of entering a duplicate record. Additional search criteria may be based on weak match criteria. Upon running a duplicate search, if the voter's information on the voter registration certificate matches with an existing record, the voter shall be updated and transferred from another county.

(2) If the qualified elector submits a paper voter registration form and provides all other required voter information, but only provides the qualified elector's driver's license or state identification number, or last four digits of the voter's SSN, the county clerk will first verify that the voter has a matching MVD record with the provided information. If the county clerk can verify and match a MVD record with the qualified elector then the county clerk should complete the search stated in Paragraph (1), of Subsection A, of 1.10.35.8 NMAC. If the county clerk is unable to verify the voter has a matching MVD record, the clerk shall, within five days, email and mail the voter information with directions on how to provide their full SSN on the secure SOS portal.

(3) Upon receipt of a voter registration certificate, the county clerk shall run a search in the statewide voter registration system to determine if the applicant has been previously marked as deceased or is incarcerated in a correctional facility as a result of a felony conviction prior to acceptance of the application. If a strong match is found, the application shall be processed pursuant to Subsection C of 1.10.35.8 NMAC. The county clerk may conduct additional searches to determine a possible match for purposes of ensuring a death record does not exist prior to entering the voter registration certificate.

(4) Unless the voter is a public official with a designated confidential home address pursuant to 1.10.37 NMAC, all registrant detail and statutorily required data

must be entered from the certificate of registration into the voter file including: name, full social security number (SSN), physical address, DOB, and an image of the signature. If the voter is a public official with such a designation, the voter record shall be marked as containing a confidential address, and "confidential" shall be entered in the address fields that correspond with the confidential address except for the zip code. The zip code indicated on the confidential home address designation shall be entered into the voter file.

(5) The county clerk may establish a best practice of proofreading data entry to prevent errors and duplicate voter entry. Proofreading may be done by a staff member who did not complete the original entry and the proofreading search for the record may be conducted using different criteria (i.e. DOB or name rather than SSN).

(6) The county clerk shall scan each certificate of voter registration in the county register and attach to the electronic voter record. All scanned images attached to a voter record transferred to another county shall be retained as attached to that record.

(7) Pursuant to Subsection C of Section 1-4-15 NMSA 1978, a voter who does not declare a political party preference shall be entered into the voter file as "decline to select". County clerk staff shall not check the "no party" box on the certificate of voter registration, but shall leave it blank.

(8) A voter who does not declare a qualified political party preference shall be entered into the voter file as "decline to select."

(9) A voter who is not 18 years of age at the time of registration shall be placed in "suspense" status. At 35 days and 21 days prior to the next election, the county clerk shall run a suspense query report of the county voter file and activate suspense voters on the appropriate date prior to the election. At 21 days prior to an election, the county clerk shall activate all those suspense voters who will be 18 on or before the election.

(10) If the age question is checked "no" or left blank the application shall nonetheless be accepted if the DOB demonstrates that the applicant is over the age of 18 or placed in suspense status if the DOB demonstrates the applicant is under the age of 18.

(11) When a voter registration agent number is provided on an application, the county clerk shall note the agent number and the registration form number in the statewide voter registration system.

B. Matching with MVD database: All online and MVD electronic registrations have been verified with the MVD database prior to transmission to the county clerk. Upon receiving a paper voter registration certificate, the county clerk may conduct a search in the MVD database for investigative purposes.

(1) If the county clerk determines that a conflict exists between the MVD database and the voter registration record the county clerk may contact the registrant to request clarification. If it is determined that the information provided on the voter registration form needs to be corrected, the county clerk shall request that the voter fill out a new voter registration form with the corrected information before processing the application.

(2) The MVD database shall not be used to fill in information that is not included on incomplete applications or applications not otherwise in proper form.

C. Rejection of voter registration forms.

(1) Rejection for incomplete information: Voter registration forms that do not contain the qualified elector's name, address, DOB, and signature or usual mark shall be rejected. A full social security number is required to finish processing a new voter registration. For voter registration forms that only provide incomplete information or the county clerk cannot ascertain the qualified elector's full SSN, the county clerk shall make the appropriate notation in the statewide voter file, and return the form to the qualified elector with an explanation of the reasons for rejection and indicate that the voter shall provide the full SSN prior to receiving a ballot and, if not, may only vote on a provisional ballot until the incomplete information is provided, within five business days of the county clerk rejecting the voter registration form.

(2) Rejection for non-citizenship: For voter registration forms in which the citizenship question is answered in the negative, the county clerk shall reject the form. The county clerk shall also reject any voter registration certificate in which the question regarding citizenship is not answered. The county clerk shall send a notice within five business days to the applicant with an explanation that non-citizens are not eligible to vote in New Mexico elections. If the box was checked in error, the applicant may fill out a new form.

(3) Rejection of forms containing commercial mailbox locations as the physical address: The county clerk shall maintain a listing of addresses for commercial mail box establishments, if any, to prevent the entry of a non-residential address as a residence address into the voter file. When any voter registration form is received containing a commercial mail box location as the physical address, it shall be rejected, and the form returned to the voter with an explanation of the reason for the rejection along with a new voter registration form and instructions on how to register online, if available to that voter, within five business days, but as soon as is practicable.

(4) Rejection for felony incarceration confirmation: For voter registration forms submitted that have a positive match with a felony record in the voter records system, the county clerk shall confirm the application was submitted personally before a county clerk, the clerk's authorized representative or a precinct board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities. If the

clerk confirms this information, the registration shall be accepted. If the clerk does not confirm this information, the county clerk shall process the application with a status of "not eligible" and a status reason of "felony incarceration" and send a notice to the applicant with an explanation that an otherwise qualified elector is ineligible to register to vote while incarcerated in a correctional facility for a felony conviction. The notice shall also provide the elector with information on how they can become eligible or how to update or correct the information in the voter records system, within five business days, but as soon as is practicable.

(5) Rejection for deceased confirmation: For voter registration forms submitted that have a positive match with a death record in the voter records system, the county clerk shall contact the secretary of state who will work with the department of health or other authorized agencies to confirm that a death certificate exists. If the death is confirmed, the county clerk shall reject the voter registration form and shall refer the matter to the assigned election prosecutor within the district attorney's office for investigation.

(6) Voter registration applications that contain an invalid series of numbers for SSN shall be rejected. Within five business days, but as soon as is practicable of the rejection, the form shall be returned to the voter with an explanation of the reason for the rejection. The social security administration has provided information regarding invalid or impossible SSNs as follows:

(a) SSN's never begin with the first three digits of 000, 666, or 900 series; and

(b) prior to June 25, 2011, SSN's did not begin with the first three digits of 800 series or above 772 in the 700 series.

(7) If applications are complete, but the county clerk reasonably believes an application is fraudulent, a copy of such registration shall be sent to the assigned election prosecutor within the district attorney's office located in the same county, along with a statement of the reasons the application(s) are considered suspicious for further investigation. The county clerk may contact the SOS to request assistance in researching suspicious applications.

(8) The county clerk may contact the applicant via phone or e-mail if necessary, however, in no case shall a change in registrant information be processed unless provided in writing.

D. Processing online voter registration forms received from the SOS.

(1) In order for an applicant to use the online voter registration system, a positive match of identity is required with the MVD database. The match criteria shall be a current or expired MVD driver's license ID number or state ID number, full SSN, and full DOB. If a positive match is not found in the MVD database, the applicant shall be provided with a notice that the application cannot be processed online because of

non-matching MVD information. The applicant shall be provided a link to print a paper voter registration application and an option to provide contact information and request to be contacted by the county clerk. If a positive match is made with the MVD database, the applicant shall be allowed to proceed with online registration and the MVD will send an image of the signature and photo as part of the voter registration application.

(2) If the applicant answers no to the questions regarding citizenship, the voter will not be allowed to continue with the online application process.

(3) If the applicant answers no to the question regarding age, the voter will be allowed to continue with the online application process, however, the clerk will place the record in suspense status in the statewide voter registration system.

(4) If the applicant answers yes to the question regarding currently being in a correctional facility as a result of a felony conviction, the voter will not be allowed to continue with the online application process.

(5) The applicant shall be provided the opportunity to enter all information as prescribed by the paper registration form, except the voter will not be allowed to modify the SSN or DOB after receiving confirmation of a positive match with the MVD database.

(6) The online voter registration system shall allow the applicant to designate from the list of qualified political parties or choose not to designate a political party. The online voter registration system shall not permit an applicant to designate a political party that is not a qualified political party pursuant to Article 7 of the Election Code.

(7) The online voter registration system shall not allow incomplete voter registration applications to be submitted to the statewide voter registration system. The registrant shall receive a system notification when attempting to submit incomplete information and shall not be allowed to proceed until all required information has been provided. Required information shall include the voter's first name, last name, DOB, SSN, gender, physical address, mailing address in the event a non-standard physical address is provided, answers to citizenship and age questions, and party designation or choice of no party designation.

(8) Upon receipt of any online or electronic application forwarded to the county clerk via the voter records system, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

(9) The online voter registration system will generate a digital image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

(10) The online voter registration system shall transmit all information provided by the voter via a secured and encrypted transmission path and an audit log of all attempts, both successful and unsuccessful, to use the online voter registration system will be maintained by the secretary of state.

E. Processing electronic voter registration forms received from the MVD.

(1) Upon receipt of any electronic application forwarded to the county clerk via the voter records system, the application shall be processed as described in Subsection A of 1.10.35.8 NMAC.

(2) The electronic voter registration system will generate an image of a voter registration certificate which shall be included as part of the statewide voter registration system and shall be printed and maintained as part of the county register pursuant to Section 1-4-12 NMSA 1978.

F. Processing incomplete or ineligible electronic or online voter registration applications: This section applies to all electronically submitted voter registration applications.

(1) Upon determining that the electronic or online voter registration application does not contain a valid physical address, includes a non-standard address with no mailing address, or is otherwise not filled out in proper form, the county clerk shall place the voter in "suspense" status with the status reason of "incomplete application." The county clerk shall attempt to contact the applicant to request a corrected voter registration form within five business days, but as soon as is practicable.

(2) After 45 days of an electronic record remaining in "suspense" status, the county clerk shall place the voter in "removable" status with a reason of "incomplete application" until such time the voter submits a completed application. Additionally, the clerk shall print the affected voter registration certificate image(s), mark as removable with the applicable status reason, and maintain as part of the county register pursuant to Section 1-4-12 NMSA 1978.

(3) Upon determining that the electronic or online voter registration application is ineligible by reason of felon incarceration, death, or other applicable reason pursuant to Section 1-4-24 NMSA 1978, the county clerk shall process the application with the applicable status and status reason code as follows:

(a) If a county clerk determines that the applicant has a death record in the voter records system, the county clerk shall contact the SOS to receive confirmation and a copy of the state vital records death certificate. Upon confirmation, the application shall be processed with a status of "removable" and a status reason of "deceased" and shall refer the matter to the assigned election prosecutor within the district attorney's office for investigation.

(b) If a county clerk determines that the applicant is incarcerated in a correctional facility as a result of a felony conviction, the county clerk shall process the application with a status of "not eligible" and a status reason of "felony incarceration." Additionally, the county clerk shall send a notice to the applicant with an explanation that an otherwise qualified elector is ineligible to register to vote while incarcerated in a correctional facility for a felony conviction. The notice shall also provide the elector with information on how they can become eligible or how to update or correct the information in the voter records system, within five business days, but as soon as is practicable.

(c) If a county clerk determines that the applicant is ineligible for any other reason, the county clerk shall process the application with a status of "removable" and the applicable status reason.

[1.10.35.8 NMAC - N, 3/15/2012; Repealed, 2/12/2016; 1.10.35.8 NMAC - N, 2/12/2016; A, 4/7/2020; A, 8/31/2023]

1.10.35.9 FILE MAINTENANCE:

List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

A. Confirmation mailings for voters designated as NVRA under Section 1-4-28 NMSA 1978 (change of address).

(1) The SOS shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28 NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

(2) The SOS shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk or SOS and so designated by the county clerk in the county voter file.

(3) All active voters appearing in either the NCOA or the NVRA files shall be marked with a status of "inactive" and a status reason of "confirmation mailing" and mailed a confirmation card to the voter's mailing address by the SOS.

(4) The SOS shall deliver returned and address corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter's record in the voter file. The physical confirmation card shall be attached to the voter's certificate of registration to be filed in the county register.

(5) The SOS shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or county. If the voter has

moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

(6) The SOS shall return to the county clerk any confirmation card that indicates the voter has moved to another state or country. The county clerk shall mark the record with a status of "removable" and a status reason of "moved outside of county/city," remove the certificate of registration from the county register with the confirmation card attached, and retain it for six years. The county clerk shall also scan the card and attached it to the electronic voter record.

(7) The SOS shall return to the county clerk any confirmation card that is returned as undeliverable. The county clerk shall log the mail as undeliverable in the electronic voter record and attach the confirmation card to the certificate of registration in the county register. The county clerk shall also scan the card and attached it to the electronic voter record.

(8) A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter's address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs after the date of the confirmation mailing.

(9) Cancellation of voter registration shall be by the board of registration and subject to the provisions of the Election Code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six years.

B. Street file maintenance: The county clerk shall establish a street file of standard 911 residential addresses within the voter file to determine a registrant's physical address and shall attempt to correct all non-standard addresses, if any.

C. Precinct assignments: The county clerk shall ensure that all political subdivision changes due to reapportionment, redistricting or annexations are entered into the voter file and voters are assigned to correct voting districts, precincts or precinct parts, if any. The county clerk shall also conduct an audit in every odd numbered year to ensure that all precinct assignments are correct and shall ensure all discrepancies that are discovered in the audit are corrected as soon as possible and at least by the end of the odd numbered year.

D. Felony incarceration.

(1) The SOS, via the voter records system, shall enter, as the method of forwarding to county clerks, information on state and federal felony incarcerations into the statewide voter file upon receipt from the administrative office of the courts, the department of corrections, the department of justice, or other legally recognized source.

Within five business days of receiving information from the voter records system, the county clerk shall check to see if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall remove the voter's voter registration certificate from the county register and mark the record in the electronic voter file system with a status code of "not eligible" and a status reason of "felony incarceration." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the felon record and the voter in the voter file. The county clerk may contact the appropriate agency to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the felon records.

(2) Upon determining a positive match due to felony incarceration, the county clerk shall confirm the applicant appeared personally before a county clerk, the clerk's authorized representative or a precinct board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities. If the county clerk confirms this information, the registration shall be accepted. If the county clerk does not confirm this information, the county clerk shall process the application with a status of "not eligible" and a status reason of "felony incarceration" and send a notice to the applicant with an explanation that an otherwise qualified elector is ineligible to register to vote while incarcerated in a correctional facility for a felony conviction. The notice shall provide information on how they can reinstate their registrant status if the person believes the cancellation has occurred in error, within five business days, but as soon as is practicable.

(3) Upon release from a correctional facility, a voter or a qualified elector who appears personally before a county clerk, the clerk's authorized representative or an election board member, at an office of the motor vehicle division of the taxation and revenue department or at a state agency that provides public assistance or services to persons with disabilities is presumed to meet the voting and voter registration eligibility requirement of not being incarcerated.

E. Deceased voters.

(1) The SOS, via the voter records system, shall enter, as the method of forwarding to county clerks, the list of deceased voters received from the DOH into the statewide voter registration system. Within five business days of receiving information in the voter records system, the county clerk shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

(2) The county clerk may also utilize information provided in the obituaries in the local newspaper of record, online sites containing such records, or signed and notarized statements from family members to positively confirm deceased status. The county clerk may also use probate information, death certificates, or information pursuant to Subsection F of Section 1-4-25 NMSA 1978, to determine strong or weak matches with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file and may contact appropriate agencies in an attempt to resolve weak matches of data. The county clerk may contact the SOS to request assistance in resolving weak matches of data in the death records.

(3) Upon designating a voter as cancelled in the voter file, the county clerk shall remove the voter's certificate of registration from the county register and retain it for six years.

F. Native American deceased processing: For counties that include tribal or pueblo land and precincts, that county's Native American coordinator shall coordinate with the tribe or pueblo officials at least three times per year to identify deceased voters on the rolls as follows:

(1) The county Native American coordinator shall request a notarized list of deceased residents since the last time period requested, that includes full name, DOB, gender, address, SSN, and place and date of death from the tribe or pueblo. Pursuant to Subsection F of Section 1-4-25 NMSA 1978, the notarized list must be provided by the president or governor of an Indian nation, tribe or pueblo, or from a tribal enrollment clerk.

(2) Upon receipt of the notarized listing, the county shall determine if there is a strong or weak match with a voter in the voter file. If there is a strong match, the county clerk shall mark the record in the statewide voter registration system with a status code of "removable" and a status reason of "deceased." If there is a weak match, the county clerk shall conduct a further investigation to determine if there is actually a match between the death record and the voter in the voter file. In the case of a weak match, the county clerk may send a letter to the residence address or relative requesting confirmation of the death. The relative will be asked to provide a signed statement from a family member indicating that the voter in question is deceased. If no response or no supporting documentation is provided, the voter's record is left unaltered and will remain on the voter registration rolls. The record will be subject to the normal NVRA purge process.

G. Other state notifications: Upon receiving notification by another state of a voter registering to vote in that state, the county clerk shall cancel that voter's registration and designate as "removable" and status reason to "moved outside of county/city."

[1.10.35.9 NMAC - N, 3/15/2012; A, 2/12/2016; A, 4/7/2020; A, 8/31/2023]

1.10.35.10 VOTER RECORDS REQUESTS:

A. All requesters of voter file data or public service requests shall complete the affidavit of authorization prescribed by the secretary of state.

B. The secretary of state shall develop a uniform fee schedule for data recording media, voter data, voter lists, special voter lists, precinct lists, printed labels, and early and absentee daily voting reports. County clerks may require a deposit for any data requested.

[1.10.35.10 NMAC - N, 3/15/2012]

1.10.35.11 PROTECTION AND ACCEPTABLE USE OF THE ELECTRONIC VOTER FILE SYSTEM:

In accordance with Sections 1-4-5.5 to -5.6, and 1-4-50 NMSA 1978, the SOS and county clerk offices shall take measures to minimize the risk of unauthorized disclosure, unauthorized acquisition, unauthorized access or other situation that would provide access to voter registration records outside what is allowable by law. Measures shall include:

A. All usernames and passwords shall be kept confidential by each authorized user of the statewide voter registration system.

B. The SOS and county clerk offices shall disable all user accounts immediately upon the effective date of resignation or termination of an employee from the respective office.

C. The SOS and county clerk shall conduct an audit at least annually of the user permissions of each authorized user within their respective office to ensure each authorized user has the minimal roles assigned in order for the user to perform his/her job functions.

D. The SOS and county clerk offices shall conduct an audit of authorized user accounts at least monthly to ensure the user account database is accurate.

E. The SOS and county clerk offices shall take reasonable measures to restrict access to voter registration data, both in electronic and paper form, except as required by the authorized user to perform his/her job functions.

F. Authorized users of the statewide voter registration system shall not use the system for any other purpose except as authorized by statute and defined by his/her job functions within the office.

G. The SOS and county clerk is prohibited from using unencrypted email to transport voter registration information that includes SSN.

H. Data exports created from the statewide voter registration system shall be stored in a protected location and shall be permanently deleted once they are no longer needed and can only be exported to work owned computers or devices within the SOS or county clerk offices.

I. The SOS and county clerk offices shall ensure that antivirus, antimalware, and an operating system patching program is maintained on all computers that access the statewide voter system.

[1.10.35.11 NMAC - N, 3/15/2012; Repealed, 2/12/2016; 1.10.35.11 NMAC - N, 2/12/2016]

1.10.35.12 USE OF GOVERNMENTAL AND OFFICIAL BUILDING AS MAILING ADDRESSES ON VOTER REGISTRATION CERTIFICATES:

A. Upon written request from an Indian nation, tribe or pueblo, the secretary of state may designate a government or official building for use for mailing addresses on voter registrations for members of that Indian nation, tribe or pueblo. The written request must comply with Subsection D of Section 1-21A-1 NMSA 1978.

B. The written request designating the government or official building shall be submitted to the secretary of state in March or April of any year. It shall include the common name for the building, the mailing address of the building, and the name(s) and phone number(s) of lead person(s) charged with the oversight of election mail at the building.

C. Upon receipt of a written request, the secretary of state shall perform a security evaluation of the building to ensure: the building has a space to safely keep the official election mail in a locked and number-sealed ballot box or envelope.

D. The secretary of state shall respond in writing within 60 days of the request.

E. An approved designation will take effect at the general election or regular local election of the year in which the request was approved.

F. Election mail shall only be provided to the voter to whom it is addressed. The lead person(s) charged with the oversight of election mail at the building shall maintain a log of election mail that includes:

- (1) the location of the officially designated building
- (2) date and time of arrival of the election mail

- (3) printed full name of the voter retrieving the mail
- (4) signature of the voter retrieving the mail
- (5) printed full name of the person providing mail to the voter
- (6) signature of the person providing the ballot to the voter

G. If the request is approved and upon implementation, the secretary of state shall send a notification of new designations in writing and shall provide an updated list of approved government and official buildings by county to each county clerk with an Indian nation, tribe or pueblo in the county.

H. If a county clerk receives a voter registration certificate that lists a government or official building on Indian nation, tribe or pueblo land by common name only, the county clerk shall not reject the certificate and, if the certificate is otherwise in the proper form, shall mail information to the voter using the address for the government or official building.

[1.10.35.12 NMAC - N, 8/31/2023]

PART 36 ELECTION FUND GRANTS, REIMBURSEMENTS AND REPORTING

1.10.36.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.36.1 NMAC - N, 7/1/2023]

1.10.36.2 SCOPE:

This rule applies to any statewide elections required by the Election Code.

[1.10.36.2 NMAC - N, 7/1/2023]

1.10.36.3 STATUTORY AUTHORITY:

Section 1-11-19 NMSA 1978; Section 1-2-1 NMSA 1978.

[1.10.36.3 NMAC - N, 7/1/2023]

1.10.36.4 DURATION:

Permanent.

[1.10.36.4 NMAC - N, 7/1/2023]

1.10.36.5 EFFECTIVE DATE:

July 1, 2023, unless a later date is cited at the end of a section.

[1.10.36.5 NMAC - N, 7/1/2023]

1.10.36.6 OBJECTIVE:

To establish the procedure for election grants, reimbursements and reporting between the secretary of state and county clerks for the purposes of paying the costs of conducting and administering statewide elections required by the Election Code.

[1.10.36.6 NMAC - N, 7/1/2023]

1.10.36.7 DEFINITIONS:

A. "Compensation for poll workers, election board members, and messengers" means the compensation to members of an election board on Election Day and members of an election board and messengers assigned to alternate voting or alternate mobile voting locations or absent voter precincts, provided that:

(1) Election board members on Election Day shall be compensated up to \$400 pursuant to Section 1-2-16 NMSA 1978. Compensations for training provided prior to Election Day is not subject to the \$400 statutory limitation.

(2) Members of an election board and messengers assigned to alternate voting or alternate mobile voting locations, monitored secured containers, or absent voter precincts shall be compensated no less than the minimum wage of the state of New Mexico and no more than double the minimum wage of the state of New Mexico.

B. "Election equipment" means tabulators, ballot on demand systems, same-day voter registration tablets, and ancillary equipment used to cast and count votes, designed to print or to make ballots at a polling location, or considered a component of a voting system under Section 1-9-1 NMSA 1978 and includes:

(1) The number of tabulators pursuant to Section 1-9-7 NMSA 1978

(2) The number of ballot on demand systems pursuant to the formula developed by the secretary of state pursuant to Section 1-9-5 NMSA 1978.

C. "Eligible expenses" means expenditures necessary for conducting and administering statewide elections or post-election canvass as statutorily required by the Election Code and include:

(1) All necessary and reasonable expenses incurred by a county clerk for compliance with the Native American Voting Rights Act, including the costs of election

equipment, translation, and personnel for polling places and monitored secured containers on Indian nation, tribal, or pueblo land.

- (2) Ballot and ballot permit paper.
- (3) Compensation for poll workers, election board members, and messengers.
- (4) Election equipment.
- (5) Election supplies.
- (6) Election publications as required by the Election Code.
- (7) Language interpreters.
- (8) Office supplies.
- (9) Postage.
- (10) Recount costs.
- (11) Tabulator delivery.
- (12) Tabulator programming.
- (13) Vendor support.

D. "Election supplies" means supplies necessary for conducting and administering statewide elections statutorily required by the Election Code and include test decks for the purposes of certifying voting machines.

E. "Ineligible expenses" means expenditures that are not necessary and reasonable for the administration of a statewide election or post-election canvass as determined by the secretary of state.

F. "Office supplies" means consumable office supplies purchased for conducting and administering statewide elections as required by the Election Code. Such supplies are limited to items required to conduct the election and post-election canvass including paper, ballot marking pens, pencils, paperclips, staples etc.

[1.10.36.7 NMAC - N, 7/1/2023]

1.10.36.8 MEMORANDUMS OF UNDERSTANDING:

A. The secretary of state shall provide memorandums of understanding (MOUs) to each county for the granting of funds to cover eligible expenses for a statewide election at least ninety days prior to election day.

B. The secretary of state and county clerks shall finalize and sign MOUs at least 60 days prior to Election Day.

C. Should a MOU between the secretary of state and a county clerk fail to be finalized 60 days prior to an election, counties shall only be reimbursed for eligible expenses as outlined in 1.10.36 NMAC and will only be reimbursed upon finalization of an executed MOU.

D. The secretary of state is not responsible for entering into MOUs for the administration of the municipal officer election occurring in even-numbered years. However, county clerks may finalize and sign MOUs with municipalities participating in those elections.

E. The secretary of state is not responsible for entering into MOUs for the administration of special elections. However, county clerks may finalize and sign MOUs with local public bodies participating in those elections.

[1.10.36.8 NMAC - N, 7/1/2023]

1.10.36.9 ADDITIONAL AND INELIGIBLE EXPENSES:

A. If election costs incurred to a county exceed the initial amount provided through a MOU, the county may request reimbursement no later than 45 days after a statewide election using a prescribed form provided by the secretary of state with a description detailed enough to directly associate the expense to the election. Additional costs are not guaranteed to be reimbursed but shall be reimbursed by the secretary of state if they are determined to be eligible expenses as outlined in 1.10.36.7 NMAC.

B. The secretary of state shall not reimburse ineligible expenses. The secretary of state shall utilize historical data including voter turnout to make determinations regarding eligibility of expenses.

[1.10.36.9 NMAC - N, 7/1/2023]

1.10.36.10 REPORTING REQUIREMENTS:

A. Each county clerk shall file a report of expenditures with the secretary of state no later than 45 days after a statewide election for timely reimbursement and/or accounting. The report shall include an official form provided by the secretary of state as well as descriptions with a description detailed enough to directly associate the expense to the election with line-item reporting of expenditures incurred such that the secretary of state can reconcile each expense by counties during the election.

B. County clerks shall return any unused funds via physical check made out to the office of the secretary of state no later than 45 days after a statewide election.

C. If a county clerk does not file expenditure reports by the deadline established in Section A of 1.10.36.10 NMAC, the county shall be reimbursed after a report is filed and as funds become available for reimbursement.

[1.10.36.10 NMAC - N, 7/1/2023]

PART 37 PUBLIC OFFICIAL HOME ADDRESS CONFIDENTIALITY

1.10.37.1 ISSUING AGENCY:

Office of the Secretary of State.

[1.10.37.1 NMAC - N, 7/1/2023]

1.10.37.2 SCOPE:

This rule applies to the secretary of state, county clerks and public officials.

[1.10.37.2 NMAC - N, 7/1/2023]

1.10.37.3 STATUTORY AUTHORITY:

Section 1-2-1 NMSA 1978; Section 10-16A-9 NMSA 1978; Chapter 39 of New Mexico Laws of 2023

[1.10.37.3 NMAC - N, 7/1/2023]

1.10.37.4 DURATION:

Permanent.

[1.10.37.4 NMAC - N, 7/1/2023]

1.10.37.5 EFFECTIVE DATE:

July 1, 2023, unless a later date is cited at the end of a section.

[1.10.37.5 NMAC - N, 7/1/2023]

1.10.37.6 OBJECTIVE:

To establish procedures for the secretary of state and county clerks for the non-disclosure of home addresses for public officials on election- and financial- related records.

[1.10.37.6 NMAC - N, 7/1/2023]

1.10.37.7 DEFINITIONS:

A. "Election-related disclosures" means records pertaining to a public official for campaign or election purposes and include nominating petitions, candidacy declarations, designations of confidential home address forms and voter registration forms.

B. "Financial-related disclosures" means records filed with a county clerk or secretary of state and includes disclosures pursuant to the Financial Disclosure Act, Chapter 10, Article 16A NMSA 1978, and the Campaign Reporting Act, Chapter 1, Article 19 NMSA 1978.

C. "Public official" means a person elected or appointed to a state, county or local office or a candidate thereof or a person appointed to a state, county or local government position.

D. "Designated confidential address" means the address specified by a public official for non-disclosure on the designation of confidential home address form prescribed by the secretary of state, provided that the zip code of the address remains publicly available.

[1.10.37.7 NMAC - N, 7/1/2023]

1.10.37.8 CONFIDENTIAL HOME ADDRESS DESIGNATION:

A. A public official may submit a request for designation of confidential home address using a form prescribed by the secretary of state. A copy of the form shall be forwarded to the county clerk of the county in which the official is registered to vote within seven business days of submission.

B. After the initial request, a public official with designated confidential home addresses shall resubmit a confidential home address form every two years by February 1 of that calendar year to the secretary of state in order to maintain a confidential designation. A copy of the form shall be forwarded to the county clerk of the county in which the official is registered to vote within seven business days of submission.

C. Using a form prescribed by the secretary of state, a candidate for state, county or local office may file a designation of confidential home address with the proper filing officer when filing a declaration of candidacy. In cases where the county clerk is the proper filing officer, the county clerk shall send a copy of the designation to the secretary of state within one business day of the filing. In cases where the secretary of state is the proper filing officer, the secretary of state shall send a copy of the

designation to the county clerk of the county where the candidate is registered to vote within one business day of the filing.

D. A designation of confidential home address for a public official shall be void upon failure to be elected to a state, county or local office.

E. Upon submission of a request for designation of confidential home address, the public official shall provide a mailing address other than the confidential home address which shall be substituted on all election- and financial - related disclosures.

F. The secretary of state shall maintain a list of public officials who have designated confidential addresses, and the list shall be accessible by county clerks.

G. The home address of the public official shall not be publicly disclosed or published on a governmental website so long as a current request for designation of confidential home address has been filed and the public official maintains their status as a public official, or unless such request for designation is otherwise withdrawn in writing by the public official on a form prescribed by the secretary of state.

[1.10.37.8 NMAC - N, 7/1/2023]

1.10.37.9 PRESERVATION OF ORIGINAL RECORDS:

A. Original election- and financial- disclosures that contain a designated confidential address shall be preserved by the secretary of state and county clerks for the purposes of any potential judicial review.

B. Original election- and financial- disclosures that contain a designated confidential address shall not be redacted. When such records are requested by the public, a copy shall be provided, and the confidential address shall be redacted, except for the zip code, on the copy of the disclosure.

[1.10.37.8 NMAC - N, 7/1/2023]

CHAPTER 11: E-GOVERNMENT

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: REAL PROPERTY ELECTRONIC RECORDING

1.11.2.1 ISSUING AGENCY:

State Commission of Public Records - State Records Center and Archives and Department of Information Technology.

[1.11.2.1 NMAC - N, 9/15/2008]

1.11.2.2 SCOPE:

All county clerks who accept and record real property records electronically.

[1.11.2.2 NMAC - N, 9/15/2008]

1.11.2.3 STATUTORY AUTHORITY:

Section 14-9A-5 NMSA 1978 of the Uniform Real Property Electronic Recording Act gives the authority to establish standards for the purpose of implementing the Uniform Real Property Electronic Recording Act to the state commission of public records and the department of information technology in consultation with county clerks.

[1.11.2.3 NMAC - N, 9/15/2008]

1.11.2.4 DURATION:

Permanent.

[1.11.2.4 NMAC - N, 9/15/2008]

1.11.2.5 EFFECTIVE DATE:

September 15, 2008 unless a later date is cited at the end of a section.

[1.11.2.5 NMAC - N, 9/15/2008]

1.11.2.6 OBJECTIVE:

A. To keep the standards and practices of county clerks in New Mexico in agreement with the standards of national standard-setting bodies, such as PRIA, and in agreement with nationally accepted best practices in electronic real property recording.

B. To keep the technology used by county clerks in New Mexico compatible with technology used by recording offices nationally that have enacted the Uniform Real Property Electronic Recording Act.

C. To keep the standards and practices of county clerks in New Mexico in agreement with professional standards and best practices in electronic records management.

D. To ensure electronic instruments that are public records filed and recorded by a county clerk are accessible.

E. To manage and retain real property records in accordance with established records management standards for electronic records (1.14.2 NMAC and 1.13.3 NMAC) and the records retention and disposition schedule adopted by the commission of public records 1.19.3 NMAC.

[1.11.2.6 NMAC - N, 9/15/2008]

1.11.2.7 DEFINITIONS:

A. "ACH" (automated clearing house) means a network processing and delivery system that provides for the distribution and settlement of electronic credits and debits among financial institutions.

B. "Authentication" means the act of tying an action or result to the person claiming to have performed the action. Authentication generally requires a password or encryption key to perform, and the process will fail if the password or key is incorrect.

C. "Authorized filer" means a party who has entered into a MOU with a county clerk pursuant to 1.11.2.10 NMAC.

D. "Digital electronic document" means an instrument containing information that is created, generated, sent, communicated, received, or stored by electronic means, but not created in original paper form.

E. "Digitized electronic document" means a scanned image of the original document.

F. "Document" means recorded information regardless of medium or characteristics that is:

(1) inscribed on a tangible medium or that is stored in an electronic or other medium and that is retrievable in perceivable form; and

(2) eligible to be recorded in the real property records maintained by a county clerk.

G. "E-government" means government's use of information technology to conduct business or exchange information with citizens, businesses or other federal, state and local government offices.

H. "Electronic" as defined in the Uniform Real Property Electronic Recording Act means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

I. "Electronic recording delivery system" means an automated electronic recording system implemented by a county clerk for recording instruments, and for returning to the party requesting the recording, digitized or digital electronic instruments.

J. "Electronic document" means a document that is received by a county clerk in an electronic form.

K. "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

L. "FTP" means file transport protocol.

M. "HTTPS" means hypertext transport protocol secure.

N. "Instrument" as used in 1.11.2 NMAC means all deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate required to be recorded in the office of the county clerk of the county or counties in which the real estate affected thereby is situated.

O. "Memorandum of understanding (MOU)" means a legal document outlining the terms and details of an agreement between parties, including each parties requirements and responsibilities.

P. "Metadata" means "data about data"; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. In the electronic recording context, metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of electronic recordings.

Q. "MISMO" means mortgage industry standards maintenance organization.

R. "PDF"(portable document format) means a file format created for document exchange. PDF is a fixed-layout document format used for representing two-dimensional documents in a manner independent of the application software, hardware, and operating system.

S. "PDF/A" means a subset of PDF that is an electronic document file format for long-term preservation of electronic documents that ensures the documents can be reproduced the exact same way in years to come. A key element is the requirement for PDF/A documents to be 100 percent self-contained. All of the information necessary for displaying the document in the same manner every time is embedded in the file. This

includes, but is not limited to, all content (text, raster images and vector graphics), fonts, and color information.

T. "PRIA" means the property records industry association. PRIA is a not-for-profit association representing business and government members of the property records industry. The main goal of the association is to facilitate recordation and access to public real property records through research and the development and implementation of national standards and systems for the industry.

U. "PKI" (public key infrastructure) means a method of enabling a user of an unsecured public network such as the Internet to securely and privately exchange data and money through the use of a public and a private cryptographic key pair that is obtained and shared through a trusted authority. The public key infrastructure provides for a digital certificate that can identify an individual or an organization and directory services that can store and, when necessary, revoke the certificates.

V. "Schema" means a method for specifying the structure and content of specific types of electronic documents which use XML.

W. "SMART Doc™" means a technical framework for representing documents in an electronic format. This format links data, the visual representation of the form, and signature. The visual representation of the documents can utilize a variety of technologies such as XHTML, PDF, and TIFF. Previously SMART docs™ were called eMortgage documents. In order to better describe the actual capabilities of the technology, the word "eMortgage" was replaced by the acronym "SMART" which represents: securable, manageable, archivable, retrievable, and transferable.

X. "UETA" (Uniform Electronic Transaction Act) means a body of recommended legislation drafted in 1999 by the national conference of commissioners on uniform state laws (NCCUSL) for adoption by state legislatures. UETA allows electronic documents and digital signatures to stand as equals with their paper counterparts.

Y. "URPERA" (Uniform Real Property Electronic Recording Act) means a body of recommended legislation drafted in 2004 by the national conference of commissioners on uniform state laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recorders to accept electronic documents for recording in accordance with established standards. New Mexico adopted a modified version of URPERA during the 2007 legislative session. (see Laws 2007, Ch. 261, Section 1.)

Z. "XHTML" means extensible hypertext mark-up language.

AA. "XML" (extensible markup language) means a computer language used to create markup languages. XML allows developers to specify a document type definition or schema in order to devise new markup languages for general or specific uses.

[1.11.2.7 NMAC - N, 9/15/2008]

1.11.2.8 GENERAL PROVISIONS:

In accordance with the provisions of the URPERA the commission of public records and the department of information technology adopted the electronic recording standards issued by PRIA as the foundation for the standards promulgated as rule under 1.11.2 NMAC.

A. A county clerk may accept instruments for filing and recording electronically in accordance with the requirements of the Uniform Real Property Electronic Recording Act (14-9A-1 NMSA 1978) and 1.11.2 NMAC.

B. Any real property record created by electronic recording means shall meet established records management standards for electronic records (1.14.2 NMAC and 1.13.3 NMAC) and record retention requirements identified in the local government records retention and disposition schedule for county clerks, 1.19.3 NMAC.

C. A participating county clerk shall retain control and ownership of the electronic records created or received by the office of the county clerk and shall be responsible for their maintenance as public records pursuant to 1.14.2 NMAC, 1.13.3 NMAC and 1.15.2 NMAC.

[1.11.2.8 NMAC - N, 9/15/2008]

1.11.2.9 ELECTRONIC RECORDING MODELS:

Authorized filers shall submit real property records for electronic filing and recordation utilizing one of three methods described below. The methods are based on levels of automation and transaction structures identified in the PRIA *URPERA enactment and E-recording standards implementation guide*© utilized nationally to implement electronic recording.

A. Method one. An authorized filer transmits to the county clerk a digitized (scanned) document of an original document created in paper, signed in ink and notarized. The county clerk completes the recording process in the same way as paper using the imaged copy as the source document and determines the recording fees. Fees are usually paid from an escrow or ACH account the authorized filer establishes with the county clerk. Documents may be submitted in batches. Once the county clerk accepts the documents for recording the scanned image is "burned" with the recording information, including recording date and time as well as the unique recording reference number, such as book and page number or instrument number. Indexing is performed by the indexing staff of the clerk's office. The recorded image is returned to the authorized filer. Usually a recording receipt, together with the recording endorsement data, the authorized filer uses the data to create and print a label with the recording

endorsement information. The label is affixed to the paper document, which is then processed as usual by the authorized filer.

B. Method two. An authorized filer transmits to the county clerk a digitized (scanned) document of an original document created in paper, signed in ink and notarized wrapped in an XML wrapper containing the data necessary for processing, indexing and returning the document. In the case of a scanned paper document, method 2 further extends method 1 by adding data that improves the process, specifically the indexing process in the clerk's office. The recordable documents are generally delivered to the county clerk's website by whatever means the parties agree, including HTTPS, web services, and FTP. Documents may be submitted in batches. Authentication of the submitter is required based on an account and personal identification number. Digital signatures and certificates may be used. The documents are stored in a secure area on the clerk's web site until the clerk's system retrieves them. Once imported into the clerk's system, the clerk's system handles the recording functions. The system imports the data from an XML wrapper, including index data. The indexing process is partially automated, but the image must be visually inspected to determine that it meets recording requirements as well as possibly to validate against the data in the XML wrapper. If a document meets the requirements, it is recorded. The recording information is "burned" onto the image and returned to the authorized filer by means agreed upon by the parties in a MOU. Fees are paid based on the method agreed upon through the MOU, usually fees are paid from an escrow or ACH account the authorized filer maintains with the county clerk.

C. Method three. An authorized filer transmits to the county clerk digital electronic documents that have been created, signed and notarized electronically along with the electronic indexing information. Real property documents are typically generated on a vendor's document preparation system usually in XHTML format. [Currently the XHTML format (XML data - HTML formatting) is used or other similar formats, such as MISMO's SMART Doc format or PDF's intelligent document that incorporate the XML data and link it to the content displayed.] The submitter logs on to the system and enters the information necessary to generate the document. Once the document has been generated, the person signs it if he or she has the authority, or notifies the person with signing authority to sign. Secure access is required for all parties that must sign the document because signing is done by digital signature. Once the documents are electronically signed and notarized, they are released for recording. The document preparation system compares each document against recording rules to ensure its recordability and then calculates recording fees. Documents may be submitted in batches. Documents received at the county clerk's system are re-checked against the requirements to determine whether or not they may be recorded. If not, they are rejected and returned to the authorized filer. Otherwise they are accepted for recording and the data for recording is extracted from the documents and passed to the county clerk's recording system. The endorsement data is received from the clerk's system and entered onto the respective documents usually in XML format. Fees are paid based on the method agreed upon through the MOU.

[1.11.2.9 NMAC - N, 9/15/2008]

1.11.2.10 MEMORANDUM OF UNDERSTANDING:

A filer shall apply to a participating county clerk to be enrolled in the participating county clerk's electronic filing and recording program.

A. The authorized filer and a participating county clerk shall enter into a memorandum of understanding (MOU) relating to the terms and conditions of participation in the county clerk's electronic filing and recording program. The provisions of the MOU shall be consistent with 1.11.2 NMAC and the Uniform Real Property Electronic Recording Act. At a minimum the MOU shall address the items described immediately below.

(1) Instruments permitted to be filed electronically. The agreement shall identify the types of real property records permitted to be filed electronically, which may be amended from time to time by the clerk.

(2) Payment of filing fees. The MOU shall require the payment of recordation taxes, recording fees or clerk's fees assessed by statute, and establish the manner and method of such payment.

(3) Notarization. The MOU shall provide that electronic real property recordings shall comply with requirements for notarization pursuant to New Mexico statutes and rules adopted by the secretary of state.

(4) Notification of submission for recordation. The MOU shall provide that the clerk shall issue to the authorized filer an electronic or other written notification that the electronic document has been received by the clerk. The notification shall include the date and time of the receipt of the electronic instrument.

(5) Notification of rejection. The MOU will provide that the electronic instruments submitted for recordation shall be rejected if they fail to meet 1.11.2 NMAC image or file-format specifications and security requirements; comply with New Mexico statute requirements; or comply with the requirements established by the county clerk for electronic recording of real property records.

(6) Transmittal sheet requirements. The MOU shall provide that authorized filers shall comply with transmittal sheet requirements outlined in Subsection C of 1.11.2.10 NMAC.

(7) The MOU shall establish an effective date and duration of the MOU or conditions for termination.

(8) Authorized filer contact information. The MOU shall require authorized filers to provide full information of persons to contact, including an administrative contact person and an information technology contact person.

(9) Liabilities and responsibilities of the authorized filer. The MOU shall require authorized filers to be responsible for keeping their encryption keys secure pursuant to Subsection D of 1.11.2.11 NMAC and for establishing internal controls to assure the security of the private key is not compromised and shall charge them with the responsibility to notify the clerk's office of a compromise to address any breach of internal controls.

(10) Breach of agreement by authorized filer. If an authorized filer fails to take immediate corrective and remedial action for any security compromise, the clerk may revoke the authorized filer's privileges to file electronically.

B. A participating county clerk may include in the MOU other procedures and requirements consistent with 1.11.2 NMAC in order to implement fully an electronic filing and recording program.

[1.11.2.10 NMAC - N, 9/15/2008]

1.11.2.11 DOCUMENT AND SYSTEM SECURITY REQUIREMENTS:

Security procedures shall be implemented to ensure the authenticity and integrity of the electronically filed instrument, including the ability to verify the identity of the filer, as well as the ability to verify that an instrument has not been altered since it was transmitted or filed. In order to protect the integrity of instruments to be recorded electronically, a participating county clerk and authorized filers shall meet the security procedure requirements set forth below.

A. An electronic recording delivery system implemented by a county clerk shall provide a secure method for accepting and recording digital or digitized electronic instruments. The system shall not permit an authorized filer or its employees and agents, or any third party, to modify, manipulate, insert or delete information in the public record maintained by the county clerk, or information in electronic records submitted pursuant to 1.11.2.NMAC.

B. Security standards implemented by county clerks shall accommodate electronic signatures and notarization of documents in a manner that complies with 12.9.2 NMAC, *Performing Electronic Notarial Acts* and that address the following encryption requirements. The electronic recording delivery system shall:

(1) support, at a minimum, 128-bit file and image encryption over a secure network;

(2) provide for periodic updates to encryption by the electronic recording delivery system vendor;

(3) advise the authorized filer of its liabilities and responsibilities for keeping its keys secure;

(4) provide a secure key management system for the administration and distribution of cryptographic keys; and

(5) require all encryption keys to be generated through an approved encryption package and securely stored.

C. The electronic recording delivery system shall control interactive access to the system through authentication processes that:

(1) utilize a process of requesting, granting, administering and terminating accounts;

(2) address the purpose, scope, responsibilities and requirements for managing accounts;

(3) designate one or more individuals to manage accounts; and

(4) provide for secure delivery of the authorized filer (s) initial password(s) and prohibit the transmission of identification and authentication information (password) without the use of industry-accepted encryption standards.

D. County clerks shall have a key management system in place for the secure administration and distribution of cryptographic keys.

(1) The electronic recording delivery system shall authenticate the authorized filer's private key.

(2) Authorized filers shall establish internal controls to assure the security of the private key is not compromised and certify compliance with the county clerk as part of the MOU.

(3) Security of private keys compromised within the electronic recording delivery system shall be promptly addressed by the clerk.

E. A risk analysis to identify potential threats to the electronic recording delivery system and the environment in which it operates shall be conducted at least once every three years by the county clerk and shall be submitted to the department of information technology and the commission of public records. The purpose of the risk analysis is to prevent the filing and recording of fraudulent instruments or alteration of instruments that were previously filed and recorded electronically. A risk analysis shall identify and

evaluate system and environmental vulnerabilities and determine the loss impact if one or more vulnerabilities are exploited by a potential threat. The risk analysis shall include:

- (1) a risk mitigation plan that defines the process for evaluating the system;
- (2) documentation of management decisions regarding actions to be taken to mitigate vulnerabilities;
- (3) identification and documentation of implementation of security controls as approved by management; and
- (4) a reassessment of the electronic recording delivery system security after recommended controls have been implemented or in response to newly discovered threats and vulnerabilities.

F. Authorized filers who are enrolled in a participating county clerk's electronic filing and recording program shall implement security procedures for all electronic filing transmissions and shall be responsible for maintaining the security of the systems within their respective offices.

G. Electronic recording delivery systems shall protect against system and security failures and, in addition, shall provide normal backup and disaster recovery mechanisms.

[1.11.2.11 NMAC - N, 9/15/2008]

1.11.2.12 ELECTRONIC TRANSMISSIONS:

A. Instruments shall be transmitted through either a secured website or an electronic recording delivery system. The method of transmission shall be identified in the MOU (1.11.2.10 NMAC) signed by the authorized filer and the county clerk.

B. An authorized filer shall visually inspect each instrument prior to transmitting to ensure compliance with existing statutory recording requirements and 1.11.2 NMAC;

C. Instruments submitted for filing shall have a transmittal sheet containing the following information and order:

- (1) document type - title of the document type shall be stated at the top of the page below the top margin;
- (2) return to - all cover transmittal sheets shall have a return to name, address, phone and fax numbers and email address;
- (3) party names - all party names to be indexed shall be listed with the grantor's last name, then first, and middle names, followed by the grantee's last name,

first and middle names and full name of business entities bolded, underlined or capitalized in a way to stand out for indexing;

(4) subsequent references - references to the original document on subsequent documents shall appear conspicuously on the first page of all subsequent documents;

(5) legal description - if legal description is provided the page number on which the legal description is printed shall be referenced;

(6) recording fee - the amount of the recording fee; and

(7) property tax - the name and address on deed of party responsible to pay property tax shall appear on the first page of the document.

[1.11.2.12 NMAC - N, 9/15/2008]

1.11.2.13 ELECTRONIC RECORDING PROCESS REQUIREMENTS:

A. An MOU between a participating county clerk and an authorized filer shall include information required by the participating county clerk in order to provide electronic notice of confirmation or rejection of an electronic filing and subsequent recording, or if such electronic notice is not possible, by telephone or facsimile. The MOU shall address the requirements outlined in 1.11.2.10 NMAC.

B. When a participating county clerk provides acknowledgment of receipt of an instrument filed electronically, the instrument shall be considered to have been filed in compliance with the applicable regulations and laws relating to filing of an instrument with the county clerk.

C. A notice of confirmation of recording or a notice of rejection for recording shall be provided by a participating county clerk to an authorized filer no later than the first business day after the instrument is filed electronically.

(1) A notice of confirmation shall include recording information for the instrument accepted for recording and shall identify the instrument accepted for recording, as provided in the agreement.

(2) A notice of rejection shall include a brief explanation of the reason or reasons for rejection and shall identify the instrument rejected for recording, as provided in the agreement.

(3) If a participating county clerk complies with the notice provisions of the agreement, the failure of an authorized filer to receive notice of confirmation or rejection of filing and subsequent recording shall not affect the validity of the confirmation or rejection.

D. The authorized filer shall be responsible for returning the original instrument to the party or parties entitled to it after notice of confirmation of recording is received by the authorized filer and for providing to such party or parties the recording information set forth in the notice of confirmation from the participating county clerk.

[1.11.2.13 NMAC - N, 9/15/2008]

1.11.2.14 ELECTRONIC SIGNATURES AND NOTARY ACKNOWLEDGEMENT:

A county clerk that accepts for recording electronically signed and notarized instruments utilizing digital signatures based on PKI encryption technology shall do so in accordance with rules promulgated by the secretary of state. For purposes of efficiency, participating county clerks are encouraged to utilize technology and to accept digital certificates from certification authorities compatible with the technology used and certificates accepted by other participating county clerks.

[1.11.2.14 NMAC - N, 9/15/2008]

1.11.2.15 DOCUMENT FORMATS:

A. Authorized filers may elect to transmit either a digitized (scanned) electronic document of an original ink signed instrument or an electronic document electronically signed and notarized along with electronic indexing information to the county clerk.

B. Digitized (scanned) electronic documents shall meet the following specifications:

- (1) provide fidelity to the original appearance of any instrument at the time such instrument was first created, whether by electronic or other means;
- (2) retain the original content;
- (3) be scanned at a minimum of 300 dpi;
- (4) be scanned in TIFF or PDF/A formats;
- (5) be scanned in portrait mode;
- (6) shall capture document images in any multi-page storage format as specified by the county clerk; and
- (7) shall be legible to enable reproduction onto microfilm or microfiche to meet 1.14.2 NMAC requirements.

C. Digital electronic documents transmitted to the county clerk for recording shall meet PRIA formatting and document data field standards. The commission of public

records and the department of information technology have adopted by reference PRIA and MISMO electronic document formatting and data field standards.

D. Electronic recordings shall be converted to (if necessary) and preserved as TIFF or PDF files along with their associated metadata. Method 3 submissions shall be converted to TIFF or PDF to meet preservation requirements pursuant to 1.14.2 NMAC.

[1.11.2.15 NMAC - N, 9/15/2008]

1.11.2.16 DOCUMENT AND INDEXING REQUIREMENTS:

Electronic recording delivery systems implemented by county clerks shall have the capacity at a minimum to process documents that are compatible with indexing requirements established by PRIA for file formatting and indexing.

A. The *PRIA eRecording XML Standard v2.4.1* is adopted by reference. The most current version of the PRIA indexing and document format standards may be found at the PRIA website at <http://pria.us/>.

B. Indexing fields for each document code shall require the minimum index fields listed below:

- (1) grantor(s) or equivalent grantee(s) or equivalent.
- (2) document type recording fee related (original document number, in the case of releases, assignment, amendments, etc.).
- (3) legal description fields as specified by county.
- (4) standard PRIA tags defined for these fields must be used. <http://pria.us/>

[1.11.2.16 NMAC - N, 9/15/2008]

1.11.2.17 PAYMENT OF FILING FEES:

Payment of recording fees shall be collected by a county clerk as prescribed by statute. The clerk shall provide an electronic or other written receipt to the authorized filer indicating that the payment for the recordation of the electronic instrument has been received and processed by the clerk. The electronic recording delivery system may generate an automated electronic report which complies with this requirement. The clerk shall provide authorized filers with a list of payment methods which may be used for the recordation of electronic real property records.

[1.11.2.17 NMAC - N, 9/15/2008]

1.11.2.18 PRESERVATION:

Real property records in the custody of the county clerk are permanent records and must be preserved. The preservation of electronic real property records requires consistent and complex management in order to maintain authenticity and integrity. Electronic records are subject to the same threats of destruction as other mediums such as natural or human-made disasters. There are the added challenges of hardware and software obsolescence, media longevity and migration, infrastructure failures and accidental damage from improper handling. The durability of electronic records has not been proven to be as enduring as microfilm. In order to secure and preserve information created and stored electronically, permanent digital real property records shall be converted to microfilm. Microfilm shall meet standards established by the commission of public records 1.14.2.10 NMAC.

[1.11.2.18 NMAC - N, 9/15/2008]

CHAPTER 12: INFORMATION TECHNOLOGY

PART 1: GENERAL PROVISIONS

1.12.1.1 ISSUING AGENCY.

Information Technology Commission.

[1.12.1.1 NMAC - Rp/E, 1 NMAC 12.1.1, 12/02/2005]

[All documents intended for delivery to the information technology commission shall be addressed or delivered to the office of the chief information officer at 5301 Central NE, Suite 1500, Albuquerque, NM 87108. The internet address for the information technology commission and the office of the chief information officer is www.cio.state.nm.us. The email address for the office of the chief information officer is cio@state.nm.us]

1.12.1.2 SCOPE.

This rule applies to all rules adopted by the information technology commission.

[1.12.1.2 NMAC - Rp/E, 1 NMAC 12.1.2, 12/02/2005]

1.12.1.3 STATUTORY AUTHORITY.

NMSA 1978 Section 15-1C-5.

[1.12.1.3 NMAC - Rp/E, 1 NMAC 12.1.3, 12/02/2005]

1.12.1.4 DURATION.

Permanent.

[1.12.1.4 NMAC - Rp/E, 1 NMAC 12.1.4, 12/02/2005]

1.12.1.5 EFFECTIVE DATE.

December 2, 2005, unless a later date is cited at the end of a section.

[1.12.1.5 NMAC - Rp/E, 1 NMAC 12.1.5, 12/02/2005]

1.12.1.6 OBJECTIVE.

The purpose of this rule is to set forth provisions that apply to all rules adopted by the information technology commission.

[1.12.1.6 NMAC - Rp/E, 1 NMAC 12.1.6, 12/02/2005]

1.12.1.7 DEFINITIONS.

Defined terms apply to this rule and all other rules adopted by the information technology commission.

A. "Act" means the Information Technology Management Act, NMSA 1978 Section 15-1C-1 et seq.

B. "Agency" means an executive agency of the state.

C. "Architectural configuration requirement (ACR)" means the technical specifications for information architecture and computer system purchases for agencies adopted by the commission.

D. "CIO" means the chief information officer.

E. "Commission" means the information technology commission.

F. "Exception" means a request granted by the office allowing an agency an exclusion from compliance with a rule, ACR or guideline that is limited in scope and duration.

G. "Guideline" means a directive adopted by the commission.

H. "Individual" means a natural person, a human being.

I. "Office" means the office of the chief information officer.

J. "Person" means an individual, association, organization, partnership, firm, syndicate, trust, corporation, and every legal entity.

K. "Rule" means any rule adopted by the commission which requires compliance by executive agencies.

L. "State" means New Mexico, or, when the context indicates a jurisdiction other than New Mexico, any state, district, commonwealth, territory, or possession of the United States.

[1.12.1.7 NMAC - Rp/E, 1.12.1.7, 12/02/2005]

1.12.1.8 USE OF COMMISSION-PRESCRIBED FORMS.

The office or commission may prescribe forms to carry out certain requirements of its adopted rules, ACRs and guidelines. Prescribed forms must be used when a form exists for the purpose, unless these rules state otherwise or the requirement is waived by the office or commission.

[1.12.1.8 NMAC - Rp/E, 1 NMAC 12.1.8, 12/02/2005]

1.12.1.9 RULE, ACR AND GUIDELINE COMPLIANCE AND EXCEPTION.

Rules, ACRs and guidelines shall be followed by agencies under all circumstances unless the office grants an exception in accordance with this rule.

A. An agency may request an exception. An exception shall be granted only if compliance would:

- (1) threaten the function of government;
- (2) threaten the preservation or protection of property;
- (3) threaten the health or safety of any person;
- (4) result in significant increase in agency costs;
- (5) hinder mission critical services; or
- (6) compromise essential service attributes critical to agency success.

B. An agency shall file a written request for exception with the office that:

- (1) identifies the appropriate section of the rule, ACR or guideline from which the agency is requesting an exception;
- (2) outlines the grounds on which the request is based; and
- (3) includes any information available to support the request.

C. The office shall evaluate the request for exception and provide a written determination to the agency within fifteen (15) business days.

[1.12.1.9 NMAC - Rp/E, 1 NMAC 12.1.9, 12/02/2005]

PART 2: COMMISSION OPERATING PROCEDURES

1.12.2.1 ISSUING AGENCY:

Information Technology Commission.

[2-1-00; Recompiled 11/30/01]

1.12.2.2 SCOPE:

This rule applies to all actions taken by the information technology commission.

[2-1-00; Recompiled 11/30/01]

1.12.2.3 STATUTORY AUTHORITY:

NMSA 1978 Section 15-1C-5.

[2-1-00; Recompiled 11/30/01]

1.12.2.4 DURATION:

Permanent.

[2-1-00; Recompiled 11/30/01]

1.12.2.5 EFFECTIVE DATE:

February 1, 2000, unless a later date is cited at the end of a section or paragraph.

[2-1-00; Recompiled 11/30/01]

[Compiler's note: The words *or paragraph*, above, are no longer applicable. Later dates are now cited only at the end of sections, in the history notes appearing in brackets.]

1.12.2.6 OBJECTIVE:

The purpose of this rule is to establish the procedures by which the commission will operate in carrying out its responsibilities under the Act.

[2-1-00; Recompiled 11/30/01]

1.12.2.7 DEFINITIONS:

As used in this rule:

A. **"advisory member"** means a person appointed to the commission pursuant to NMSA 1978 Section 15-1C-4B;

B. **"comment draft"** means the draft of a proposed rule or guideline approved by the Commission for publication for the limited purpose of receiving comments;

C. **"designee"** means the person selected by a member to represent and vote or otherwise act on behalf of the member, where the selection of a designee is permitted by law;

D. **"public member"** means a person appointed to the commission pursuant to NMSA 1978 Section 15-1C-4A(5);

E. **"voting member"** means a person appointed to the commission pursuant to NMSA 1978 Section 15-1C-4A and includes a public member.

[2-1-00; Recompiled 11/30/01]

1.12.2.8 MEMBERS:

A. Terms. Public members shall serve for staggered three-year terms or until they resign. All other members shall serve until they resign or are replaced by their appointing authority.

B. Vacancies. A member may resign or a member's position on the commission may be deemed vacant if the member or his designee fails to participate in three (3) successive regular meetings.

C. Notice of vacancy. The commission shall notify the appointing authority of a vacancy on the Commission.

(1) Public members. The appointing authority shall appoint a replacement for the remainder of the three-year term.

(2) All other members. The appointing authority shall appoint a replacement.

D. Conflicts of interest. If any member of the commission has a financial interest in state information systems, state contracts, or the outcome of any commission action, the member shall disclose such interest to the commission and shall not vote on any matter which may have an effect on such interest.

[2-1-00; Recompiled 11/30/01]

1.12.2.9 OFFICERS:

A. Chairperson. The chairperson shall preside at meetings of the commission and shall assume all duties designated from time to time by the commission.

B. Vice-chairperson. The vice-chairperson shall perform the duties and assume the obligations of the chairperson when the chairperson is absent. When a vacancy occurs in the office of chairperson, the vice-chairperson shall serve as chairperson until the commission elects a chairperson.

C. Elections.

(1) Date of elections. Starting in 2000, the commission shall elect a chairperson and a vice-chairperson at a commission meeting to be held in May of every even-numbered year.

(2) Nominations. Any voting member may nominate an individual to serve as chairperson or vice-chairperson of the commission. Nominations may be made in person at a commission meeting or by e-mail, facsimile or other writing addressed to the office. For bi-annual elections, nominations must be received by the office no later than April 1 of every even-numbered year. The office shall provide the names of nominees for chairperson and vice-chairperson to all members by April 10 of every even-numbered year.

(3) Voting. Voting shall be by voice or roll call vote. New officers shall assume their duties upon adjournment of the meeting.

(4) Vacancies. When a vacancy occurs in the office of chairperson or vice-person, the office shall as soon as practicable give notice of the vacancy to the commission, invite nominations from voting members by a specified date, provide the names of nominees to fill the vacancy to all members at least five calendar days before the next meeting, and, at the next meeting, the commission shall elect an individual to serve out the remainder of the chairperson's or vice-chairperson's term.

[2-1-00; Recompiled 11/30/01]

1.12.2.10 COMMITTEES:

The commission may appoint committees from time to time and may abolish them at any time. Committees shall have investigative or advisory powers only, reporting all findings and recommendations to the commission for action. The commission shall assign specific topics for study or well-defined areas of activity to each committee immediately following its appointment.

[2-1-00; Recompiled 11/30/01]

1.12.2.11 STAFF:

The office shall serve as staff to the commission and shall:

- A. prepare, file and post all notices of meetings;
- B. prepare the agenda for meetings; the agenda for regular meetings shall include at a minimum a call to order, roll call, approval of agenda and minutes, presentation and recommendations to the commission, unfinished business, commission-requested discussion or action, new business, and adjournment.
- C. arrange the time, place, and facilities for meetings;
- D. tape record each meeting; the tape recording shall constitute the detailed minutes of the meeting;
- E. prepare summary minutes of each meeting in writing in accordance with New Mexico law; summary minutes shall include at a minimum the date, time, and place of the meeting; the names of commission members present and absent; the subjects discussed by the commission; and a record of all votes taken that shows how each member voted.
- F. prepare ballots for election of officers as necessary;
- G. establish and maintain an electronic distribution list for all persons requesting notice of comment drafts;
- H. maintain and have custody of the records of the commission;
- I. draft or review proposed rules and guidelines, and proposed amendments to rules and guidelines;
- J. prepare reports on behalf of the commission;
- K. recommend revisions to commission operating procedures as needed;
- L. orient new commission members; and
- M. do all other tasks requested by the commission.

[2-1-00; Recompiled 11/30/01]

1.12.2.12 MEETINGS:

A. Regular meetings. The chairperson shall call a regular meeting of the commission not less often than semiannually. The office shall provide notice to the public of the date, time, and place of regular meetings by publication once in a newspaper of general circulation in the state at least ten (10) calendar days in advance of the meeting. The commission may not take action on, but may discuss, any item not specifically on the agenda.

B. Special meetings. The chairperson or a majority of the voting members of the commission may call a special meeting to consider urgent matters that do not qualify as an emergency. The Office shall provide notice to the public of the time, date, and place of special meetings by telephone to newspapers of general circulation in the state and by posting on the internet and at the office at least three (3) calendar days in advance of the meeting. The commission may discuss at a special meeting only those items specifically on the agenda.

C. Emergency meetings. The chairperson or a majority of the voting members of the commission may call an emergency meeting only when unforeseen circumstances demand immediate action to protect the health, safety and property of citizens or to protect the commission and the office from substantial financial loss. The office shall provide notice to the public of the time, date, and place of emergency meetings by telephone to newspapers of general circulation in the state and by posting on the internet and at the office at least twenty-four (24) hours in advance of the meeting, unless threat of personal injury or property damage require less notice. The commission may discuss at an emergency meeting only those items specifically on the agenda.

D. Notice. All notices shall:

- (1) include information on how the public may obtain a copy of the agenda;
- (2) include the following language: "If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the information technology management office at 476-0400 at least one week prior to the meeting, or as soon as possible. Public documents, including the agenda and minutes can be provided in various accessible formats by contacting the information technology management office at 476-0400.";
- (3) be posted on the internet;
- (4) be posted at the information technology management office; and
- (5) be provided to broadcast stations licensed by the federal communications commission and newspapers of general circulation which have filed with the office a written request for notice of public meetings.

E. Waiver of notice to voting members. Whenever any notice is required to be given to a voting member, a written waiver of notice signed by the voting member entitled to the notice is equivalent to the giving of timely notice. The attendance of a voting member at a meeting shall constitute waiver of notice of the meeting except when the voting member's attendance is for the sole purpose of objecting that the meeting is not lawfully called or convened.

F. Materials for review. At least five (5) calendar days before a regular meeting or as soon as practicable, the office shall provide to the commission copies of draft reports, proposed rules or guidelines, and other documents to be discussed or voted on at the meeting.

G. Participation methods. A member may participate in commission meetings in person or, if it is difficult or impossible for the member to attend in person, by any means of communication which permits all members participating in the meeting to hear each other at the same time and members of the public attending the meeting to hear any commission member who speaks during the meeting.

H. Quorum. A majority of the thirteen (13) voting members shall constitute a quorum. The commission shall not take any official action without a quorum present.

I. Voting. Only voting members may vote on official matters before the commission. A majority of a quorum of the voting members must vote in the affirmative for an action to be taken; a tie vote shall be deemed a negative vote.

J. Agenda. Any person may request the chairperson to place an item on the agenda or an item may be placed on the agenda by a majority of the voting members. The office shall prepare the agenda in consultation with the chairperson and make it available to the public and the commission at least twenty-four (24) hours prior to the meeting.

K. Closure of meetings. The commission may close a meeting to the public only to discuss matters exempted from the open meeting requirement by NMSA 1978 Section 10-15-1(H).

(1) The commission may close an open meeting by a majority vote of a quorum taken during the open meeting. The motion for closure shall state with reasonable specificity the subject to be discussed and the provision of law authorizing the closed meeting. The vote of each voting member on the motion for closure shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the closed portion of the meeting.

(2) The commission may hold a separately scheduled closed meeting only if an appropriate notice of closure, stating with reasonable specificity the subject to be discussed and the provision of law authorizing the closed meeting, is given to the members and the general public.

(3) The minutes of an open meeting that was closed, or the minutes of the next open meeting held after a separately scheduled closed meeting, shall state that the discussions in the closed meeting were limited to those matters specified in the motion for closure or notice of closure.

(4) Except as provided in NMSA 1978 Section 10-15-1(H), the commission shall vote in an open meeting on any action taken as a result of discussions in a closed meeting.

L. Meeting procedures. The commission shall conduct its meetings in accordance with *Robert's Rules of Order, Newly Revised*, except that this rule shall govern in the event of a conflict between this rule and *Robert's Rules of Order*.

[2-1-00; Recompiled 11/30/01]

1.12.2.13 ADOPTION OF RULES:

A. Proposed rules. Any person may submit a proposal for a rule to the commission. The office shall evaluate the proposal for compliance with the state information architecture and the state strategic plan and shall report its findings and recommendations to the commission. The commission may reject the proposal, agree to consider it further, or approve a comment draft. The comment draft may contain modifications agreed to by the commission.

B. Emergency rules. The CIO may issue an emergency rule in accordance with 1 NMAC 3.3.20, Emergency Rules [now 1.24.20 NMAC]. Executive agencies shall comply with an emergency rule pending its adoption by the commission pursuant to the rulemaking procedures set forth in this section or until the emergency rule expires.

C. Notice of proposed rulemaking. The office shall cause a notice of proposed rulemaking to be published once in the New Mexico register and once in a newspaper of general circulation in the state, and posted on the internet at its internet address at least twenty-five (25) calendar days prior to adoption of the proposed rule.

D. Availability of comment draft. The office shall:

- (1) post comment drafts on the Internet at its internet address;
- (2) send comment drafts to all members of the information technology oversight committee;
- (3) notify all persons on the electronic distribution list that a comment draft is available for comment; and
- (4) mail or fax a hard copy of a comment draft to any person requesting a copy of the comment draft in writing or by telephone.

E. Comment procedure. The office shall make a comment draft available for comment for at least twenty (20) calendar days prior to its adoption. Any person may submit written comments on the proposed rule to the Office in hard copy or by electronic means. All comments received before the deadline for receipt of comments will be considered; comments received after the deadline will not be considered.

F. Review. The office shall review all comments for compliance with the state information architecture and the state strategic plan, prepare a summary of all comments received before the deadline, and report its findings and recommendations to the commission.

G. Commission action. The commission shall consider the comment draft, the summary of comments, and the findings and recommendations of the office at a meeting held after the comment period. The commission may adopt the proposed rule without revision, revise and adopt the proposed rule, revise the proposed rule and seek additional comments, or reject the proposed rule,.

H. Amendment and repeal of rules. The commission may amend, replace, or repeal rules in accordance with the procedures set forth in this section.

I. Records of rulemakings. The office shall compile a record of all rulemakings containing at a minimum the notice of rulemaking, the comment draft, all comments received by the deadline for the receipt of comments, the minutes of commission meetings at which the proposed rule was discussed, the stamped copy of the adopted rule filed with the state records center, and the transmittal form and shall maintain them for a period of at least three (3) years from the date the rule becomes effective.

J. Availability of adopted rules. The office shall post all rules adopted by the commission on the internet at the office's internet address.

[2-1-00; Recompiled 11/30/01]

1.12.2.14 ADOPTION OF GUIDELINES:

A. Proposed guidelines. Any person may submit a proposal for a guideline to the commission. The office shall evaluate the proposal for compliance with the state information architecture and the state strategic plan and shall report its findings and recommendations to the commission. The commission may reject the proposal, agree to consider it further, or approve a comment draft. The comment draft may contain modifications agreed to by the commission.

B. Notice of proposed guidelines. The office shall post notice of a proposed guideline on the internet at its internet address at least twenty-five (25) calendar days prior to adoption of the proposed guideline.

C. Availability of comment draft. The office shall:

- (1) post comment drafts on the internet at its internet address;
- (2) send comment drafts to all members of the information technology oversight committee;
- (3) notify all persons on the electronic distribution list that a comment draft is available for comment; and
- (4) mail or fax a hard copy of a comment draft to any person requesting a copy of the comment draft in writing or by telephone.

D. Comment procedure. The office shall make a comment draft available for comment for at least twenty (20) calendar days prior to its adoption. Any person may submit written comments on the proposed guideline to the office in hard copy or by electronic means. All comments received before the deadline for receipt of comments will be considered; comments received after the deadline will not be considered.

E. Review. The office shall review all comments for compliance with the state information architecture and the state strategic plan, prepare a summary of all comments received before the deadline, and report its findings and recommendations to the commission.

F. Commission action. The commission shall consider the comment draft, the summary of comments, and the findings and recommendations of the office at a meeting held after the comment period. The commission may adopt the proposed guideline without revision, revise and adopt the proposed guideline, revise the proposed guideline and seek additional comments, or reject the proposed guideline.

G. Amendment and repeal of guidelines. The commission may amend, replace, or repeal guidelines in accordance with the procedures set forth in this section.

H. Availability of adopted guidelines. The office shall post all guidelines adopted by the commission on the internet at the office's internet address.

[2-1-00; Recompiled 11/30/01]

1.12.2.15 ANNUAL REPORTS:

A. State information technology strategic plan. On or before June 1 of each year, the commission shall update the state information technology strategic plan.

B. Information technology planning guidelines. On or before June 1 of each year, the commission shall provide information technology planning guidelines to executive agencies to assist them in preparing their annual agency plans.

C. Funding recommendations. On or before November 30 of each year, the commission shall submit its funding recommendations to the department of finance and administration, the legislative finance committee, and the information technology oversight committee.

[2-1-00; Recompiled 11/30/01]

PART 3: ELECTRONIC MAIL THIRD-PARTY RELAY

1.12.3.1 ISSUING AGENCY.

Information Technology Commission.

[1.12.3.1 NMAC - N, 6-15-00]

1.12.3.2 SCOPE.

This rule applies to all executive state agencies.

[1.12.3.2 NMAC - N, 6-15-00]

1.12.3.3 STATUTORY AUTHORITY.

NMSA 1978 Section 15-1C-5.

[1.12.3.3 NMAC - N, 6-15-00]

1.12.3.4 DURATION.

Permanent.

[1.12.3.4 NMAC - N, 6-15-00]

1.12.3.5 EFFECTIVE DATE.

June 15, 2000, unless a later date is cited at the end of a section.

[1.12.3.5 NMAC - N, 6-15-00]

1.12.3.6 OBJECTIVE.

The purpose of this rule is to establish requirements regarding state agency electronic mail systems.

[1.12.3.6 NMAC - N, 6-15-00]

1.12.3.7 DEFINITIONS.

As used in this rule, **third-party relay** means that feature of an Internet electronic mail system that enables any mail sender on the Internet to transfer messages using any mail server on the Internet installed with the feature, regardless of the mail server's location.

[1.12.3.7 NMAC - N, 6-15-00]

1.12.3.8 THIRD-PARTY RELAY.

State agencies operating Internet electronic mail systems shall disable the third party relay feature and shall take any other steps necessary to ensure that electronic mail originating from outside state agencies is not relayed by state-owned mail servers.

[1.12.3.8 NMAC - N, 6-15-00]

1.12.3.9 EXEMPTION.

A. An agency seeking an exemption from the requirements of this rule shall file a written request with the CIO. The request shall state the grounds for the exemption request and shall include any information available to support the request. The CIO shall respond to the request within thirty (30) days.

B. An agency may file with the Commission a written request for review of an adverse CIO decision. The Commission shall make a final decision at its next regularly scheduled meeting, unless a special meeting is called for that purpose.

[1.12.3.9 NMAC - N, 6-15-00]

PART 4: MAGNET NETWORK AGGREGATION

1.12.4.1 ISSUING AGENCY:

Information Technology Commission.

[1.12.4.1 NMAC - N, 12-29-00]

1.12.4.2 SCOPE:

This rule applies to all executive state agencies that lease broadband circuit service.

[1.12.4.2 NMAC - N, 12-29-00]

1.12.4.3 STATUTORY AUTHORITY:

NMSA 1978 Section 15-1C-5.

[1.12.4.3 NMAC - N, 12-29-00]

1.12.4.4 DURATION:

Permanent.

[1.12.4.4 NMAC - N, date]

1.12.4.5 EFFECTIVE DATE:

December 29, 2000, unless a later date is cited at the end of a section.

[1.12.4.5 NMAC - N, 12-29-00]

1.12.4.6 OBJECTIVE:

The purpose of this rule is to facilitate the creation of a shared, centrally managed statewide network infrastructure by aggregating broadband circuit service to state agencies when it is to the economic and operational advantage of the state.

[1.12.4.6 NMAC - N, 12-29-00]

1.12.4.7 DEFINITIONS:

As used in this rule:

A. BMAC means the Broadband management advisory committee, a subcommittee of the commission.

B. ISD-OC means the information systems division, office of communications.

[1.12.4.7 NMAC - N, 12-29-00]

1.12.4.8 MAGNET NETWORK AGGREGATION IMPLEMENTATION AND BUSINESS PLAN:

MAGnet network aggregation will be accomplished according to the MAGnet network aggregation implementation and business plan.

[1.12.4.8 NMAC - N, 12-29-00]

1.12.4.9 RESPONSIBILITIES OF STATE AGENCIES:

A. Agencies shall participate in broadband circuit aggregation efforts, unless exempted pursuant to the provisions of this rule.

B. Agencies will transfer administrative management of existing contracts for broadband circuit service to ISD-OC as the BMAC determines the most effective method for accomplishing the transfer.

[1.12.4.9 NMAC - N, 12-29-00]

1.12.4.10 RESPONSIBILITIES OF BMAC:

BMAC will provide high-level management oversight for the shared broadband circuit network including, but not limited to, provision of new services and changes in direction, service level, or attributes of broadband circuit service.

[1.12.4.10 NMAC - N, 12-29-00]

1.12.4.11 RESPONSIBILITIES OF ISD-OC:

ISD-OC will:

A. provide administrative management of all broadband circuits leased by state agencies, including control of billing and contracts;

B. provide technical management of all shared broadband circuits;

C. participate in the negotiation of all new agreements for broadband circuit service;

D. participate in the negotiation of renewal agreements for broadband circuit service in conjunction with agencies as individual agency contracts for broadband circuit service expire:

(1) ISD-OC may negotiate renewal agreements affecting agency-managed broadband circuit service without express agency approval if the renewal agreement results in no additional charge to the affected agency.

(2) If the renewal agreement results in cost savings without value being added to an agency's broadband circuit service, ISD-OC will pass the cost savings along to the affected agency.

(3) ISD-OC must seek approval from an agency before negotiating any renewal agreement for broadband circuit service that will result in increased costs to the agency.

E. effectuate the transition to an aggregated broadband circuit network in ways that minimize:

- (1) involuntary increases in individual agency expenses;
- (2) disruptions to current agency operations; and
- (3) delays in adding or changing broadband circuit services necessary to maintain agency operations.

F. provide advance notice to, and obtain consent from, an agency when disruptions or delays in broadband circuit service to the agency must be scheduled.

[1.12.4.11 NMAC - N, 12-29-00]

1.12.4.12 RESPONSIBILITIES OF THE CIO:

The CIO will:

- A. participate in the negotiation on behalf of the state all new agreements for broadband circuit service;
- B. participate in the negotiation of renewal agreements for broadband circuit service in conjunction with agencies as individual agency contracts for broadband circuit service expire; and
- C. serve as a neutral liaison between ISD/OC and any agency that has a complaint about management of all broadband circuit agreements.

[1.12.4.12 NMAC - N, 12-29-00]

1.12.4.13 EXEMPTION:

A. An agency may request exemption from the requirement to participate in broadband circuit aggregation efforts. Exemptions shall be granted only if aggregation would:

- (1) result in a significant increase in agency costs;
- (2) decrease the security of agency operations;
- (3) compromise essential service attributes critical to agency success; or
- (4) result in inadequate resource levels.

B. An agency shall file a written request for exemption with the CIO. The request shall state the grounds on which the request is based and shall include any information available to support the request. The CIO shall respond to the request within thirty (30) days.

C. Agencies may file a written request for review of an adverse CIO decision with the commission. The commission shall review the CIO decision but shall only consider information presented to the CIO, unless new information becomes available that was not available at the time the agency submitted its request for exemption to the CIO. The commission shall make a final decision at its next regularly scheduled meeting.

[1.12.4.13 NMAC - N, 12-29-00]

PART 5: OVERSIGHT OF INFORMATION TECHNOLOGY PROJECTS

1.12.5.1 ISSUING AGENCY.

Information Technology Commission.

[1.12.5.1 NMAC - Rp 1.12.5.1 NMAC, 9/30/2005]

1.12.5.2 SCOPE.

This rule applies to the oversight of all information technology projects undertaken by executive agencies.

[1.12.5.2 NMAC - Rp 1.12.5.2 NMAC, 9/30/2005]

1.12.5.3 STATUTORY AUTHORITY.

Sections 15-1C-5 and 15-1C-8 NMSA 1978.

[1.12.5.3 NMAC - Rp 1.12.5.3 NMAC, 9/30/2005]

1.12.5.4 DURATION.

Permanent.

[1.12.5.4 NMAC - Rp 1.12.5.4 NMAC, 9/30/2005]

1.12.5.5 EFFECTIVE DATE.

September 30, 2005, unless a later date is cited at the end of a section.

[1.12.5.5 NMAC - Rp 1.12.5.5 NMAC, 9/30/2005]

1.12.5.6 OBJECTIVE.

The purpose of this rule is to set forth agency and office IT project management oversight responsibilities.

1.12.5.7 DEFINITIONS.

A. "Agency" means a state organizational entity of the executive branch, used interchangeably with department.

B. "Independent" is used to describe the autonomous and impartial verification and validation assessment of compliance to a project and the project's products requirements. These independent assessments are performed by a contractor that is not responsible for developing the product or performing the activity being evaluated.

C. "Independent verification and validation (IV&V)" means the process of evaluating a project and the project's product to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an organization independent of the lead agency.

D. "Executive sponsor" is the person or group that provides the financial resources, in cash or kind, for the project.

E. "Lead agency" of a multi-agency project is the agency that is indicated as lead agency in the General Appropriations Act or as designated by the office. In the case that a single agency sponsors a project then that agency shall be known as the lead agency.

F. "Office" means the office of the chief information officer.

G. "Oversight" means a continuous process of project review and evaluation to ensure that project objectives are achieved in accordance with an approved project plan and project schedule and that IT projects are in scope, on time and within budget.

H. "Product development life cycle" is a series of sequential , non-overlapping phases comprised of iterative disciplines such as requirements, analysis and design, implementation, test, and deployment implemented to build a product or develop a service.

I. "Project" means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved and project approval is given by the project executive sponsor and verified by the office.

J. "Project director" means a qualified person from the lead agency whose responsibility is to manage a series of related projects.

K. "Project manager" means a qualified person from the lead agency responsible for all aspects of the project over the entire project management lifecycle (initiate, plan,

execute, control, close). Must be familiar with project scope and objectives, as well as effectively coordinate the activities of the team. In addition, responsible for developing the project plan and project schedule with the project team to ensure timely completion of the project. Interfaces with all areas affected by the project including end users, distributors, and vendors. Ensures adherence to the best practices and standards of the office.

L. "Project management plan" is a formal document approved by the executive sponsor and the office and developed in the plan phase used to manage both project execution, control, and project close. The primary uses of the project plan are to document planning assumptions and decisions, facilitate communication among stakeholders, and documents approved scope, cost, and schedule baselines. A project plan includes at least other plans for issue escalation, change control, communications, deliverable review and acceptance, staff acquisition, and risk management.

M. "Project product" means the final project deliverable as defined in the project plan meeting all agreed and approved acceptance criteria.

N. "Project schedule" is a tool used to indicate the planned dates, dependencies, and assigned resources for performing activities and for meeting milestones.

O. "Qualified" means demonstrated experience managing IT projects. Demonstrated experience includes exhibiting the ability to apply project management methodology to maintain projects on time, on budget, and on schedule. Qualified also includes those employees who have the demonstrated ability to manage resources, lead people to accomplishing project objectives and who possess a working knowledge of the project scope.

P. "Quality" means the degree to which a system, system component, or process meets specified requirements, customer needs, and user expectations.

Q. "Quality assurance" means a planned and systematic pattern of all actions necessary to provide adequate confidence that a product or system component conforms to established requirements.

R. "Validation" means ensuring a system meets documented performance outcomes and requirements of the project.

S. "Verification" means application of an appropriate test yielding documentable, measurable evidence that ensures a process executed or the technical system developed produces required performance outcomes.

[1.12.5.7 NMAC - Rp 1.12.5.7 NMAC, 9/30/2005]

1.12.5.8 PROJECT MANAGEMENT METHODOLOGY.

A. All IT projects shall be managed:

- (1)** using a qualified project manager;
- (2)** using a formal project management methodology, processes, and techniques approved by the office; and
- (3)** by analyzing and monitoring risk at periodic intervals during the project management lifecycle, and mitigating risks before they negatively impact the IT project schedule, scope, or budget.

B. During the project management lifecycle, agencies shall select and implement a phase product development lifecycle methodology approved by the office.

C. The project budget must be documented in the project management plan by the phases and by deliverable.

[1.12.5.8 NMAC - Rp 1.12.5.8 NMAC, 9/30/2005]

1.12.5.9 LEAD AGENCY RESPONSIBILITIES.

A. A lead agency shall perform the following functions.

(1) Manage its own information technology (IT) projects and project resources and use the state project management methodology for planning, executing, and controlling the project.

(2) Appoint a qualified state employee as the lead project manager and if applicable a project director. If the agency hires a contract project manager, the lead project manager/director shall be responsible for ensuring that the consulting firm and/or contract project manager is managed to the best interests of the state.

(3) Provide to the office all project management and product deliverables. Deliverables shall include but not limited to the project plan, project schedule, initial and periodic risk assessments, quality strategies and plan, periodic project status reports, requirement and design documents for all projects. The lead agency must make available all deliverables in a repository with open access for the Information Technology Commission (ITC) and office review.

(4) Prepare and submit a written project status report at least monthly to the office, and more frequently at the request of the ITC or the office.

(5) Prepare a written risk assessment report at the inception of a project and at the end of each product development lifecycle phase or more frequently for large and high-risk projects. Each risk assessment shall be included as a project activity in the project schedule.

(6) Develop and provide quality strategies, including Independent Verification and Validation, in compliance with the office best practices and standards.

B. The lead agency shall fully cooperate and seek the assistance of the office regarding the planning and execution of IT projects.

[1.12.5.9 NMAC - Rp 1.12.5.9 NMAC, 9/30/2005]

1.12.5.10 RESPONSIBILITIES OF THE OFFICE.

The office shall:

A. provide oversight of all IT projects;

B. review agency IT plans;

C. make recommendations to the ITC regarding prudent allocation of IT resources, reduction of redundant data, hardware, and software, and improve interoperability and data accessibility between agencies;

D. approve agency RFPs, contract vendor requests and IT contracts including amendments, emergency procurements, sole source contracts and price agreements;

E. recommend procedure and rules to the ITC to improve oversight of IT procurement;

F. monitor agency compliance and report to the Governor, ITC and agency management on noncompliance;

G. review IT cost recovery mechanisms and rate structures and make recommendations to the ITC;

H. provide technical support to agencies for IT plan development;

I. review appropriation requests to ensure compliance with agency plans and the strategic plan;

J. monitor the progress of agency IT projects, including ensuring adequate project management, risk management and disaster recovery practices;

K. submit project portfolio status reports to the ITC; and

L. recommend IT project funding as required by law.

[1.12.5.10 NMAC - Rp 1.12.5.10 NMAC, 9/30/2005]

1.12.5.11 REPORTING REQUIREMENTS.

A. Project status reports. For all projects that require office oversight, the lead agency project manager shall submit an agency approved project status report on a monthly basis to the office.

B. Independent verification and validation assessment reporting. The office requires all projects subject to oversight to engage an independent verification and validation contractor unless waived by the office. The IV&V contractor shall perform the following activities.

(1) Prepare an initial risk assessment report at project inception. This assessment will include recommended mitigation activity to reduce the impact and probability of the identified risk.

(2) Prepare initial status report at project inception to disclose the effectiveness of project management and whether the documented project activities are meeting the objectives set forth by project.

(3) Prepare interim reports based on the phases as indicated within the project schedule. Included in the report will be an evaluation on whether product development requirements are being met, project management is effective, continuing risk analysis, and how the project is implementing previous recommended risk mitigation strategies.

(4) Prepare a post implementation assessment at project close to indicate whether project objectives were met based on the project's scope and acceptance criteria.

(5) Submit each risk assessment report, status report, interim report, and post-implementation assessment report to the office within five (5) business days of each deliverable due date as indicated on the project schedule. All reports must be submitted to the agency heads and the office.

[1.12.5.11 NMAC - Rp 1.12.5.11 NMAC, 9/30/2005]

PART 6: ARCHITECTURAL CONFIGURATION REQUIREMENTS

1.12.6.1 ISSUING AGENCY:

Information Technology Commission.

[1.12.6.1 NMAC - N, 7-14-00]

1.12.6.2 SCOPE:

This rule applies to all executive agencies.

[1.12.6.2 NMAC - N, 7-14-00]

1.12.6.3 STATUTORY AUTHORITY:

NMSA 1978 Section 15-1C-5.

[1.12.6.3 NMAC - N, 7-14-00]

1.12.6.4 DURATION:

Permanent.

[1.12.6.4 NMAC - N, 7-14-00]

1.12.6.5 EFFECTIVE DATE:

July 14, 2000, unless a later date is cited at the end of a section.

[1.12.6.5 NMAC - N, 7-14-00]

1.12.6.6 OBJECTIVE:

The purpose of this rule is to set forth procedures for establishing architectural configuration requirements.

[1.12.6.6 NMAC - N, 7-14-00]

1.12.6.7 DEFINITIONS:

As used in this rule:

A. architectural configuration requirement (ACR) means the technical specifications for information architecture and computer system purchases for executive agencies;

B. IAS means any information architecture subcommittee of the commission.

[1.12.6.7 NMAC - N, 7-14-00]

1.12.6.8 STANDARDS FOR ACRs:

ACRs will be based on an evaluation of an item's:

A. life cycle;

- B.** system interoperability and data accessibility;
- C.** technical quality;
- D.** training compatibility;
- E.** wide use;
- F.** company financial stability; and
- G.** ability to advance government efficiency.

[1.12.6.8 NMAC - N, 7-14-00]

1.12.6.9 PROPOSED ACRs:

- A.** An IAS may submit a proposal for an ACR to the office.
- B.** The office shall evaluate the proposal for compliance with the state information architecture and the state strategic plan and shall report its findings and recommendations to the commission.
- C.** The commission may reject the proposal, agree to consider it further, or approve a comment draft. The comment draft may contain modifications agreed to by the commission.

[1.12.6.9 NMAC - N, 7-14-00]

1.12.6.10 NOTICE OF PROPOSED ACR:

The office shall post notice of a proposed ACR on the internet at its internet address at least twenty (20) calendar days prior to adoption of the proposed ACR.

[1.12.6.10 NMAC - N, 7-14-00]

1.12.6.11 AVAILABILITY OF COMMENT DRAFT:

The office shall:

- A.** post comment drafts on the internet at its internet address;
- B.** send comment drafts to all members of the information oversight committee;
- C.** notify all persons on the electronic distribution list that a comment draft is available for comment;

D. mail or fax a hard copy of a comment draft to any person requesting a copy of the comment draft in writing or by telephone.

[1.12.6.11 NMAC - N, 7-14-00]

1.12.6.12 COMMENT PROCEDURE:

A. The office shall make a comment draft available for comment for at least twenty (20) calendar days prior to its adoption.

B. Any person may submit written comments on the proposed ACR to the office in hard copy or by electronic means.

C. All comments received before the deadline for receipt of comments will be considered; comments received after the deadline will not be considered.

[1.12.6.12 NMAC - N, 7-14-00]

1.12.6.13 REVIEW:

The office shall review all comments for compliance with the state information architecture and the state strategic plan, prepare a summary of all comments received before the deadline, and report its findings and recommendations to the commission.

[1.12.6.13 NMAC - N, 7-14-00]

1.12.6.14 COMMISSION ACTION:

A. The commission shall consider the comment draft, the summary of comments, and the findings and recommendations of the office at a meeting held after the comment period.

B. The commission may adopt the proposed ACR without revision, revise and adopt the proposed ACR, revise the proposed ACR and seek additional comments, or reject the proposed ACR.

[1.12.6.14 NMAC - N, 7-14-00]

1.12.6.15 AMENDMENT AND REPEAL OF ACR:

The commission may amend, replace or repeal an ACR in accordance with the procedures set forth in this rule.

[1.12.6.15 NMAC - N, 7-14-00]

1.12.6.16 AVAILABILITY OF ADOPTED ACRs:

The office shall post all ACRs adopted by the commission on the internet at the office's internet address.

[1.12.6.16 NMAC - N, 7-14-00]

1.12.6.17 EXEMPTION:

A. An agency may request exemption from an ACR. Exemptions shall be granted only if complying with an ACR would:

- (1) result in a significant increase in agency costs;
- (2) decrease the security of agency operations;
- (3) compromise essential service attributes critical to agency success; or
- (4) result in inadequate resource levels.

B. An agency shall file a written request for exemption with the IAS which proposed the ACR. The request shall state the grounds on which the request is based and shall include any information available to support the request. The IAS shall respond to the request within thirty (30) days.

C. Agencies may file a written request for review of an adverse IAS decision with the CIO. The CIO shall review the IAS decision but shall only consider information presented to IAS, unless new information becomes available that was not available at the time the agency submitted its request for exemption to the IAS. The CIO shall make a final decision within fifteen (15) days.

[1.12.6.17 NMAC - N, 7-14-00]

PART 7: DIGITAL/ELECTRONIC SIGNATURE

1.12.7.1 ISSUING AGENCY:

State Commission of Public Records and State Records Administrator.

[1.12.7.1 NMAC - Rp, NMAC 1.12.7.1, 7/1/2015]

1.12.7.2 SCOPE:

To implement the electronic signature authority pursuant to the Public Records Act, Section 14-3-15.2 NMSA 1978 and the New Mexico Uniform Electronic Transactions Act, Section 14-16-1 et seq NMSA 1978.

[1.12.7.2 NMAC - Rp, NMAC 1.12.7.2, 7/1/2015]

1.12.7.3 STATUTORY AUTHORITY:

Public Records Act, Section 14-3-15.2 NMSA 1978; Uniform Electronic Transactions Act, Section 14-16-1 et seq NMSA 1978.

[1.12.7.3 NMAC - Rp, NMAC 1.12.7.3, 7/1/2015]

1.12.7.4 DURATION:

Permanent.

[1.12.7.4 NMAC - Rp, NMAC 1.12.7.4, 7/1/2015]

1.12.7.5 EFFECTIVE DATE:

July 1, 2015, unless a later date is cited at the end of a section.

[1.12.7.5 NMAC - Rp, NMAC 1.12.7.5, 7/1/2015]

1.12.7.6 OBJECTIVE:

To establish standards for state agencies regarding the use of electronic signatures for legal signing purposes as authorized under the provisions of the Uniform Electronic Transactions Act. These rules are an adaption of the Use of Electronic Signatures in Federal Organization Transactions, Version 1.0 issued January 25, 2013.

[1.12.7.6 NMAC - Rp, NMAC 1.12.7.6, 7/1/2015]

1.12.7.7 DEFINITIONS:

For purposes of this part, all terms defined in the Uniform Electronic Transactions Act, Section 14-16-1 et seq NMSA 1978 have the meanings set forth in statute. Additionally, the following terms shall have the following meanings:

A. Terms beginning with the letter "A":

(1) **"Agreement"** refer to Uniform Electronic Transactions Act, Section 14-16-2(1) NMSA 1978.

(2) **"Attribution"** means the process of establishing or confirming that someone is the previously identified person they claim to be.

(3) **"Authenticate"** refer to Electronic Authentication of Documents Act, Section 14-15-3(A) NMSA 1978.

(4) **"Automated transaction"** refer to Uniform Electronic Transactions Act, Section 14-16-2(2) NMSA 1978.

B. Terms beginning with the letter "B":

(1) **"Biometrics"** means the unique physical characteristics of individuals that can be converted into digital form and then interpreted by a computer. Among these are voice patterns, fingerprints, and the blood vessel patterns present on the retina of one or both eyes.

C. Terms beginning with the letter "C":

(1) **"Click wrap"** means a click wrap agreement, also known as click through agreement or click wrap license, that require an end user to manifest his or her assent by clicking a button or pop-up window that says "OK" or "agree" or some similar form. A user indicates rejection by clicking "cancel" or some similar form or by closing browsing window.

(2) **"Computer program"** refer to Uniform Electronic Transactions Act, Section 14-16-2(3) NMSA 1978.

(3) **"Contract"** refer to Uniform Electronic Transactions Act, Section 14-16-2(4) NMSA 1978.

(4) **"Credential"** means a digital document that binds a person's identity to a token possessed and controlled by a person; data that is used to establish the claimed attributes or identity of a person or an entity. Common paper credentials include passports, birth certificates, driver's licenses and employee identification cards. Common digital credentials include user IDs and digital certificates. Credentials are a tool for authentication.

(5) **"Cryptographic key"** means a value used to control cryptographic operations, such as decryption, encryption, signature generation or signature verification.

D. Terms beginning with the letter "D":

(1) **"Digital signature"** means any electronic signature that can be used to authenticate the identity of the sender or signer of a document, and may also ensure that the content of the sent document is unaltered.

(2) **"Digitized signature"** means a graphical image of a handwritten signature.

(3) **"Document"** refer to Electronic Authentication of Documents Act, Section 14-15-3(B) NMSA 1978.

E. Terms beginning with the letter "E":

(1) **"Electronic"** refer to Uniform Electronic Transactions Act, Section 14-16-2(5) NMSA 1978.

(2) **"Electronic agent"** refer to Uniform Electronic Transactions Act, Section 14-16-2(6) NMSA 1978.

(3) **"Electronic authentication"** refers to Electronic Authentication of Documents Act, Section 14-15-3(C) NMSA 1978.

(4) **"Electronic record"** refer to Uniform Electronic Transactions Act, Section 14-16-2(7) NMSA 1978.

(5) **"Electronic signature"** refer to Uniform Electronic Transactions Act, Section 14-16-2(8) NMSA 1978.

F. Terms beginning with the letter "F": [RESERVED]

G. Terms beginning with the letter "G":

(1) **"Governmental agency"** refer to Uniform Electronic Transactions Act, Section 14-16-2(9) NMSA 1978.

H. Terms beginning with the letter "H":

(1) **"Hash" or Hash function** means a mathematical function that takes a variable length input string and converts it to a smaller fixed-length output string, that is for all relevant purposes unique to the data used as input to the message digest function. The message digest is, in essence, a digital fingerprint of the data to which it relates.

(2) **"Hyperlink"** means any electronic link providing direct access from one distinctively marked place in a hypertext or hypermedia document to another in the same or a different document.

I. Terms beginning with the letter "I":

(1) **"Identification"** means the process of verifying and associating attributes with a particular person designated by an identifier.

(2) **"Identity"** means the unique name of an individual person, and any associated attributes; the set of the properties of a person that allows the person to be distinguished from other persons.

(3) "Information" refer to Uniform Electronic Transactions Act, Section 14-16-2(10) NMSA 1978.

(4) "Information processing system" refer to Uniform Electronic Transactions Act, Section 14-16-2(11) NMSA 1978.

(5) "Integrity" means a state in which information has remained unaltered from the point it was produced by a source, during transmission, storage and eventual receipt by the destination.

(6) "Intent to sign" means the intent of a person that a sound, symbol or process is applied to a record in order to have a legally binding effect.

(7) "Level of assurance" means the level of authentication assurance that describes the degree of certainty that a user has presented an identifier that refers to her identity.

J. Terms beginning with the letter "J": [RESERVED]

K. Terms beginning with the letter "K": [RESERVED]

L. Terms beginning with the letter "L": [RESERVED]

M. Terms beginning with the letter "M":

(1) "Method" means a particular way of doing something, a means, process or manner of procedure, especially a regular and systematic way of accomplishing something and an orderly arrangement of steps to accomplish an end.

N. Terms beginning with the letter "N":

(1) NIST Special Publication 800-63" refers to the National Institute of Standards and Technology, Special Publication 800-63, Electronic Authentication Guidance.

O. Terms beginning with the letter "O":

(1) "Originator" refers to Electronic Authentication of Documents Act, Section 14-15-3(E) NMSA 1978.

P. Terms beginning with the letter "P":

(1) "Password" means a secret word or string of characters that is used for authentication, to prove identity or to gain access to a record or resource. Passwords are typically character strings.

(2) **"PDF"** or Portable Document Format refers to a file format used to present documents in a manner independent of application software, hardware, and operating systems. A PDF file encapsulates a complete description of a fixed-layout flat document, including the text, fonts, graphics, and other information needed to display it.

(3) **"Person"** refer to Uniform Electronic Transactions Act, Section 14-16-2(12) NMSA 1978.

(4) **"Personal identification number (PIN)"** means a shared secret a person accessing a government organization's electronic application is requested to enter, such as a password or PIN. The system checks that password or PIN against data in a database to ensure its correctness and thereby "authenticates" the user.

(5) **"Private key"** means the code or alphanumeric sequence used to encode an electronic authentication and which is known only to its owner. The private key is the part of a key pair used to create an electronic authentication.

(6) **"Public key"** means the code or alphanumeric sequence used to decode an electronic authentication. The public key is the part of a key pair used to verify an electronic authentication.

(7) **"Public/private key system"** means the hardware, software, and firmware that are provided by a vendor for: (a) the generation of public/private key pairs, (b) the record abstraction by means of a secure hash code, (c) the encoding of the signature block and the record abstraction or the entire record, (d) the decoding of the signature block and the record abstraction or the entire record, and (e) the verification of the integrity of the received record.

Q. Terms beginning with the letter "Q": [RESERVED]

R. Terms beginning with the letter "R":

(1) **"Reason for signing"** means the purpose statement of a person with regard to a document or electronic record that is affirmed by signing the document or record. The reason for signing should be distinguished from the intent to sign.

(2) **"Record"** refer to Uniform Electronic Transactions Act, Section 14-16-2(13) NMSA 1978.

(3) **"Record abstraction"** means a condensed representation of a document, which condensation is prepared by use of a secure hash code; it is also known as a message digest.

(4) **"Repudiate"** and **"non-repudiation"** refer to the acts of denying or proving the origin of a document from its sender, and to the acts of denying or proving the receipt of a document by its recipient.

(5) **"Risk"** is a function of the likelihood that a given threat will exploit a potential vulnerability and have an adverse impact on an organization.

S. Terms beginning with the letter "S":

(1) **"Secure hash code"** is a mathematical algorithm that, when applied to an electronic version of a document, creates a condensed version of the document from which it is computationally infeasible to identify or recreate the document which corresponds to the condensed version of the document without extrinsic knowledge of that correspondence.

(2) **"Security procedure"** refer to Uniform Electronic Transactions Act, Section 14-16-2(14) NMSA 1978.

(3) **"Signed"** and **"signature"** refer to Electronic Authentication of Documents Act, Section 14-15-3(G) NMSA 1978..

(4) **"Signature block"** means the portion of a document, encoded by the private key, which contains the identity of the originator and the date and time of the records creation, submittal or approval.

(5) **"Signing requirements"** means the requirements that must be satisfied to create a valid and enforceable electronic signature.

(6) **"State"** refer to Uniform Electronic Transactions Act, Section 14-16-2(15) NMSA 1978.

T. Terms beginning with the letter "T":

(1) **"TIF"** or **"TIFF"** or Tagged Image Format refers to an image file format for high-quality graphics.

(2) **"Threat"** means a potential circumstance, entity or event capable of exploiting vulnerability and causing harm. Threats can come from natural causes, human actions, or environmental conditions. A threat does not present a risk when there is no vulnerability. Vulnerability is a weakness that can be accidentally triggered or intentionally exploited.

(3) **"Token"** refers to something that a person possesses and controls (typically a cryptographic key or password) that is used to authenticate the person's identity.

(4) **"Transaction"** refer to Uniform Electronic Transactions Act, Section 14-16-2(16) NMSA 1978.

(5) "Transferable record" means an electronic record that would: (a) be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and (b) the issuer of the electronic record expressly has agreed is a transferable record.

(6) "Trusted entity" means an independent, unbiased third party that contributes to, or provides, important security assurances that enhance the admissibility, enforceability and reliability of information in electronic form. In a public/private key system, a trusted entity registers a digitally signed data structure that binds an entity's name (or identity) with its public key.

U. Terms beginning with the letter "U": [RESERVED]

V. Terms beginning with the letter "V":

(1) "Voice signature" means an audio recording created by an individual who intends to sign a particular transaction (or document) and used as the electronic form of signature.

W. Terms beginning with the letter "W": [RESERVED]

X. Terms beginning with the letter "X": [RESERVED]

Y. Terms beginning with the letter "Y": [RESERVED]

Z. Terms beginning with the letter "Z": [RESERVED]

[1.12.7.7 NMAC - Rp, NMAC 1.12.7.7, 7/1/2015]

1.12.7.8 GENERAL OVERVIEW:

A. A signature, whether electronic or on paper, is the means by which a person indicates an intent to associate oneself with a document in a manner that has legal significance (e.g., to adopt or approve a specific statement regarding, or reason for signing, a document). It constitutes legally-binding evidence of the signer's intention with regard to a document. The reasons for signing a document will vary with the transaction, and in most cases can be determined only by examining the context in which the signature was made. Generally, a person's reason for signing a document falls into one of the following categories:

(1) approving, assenting to, or agreeing to the information in the document or record signed (e.g., agreeing to the terms of a contract or inter-agency memorandum or indicating approval for legal sufficiency);

(2) certifying or affirming the accuracy of the information stated in the document or record signed (e.g., certifying that the statements in one's tax return are true and correct);

(3) acknowledging access to or receipt of information set forth in the document or record signed (e.g., acknowledging receipt of a disclosure document);

(4) witnessing the signature or other act of another (e.g., notarization); or

(5) certifying the source of the information in the document or record signed (e.g., certifying data in a clinical trial record, certifying an inventory count, etc.).

B. The Uniform Electronic Transaction Act sets forth the requirements that must be satisfied by an electronic signature to establish functional equivalence to the paper-based requirement for a signature.

[1.12.7.8 NMAC - Rp, NMAC 1.12.7.8, 7/1/2015]

1.12.7.9 ELECTRONIC SIGNATURES COMPARED TO DIGITAL SIGNATURES:

A. "Electronic signature" is the term used for the electronic equivalent of a handwritten signature. It is a generic, technology- neutral term that refers to the universe of all of the various methods by which one can "sign" an electronic record. Although all electronic signatures may be represented digitally (i.e., as a series of ones and zeroes), they can take many forms and can be created by many different technologies.

B. "Digital signature" is the term used to describe the small segment of encrypted data produced when a specific mathematical process (involving a hash algorithm and public key cryptography) is applied to an electronic record.

[1.12.7.9 NMAC - Rp, NMAC 1.12.7.9, 7/1/2015]

1.12.7.10 ELECTRONIC SIGNATURE, SECURITY PROCEDURE AND SIGNING PROCESS:

A. An electronic signature is used to indicate a person's intent to associate themselves in some way to information or to a reason for signing (e.g., agreeing to the terms of a contract, acknowledging receipt of information, etc.) with legal effect. Any sound, symbol, or process that is made or adopted by a person with intent to sign a document can be used as the form of signature for purposes of creating an electronic signature. This includes, for example, a typed name, clicking on an "I Agree" button, or a cryptographically created digital signature. But the mere use of any such sound, symbol, or process does not necessarily create a legally binding electronic signature.

B. A security procedure is employed for the purpose of verifying that an electronic record, signature, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record (integrity). A digital signature can be used as both a security procedure and as a legally binding form of signature. It is important that the context make clear whether the digital signature is intended merely for purposes of attribution, integrity, or whether it is also intended to be a legally binding electronic signature.

C. A signing process is the overall set of actions, steps, and elements that is used to create a valid and enforceable electronic signature, and includes both the application to an electronic record of a form of signature (i.e., the sound, symbol, or process) to be used as the electronic signature, and one or more processes or security procedures to address the other signature requirements listed.

[1.12.7.10 NMAC - Rp, NMAC 1.12.7.10, 7/1/2015]

1.12.7.11 LEGAL REQUIREMENT FOR A SIGNATURE:

A transaction is governed by a law or regulation that requires the presence of a signature before it will be considered legally effective. A state agency must review the law applicable to each proposed transaction to determine if it requires that the transaction be "signed." If the applicable law or regulation requires a signature, then to conduct the transaction in electronic form requires an electronic signature.

[1.12.7.11 NMAC - Rp, NMAC 1.12.7.11, 7/1/2015]

1.12.7.12 TRANSACTION-BASED NEED FOR A SIGNATURE:

If there is no legal requirement for a signature on a particular type of transaction a state agency may undertake a further analysis to evaluate the desirability of incorporating a signature requirement into the transaction. An electronic signature may be desirable, even when not legally required, where there is a:

A. Need for emphasizing the seriousness of the transaction. A signature may serve to reinforce the significance of the undertaking to the party involved. It gives the transaction a more formal tone, and helps to drive home to the signing party the seriousness of what is being undertaken.

B. Need for binding a party to the transaction. If the transaction involves an intent element (e.g., agreement, approval, acknowledgment, receipt, witnessing, etc.), a signature may be useful to help formally bind a person to that reason for signing and make it more likely to be enforced (e.g., to mitigate concerns regarding repudiation).

[1.12.7.12 NMAC - Rp, NMAC 1.12.7.12, 7/1/2015]

1.12.7.13 REQUIREMENTS FOR LEGALLY BINDING ELECTRONIC SIGNATURE:

Where an electronic signature is required by law or otherwise deemed desirable, it is critical that the electronic signature and the associated signing process satisfy all of the applicable legal requirements. Generally, creating a valid and enforceable electronic signature requires satisfying the following signing requirements.

A. A person (i.e., the signer) must use an acceptable electronic form of signature. Electronic signatures can take many forms, and can be created by many different technologies. No specific technology or form of signature is required. Generally, any electronic "sound, symbol, or process" can be used as the form of signature. Examples of commonly used electronic forms of signature include, but are not limited to:

(1) Symbols such as a typed name (e.g., typed at the end of an e-mail message by the sender, or typed into a signature block on a website form by a party); digitized image of a handwritten signature that is attached to an electronic record; a shared secret (e.g., a secret code, password, or PIN) used by a person to sign the electronic record; a unique biometrics-based identifier, such as a fingerprint, voice print, or a retinal scan; or a digital signature.

(2) Sounds such as sound recording of a person's voice expressing consent.

(3) Processes such as using a mouse to click a button or hyperlink (such as clicking an "I Agree" button); using a private key and applicable software to apply a "digital signature;" or scanning and applying a fingerprint.

B. The electronic form of signature must be executed or adopted by a person with the intent to sign the electronic record, (e.g., to indicate a person's approval of the information contained in the electronic record). A person's intent to sign is often inferred from his or her approval of the reason for signing as stated in the text of either: (i) the electronic record being signed or (ii) the surrounding signing process. For example, words appearing immediately above a blank signature line on a contract document might state "By signing below I agree to the foregoing contract terms." That statement indicates both the reason for signing (agreement to the contract) as well as the means by which a person can indicate an intent to sign (i.e., by applying the form of signature where indicated). Thus, a person indicates his or her intention to sign, for the reason stated, by signing on the applicable blank line. Likewise, text on a website might state that "By checking this box I agree to the terms of use." A person indicates his or her intention to sign, for the reason stated, by checking the box on the website.

C. The electronic form of signature must be attached to or associated with the electronic record being signed. Specifically, it must be attached to, or logically associated with, the record being signed. Satisfying this requirement requires storing the data constituting the electronic form of signature, and doing so in a way that permanently associates it with the electronic record that was signed. Where the

electronic form of signature consists of a symbol or a sound (such as a typed name, a digitized image of a handwritten name, a PIN, a digital signature, a voice recording, etc.), the data representing the symbol or sound must be saved. Where the electronic form of signature consists of a process (such as clicking on an "I Agree" button), the system must be programmed so that completion of the process generates some specific data element to indicate completion of the signing process, or some other procedure (such as generation of a log record or audit trail) to record the act of signing. It is also recommended that the following additional data elements be appended to or associated with the signature data provided privacy considerations have been taken into account:

- (1) Identity of the signer or a link to the source of identifying information, such as a validated UserID, a digital certificate, a biometric database, etc.;
- (2) Date and time of the signature;
- (3) Method used to sign the record; and
- (4) An indication of the reason for signing.

D. There must be a means to identify and authenticate a particular person as the signer. Meeting this burden of proof requires establishing a link between an identified person and the signature. An electronic form of signature may or may not provide proof of identity. Many forms of signature do not contain or directly link to the identity of the person making them (such as clicking an "I Agree" button), or if they do provide evidence of identity, such identity may not be reliable (e.g., a typed name). Other security procedures may be used to accomplish this objective. The signer's identity may be authenticated as part of an overall process of obtaining access to a website or electronic resource that includes the record to be signed. If the act of signing is performed during the session authorized by the authentication process, the signature itself is attributed to the signer because the person accessing the record for signing has been duly authenticated.

E. There must be a means to preserve the integrity of the signed record. The usability, admissibility, and provability of a signed electronic record requires procedures be undertaken to ensure the continuing integrity of both the electronic record and its electronic signature following completion of the signing process. Data integrity is concerned with the accuracy and completeness of electronic information communicated over the internet or stored in an electronic system, and with ensuring that no unauthorized alterations are made to such information either intentionally or accidentally. Ensuring "integrity" requires "guarding against improper information modification or destruction, for the full retention period of the record. Electronic records are easily altered in a manner that is not detectable. In an electronic transaction of any significance, the parties to the transaction must be confident of the integrity of the information before they rely or act on the record.

1.12.7.14 BUSINESS ANALYSIS AND RISK ASSESSMENT:

A. The selection of an electronic signature process is a business decision involving more than technical consideration. State agencies are strongly encouraged to complete and document a business analysis and risk assessment. The extent, level of detail, and format of the business analysis and risk assessment is up to the state agency. The goal is to implement a signing process that is reliable as is appropriate for the purpose in question.

B. A state agency may evaluate each factor differently and accord them different weights based on the nature and specifics of the underlying transaction. A state agency may also devise its own process for conducting and documenting a business analysis and risk assessment in the selection of an electronic signature process.

C. Business analysis. The focus of the business analysis is the business transaction that the electronic signature will support and the larger related business process. The business analysis may include the following components: overview of the business process, analysis of legal and regulatory requirement specifically related to the transaction, identification of industry standards or generally accepted practices related to the transaction, analysis of those who will use electronically signed records and related requirements, and determination of interoperability requirements including those of business partners, determination of the cost of alternative approaches.

D. Risk Assessment. The selection of an appropriate electronic signature process includes identifying the potential risks involved in a signed electronic transaction and how various electronic signature approaches can address those risks. This paragraph draws upon the national institute of standards (NIST) approach to risk assessment but is more narrowly focused on the risks inherent in a signed electronic transaction. To assess risks, a state agency should identify and analyze: sources of threats, vulnerabilities (such as repudiation, intrusion, loss of access to records for business and legal purposes), potential impacts (such as financial, reputation and credibility, productivity), and likelihood that a threat will actually materialize.

E. Risk Matrix. A state agency may wish to develop a matrix in which risk level for each threat is determined by the relationship between the threat's likelihood and the degree of impact against the background of existing risk reduction measures. The greatest risks are those that have extreme consequences and almost certain to occur. Conversely, a rare event with negligible consequences may be considered trivial.

F. Both the analysis of the likelihood of a successful challenge to the enforceability of a signature and the analysis of the cost or impact of an unenforceable signature should result in a "Low," "Moderate" or "High" determination.

G. The Department of Information Technology has statutory responsibility for all state-wide, executive agency information and computer systems. Given the specific and particular expertise of the Department, any state agency may defer to any determination

made by the Secretary of the Department of Information and Technology as to 'business analysis', 'risk assessment', or constructing a 'risk matrix'.

[1.12.7.14 NMAC - Rp, NMAC 1.12.7.14, 7/1/2015]

1.12.7.15 ELECTRONIC FORM OF SIGNATURE:

A. Low risk transactions.

(1) For low risk transactions, any form of signature is acceptable. This includes clicking an on-screen button, checking an on-screen box, typing ones name, using a PIN number, or any other reasonable method, so long as it is clear to the signer that such act constitutes a signature, and is not being done for any other purpose.

(2) Evidence of intent to sign may be included either in the record being signed or in the on-screen signing process. Shorter or more cursory indicators of intent may be used as necessary to facilitate the signing experience, so long as it is reasonably clear to the signer that they are signing the record, not doing something else.

(3) Any method may be used to associate the signature to the records being signed. This can include establishing a process that could not be completed unless a person has signed; using a process that appends the signature date to the record signed; or establishing a database-type link between the signature date and the records signed.

(4) Any approach to identification and authentication of the signer is acceptable. This includes self-assertion of identity by the signer. Successful authentication at this level requires that the signer prove through a secure authentication protocol that they possess and control the token. However, this level does not require cryptographic methods that block offline attacks. Refer to NIST Special Publication 800-63-2 for additional information related to electronic authentication guidelines.

(5) The system or application must be reasonably trusted to invalidate signature upon modification of the record and provide a secure method to transfer and store the signed record.

B. Moderate risk transactions.

(1) For moderate risk transactions, any electronic form of signature is acceptable. This includes clicking an on-screen box, typing ones name, using a PIN number, or any other reasonable method, so long as it is clear to the signer that such act constitutes a signature, and is not being done for any other purpose.

(2) Evidence of intent to sign may be included either in the records being signed or in the on-screen signing process. Clear evidence of intent to sign must be unmistakably provided. Shorter or more cursory indicators of intent should be avoided in favor of clear evidence of intent to facilitate the signing experience, so that it is very clear to the signer that they are signing the record.

(3) Any reasonable method may be used to associate the signature data to the records signed, or establishing a database-type link between the signature data and the records signed. The signing data can then be either attached or appended to the records signed, or a database-type link can be established between the signature data and the record signed.

(4) A single factor remote network authentication is acceptable for medium level risk transactions. There are a wide range of available authentication technologies that can be employed. For example, memorized secret tokens, pre-registered knowledge tokens, look-up secret tokens, out of band tokens and single factor one-time password devices are acceptable. This level requires cryptographic techniques and successful authentication requires that the signer prove through a secure authentication protocol that they control the token. Refer to NIST Special Publication 800-63-2 for additional information related to electronic authentication guidelines.

(5) The system or application must be reasonably trusted to invalidate signature upon modification of the record and provide a secure method to transfer and store the signed record.

C. High risk transactions.

(1) For high risk transactions, the only acceptable electronic form of signature is a cryptographically based digital signature created with a private cryptographic key that corresponds to the public key specified in a digital credential list.

(2) Evidence of intent to sign must be included both in the record being signed and in the on-screen signing process. Such evidence of intent to sign must be clearly provided in both places and make it unmistakable to the signer that they are signing the record and the reason that they are signing.

(3) A cryptographic signing process whereby a hash of the content of the record being signed is incorporated into the signature data must be used so there is an intrinsic relationship between the signature data and the record signed. The signing data can then be either attached or appended to the record signed, or a database-type link can be established between the signature data and the record signed.

(4) The signer must be identified and authenticated by reference to a digital certificate that provides at least two authentication factors or is based on proof of possession of a key through a cryptographic protocol.

(5) The system or application must be digitally signed using the identification and authentication specified in 1.12.7.15(4) NMAC that will invalidate signature upon modification of the record and provide a secure method to transfer and store the signed record.

[1.12.7.15 NMAC - Rp, NMAC 1.12.7.15, 7/1/2015]

PART 8: NOTIFICATION OF INTERNET PROTOCOL ADDRESSES

1.12.8.1 ISSUING AGENCY:

Information Technology Commission.

[1.12.8.1 NMAC - N, 03-15-02]

1.12.8.2 SCOPE:

This rule applies to all state agencies, boards, and commissions to whom the General Services Department provides Internet access.

[1.12.8.2 NMAC - N, 03-15-02]

1.12.8.3 STATUTORY AUTHORITY:

NMSA 1978 Section 15-1C-5.

[1.12.8.3 NMAC - N, 03-15-02]

1.12.8.4 DURATION:

Permanent.

[1.12.8.4 NMAC - N, 03-15-02]

1.12.8.5 EFFECTIVE DATE:

March 15, 2002 unless a later date is cited at the end of a section.

[1.12.8.5 NMAC - N, 03-15-02]

1.12.8.6 OBJECTIVE:

The purpose of this rule is to provide the underlying data necessary to provide Internet security for state agencies, boards and commissions.

[1.12.8.6 NMAC - N, 03-15-02]

1.12.8.7 DEFINITIONS:

As used in this rule:

A. access protocols means the standard set of protocols and ports for all types of access as defined by the Internet Architecture Board of the Internet Society International Board; including, but not limited to: http, https, remote terminal (telnet), simple mail transport protocol (SMTP), and file transfer protocol (FTP).

B. internet means a decentralized, global network of computers linked through the use of common communications protocols. The Internet allows users worldwide to exchange messages, data, and images.

C. internet protocol (IP) means the set of conventions that govern the interaction among processes, devices and components of the Internet.

D. internet protocol (IP) number means a unique number consisting of four (4) parts separated by dots. Every computer connected to the Internet has a unique IP number.

E. ISD-OC means the General Services Department, Information Systems Division, Office of Communications.

F. network devices means all servers, workstations, and peripheral devices that are connected to the Internet.

G. protocol means a set of rules and formats, semantic and syntactic, that govern the interaction among processes, devices and components, and allow information systems to exchange information with one another.

H. Security and Privacy Advisory Committee means the standing committee of the Commission.

I. threat means an activity, deliberate or unintentional, with the potential for causing harm to an automated information system or activity.

[1.12.8.7 NMAC - N, 03-15-02]

1.12.8.8 RESPONSIBILITIES OF STATE AGENCIES:

A. Agencies shall submit to the Director of ISD-OC and the CIO a written listing (preferably in an Excel spreadsheet) of all agency IP addresses and the access protocols of all network devices that allow access to the public Internet.

B. Agencies shall inform the Director of ISD-OC and the CIO in writing of all new IP addresses, their devices and their access protocols within three (3) working days of implementation.

[1.12.8.8 NMAC - N, 03-15-02]

1.12.8.9 RESPONSIBILITIES OF ISD-OC:

ISD-OC will deny access from and to the public Internet for access protocols not specifically reported to ISD-OC and the CIO.

[1.12.8.9 NMAC - N, 03-15-02]

1.12.8.10 RESPONSIBILITIES OF THE CIO:

A. The CIO will maintain a listing of all IP addresses and access protocols by agency.

B. The listing will be protected as confidential information.

[1.12.8.10 NMAC - N, 03-15-02]

1.12.8.11 RESPONSIBILITY OF THE COMMISSION:

The Security and Privacy Advisory Committee will recommend to the Commission for their approval access protocols, in addition to those defined in 1.12.8.7 NMAC, subject to this rule.

[1.12.8.11 NMAC - N, 03-15-02]

1.12.8.12 NOTICE OF ADDITIONAL ACCESS PROTOCOLS:

Except in response to an active threat, within five (5) working days of approval by the Commission of additional access protocols subject to this rule, the Office shall:

A. post a notice of approved access protocols subject to this rule on the Internet at its internet address;

B. notify all persons on the electronic distribution list of approved access protocols subject to this rule; and

C. mail or fax a hard copy of the approved access protocols subject to this rule to any person requesting them in writing or by telephone.

[1.12.8.12 NMAC - N, 03-15-02]

1.12.8.13 EXEMPTION:

There are no exemptions from this rule.

[1.12.8.13 NMAC - N, 03-15-02]

PART 9: PROJECT CERTIFICATION OF TECHNOLOGY PROJECTS

1.12.9.1 ISSUING AGENCY:

Information Technology Commission.

[1.12.9.1 NMAC - N, 10/17/2005]

1.12.9.2 SCOPE:

This rule applies to certification of all information technology projects or programs undertaken by executive agencies.

[1.12.9.2 NMAC - N, 10/17/2005]

1.12.9.3 STATUTORY AUTHORITY:

Sections 15-1C-5 and 15-1C-8 NMSA, 1978.

[1.12.9.3 NMAC - N, 10/17/2005]

1.12.9.4 DURATION:

Permanent.

[1.12.9.4 NMAC - N, 10/17/2005]

1.12.9.5 EFFECTIVE DATE:

October 17, 2005, unless a later date is cited at the end of a section.

[1.12.9.5 NMAC - N, 10/17/2005]

1.12.9.6 OBJECTIVE:

The purpose of this rule is to set forth executive agency information technology project certification responsibilities.

[1.12.9.6 NMAC - N, 10/17/2005]

1.12.9.7 DEFINITIONS:

A. "Agency" means a state organizational entity of the executive branch, used interchangeably with department.

B. "Certification" means a process that releases project funds. The ITC certifies projects except as otherwise provided for in Section 1.12.9.10(c). The PCC is the subcommittee charged with making recommendations for certification to the ITC.

C. "Emergency condition" is a situation that creates a threat to public health, welfare, safety or property such as may arise by reason of floods, epidemics, riots, equipment failures or similar events. The existence of the emergency condition creates an immediate and serious need for services, construction or items of tangible personal property that cannot be met through normal procurement methods and the lack of which would seriously threaten the:

- (1) functioning of government;
- (2) preservation or protection of property; or
- (3) health or safety of any person.

D. "Independent verification and validation (IV&V)" means the process of evaluating a system to determine compliance with specified requirements and the process of determining whether the products of a given development phase fulfill the requirements established during the previous stage, both of which are performed by an organization independent of the development organization.

E. "Information technology project" means the development, purchase, replacement, or modification of a hardware or software system.

F. "ITC" means information technology commission.

G. "Mission critical" means a system (either hardware or software) that is pivotal to supporting the mission of the agency and without which the agency would have difficulty providing key business services.

H. "PCC" means project certification committee a subcommittee of the ITC.

I. "Project costs" means all hardware, software, development, testing and training expenditures, both planned and actual.

J. "Project lifecycle" means the period of time commencing with conception of an information technology project and culminating with the acceptance and operation of products produced by the project.

K. "Program" means a group of related projects managed in a coordinated manner.

L. "Qualified" means demonstrated experience successfully managing information technology projects.

M. "Quality" means the degree to which a system, system component, or process meets specified requirements, customer needs, and user expectations.

N. "Quality assurance" means a planned and systematic pattern of all actions necessary to provide adequate confidence that a product or system component conforms to established requirements.

O. "Strategy" means a plan of action for achieving a goal.

P. "Validation" means ensuring a system meets documented performance outcomes and requirements of the project.

Q. "Verification" means application of an appropriate test yielding documentable, measurable evidence that ensures a process executed or the technical system developed produces required performance outcomes.

[1.12.9.7 NMAC - N, 10/17/2005]

1.12.9.8 RESPONSIBILITIES OF THE PCC:

The PCC is a subcommittee of the ITC and shall perform the following responsibilities.

A. Have the authority to recommend certification of information technology projects that meet one or more of the following:

- (1)** mission criticality;
- (2)** project cost equal to or exceeding \$1,000,000;
- (3)** impact to customer on-line access; or
- (4)** projects the committee deems appropriate.

B. Develop procedural requirements on how to recommend certification or to recertify projects, including documentation requirements, meeting specifics, timelines and support services. The PCC shall convene at the call of the chair, but at least monthly to consider agency projects for certification.

C. Report certification recommendations to the ITC.

D. Review and comment on agency information technology project's consolidation efforts and opportunities.

[1.12.9.8 NMAC - N, 10/17/2005]

1.12.9.9 PCC MEMBERSHIP:

A. The PCC shall consist of members of the ITC appointed by the ITC chair.

B. The ITC chair shall appoint the chair of the PCC.

C. The PCC will select a vice chair from its membership.

[1.12.9.9 NMAC - N, 10/17/2005]

1.12.9.10 CERTIFICATION PROCESS:

A. PCC certification generally. At a minimum, project certification shall be required at a project's initiation, during its implementation and closeout. The PCC may require additional certification phases, events or deliverables based on the progress, complexity, risk or size of the project. Project certification shall be required before funds can be released for any of the above certification phases. Regarding phased release of funds, project managers shall present the distinct components of a phased approach, with approval of what constitutes appropriate phases for a particular project to then be approved or modified by the office and the PCC.

B. Agency request. A report by the agency requesting approval of a project requiring certification must be submitted in writing for all certification phases specified by the PCC. The PCC shall determine the components of the reports and criteria for issuing certification.

C. Verification. The PCC shall verify that the project has been reviewed by the architectural committee and the office as appropriate.

D. PCC recommendation. The PCC shall make a recommendation to the ITC to issue or deny project certification or may provide contingent certification subject to the agency providing specific information. The PCC shall notify the agency submitting the project in writing of its decision. In the case of recommendation for denial of the project for certification, the PCC will cite the reasons for its decision and the recommended actions needed to be taken by the agency for resubmission of the project for certification.

E. Office pre-certification. The office shall release "phase zero" pre-certification planning phase funds to develop project phasing, IV&V or an overall project plan.

F. Emergency Certification Review. The PCC will make every effort, within reason, to review projects in a timely manner. If at any time the PCC cannot convene, and a project faces significant time constraints and major risks to the project an emergency certification review may be implemented. The emergency review is for circumstances outside of control of the agency and every effort should have been made to work within the existing process. All members of the PCC will be provided an opportunity for comment. Documentation will be sent to the PCC electronically with notification of response timeline. Any comments from the PCC members must be sent electronically to the chair of the PCC. The CIO, PCC chair and the ITC chair shall have the authority to issue or deny certification for a particular phase of the project. If a certification is approved or denied, without convening the PCC, justification of the action shall be provided at the next regularly scheduled meeting of the ITC.

[1.12.9.10 NMAC - N, 10/17/2005]

1.12.9.11 AGENCY RESPONSIBILITIES:

A. An executive agency shall:

(1) prepare a written project certification report prior to certification for large projects that are equal to or exceeding \$1,00,000, high-risk projects or at the request of the PCC;

(2) schedule a certification review and provide documentation in a timely manner to the PCC;

(3) prepare a presentation to the PCC and answer questions prior to certification for large or high-risk projects or at the request of the PCC;

(4) shall keep a copy of each project status report on file;

(5) prepare a written risk assessment report at the concept phase of the project, at the end of each project phase, and following the culmination of each development lifecycle phase, or more frequently for large and high-risk projects;

(6) provide an independent verification and validation (IV&V) report to the PCC;

(7) be prepared to identify the value of the information technology project, as well as, relationship in support and consolidation with other information technology projects and agencies; and

(8) keep a copy of each risk assessment report on file.

B. The agency project manager, the contract project manager, if appropriate, and the project team shall regularly review the status and progress of an information technology project throughout its lifecycle.

[1.12.9.11 NMAC - N, 10/17/2005]

1.12.9.12 PROJECT PLANS:

A. Plan Required. An agency shall prepare, in accordance with instructions contained in the project management guidelines and best practices document prepared by eth office, a project plan for every IT project regardless of its scope or cost. The agency project manager shall document the plan and all revisions to the plan, and shall keep it on file until the system is removed from operation.

B. Plan contents. The plan shall contain at a minimum:

- (1) a description of the project;
- (2) a description of the functions the system will provide;
- (3) a description of the development lifecycle methodology;
- (4) an initial risk assessment;
- (5) risk management strategies, including mitigation actions;
- (6) quality assurance strategies or plan;
- (7) human and financial resource requirements and allocation;
- (8) a project review schedule;
- (9) IV&V plan and reports;
- (10) project deliverables;
- (11) a project schedule; and
- (12) appropriate security planning for at least data, disaster recovery, and system back-up.

C. Plan approval. For projects meeting the selection criteria, the agency shall submit the plan to the office prior to initiation of the project or release of funding by the department of finance and administration. The office shall review the internal plan for sufficiency and in accordance with criteria specified by the PCC, and shall make recommendations to the PCC for certification. The PCC will review the documentation

and provide the agency an opportunity to present the information technology project to the PCC for certification. The PCC meets monthly and will schedule presentation at each meeting. It is the agency's responsibility to assure timely submission of materials and schedule certification review. The PCC will identify areas of improvement to the agency if the plan does not meet initial approval of the PCC. The PCC shall make their recommendation to the ITC.

D. Right to appeal. If an agency requesting certification for any phase is denied certification, the agency may appeal the decision by submitting a written intent to appeal within five (5) business days of receipt of denial. The written intent to appeal shall be submitted to the chair of the ITC with a courtesy copy provided to the chair of the PCC. It shall be the responsibility of the agency to comply with the ITC agenda and meeting rules to present its appeal.

[1.12.9.12 NMAC - N, 10/17/2005]

PART 10: INTERNET, INTRANET, EMAIL AND DIGITAL NETWORK USAGE

1.12.10.1 ISSUING AGENCY:

Information Technology Commission, 404 Montezuma, Santa Fe, NM 87501.

[1.12.10.1 NMAC - N, 9-15-04]

1.12.10.2 SCOPE:

The policy governs the use of state of New Mexico information technology (IT) and data telecommunications resources.

[1.12.10.2 NMAC - N, 9-15-04]

1.12.10.3 STATUTORY AUTHORITY:

Section 15-1C-5 NMSA 1978.

[1.12.10.3 NMAC - N, 9-15-04]

1.12.10.4 DURATION:

Permanent.

[1.12.10.4 NMAC - N, 9-15-04]

1.12.10.5 EFFECTIVE DATE:

September 15, 2004, unless a later date is cited at the end of a section.

[1.12.10.5 NMAC - N, 9-15-04]

1.12.10.6 OBJECTIVE:

The purpose of this policy is to provide state of New Mexico staff with guidance on the proper use of the state's information technology resources, including but not limited to the internet, the intranet, email, and the state's digital network and supporting systems.

[1.12.10.6 NMAC - N, 9-15-04]

1.12.10.7 DEFINITIONS:

As used in this policy:

A. access means the ability to read, change, or enter data using a computer or an information system;

B. equipment means computers, monitors, keyboards, mice, routers, switches, hubs, networks, or any other information technology assets;

C. freeware or shareware means software that is available free of charge and available for download from the internet. Freeware is protected by a copyright and is subject to applicable copyright laws;

D. information technology resources (IT resources) means computer hardware, software, databases, electronic message systems, communication equipment, computer networks, telecommunications circuits, and any information that is used by a state agency to support programs or operations that is generated by, transmitted within, or stored on any electronic media;

E. malicious code means any type of code intended to damage, destroy, or delete a computer system, network, file, or data;

F. pirated software means licensable software installed on a computer system for which a license has not been purchased or legally obtained;

G. security mechanism means a firewall, proxy, internet address-screening or filtering program, or other system installed to prevent the disruption or denial of services or the unauthorized use, damage, destruction, or modification of data and software;

H. sexually explicit or extremist materials means images, documents, or sounds that can reasonably be construed as:

- (1) discriminatory or harassing; or

- (2) defamatory or libelous; or
- (3) obscene or pornographic; or
- (4) threatening to an individual's physical or mental well-being; or
- (5) read or heard for any purpose that is illegal; and

I. user means any person authorized by a state agency to access state IT resources, including a state employee, officer or contractor; a user for purposes of this rule does not include a person who accesses state telecommunications resources offered by the state for use by the general public.

[1.12.10.7 NMAC - N, 9-15-04]

1.12.10.8 POLICY:

The internet and other information technology resources are important assets that the state can use to gather information to improve external and internal communications and increase efficiency in business relationships. To encourage the effective and appropriate use of the state's IT resources, the following policies govern the use of the state's IT resources:

A. State agencies shall provide all users with a written copy of this rule.

(1) All users shall sign and date a statement indicating they have received and read this policy.

(2) Each user's signed statement shall be kept on file for as long as the user is employed by, has a contract with or otherwise provides services to the agency.

B. For the purposes of this rule, IT resources usage includes but is not limited to all current and future internet/intranet communications services, the world wide web, state intranets, voice over IP, file transfer protocol (FTP), TELNET, email, peer-to-peer exchanges, and various proprietary data transfer protocols and other services.

C. The state of New Mexico may undertake all prudent and reasonable measures to secure the systems it uses for internet communications and the data transmitted by these systems and services, at the direction of the governor or his designee(s).

D. The state of New Mexico and/or its agencies may install software and/or hardware to monitor and record all IT resources usage, including email and web site visits. The state retains the right to record or inspect any and all files stored on state systems.

E. State IT resources shall be used solely for state business purposes (except as described in Section 1.12.10.10 NMAC) and users shall conduct themselves in a manner consistent with appropriate behavior standards as established in existing state policies. All state of New Mexico policies relating to intellectual property protection, privacy, misuse of state equipment, sexual harassment, sexually hostile work environment, data security, and confidentiality shall apply to the use of IT resources.

F. Users shall have no expectations of privacy with respect to state IT resource usage. Serious disciplinary action up to and including termination of employment or contract may result from evidence of prohibited activity obtained through monitoring or inspection of electronic messages, files, or electronic storage devices. Illegal activity involving state IT resource usage may be referred to appropriate authorities for prosecution.

[1.12.10.8 NMAC - N, 9-15-04]

1.12.10.9 PROHIBITED INTERNET USE:

State IT resources shall not be used for anything other than official state business unless otherwise specifically allowed by the agency head or as permitted under Section 1.12.10.10 NMAC.

A. No software licensed to the state nor data owned or licensed by the state shall be uploaded or otherwise transferred out of the state's control without explicit authorization from the agency head.

B. IT resources shall not be used to reveal confidential or sensitive information, client data, or any other information covered by existing state or federal privacy or confidentiality laws, regulations, rules, policies, procedures, or contract terms. Users who engage in the unauthorized release of confidential information via the state's IT resources, including but not limited to newsgroups or chat rooms, will be subject to sanctions in existing policies and procedures associated with unauthorized release of such information.

C. Users shall respect the copyrights, software, licensing rules, property rights, privacy, and prerogatives of others, as in any other business dealings.

D. Users shall not download executable software, including freeware and shareware, unless it is required to complete their job responsibilities.

E. Users shall not use state IT resources to download or distribute pirated software or data, including music or video files.

F. Users shall not use state IT resources to deliberately propagate any malicious code.

G. Users shall not use state IT resources to intentionally disable or overload any computer system or network, or to circumvent any system intended to protect the privacy or security of the state's IT resources.

H. Unauthorized dial-up access to the internet is prohibited from any device that is attached to any part of the state's network. The state's IT resources shall not be used to establish connections to non-state internet service providers without prior authorization in writing by the office of the chief information officer or the state chief information technology security officer.

I. Users shall not access, store, display, distribute, edit, or record sexually explicit or extremist material using state IT resources.

(1) In agencies or offices where the display or use of sexually explicit or extremist materials falls within legitimate job responsibilities, an agency head may exempt a user in writing from the requirements of this subsection. The agency issuing the exemption letter shall keep the letter on file for as long as the user is employed by, has a contract with, or otherwise provides services to the agency.

(2) The incidental and unsolicited receipt of sexually explicit or extremist material, such as might be received through email, shall not constitute a violation of this section, provided that the material is promptly deleted and neither stored nor forwarded to other parties.

J. Users are prohibited from accessing or attempting to access IT resources for which they do not have explicit authorization by means of user accounts, valid passwords, file permissions or other legitimate access and authentication methods.

K. Users shall not use state IT resources to override or circumvent any security mechanism belonging to the state or any other government agency, organization or company.

L. Users shall not use state IT resources for illegal activity, gambling, or to intentionally violate the laws or regulations of the United States, any state or local jurisdiction, or any other nation.

[1.12.10.9 NMAC - N, 9-15-04]

1.12.10.10 PERSONAL USE OF THE INTERNET:

Occasional and incidental personal use of the state's IT resources and internet access is allowed subject to limitations. Personal use of the internet is prohibited if:

A. it materially interferes with the use of IT resources by the state or any political subdivision thereof; or

B. such use burdens the state or any political subdivision thereof with additional costs; or

C. such use interferes with the user's employment duties or other obligations to the state or any political subdivision thereof; or

D. such personal use includes any activity that is prohibited under this rule.

[1.12.10.10 NMAC - N, 9-15-04]

1.12.10.11 AGENCY POLICIES:

All agencies shall implement this policy immediately upon its effective date. At the discretion of the agency head, an agency may adopt additional agency-specific IT resources usage policies that are more restrictive than this rule, but in no case shall an agency adopt policies that are less restrictive than this rule. This rule shall control in the event of any conflict between an agency policy and this rule.

[1.12.10.11 NMAC - N, 9-15-04]

PART 11: ENTERPRISE ARCHITECTURE

1.12.11.1 ISSUING AGENCY:

Information Technology Commission, 404 Montezuma, Santa Fe, NM 87501.

[1.12.11.1 NMAC - N, 06-15-2005]

1.12.11.2 SCOPE:

This rule applies to the enterprise architecture of the state of New Mexico (SoNM) and all IT projects or programs undertaken by agencies. This rule applies to any state government body or public entity that would like to become a member or utilize services within the enterprise data center.

[1.12.11.2 NMAC - N, 06-15-2005]

1.12.11.3 STATUTORY AUTHORITY:

NMSA 1978 Section 15-1C-5 and 15-1C-8.

[1.12.11.3 NMAC - N, 06-15-2005]

1.12.11.4 DURATION:

Permanent.

[1.12.11.4 NMAC - N, 06-15-2005]

1.12.11.5 EFFECTIVE DATE:

The effective date is 06-15-2005, unless a later date is specified at the end of a section.

[1.12.11.5 NMAC - N, 06-15-2005]

1.12.11.6 OBJECTIVE:

The purpose of this document is to establish rules, standards, and policies for the enterprise architecture for the SoNM.

[1.12.11.6 NMAC - N, 06-15-2005]

1.12.11.7 DEFINITIONS:

As used in this policy.

A. Address block means a contiguous group of internet protocol (IP) addresses.

B. Addressing resolution means a method for resolving differences between computer addressing schemes. Address resolution usually specifies a method for mapping network layer (layer 3) addresses to data link layer (layer 2) addresses.

C. Address resolution protocol means a protocol for mapping an IP address to a physical machine address that is recognized in the local network.

D. Application administration account means any account that is for administration of an application.

E. Agency network means networks that are managed by individual agencies and autonomous to state's core network.

F. Architecture means a logically consistent set of principles, policies, and standards that guide the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs.

G. American registry for internet numbers (ARIN) means one of four regional internet registries. ARIN, founded in 1997, is a non-profit organization that registers and administers *IP numbers* for North America. ARIN is one of four regional internet registries.

H. Class A network means a binary address starting with 0; therefore, the decimal number can be anywhere from 1 to 126. The first 8 bits (the first octet) identify the network, and the remaining 24 bits indicate the host within the network.

I. Class B network means binary addresses that start with 10; therefore, the decimal can be anywhere from 128 to 191; (the number 127 is reserved for loop-back and is used for internal testing on the local machine). The first 16 bits (the first two octets) identify the network, and the remaining 16 bits indicate the host within the network. An example of a class B IP address is 168.212.226.204, where "168.212" identifies the network and "226.204" identifies the host on that network.

J. Class C network means binary addresses that start with 11; therefore, the decimal number can be anywhere from 192 to 223. The first 24 bits (the first three octets) identify the network, and the remaining 8 bits identify the host within the network. An example of a class C IP address is 200.168.212.226, where "200.168.212" identifies the network and "226" identifies the host on that network.

K. Common service means a function that may be in use or deployed in multiple agencies, whether they are using the same programs or people to perform the function or not.

L. Consolidated service means a function that is performed by a common group of programs or people for multiple agencies, under centralized control and with agreed-upon standards, interfaces, and service level agreements.

M. Consolidated service means a function that is performed by a common group of programs or people for multiple agencies, under centralized control and with agreed-upon standards, interfaces, and service-level agreements.

N. Cost recovery service means a service that is charged back to the consumers of the service at a fully loaded rate to allow the provider to recoup all associated costs with providing the service.

O. Current technology means components that have met requirements of the EA - those components that should be used in deployment of technology solutions.

P. Emerging technology means products that have potential to become current components.

Q. Enterprise means that for this document, 'enterprise' refers to the executive branch of the government of the SoNM, including all business processes and IT support systems.

R. Enterprise architecture defines an enterprise-wide, integrated set of components that incorporates strategic business thinking, information assets, and the technical infrastructure of an enterprise to promote information sharing across agency

and organizational boundaries; the enterprise architecture is supported by architecture governance and the allied architectures of business, information, technology, and solution architectures.

S. Enterprise project means a project with the purpose of delivering new or modifying existing services to many stakeholders within the state.

T. General funded service means a SoNM service funded through general fund tax dollars.

U. Internet protocol (IP) address means a 32-bit address used to indicate a specific network and host on the internet or within a local network. The address is usually seen in decimal representation in the form *nnn.nnn.nnn.nnn*, where *nnn* can be any number between 0 and 255.

V. Internet protocol security (IPSec) means a set of protocols developed by the internet engineering task force (IETF) to support secure exchange of packets at the IP layer by encrypting a 1.18.361 NMAC authenticating all IP packets. IPSec has been deployed widely to implement virtual private networks.

W. Internet protocol version 6 (IPv6) means a standard intended to replace the previous standard, IPv4, which only supports up to about 4 billion addresses (4×10^9), whereas IPv6 supports approximately 3.4×10^{38} addresses, equivalent to 430,000,000,000,000,000,000 unique addresses per square inch of earth. The root domain has been changed to support both IPv6 and IPv4. It is expected that IPv4 will be supported until about 2025 to allow for bugs to be worked in support of new IP and wireless devices.

X. Other-funded service means a SoNM service that receives funding from non-SoNM sources or state funds other than the general fund, such as the road fund, federal government, or a locality.

Y. Network address translation means an internet standard that enables a local area network (LAN) to use one set of IP addresses for internal traffic and a second set of addresses for external traffic. A NAT box located where the LAN meets the internet makes all necessary IP address translations by keeping IP addresses of network packets passing through a router or firewall. Hosts, which are behind a NAT-enabled gateway, do not have end-to-end connectivity. NAT serves three main purposes:

- (1) provides a type of firewall by hiding internal IP addresses;
- (2) enables a company to use more internal IP addresses (since they are used internally only, there is no possibility of conflict with IP addresses used by other companies and organizations); and

(3) allows a company to combine multiple ISDN connections into a single internet connection.

Z. Passphrases means that a public/private key system defines a mathematical relationship between the public key that is known by all, and the private key, that is known only to the user. Without the passphrase to "unlock" the private key, the user cannot gain access.

AA. Private address means a space that has been allocated via request for comments (RFC) 1918. These addresses are available for any use by anyone, and therefore the same private IP addresses can be reused. However, they are not routable - they are used extensively in private networks due to the shortage of publicly remittable IP addresses.

BB. Request for comment (RFC) means a series is used as the primary means for communicating information about the internet; some RFCs are designated as internet protocol.

CC. SANS means a sysadmin, audit, network, security, or SANS institute.

DD. Self-funded service means a SoNM service that, through its use, generates a stream of revenue sufficient to cover its on-going costs and to accrue monies to pay for future development and enhancement.

EE. Service (types of) - see 'common service', 'consolidated service', 'cost recovery service', 'general funded service', 'other-funded service', and 'self-funded service'.

FF. Sunset technology means components in use which do not conform to the ITEA and with a stated specific date set for discontinuance - indicating the date that the component will no longer be acceptable for use.

GG. Twilight technology means components in use, but which do not conform to the stated business/technical drivers; no date of discontinuance is identified - but not to be used for new development or new procurements; extensive modifications should be avoided.

[1.12.11.7 NMAC - N, 06-15-2005]

1.12.11.8 ABBREVIATIONS AND ACRONYMS:

A. ARIN means American registry for internet numbers.

B. ARP means address resolution protocol.

C. CIO means chief information officer.

- D. **EA** means enterprise architecture.
- E. **IETF** means internet engineering task force.
- F. **IP** means means internet protocol.
- G. **IPSec** means IP security.
- H. **IPv4** means version 4 of the internet protocol.
- I. **ISDN** means integrated services digital network.
- J. **IT** means information technology.
- K. **ITC** means information technology commission.
- L. **ITEA** means information technology enterprise architecture.
- M. **LAN** means local area network.
- N. **NAT** means network address translation.
- O. **NM** means New Mexico.
- P. **NT** means new technology (predecessor of windows 2000 server).
- Q. **OCIO** means office of chief information officer.
- R. **RFC** means request for comments.
- S. **SANS** means system administration, audit, network, security, or SANS institute.
- T. **SoNM** means state of New Mexico.
- U. **TCP** means transmission control protocol.
- V. **VPN** means virtual private networks.
- W. **WAN** means wide area network.

[1.12.11.8 NMAC - N, 06-15-2005]

1.12.11.9-1.12.11.14: [RESERVED]

1.12.11.15 NETWORK:

IP addressing.

A. The enterprise service provider will assign, document, and manage all address blocks of private, public, and reserved address spaces.

B. Agencies will manage and control all addresses within their block. Agencies will be required to submit current and accurate IP sub-net assignments and change control documentation to the enterprise service provider database on a real-time basis.

C. An agency core router will be configured to route only 10.0 and 164.64.0.0 addressing.

D. Private class A (RFC 1918) IPv4 is to be the named standard for all agencies and core networks to extend networks within the state that do not want to be routed to external sources with subnets of class B and class C.

E. Public Address.

(1) In the event that access is required to route to an external source, addresses must be public.

(2) The only public address range that will be advertised by the SoNM to the internet is the 164.64.0.0 class B address space assigned by ARIN.

F. The reserved address 1.18.361 NMAC.

(1) This reserved addressing will be limited to securing segregated voice transmission until an equally secure design is available with RCF 1918.

(2) Reserved addressing will not be implemented in the same autonomous RCF 1918 or public addressing.

[1.12.11.15 NMAC - N, 06-15-2005]

1.12.11.16 SECURITY:

Password policy.

A. This policy establishes a standard for creation of strong passwords, the protection of those passwords, and the frequency of change.

B. Passwords must be at least eight (8) alphanumeric characters long.

C. All system-level passwords (e.g., root, enable, NT admin, application administration accounts, etc.) must be changed at least every 6 months. Password

changes will be addressed immediately by the password authority when personnel changes are made to staff that have root access.

D. Passwords must not be stored on unencrypted or other insecure forms (i.e., word document, post-its, labels, etc.).

E. All user-level passwords (e.g., email, web, desktop computer, etc.) must be changed periodically. The minimum change interval is every 4 months.

F. User accounts that have system-level privileges granted through group memberships or programs such as "sudo" must have a unique password from all other accounts held by that user.

G. Passwords must not be inserted into email messages or other forms of electronic communication.

H. All user-level and system-level passwords must conform to the guidelines described below.

I. A password authority shall be established by the agency CIO or IT lead to disseminate passwords, facilitate as the gatekeeper for system-level passwords, and be the point of contact for password-related security breaches. Password may only be obtained or requested from the password authority of the agency.

[1.12.11.16 NMAC - N, 06-15-2005]

PART 12: APPLICATION SOFTWARE SELECTION

1.12.12.1 ISSUING AGENCY:

Information Technology Commission.

[1.12.12.1 NMAC - N, 10/17/2005]

1.12.12.2 SCOPE:

This rule applies to extended sourcing technology by executive agencies.

[1.12.12.2 NMAC - N, 10/17/2005]

1.12.12.3 STATUTORY AUTHORITY:

Sections 15-1C-5 and 15-1C-8 NMSA, 1978.

[1.12.12.3 NMAC - N, 10/17/2005]

1.12.12.4 DURATION:

Permanent.

[1.12.12.4 NMAC - N, 10/17/2005]

1.12.12.5 EFFECTIVE DATE:

October 17, 2005, unless a later date is cited at the end of a section.

[1.12.12.5 NMAC - N, 10/17/2005]

1.12.12.6 OBJECTIVE:

The purpose of this rule is to select enterprise-wide programs, applications, and application systems that do not inhibit or create barriers to necessary interaction, collaboration and information sharing among governmental agencies.

[1.12.12.6 NMAC - N, 10/17/2005]

1.12.12.7 DEFINITIONS:

A. "Application" means the software, including code and processes that address specific business needs; separate from the operating system software.

B. "Commercial off the shelf (COTS)" means commercially available software designed to meet specific business needs and generally maintained by a commercial vendor.

C. "Enterprise-wide" means effecting the entire organization.

D. "Platform" means the modules of computer code that perform specific functions with the application.

E. "Program" means the modules of computer code that perform specific functions with the application.

F. "Source code" means the computer code from which the application and programs may be recovered.

G. "Total cost of ownership (TCO)" means all costs to purchase, implement and train users on an application system. The TCO also includes ongoing maintenance, in service training and network costs.

[1.12.12.7 NMAC - N, 10/17/2005]

1.12.12.8 POLICY:

When selecting software, the following principles apply.

A. The user base of the particular "sourced" application is growing, commercial interest and support is evident and a certified peer support group is active.

B. Source code and application platforms are well supported and business functionality can be clearly demonstrated.

C. A timely schedule has been established for new version updates and bug fixes for the application.

D. Proposals from state entities must demonstrate that an infrastructure of support exists to manage applications, implementation and ongoing maintenance.

E. Total cost of ownership for proposed application must be equivalent to or less than a commercial solution and should present a value driven methodology, TCO (as developed elsewhere) must always address costs of implementation, ongoing technical support, training, etc. COTS procurement must be equal to or less than the cost of in-house developed systems.

F. Training for the implementation and ongoing use of the software is readily available and can be provided on a reasonable schedule and cost.

G. Applications development practices are of high quality, well-documented and easily applied.

H. The vendor is financially stable and could be expected to remain a viable entity under state guidelines.

I. In-house developed application software will adhere to items B through G above.

[1.12.12.8 NMAC - N, 10/17/2005]

PART 13-19: [RESERVED]

PART 20: INFORMATION SECURITY OPERATION MANAGEMENT

1.12.20.1 ISSUING AGENCY:

Department of Information Technology.

[1.12.20.1 NMAC - N/E, 04/14/2010]

1.12.20.2 SCOPE:

This rule applies to all executive branch agencies, and any other state entity which utilizes the state information technology (IT) infrastructure, contractors and subcontractors and any other non-state government staff members, and outsourced third parties, who have access to, store, or manage state government information on site at a state agency or off-site, as approved by a state agency.

[1.12.20.2 NMAC - N/E, 04/14/2010]

1.12.20.3 STATUTORY AUTHORITY:

NMSA 1978 Section 9-27-6 F (3) and 9-27-6 I (1).

[1.12.20.3 NMAC - N/E, 04/14/2010]

1.12.20.4 DURATION:

Permanent.

[1.12.20.4 NMAC - N/E, 04/14/2010]

1.12.20.5 EFFECTIVE DATE:

April 14, 2010, unless a later date is cited at the end of a section.

[1.12.20.5 NMAC - N/E, 04/14/2010]

1.12.20.6 OBJECTIVE:

The purpose of this rule is to establish security operation management practices for executive branch agencies and any other state entity which utilizes the state information technology (IT) infrastructure in the operation of their information technology (IT) systems and infrastructure/networks. This rule encompasses all systems, automated and manual, for which the state has administrative responsibility, including systems managed or hosted by third parties on behalf of a state agency.

[1.12.20.6 NMAC - N/E, 04/14/2010]

1.12.20.7 DEFINITIONS:

Defined terms apply to this rule and all other rules promulgated by the secretary and adopted by the information technology commission.

A. "Act" means the Department of Information Technology Act, NMSA 1978 9-27-1 et seq.

B. "Agency" means an executive branch agency of the state or any other state entity which uses the state IT infrastructure.

C. "Architectural configuration requirement (ACR)" means the technical specifications for information architecture and information technology system purchases for agencies.

D. "CIO" means chief information officer and refers to the secretary of the department as chief information officer of the state or any agency CIO.

E. "Commission" means the information technology commission.

F. "Department or DoIT" means the department of information technology.

G. "Exception" means a request, limited in scope and duration, granted by the department allowing an agency an exclusion from compliance with a rule, ACR or guideline.

H. "Firewall" means a part of a computer system or network designed to block unauthorized access while permitting authorized communications. It is a device or set of devices which is configured to permit or deny computer based applications based upon a set of rules and other criteria.

I. "Individual" means a natural person, a human being.

J. "Information owner" means the individual or individuals held managerially and financially accountable for a dataset and who have legal ownership rights to a dataset even though the dataset may have been collected/collated/disseminated by another party.

K. "Information security officer ("ISO")" means a senior-level executive within an organization responsible for establishing and maintaining the enterprise vision, strategy and program to ensure information assets are adequately protected

L. "Information technology ("IT")" means computer hardware, software and ancillary products and services including: systems design and analysis, acquisition, storage and conversion of data; computer programming, information storage and retrieval, voice, radio, video and data communications, requisite systems, simulation and testing, and related interactions between users and information systems.

M. "Information technology project" means the purchase, replacement, development or modification of an IT component or system.

N. "IT asset" means all elements of software and hardware found in an IT environment.

O. "Malicious code" is the term used to describe any code in any part of a software system or script intended to cause undesired effects, security breaches or damage to a system. Malicious code describes a broad category of system security terms that includes attack scripts, viruses, worms, Trojan horses, backdoors, and malicious active content.

P. "Network segregation" means controlling the security of networks by dividing them into separate secure networks. Security measures can then be applied to further segregate the network environments.

Q. "Password" means a secret series of characters that enables a user to access a file, computer, or program. On multi-user systems, each user must enter his or her password before the computer will respond to commands. The password helps ensure that unauthorized users do not access the computer. In addition, data files and programs may require a password.

R. "Person" means an individual, association, organization, partnership, firm, syndicate, trust, corporation, and every legal entity.

S. "Portable computing devices or removable media devices" means, but is not limited to, removable media such as thumb or USB drives, external hard drives, laptop or desktop computers, mobile/cellular phones, smartphones or personal digital assistants (PDA's) owned by or purchased by agency employees, contract personnel, or other non-state user(s).

T. "Privileged accounts" means accounts required for systems to function; they are frequently used by system administrators in their performance of their job duties. These special system privileges are primarily used when major changes to the system are necessary by administrators.

U. "Rule" means any rule promulgated by the department for review and approval by the commission which requires compliance by executive agencies and any other state user of the state IT infrastructure.

V. "Secretary" means the secretary of the department of information technology.

W. "Segregation of security duties" means disseminating the tasks and associated privileges for a specific business process among multiple users to reduce the potential for damage from the actions of one person. IT staff should be organized in a manner that achieves adequate separation of duties in the agency.

X. "State" means New Mexico, or, when the context indicates a jurisdiction other than New Mexico, any state, district, commonwealth, territory, or possession of the United States.

Y. "State CIO" means the cabinet secretary of the department of information technology.

Z. "State information architecture" means a logically consistent set of principles, policies and standards that guides the engineering of state government's information technology systems and infrastructure in a way that ensures alignment with state government's business needs.

AA. "State information technology strategic plan" means the information technology planning document for the state that spans a three-year period.

BB. "Virtual private network ("VPN")" means a network that uses a public telecommunication infrastructure, such as the internet, to provide remote offices or individual users with secure access to their organization's network. These systems use encryption and other security mechanisms to ensure that only authorized users can access the network and that the data cannot be intercepted.

[1.12.20.7 NMAC - N/E, 04/14/2010]

1.12.20.8 DOCUMENTATION OF SECURITY OPERATIONS:

A. All agency IT technical operations shall have documented security operating instructions, management processes, and formal incident management procedures in place that define roles and responsibilities of individuals who operate or use agency IT technical operations and facilities.

B. Where one agency provides a server, application, or network services to another agency, operational and management responsibilities shall be coordinated by the CIOs of both agencies.

C. All agencies shall develop procedures for conducting background investigations on IT employees or contractors as required by state law, NMSA 1978 9-27-6 C (15) and D.

[1.12.20.8 NMAC - N/E, 04/14/2010]

1.12.20.9 SEGREGATION OF SECURITY DUTIES:

Segregation of duties is required to reduce the risk of accidental or deliberate damage to the state or agency IT system through misuse by a person or persons. In small agencies in which separation of duties is difficult to achieve, with the approval of DoIT, the agency shall implement compensatory controls including, but not limited to, actively monitoring its IT operations, audit trails, and by regularly documented management supervision.

[1.12.20.9 NMAC - N/E, 04/14/2010]

1.12.20.10 NETWORK MANAGEMENT:

All agencies shall implement a range of network controls to maintain security in its trusted, internal network, and to ensure the protection of connected services and networks. Such controls help prevent unauthorized access and use of the agencies' private networks. The following controls, at minimum, shall be implemented:

- A.** individuals with operational responsibility for networks shall be separate from those with computer operations responsibility; responsibilities and procedures for remote access shall be established;
- B.** controls, such as data encryption, shall be implemented to safeguard data integrity and the confidentiality of data passing over public networks (internet);
- C.** all client-based VPN connections shall have split tunneling disabled; VPN connections to the agency are only permitted from agency managed VPN devices;
- D.** agencies' networks shall implement private address routing to public addresses when sending over the internet to minimize the exposure of public routable addresses;
- E.** firewall policies shall be configured to accept only inbound and outbound data traffic which is required based on business needs; all other data traffic should be denied;
- F.** firewall policies shall take into account the source and destination of the traffic in addition to the content;
- G.** data traffic with invalid or private addresses shall be default blocked from delivery;
- H.** proposed modifications to network and security equipment must be requested and approved for implementation through the agency change management procedure;
- I.** to prevent unauthorized modifications of the firewall configuration, the firewall administrator must review the firewall configuration quarterly;
- J.** any form of cross-connection, which bypasses the firewall, is strictly prohibited;
- K.** remote firewall administration must be performed over secure channels (e.g., encrypted network connections using SSH or IPSEC) or console access;
- L.** details of firewall, and security devices type, software versions, and configuration data will not be disclosed without the permission of the agency CIO;

M. agencies shall define security zones and create logical entities and rules for what comprises permissible data and network traffic between different agency business units; and

N. agencies shall perform network segmentation to control the flow of data between hosts on different segments of the network to provide enhanced security, network performance, and connectivity.

[1.12.20.10 NMAC - N/E, 04/14/2010]

1.12.20.11 PRIVILEGED ACCOUNTS MANAGEMENT:

The issuance and use of privileged accounts in agencies shall be restricted and controlled by system administrator management in the agency.

A. Agencies shall develop processes to ensure that if a privilege account is issued, the use of such privileged accounts is monitored by the manager of system administration, or the CIO.

B. Agencies shall promptly investigate any suspected misuse of these accounts by the manager of system administration or DoIT or an agency approved independent contractor.

C. Agencies shall change passwords of system privileged accounts no less than every 60 days.

[1.12.20.11 NMAC - N/E, 04/14/2010]

1.12.20.12 ACCESS CONTROL POLICY:

To preserve the integrity, confidentiality, and availability of the system and the data, the agency's information assets shall be protected by logical as well as physical access control mechanisms commensurate with the value and sensitivity of the system, the ease of recovery of the assets and the direness of consequences, legal or otherwise, if the loss or compromise were to occur.

A. Agencies' CIOs are responsible for determining who shall have access to sensitive and protected information resources within the agency. Access privileges shall be granted by the CIO in accordance with the particular user's role and job responsibilities in the agency.

B. Agency enforcement of its access control policy shall be verified during an independent annual risk assessment which shall be performed by DoIT or a DoIT approved contractor.

[1.12.20.12 NMAC - N/E, 04/14/2010]

1.12.20.13 OPERATING SYSTEM ACCESS CONTROL:

A. Access to agency operating system code, commands and services shall be restricted to individuals with specialized skills such as systems programmers, database administrators, network, and security administrators who require access to perform their daily job responsibilities.

(1) Each of these individuals who are given access shall have assigned to them a unique privileged account (user ID).

(2) User IDs shall not disclose nor provide any indication of the user's supervisor, manager, administrator, or privilege level.

B. To allow administrator activities to be tracked to the individual responsible for the work or changes to the system, such as system programmers, database administrators, network administrators and security administrators, a second user ID shall be provided for use when the particular individual performs necessary business transactions unrelated to his or her regular job functions (operating system, database, network and security functions), such as accessing an employee's electronic records.

C. Under some agency specific circumstances, where there is a clear business requirement or system limitation, the use of a shared user ID/password for a group of users or a specific job can be used by obtaining written approval by the agency ISO and agency CIO. In such situations, additional controls shall be implemented by the agency to ensure accountability of the device operating system is maintained.

D. Where technically feasible, default administrator accounts shall be renamed, removed, or disabled. The default passwords for these accounts shall be changed if the account is retained, even if the account is renamed or disabled.

[1.12.20.13 NMAC - N/E, 04/14/2010]

1.12.20.14 APPLICATION ACCESS CONTROL:

A. Access to agency business and systems applications shall be restricted to those individuals who have an identified business need to access those applications or systems in the performance of their job responsibilities.

B. Access to source code for applications and systems shall be restricted; any such access shall be further restricted so that only authorized agency staff and agency supervised contractors can access those applications and systems for which they directly provide support.

[1.12.20.14 NMAC NMAC - N/E, 04/14/2010]

1.12.20.15 NETWORK ACCESS CONTROL:

Access to an agency's trusted internal network shall require all agency authorized users to authenticate themselves through use of an individually assigned user ID or other agency approved authentication mechanism (e.g., password, token, smart card). Network controls shall be developed and implemented by the agency to ensure that an authorized user can access only those network resources and services necessary to perform their assigned job responsibilities.

[1.12.20.15 NMAC - N/E, 04/14/2010]

1.12.20.16 USER AUTHENTICATION FOR EXTERNAL CONNECTIONS (REMOTE ACCESS CONTROL):

A. To maintain information security, agency must require through published policies and procedures consistent with these rules, that individual accountability shall be maintained at all times, including during remote access.

B. Connection to the agency's networks shall be provided in a secure manner to preserve the integrity of the network, to preserve the data transmitted over that network, and to maintain the availability of the network. Security mechanisms shall be in place to control remote access to agency systems and networks from fixed or mobile locations.

C. Approval for any such remote connection shall first be obtained from the agency management and the agency CIO or ISO. Prior to approval being granted, the CIO shall review the request to determine what needs to be accessed and what method of access is desired and document the risks involved and technical controls required for such connection to take place.

D. Because of the level of risk inherent with remote access, the agency shall require use of a stronger password or another comparable method of protection prior to allowing connection to any agency network. Users shall be informed that all sessions performed remotely are subject to periodic and random monitoring by the agency.

E. When accessing an agency network remotely, identification and authentication of the user shall be performed by the remote access system (VPN) in such a manner as to not disclose the password or other authentication information that could be intercepted and used by a third-party.

F. All remote connections to an agency computer shall be made through managed central points-of-entry or "common access point." Using this type of entry system to access an agency computer provides simplified and cost effective security, maintenance, and support.

G. Vendors which may be provided access to agency computers or software, will be required to have individual accountability. For any agency system (hardware or software) for which there is a default user ID or password that came with the system for use in set up or periodic maintenance of the system , that account shall be disabled until

the user ID is needed and requested. Any activity performed while a vendor user ID is in use shall be logged on the remote access system by an external logger. Since such maintenance accounts are not regularly used, the vendor user ID shall be disabled, the password changed, and other controls shall be implemented by the agency to prevent or monitor unauthorized use of these privileged accounts during periods of inactivity.

H. In special cases wherein servers, storage devices, or other computer equipment has the capability to automatically connect to a vendor in order to report problems or suspected problems, the agency ISO shall review any such connection and process to report certain events back to the system's manufacturer for performance "tuning" to ensure that such connectivity does not compromise the agency or other third-party connections.

I. Agency personnel will only be allowed to work from a remote location upon authorization by the CIO and agency management. Once approved, appropriate arrangements shall be made pursuant to agency written policy and procedures, consistent with this rule, to ensure the work environment at the remote location provides adequate security for transmission of agency data and protection of computing resources. The agency shall identify to the user the appropriate protection mechanisms necessary to protect against theft of agency equipment, unauthorized disclosure of agency information, misuse of agency equipment, unauthorized access to the agency internal network, or facilities by anyone besides the specifically identified and approved user, including family and friends. To ensure the proper security controls are in place and all state security standards are followed, the agency will approve remote access after consideration and documentation of their review following:

- (1)** the physical security of the remote location, including the use of any portable devices at any location other than an employee's approved work station;
- (2)** the method of transmitting information given the sensitivity of agency's internal system; and
- (3)** clearly defined business continuity procedures, including the capability of backing up critical information.

J. The following access system controls shall be implemented. Agency ISO or CIO shall monitor and audit their use:

- (1)** a definition of the type of information accessed (such as sensitive or confidential information under HIPAA) and the systems and services that the remote user is authorized to access;
- (2)** procedures and end user system requirements for secure remote access, such as authentication tokens or passwords, shall be documented by the agency including provisions for revocation of authorization and return of equipment to the agency;

- (3) access system support and usage procedures provided to the users;
- (4) implementation of suitable network boundary controls to prevent unauthorized information exchange between agency networks connected to remote computers and externally connected networks, such as the internet; such measures shall include firewalls and intrusion detection techniques at the remote location; and
- (5) physical security of the equipment used for remote access (e.g. such as cable locking device, or locking computer cabinet/secure storage area).

[1.12.20.16 NMAC - N/E, 04/14/2010]

1.12.20.17 DEDICATED NETWORK CONNECTIONS:

A. The internet is inherently insecure, access to the internet is prohibited from any device that is connected (wired or wireless) to any part of the state network unless such access is authorized via exception signed by the state CIO. Such access includes accounts with third-party internet service providers.

B. Any dedicated network connection from the agency network to any external network (either within or outside state government) shall be first approved in writing by the DoIT.

C. Dedicated network connections shall be allowed after the requesting agency has presented its proposed network architecture for approval by the DoIT; DoIT will approve if the proposal has acceptable security controls and procedures in place, and appropriate security measures have been implemented by the agency to protect state network resources. The agency shall perform a risk analysis of the connection to ensure that the connection to the external network shall not compromise the agency's private network. The agency may require that additional controls, such as the establishment of firewalls and a DMZ (demilitarized zone) be implemented between the third-party connection and the agency.

(1) The business case for the dedicated connection is still valid and the dedicated connection is still required.

(2) The security controls are in place (e.g., filters, rules, access control lists) are current and are functioning correctly.

D. The dedicated connection to the agency network shall be accomplished by the agency in a secure manner to preserve the integrity of the agency network, preserve the integrity of the data transmitted over that network, and the availability of the network to the agency. Security requirements for each connection shall be assessed individually and permission to use such connection shall be driven by the specific business needs of the agency. Only agency CIO-approved and qualified staff or agency CIO-approved and

qualified third-party shall be permitted to use sniffers or similar technology on the network to monitor operational data and security events.

E. The agency ISO or designee shall every six (6) months review external network connections, audit trails and system logs for abuses and anomalies.

F. Any agency-approved third-party network or workstation connection to an agency network shall:

(1) have written justification in the form of a clear business case provided to the agency CIO for any such network connection;

(2) sign an agency non-disclosure agreement ("NDA"); the non-disclosure agreement shall be signed by a duly appointed representative from the third-party organization who is legally authorized to sign such an agreement;

(3) have equipment in place that conforms to this rule and any other applicable state security standards, complies with the agency's technical architecture, and be approved in writing by the agency CIO; and

(4) use encryption to ensure the confidentiality and integrity of any sensitive or confidential data passing over the external network connection.

[1.12.20.17 NMAC - N/E, 04/14/2010]

1.12.20.18 NETWORK SEGREGATION:

When an agency desires to connect its network to any other third party network or its network becomes a segment on a larger network, controls shall be in place to prevent access by users from other connected networks to sensitive areas of the agency's private network. Such connection must first be approved by the agency CIO. Firewalls or other agency approved technologies shall be implemented to control access to secured resources on the trusted agency network. If any such third party network connections are contemplated, the agency CIO must first approve and receive approval from the state CIO.

[1.12.20.18 NMAC - N/E, 04/14/2010]

1.12.20.19 WIRELESS NETWORKS, BLUETOOTH, AND RADIO FREQUENCY IDENTIFICATION:

A. No wireless network or wireless access point shall be installed prior to an agency performed risk assessment and the written approval of the agency CIO.

B. Suitable controls, such as media access control (MAC), address restriction, authentication, and encryption, shall be implemented by the agency to ensure that a

wireless network or access point cannot be exploited to disrupt agency information services or to gain unauthorized access to agency information. When selecting wireless technologies, such as 802.11x or its predecessors or its successor, wireless network security features on the equipment shall be available and implemented at the time of deployment.

C. Access to systems that hold sensitive information or the transmission of protected or sensitive information via a wireless network is not permitted unless and until appropriate and adequate measures have been implemented and approved by the state CIO. Such measures shall include authentication, authorization, encryption, access controls, and logging.

[1.12.20.19 NMAC - N/E, 04/14/2010]

1.12.20.20 USER REGISTRATION AND MANAGEMENT:

A. A user management process shall be established, documented and provided to all IT staff of the agency which outlines and identifies all aspects of user management including the generation, distribution, modification, and deletion of user accounts. This process shall ensure that only authorized individuals have access to agency applications and information and that such users only have access to the resources required to perform authorized services.

B. The user management process shall include the following sub-processes:

- (1)** how to enroll new users;
- (2)** how to remove user IDs;
- (3)** how to grant a "privileged account" to a user;
- (4)** how to remove "privileged accounts" from a user;
- (5)** how the agency defines "periodic review" of "privileged accounts";
- (6)** how the agency defines "periodic review" of users enrolled in any state IT system;
- (7)** how to assign a new authentication token (e.g., password reset processing); and
- (8)** how proper enforcement of user management shall be verified during an independent annual risk assessment.

C. The appropriate information owner or other authorized officer shall make requests for the registration and granting of any data access rights.

D. For applications that interact with individuals who are not employees of the agency, including but not limited to employees of other state agencies, approved contractors or approved vendors, the information owner is responsible for ensuring an appropriate user management process is implemented. Standards for the registration of such external users shall be defined by the agency CIO, to include what credentials shall be provided to prove the identity of the user requesting registration, validation of the request, and the scope of access that may be provided.

[1.12.20.20 NMAC - N/E, 04/14/2010]

1.12.20.21 USER PASSWORD MANAGEMENT:

Password protocols shall be developed consistent with state standards and implemented to ensure all authorized individuals accessing agency resources follow 1.12.11 NMAC Enterprise Architecture. Such password protocols shall be mandated by automated system controls whenever possible. Password protocols should include, but not be limited to:

- A.** compliance with 1.12.11.16 NMAC (Security Password rule);
- B.** prohibiting the storage of passwords in clear text;
- C.** prohibiting the use of passwords that could be easily guessed or subject to disclosure through a dictionary attack;
- D.** direction for keeping passwords confidential;
- E.** prohibiting any and all password sharing;
- F.** directing users to change passwords at regular intervals;
- G.** direction for changing temporary passwords at the first logon;
- H.** enforcing the implementation standard password formats to include a mix of alphabetic, numeric, special, and upper/lower case characters;
- I.** automated logon processes which must be approved by agency CIO;
- J.** implementing state password standards and protocols on agency computing resources; and
- K.** verifying proper enforcement of password management by the agency during an annual independent risk assessment.

[1.12.20.21 NMAC - N/E, 04/14/2010]

1.12.20.22 PROHIBITION OF USE OF PERSONAL COMPUTING DEVICES ON STATE EQUIPMENT OR SYSTEMS:

A. Connecting any computing device not owned by the state of New Mexico to a state network or to any state computing device is prohibited unless authorized in writing by the agency CIO.

B. Installation of any software, executable or other file to any state computing device is prohibited if that software, executable, or other file was downloaded by, is owned by, or was purchased by an employee or contractor with his or her own funds.

C. Installation of downloaded software, executables, or other files to any state computing device is prohibited when downloaded or installed by an employee or contractor for personal use. Downloaded software, executable, or other files include, but are not limited to: SKYPE, music files or other software, and personal photos.

[1.12.20.22 NMAC - N/E, 04/14/2010]

1.12.20.23 VULNERABILITY SCANNING:

A. All state owned computing devices that are, or will be, accessible from outside the agency network shall be scanned by DoIT, DoIT-approved contractor or DoIT-approved agency IT staff for vulnerabilities and weaknesses prior to installation on the state network and following any changes made to the software, operating system, or configuration.

B. For both internal and external systems, scans shall be performed at least annually by DoIT or a DoIT-approved contractor to ensure that no major vulnerabilities have been introduced into the environment. The frequency of additional scans shall be determined by the agency ISO; such determination shall depend upon the criticality and sensitivity of the information on the system.

C. Network vulnerability scanning shall be conducted after any new network software or hardware has been installed and after major configuration changes have been made on critical and essential agency systems.

D. Output from the scans shall be reviewed immediately by the agency IT staff or agency ISO and the results communicated to the agency CIO.

E. Any vulnerability detected as a result of a scan shall be immediately evaluated for risk and actions shall be taken by the agency to mitigate such risk.

F. Tools used to scan for vulnerabilities shall be updated quarterly to ensure that any recently discovered vulnerabilities are included in any scans.

G. If an agency has outsourced a server, application, or network services to another agency, the responsibility for vulnerability scanning shall be coordinated by both agencies.

H. Anyone authorized to perform vulnerability scanning shall have its process defined, documented, tested, and followed at all times to minimize the possibility of disruption of services. Reports of exposures to vulnerabilities shall immediately be forwarded to the agency CIO and agency general counsel.

I. Any vulnerability scanning other than that performed by an agency ISO shall be conducted only by qualified individuals or organizations contracted with or otherwise authorized in writing by the agency's CIO.

[1.12.20.23 NMAC - N/E, 04/14/2010]

1.12.20.24 PENETRATION AND INTRUSION TESTING:

All state computing infrastructures that provide information through a public network, either directly or through another dedicated circuit, and that provide information externally (such as through the world-wide web), shall be subject to annual independent penetration analysis and intrusion testing by qualified, independent third-party contractor approved by DoIT.

A. Penetration analysis and testing shall be used to determine whether:

- (1)** a user can make an unauthorized change to an application;
- (2)** a user can access the application and cause it to perform unauthorized tasks;
- (3)** an unauthorized individual can access, destroy or change any data;
- (4)** an unauthorized individual may access the application and cause it to take actions unintended by the application designer(s).

B. The output of the penetration testing and intrusion testing shall be reviewed by the agency ISO and any vulnerability detected shall be evaluated for risk and steps taken to mitigate the risk.

C. Any tools used to perform the penetration testing shall be kept updated to ensure that recently discovered vulnerabilities are included in any future testing.

D. Where an agency has outsourced a server, application, or network services to another agency, independent penetration testing shall be coordinated by both agencies.

E. Only an individual or individuals authorized in writing by the agency shall perform penetration testing. The agency ISO shall notify DoIT security staff two business days prior to any penetration test. Any attempt by the agency to perform penetration testing without prior notice to DoIT shall be deemed an unauthorized access attack which shall be reported to the state CIO.

F. All documents pertaining to security penetration tests, security investigations, security data and reports shall be categorized as sensitive and protected from public disclosure. Counsel for the agency shall review and approve such information to ensure compliance with state law.

[1.12.20.24 NMAC - N/E, 04/14/2010]

1.12.20.25 PROTECTION AGAINST MALICIOUS CODE:

A. Software and any other mechanism to prevent intrusions shall be implemented across agency systems to prevent as well as detect the introduction of malicious code. The introduction of malicious code can cause serious damage to networks, workstations, and business data.

B. Agency users shall be informed of the dangers of unauthorized or malicious code.

C. Agency shall implement controls to, first, detect and then prevent any computer virus from being introduced to the agency environment. The types of controls and frequency of updating signature files shall be dependent on the value and sensitivity of the information at risk.

D. For most agency workstations, virus signature files shall be kept updated by the agency system administrator. On host systems or servers, the signature files shall be updated when the virus software vendor's signature files are updated and made available.

[1.12.20.25 NMAC - N/E, 04/14/2010]

1.12.20.26 SYSTEM SECURITY CHECKING:

A. Systems that process or store sensitive or confidential information or services that provide support for critical services shall undergo technical security reviews by agency system administrators to ensure compliance with implementation standards and rules as promulgated by DoIT and check for vulnerabilities to threats discovered subsequent to the review. Technical reviews of systems and services essential to the support of critical agency functions shall be conducted by agency system administrators at least once every year. Random reviews of all systems and services shall be conducted at least once every 24 months.

B. Any deviations from expected or required results, as defined by the agency CIO or ISO which are detected by the technical security review shall be reported to the agency CIO and the agency ISO and shall be corrected immediately. Agency staff shall also be advised of such deviations and agency shall investigate deviations (including the review of system activity log records, if necessary) and provide results of investigation to agency ISO and CIO.

[1.12.20.26 NMAC - N/E, 04/14/2010]

1.12.20.27 PORTABLE DEVICES AND REMOVABLE MEDIA:

A. All state owned portable computing resources and removable media shall be secured to prevent compromise of confidentiality or integrity of information. All portable computing devices and removable media must be protected by a password.

B. No portable and removable media computing devices may store or transmit sensitive information without suitable protective measures approved by the agency CIO.

C. An agency user of portable computing devices such as notebooks, PDAs, laptops, and mobile phones, Smartphones, or any other such then current portable devices, shall obtain the approval from the agency CIO to use and such approval shall be based on satisfactory documentation that the requirements for physical protection, access controls, cryptographic techniques, back-ups, malware and malicious codes protection and the rules associated with connecting portable devices to networks and guidance on the use of these devices in public places have been met.

D. Agency users shall be instructed that when using portable computing devices or removable media in public places, meeting rooms and other unprotected areas outside of the agency's premises, they must use appropriate protection, such as using cryptographic techniques, firewalls, and updated virus protection shall be in place to avoid the unauthorized access to or disclosure of the agency information stored and processed by these devices.

E. Agency users shall be instructed that when such portable devices or removable media are used in public places care shall be taken to avoid the risk of unauthorized persons viewing on-screen sensitive or protected information.

F. Procedures protecting portable devices or removable media containing sensitive information against malicious software shall be developed, implemented, and be kept up-to-date.

G. Portable devices and removable media containing sensitive or protected information shall be attended at all times and shall be secured e.g. do not leave devices unattended in public places.

H. Agency shall provide training to all staff using portable devices and removable media to raise their awareness with respect to risks resulting from the use of portable devices and removable media and what controls are in place by the agency to protect state data and equipment.

I. Employees in the possession of portable devices and removable media shall not check such items in airline luggage systems or leave in unlocked vehicles. Such devices shall remain in the possession of the employee as carry-on luggage unless other arrangements are required by federal or state authorities.

J. In the event that a state-owned portable device or removable media is lost or stolen, it is the responsibility of the user of that device to immediately report the loss following procedures in 1.12.20.34 NMAC.

[1.12.20.27 NMAC - N/E, 04/14/2010]

1.12.20.28 TELEPHONES AND FAX EQUIPMENT:

A. Users are prohibited from sending documents containing sensitive and confidential information via fax unless allowed by law.

B. Users are prohibited from using fax services to send or receive sensitive and confidential information.

C. Users are prohibited from using third-party fax services to send or receive sensitive and confidential information.

D. Users are prohibited from sending documents containing sensitive and private information via wireless fax devices.

E. Users are prohibited from sending teleconference call-in numbers and pass codes to a pager when sensitive and confidential information shall be discussed during the conference.

F. Teleconference chair people shall confirm that all teleconference participants are authorized participants, if sensitive or confidential information shall be discussed.

[1.12.20.28 NMAC - N/E, 04/14/2010]

1.12.20.29 MODEM USAGE:

Connecting any dial-up modem to any computer systems which are also connected to the agency's local area network, to the state network, or to another internal communication network shall first be approved in writing by the agency CIO.

[1.12.20.29 NMAC - N/E, 04/14/2010]

1.12.20.30 PUBLIC WEBSITES CONTENT APPROVAL PROCESS:

A. Sensitive and confidential information shall not be available through a server accessible to a public network without appropriate safeguards in place as approved in writing by the agency CIO in consultation with the agency legal counsel. The agency ISO shall implement safeguards to ensure user authentication, data confidentiality and integrity, access control, data protection and logging mechanisms.

B. The design of any proposed web service shall be first reviewed and approved in writing by the agency CIO in coordination with DoIT to ensure that the security of the web server, protection of agency networks, performance of the site, integrity, and availability considerations are adequately addressed.

C. Agency websites and agency websites hosted outside the state network shall be tested for security vulnerabilities prior to being put into production by DoIT or a DoIT approved contractor.

D. Agency website content shall first be reviewed by the agency information owner and approved by the agency CIO to ensure that the collection and processing of information meets state security and privacy requirements. Such review shall ensure that the information is adequately protected in transit over public and state networks, in storage, and while being processed.

[1.12.20.30 NMAC - N/E, 04/14/2010]

1.12.20.31 BUSINESS CONTINUITY:

This section is limited to the IT infrastructure and the data and applications of the local agency environment.

A. A threat and risk assessment shall be performed by the agency to determine the criticality of business systems and the time frame required for recovery in the event of disaster.

B. To minimize interruptions to normal agency business operations and critical agency business applications and to ensure they are protected from the effects of any major failures, each agency business unit or each agency ISO, under the direct guidance of the agency CIO, shall develop plans to meet the IT backup and recovery requirements of the agency and approved by DoIT.

C. Back-ups of critical agency data and software shall be performed daily.

[1.12.20.31 NMAC - N/E, 04/14/2010]

1.12.20.32 LOG-ON BANNER:

A. Log-on banners shall be implemented on all state IT systems to inform all users that agency systems are only for agency business and other approved uses consistent with agency policy, to inform that users their activities may be monitored, and to inform the user that they have no expectation of privacy.

B. Logon banners shall be displayed on computer screens during the authentication process.

[1.12.20.32 NMAC - N/E, 04/14/2010]

1.12.20.33 MONITORING SYSTEM ACCESS AND USE: NO EXPECTATION OF PRIVACY:

A. Consistent with applicable law, the agency reserves the right to monitor, inspect, and search at any time, all agency information systems and equipment used by agency users. Since agency computers and networks are provided for state business purposes, agency staff and any contractor(s) specifically allowed limited use of state systems or equipment shall have no expectation of privacy with regard to the information stored in or sent through the state information systems. Agency management may remove from its information systems any material unauthorized by the agency or by state statute.

B. Systems and applications shall be monitored and analyzed by agency ISO or agency designated IT staff to detect deviation from the state access control policy.

C. Events shall be recorded to provide evidence of misuse and to reconstruct lost or damaged data by the agency system administrator.

D. Audit logs shall be used to record user activities and other security-relevant events.

E. Audit log reports shall be produced to agency CIO and ISO and kept consistent with agency record retention schedules.

[1.12.20.33 NMAC - N/E, 04/14/2010]

1.12.20.34 LOST OR STOLEN IT ASSET:

In the event of a lost or stolen IT asset, the user shall:

A. immediately report the incident to the user's supervisor;

B. immediately report the incident to the DoIT help desk at (505)827-2121 or EnterpriseSupportDesk@state.nm.us; a state IT asset incident form must be completed and signed by the agency CIO and returned to the DoIT help desk; the asset incident form can be found on the DoIT security web site at:
<http://www.doit.state.nm.us/securityoffice.html>;

C. if stolen, user must contact the local law enforcement agency to report the theft and receive a crime report case number;

D. upon loss of or in the event of loss of an IT asset by theft, the agency CIO shall work with the DoIT ISO to identify the nature of the data exposed; the loss of confidential or sensitive data shall be reported to the agency executive management for direction.

[1.12.20.34 NMAC - N/E, 04/14/2010]

PART 21 GRANT PROGRAM RULES

1.12.21.1 ISSUING AGENCY:

Department of Information Technology ("DoIT")

[1.12.21.1 NMAC - N, 04/11/2023]

1.12.21.2 SCOPE:

These rules apply to the development, award and administration of grant programs within the jurisdiction of DoIT, the Office of Broadband Access and Expansion ("OBAE"), the Connect New Mexico Council ("Council"), or to any public body administratively attached to DoIT, directly or indirectly. These rules also apply to a subject grant program, as applicable, and to any person who applies, or intends to apply, for a grant under a program that is subject to these rules. These rules do not apply to contracting.

[1.21.21.2 NMAC - N, 04/11/2023]

1.12.21.3 STATUTORY AUTHORITY:

Paragraphs A and B of Section 9-27-6 NMSA 1978; Paragraph C of Section 63-9K-4 NMSA 1978.

[1.21.21.3 NMAC - N, 04/11/2023]

1.12.21.4 DURATION:

Permanent.

[1.12.21.4 NMAC - N, 04/11/2023]

1.12.21.5 EFFECTIVE DATE:

April 11, 2023, unless a later date is cited at the end of a section.

[1.12.21.5 NMAC - N, 04/11/2023]

1.12.21.6 OBJECTIVE:

These rules establish standards and practices for the development, challenge, application, award and administration of subject grant programs.

[1.12.21.6 NMAC - N, 04/11/2023]

1.12.21.7 DEFINITIONS:

These rules are subject to all applicable statutory definitions in Section 63-9K-2 NMSA 1978 and in Section 9-27-3 NMSA 1978, and to these supplemental definitions:

A. "Application" means the compilation of information and materials that comprise a formal request to receive an award.

B. "Assistance grant program" means a grant award process that does not require a merit process.

C. "Award" means the appropriation of funds to a grantee under the terms of an award agreement.

D. "Award agreement" means the documentation that governs the terms and conditions of an award.

E. "Constructive notice" means that notice of an action or event was sent to a person, or published to an audience that included the person, as required by these rules, even if the person did not actually read the notice.

F. "Contract" means any type of agreement, regardless of what it may be called, where the principal purpose is to acquire services or materials, or a combination of these.

G. "Contracting" means the process of procurement and negotiation that results in a contract.

H. "Contractor" means a person who agrees to provide goods or services pursuant to the terms of a Contract.

I. "Council" means the connect New Mexico council established by Section 63-9K-3 NMSA 1978.

J. "Director" means the director of the office of broadband access and expansion.

K. "DoIT" means the New Mexico department of information technology and, as applicable, its staff and contractors.

L. "DoIT's law clerk" means any person identified as such by the secretary, the designee of any such person, or the designee of the Secretary.

M. "Eligible entities" means those entities specified in a NOFO as required or acceptable grantees.

N. "Eligible project area" means those geographic boundaries, or other criteria that delineate eligible project boundaries, specified in a NOFO or funding source as locations for the expenditure of program funds.

O. "Fund" means the connect New Mexico fund established by Section 63-9K-6 NMSA 1978.

P. "Funding source" means the appropriation, grant, donation or other commitment to provide funding for a grant program and that specifies funding conditions.

Q. "Grant" means a commitment by a public body to provide funding to a grantee or subrecipient, pursuant to an award agreement, to accomplish a purpose authorized by law as described in the award agreement.

R. "Grantee" means any person who or entity that receives an award.

S. "Last mile infrastructure" means a network for which the predominant purpose is to provide broadband service to end-users (e.g., homes, businesses, community institutions).

T. "Middle mile infrastructure" means a network for which the predominant purpose involves connecting a last-mile network to a regional or national Internet backbone to enable transport of local traffic to the public internet; services may include interoffice transport, carrier-neutral internet exchange facilities, transport connectivity to data centers, lit service transport, leased dark fiber, and other similar services.

U. "Matching contributions" means a monetary, non-monetary, or a combination of these that a grantee is required to contribute to a project to receive an award.

V. "Merit based grant program" means a grant funding opportunity that requires a merit process.

W. "Merit process" means collecting information through an application, assessing each application on the basis of evaluation factors, and determining whether the application merits funding according to the established criteria and based on available funds.

X. "Notice of funding opportunity (NOFO)" means an announcement of grant funding availability that provides information about the authorizing legislation, program purpose, program eligibility factors, allowable expenditures, match requirements, key performance requirements, evaluation criteria and compliance requirements.

Y. "Office of broadband access and expansion" and "OBAE" mean the office as established by the "Broadband Access and Expansion Act" Section 63-9J NMSA 1978.

Z. "Pass through entity (PTE)" means the grantee of an award who uses the award funds to support a subsequent program. If a state agency is the grantee of an award that will be subsequently awarded to one or more subrecipients, that entity shall be a PTE with respect to that grant award.

AA. "Procurement code" means the New Mexico Procurement Code, Sections 13-1-1 et seq. NMSA 1978

BB. "Project" means the deliverables promised by a grantee pursuant to the terms of an agreement.

CC. "Program" means the set of requirements and processes pursuant to which a specified amount of funding is allocated to accomplish specified objectives through one or more grant awards.

DD. "Program administrator" means a person authorized by a sponsoring body to manage a program and make written determinations within authorized limits.

EE. "Secretary" means the confirmed or acting cabinet secretary for DoIT, or the secretary's lawful designee.

FF. "Sponsoring body" means the public body subject to these rules that develops and administers a program, either as original grantor or as a pass through entity.

[1.12.21.7 NMAC - N, 04/11/2023]

1.12.21.8 GENERAL RULES:

These rules govern all subject grant programs:

A. Program administrator. A sponsoring body shall designate at least one person to serve as the program administrator for each grant program. The sponsoring body for a program shall notify applicants and grantees (as applicable) of any change to the program administrator(s) within 30 days of the change.

(1) The program administrator for a subject program shall be retained and subject to discharge by the sponsoring body subject to the provisions of the State

Personnel Act and procurement laws, and to the advice and consent of the sponsoring body, as applicable.

(2) The program administrator shall report to the sponsoring body for a subject grant program.

B. Program purpose. A sponsoring body shall design a grant program to accomplish a purpose authorized by the funding source and that conforms to all applicable laws. The purpose and scope of a program shall be determined by the sponsoring body. The program purpose shall be stated in the NOFO for a merit-based program, and in the authorization order for an assistance grant program.

C. Appropriations. These rules do not apply to any appropriation lawfully used by a sponsoring body:

- (1) to fund program administration;
- (2) for a purpose specified in a funding source;
- (3) budgeted for a purpose other than program funding; or
- (4) for contracting.

D. Notice. Whenever these rules require notice, the required information shall be directed to the intended recipient(s) through e-mail, or through first-class mail if no e-mail address is on file. Notice shall be deemed delivered one day after transmission for e-mailed notice and three days after posting for mailed notice.

E. Publication. Whenever these rules require publication, the required information shall be disseminated through mass communication channels reasonably calculated to reach the intended recipients. Such channels shall include display on the public notice section of the DoIT website, and may also include, but are not limited to, website postings, text messaging, subscription list-serves, newspapers and social media outlets.

F. Service. Whenever these rules require “service”, that shall be accomplished either through e-mail or first-class mail to the intended recipient. E-mail service shall be effective upon the sender’s receipt of a return receipt, acknowledgment of receipt, or reply to the service e-mail. Mail service shall be effective three days after posting.

G. Time. In computing any period of time prescribed or allowed by these rules:

(1) the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is

less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

(2) the time allowed to respond or do some other act within a prescribed period after service of a notice, pleading or paper, and the service is by first class mail, three calendar days shall be added to the prescribed period.

H. Waiver and variance. For good cause, a program administrator may waive, vary or excuse compliance with, any time limit or ministerial requirement in these rules or of a NOFO. Upon a finding of good cause, a program administrator may waive substantive requirements of a NOFO, subject to veto of the sponsoring body within 30 days of receiving notice of the waiver.

(1) A waiver shall only be valid if documented in a writing physically or digitally signed by the program administrator.

(2) A person aggrieved by a program administrator's determination to grant or not grant a waiver or excuse pursuant to this rule may, within seven days of receiving notice of the program administrator's determination, appeal the determination to the sponsoring body by serving notice of appeal to the sponsoring body's legal department or lawful designee.

(3) The sponsoring body shall have 10 days to affirm or reverse any waiver-related appeal. A reversal that results in granting a waiver request shall only be valid if documented in a legally authorized written order or resolution, as applicable, of the sponsoring body. If the sponsoring body does not reverse a program administrator's determination within 10 days of receiving notice of the appeal, that determination is deemed affirmed.

I. Award agreement. Every award agreement shall, where applicable:

- (1) identify the grantor (sponsoring body) and the grantee;
- (2) identify the funding source and award amount;
- (3) specify the award deliverables, goals, standards and benchmarks with sufficient particularity to verify performance and to eliminate or minimize subjective assessments of performance;
- (4) identify the program administrator;
- (5) identify the administrative, financial, oversight and verification standards and processes applicable to the award;
- (6) specify tax reporting and payment obligations applicable to the award;

- (7) identify the grantee's grant administrator or primary contact;
- (8) specify record keeping and reporting requirements;
- (9) specify the amount, form and timing of the grantee's matching contribution, if any;
- (10) specify limitations on assignment or transfer of award rights, obligations or deliverables;
- (11) describe ownership rights to tangible or intangible property created by the grantee pursuant to the award, including any limitations on the right to voluntarily or involuntarily transfer any property created or purchased with award funds, and reversion rights and triggers, if any;
- (12) identify by citation or codified nomenclature any and all laws, regulations, and published guidance that govern award administration or establish program compliance obligations;
- (13) identify by citation or codified nomenclature the procurement laws, if any, that apply to contracting with award funds;
- (14) specify contracting documentation requirements and processes, including any approval or authorization requirements, and any non-standard contracting limitations;
- (15) consistent with the provisions of these rules, include terms governing default; remedies; termination criteria and processes; recoupment; cure processes and standards; choice of law; remedy limitations (if any); and rehabilitation rights and processes;
- (16) include pertinent disclaimers and notices concerning compliance obligations, including tax payments, prevailing wage laws and preferences;
- (17) identify key deadlines;
- (18) specify end user or customer service terms or conditions applicable to the award, including price or discount agreements, service level commitments, co-share or cooperation requirements;
- (19) incorporate the terms and conditions of the NOFO;
- (20) incorporate all statements and representations in the application as actionable representations and warranties;

(21) include any other covenants or conditions required by the funding source or pertinent to the requirements of a particular program.

(22) specify a process for the grantee to request modifications or accommodations responsive to unexpected or changed circumstances during project performance.

J. Disqualification and debarment. A sponsoring body shall not make an award, or consider an application for an award, made by any person who, within the preceding five years, violated any federal, state or local law or rule governing theft, fraud, misrepresentation, trade practices, undue influence, business ethics, lobbying or political contributions.

(1) Subject to New Mexico laws governing res judicata, a sponsoring body may treat a final judgment, order or similar legal instrument against a person as conclusive or prima facie evidence of a disqualifying violation.

(2) A sponsoring body may establish that a person has committed a disqualifying violation after conducting a duly noticed hearing with sufficient procedural safeguards to provide due process.

(3) Unless a disqualification or debarment is final by operation of law, a person may challenge a disqualification or debarment pursuant to the challenges and disputes section of these rules.

K. Grant program coordination and collaboration. Where a funding source or controlling law requires or contemplates coordination between DoIT, OBAE and the council, these entities shall collaborate on the development, award and administration of a program subject to a specific or generally applicable memorandum of understanding (MOU). A MOU may incorporate a responsibility matrix that may be customized for a particular program. These rules do not preclude subject entities from cooperating in the development or administration of a grant program in the absence of a specific legal or program directive to do so.

L. Award modification. A sponsoring body may increase an award for good cause and as necessary to accomplish the project objectives. A modified award shall be published in the same manner as publication of the initial award. As used here, good cause refers to an unexpected and unforeseeable change in economic circumstances beyond the control of the awardee that would prevent completion of the project if the award is not modified.

M. Tribal collaboration. A sponsoring body shall comply with the NM State Tribal Collaboration Act regarding Indian nations, tribes or pueblos in the development or administration of programs subject to these rules that directly affect American Indians. An applicant who proposes to provide service on tribal lands, as identified in the project area, must obtain a Certification of Consent from the tribal council, or authorized tribal

entity. The tribal consent must note whether the project area is unserved or underserved, note how that determination was made, and will disclose all tribally-approved state and federal funded enforceable network buildout commitments.

[1.12.21.8 NMAC - N, 4/11/2023; A, 4/9/2024]

1.12.21.9 MERIT BASED GRANT PROGRAMS:

These additional rules apply to a merit based grant program.

A. Merit requirement. Unless the rules applicable to an assistance grant program apply, a grant program shall be merit based.

B. General merit standards. A merit based grant program shall be designed and conducted in a manner that encourages participation by applicants who are reasonably likely to accomplish the program purpose, who have the ability to satisfy award criteria, who have interests and capabilities aligned with the intended beneficiaries of the program and who have the interest and ability to sustain the program purpose;

(1) shall encourage contracting with state, local, minority, native American and woman owned enterprises;

(2) unless specified by a funding source, or good cause exists, shall not use eligibility or program specifications that favor a particular applicant. In this context, good cause means there is a compelling public interest that justifies favoring a particular applicant, but the program does not qualify to be established as an assistance grant program;

(3) shall, if lawful and reasonably practicable, be designed in a way that supports direct or indirect participation by local and small businesses;

(4) shall include a process that allows the sponsoring body to waive or defer a matching contribution upon a showing of good cause and where sufficient safeguards can be implemented to facilitate successful completion of the project.

(a) As used in this rule, safeguards may include, but are not limited to, financial guarantees by the grantee or third party, bond programs or bond program initiatives, enhanced contractor qualifications, or enhanced project oversight including increased reporting frequency.

(b) As used in this rule, good cause exists when an applicant submits a waiver request with an application articulating facts which show a legal or practical obstacle to appropriating or generating sufficient funding for the matching requirement using all reasonably available funding mechanisms. Obstacles to funding may include, but are not limited to, challenging socio-economic conditions within the proposed service area or community, poor subscriber revenue projections, limited investment

opportunity or return expectations, or infeasibility of generating matching funds through tax or bond initiatives. A demonstration of a current lack of available funding, without more, will not establish good cause.

(c) A waiver request shall be submitted with an application, using a form or format specified by the sponsoring body, and shall include both the justification for the request and any safeguards the applicant is willing to implement to facilitate project completion.

(5) may include incentives for an application that maximizes or leverages alternative and supplemental funding sources for a program. Any available incentive shall be identified in the program NOFO.

(6) shall be designed and administered in a manner that maximizes transparency without sacrificing confidentiality or competitive processes.

C. Application period. Unless the program administrator finds good cause to shorten the application period, that period shall be no less than 30 days.

(1) For purposes of this rule, good cause includes, but is not limited to, any exigent circumstances relating to funding conditions, business need, cost savings, business conditions (including material, equipment and labor supply issues), program objectives or needs.

(2) A NOFO shall identify the good cause that justifies any application period less than 60 days.

(3) If allowed by the NOFO, a program administrator may accept, evaluate and award applications submitted earlier than the filing deadline.

D. NOFO. A merit based program shall be conducted pursuant to a NOFO, which shall:

(1) identify, with reasonable particularity, the purpose, scope, eligible entities, and eligible projects;

(2) be drafted or reviewed by a subject matter expert experienced with the type of project(s) eligible for funding, and in NOFO drafting;

(3) specify, with reasonable particularity, application requirements, including deadline, supporting documentation, eligibility criteria and submission requirements;

(4) specify the total funding available under the program and the maximum funding available for a single award;

(5) be timely published in a manner that is reasonably calculated to provide notice to potential applicants. At a minimum, every NOFO shall be published through a NOFO list service operated by the sponsoring body, on a designated location on the webpage of the sponsoring body and through each publication method required by other law;

(6) accept and consider applications from non-public entities to the extent allowable by law and the funding source;

(7) identify the program administrator;

(8) identify factor(s), if any, other than an application score, that may have bearing on application evaluation and selection;

(9) provide a streamlined mechanism, such as a frequently asked questions forum, for requesting and providing supplemental or clarifying information that may impact the award determination;

(10) specify match requirements, including match percentage and contribution timing; and

(11) if a match waiver is allowed under a program, specific standards for approving, and the process for requesting, a waiver.

E. Award agreement. To the extent permitted by program exigencies, a sponsoring body shall publish a template award agreement with the NOFO.

F. Application. Every merit based program shall require the submission of an application for evaluation and scoring. An application shall:

(1) seek the necessary information to enable a comprehensive scoring and evaluation of an applicant's potential to most effectively achieve program objectives and meet policy and compliance requirements.

(2) avoid, to the extent practical, requests for information that is likely to be considered confidential under state or federal law, and provide a process consistent with these rules for an applicant to request confidential treatment of required application material or information;

(3) be published with the NOFO;

(4) only be accepted in a specified digital format, unless a program administrator finds good cause to allow a specific applicant to submit a paper application;

(5) not request information about an applicant's status as a minority or small business enterprise unless pertinent to a scoring or award criterion;

(6) request the identification and qualification of a fiscal agent if required;

(7) require specific and detailed descriptions of the proposed service area and project deliverables.

(8) limit application submission requirements and processes to only those reasonably necessary to ensure a full and fair evaluation and avoid requirements or processes that are likely to be unduly burdensome to a potential applicant unless strictly necessary to obtain evaluative information.

(9) specify how an applicant can request pre-submission clarification of application requirements or processes.

G. Application pre-screening. The program administrator shall pre-screen each application to determine if it provides all requested information and supporting materials.

(1) If an application submitted in good faith is incomplete, the program administrator shall notify the applicant of the deficiency and allow the applicant an opportunity to cure the deficiency unless allowing that opportunity would be contrary to a material program objective.

(2) A program administrator may reject any application that remains incomplete after expiration of the specified cure period;

(3) A program administrator shall accept and proceed with scoring and evaluation of every materially complete application.

H. Scoring and evaluation. Every merit based program application shall be evaluated pursuant to a published scoring and evaluation guide.

(1) The scoring guide shall identify key selection criteria; provide a methodical, structured approach to comprehensively assess an applicant's potential to satisfy program and award requirements; and shall ensure all applications receive a consistent standard of evaluation and scoring.

(2) Each application shall be scored by multiple reviewers, as specified in the NOFO.

(a) A program may use multiple panels of reviewers of functionally comparable size.

(b) If all applications are not evaluated and scored by a single review panel, the program administrator or designee(s) shall conduct a final review which shall

evaluate all application scores, conduct any application due diligence and make final award recommendations or decisions.

(3) If specified in the NOFO, a sponsoring agency may consider non-scored criteria in the award selection process, including, but not limited to:

(a) Geographic diversity: distributing awards to qualifying service areas across a State.

(b) Organizational diversity: distributing awards to a variety of qualifying entities.

(c) Synergy with state strategic priorities: consideration of other programs across the state aimed to foster economic and social development, and how broadband can advance those objectives and plans.

I. Reviewer qualification, selection and compensation. Each reviewer shall either be a subject matter expert specific to the program or specifically trained to evaluate and score program applications.

(1) The program administrator shall select and appoint the reviewers and shall provide or arrange for any required reviewer training.

(2) Subject to the terms of the funding source, and to all applicable procurement and personnel laws and policies, the sponsoring body shall determine whether reviewers will be contracted, employed or volunteers.

(3) Prior to selection, every prospective reviewer shall be required to disclose any facts and circumstances likely to create an actual or perceived financial conflict of interest.

(a) The program administrator shall determine whether a reviewer has a disqualifying financial conflict.

(b) In determining whether a reviewer has a disqualifying conflict, the program administrator shall evaluate whether the reviewer, or any entity affiliated with the reviewer, has a direct or indirect financial interest that may be impacted favorably or adversely by the reviewer's evaluation, score or recommendation.

J. Public comment. Unless good cause exists to eliminate a public comment period, or to shorten the allowed time for submitting comments, the sponsoring body shall publish a draft NOFO, and allow the public to comment on that draft and the proposed service area, for at least 10 days.

(1) The publication shall specify how, and by when, public comments may be submitted, any material limitations on comments, and the period of time allowed for the sponsoring body to review comments after expiration of the submission period.

(2) The sponsoring body shall accept and consider every timely submitted public comment before officially publishing a program NOFO and may revise the program documents in response to any comment before that publication. The sponsoring body may, but is not required to, provide responses to comments or offer an additional public comment period to address revisions made in response to prior public comments.

(3) A person who fails to offer comment during a public comment period waives any objection to the form of the published NOFO, and to the proposed service area, but shall not be barred from challenging the legal sufficiency of any NOFO terms or provisions.

(4) Any person, other than an employee or agent of the sponsoring body, shall be allowed to submit public comments.

K. Confidential information. A program administrator shall provide a process for an applicant to request confidential treatment of information required for an application.

(1) Subject to any program exigencies beyond the control of the sponsoring body, the confidentiality request process shall be prominently specified in the application form or on any web-based application portal.

(2) A request to treat application information as confidential shall be submitted as specified by the program administrator and supported by a declaration that provides sufficient factual information and legal authority to support the confidentiality request. A declaration form is available on DoIT's website.

(3) The program administrator shall refer each confidentiality request for a legal review by the sponsoring body's legal counsel or that person's designee.

(4) If the program administrator notifies the applicant that information will not be held confidential, the applicant shall be allowed at least five days from the date of the notice to appeal that determination pursuant to these rules. The information shall be treated confidentially pending the resolution of the appeal and any ensuing judicial review. If a determination that information in an application is not confidential becomes final the applicant may withdraw the application, or proceed with the application process, in which case the application will be a public record.

(5) An applicant who requests and receives confidential treatment of information is solely responsible for opposing any public record request, discovery request or subpoena for the information in any administrative or judicial forum. As soon as practical after receiving a request for confidential information, a program

administrator shall attempt to notify the owner of the information of the request. However, neither the program administrator nor the sponsoring body shall be responsible for ensuring the applicant has sufficient time, means or opportunity to oppose the request, nor shall either be liable for any consequences resulting from the applicant's inability or failure to timely challenge the request, or for the administrative or judicial denial of any objection to disclosure.

[1.12.21.9 NMAC - N, 04/11/2023]

1.12.21.10 ASSISTANCE GRANTS:

These additional rules apply to assistance grant programs.

A. Authorization. An assistance grant is authorized if the:

- (1) total available program funding does not exceed \$2,500,000;
- (2) funding source specifies the grantee or subrecipient;
- (3) funding source requires program funds to be fully expended in fewer than 18 months;
- (4) sponsoring body determines that the grantee or subrecipient is the only person who can satisfy program requirements specified by a funding source in a timely, correct and cost-effective manner;
- (5) delay inherent in the merit-based program would likely create or exacerbate a threat to life, health, physical security, economic security, cyber security or educational development of state residents or to the State, or would likely delay meaningful mitigation of such an existing threat; or
- (6) grantee or subrecipient is a local governmental unit, tribal unit, electric cooperative, or telephone cooperative and the funding source does not expressly require a competitive or merit based process.

B. Justification order. An assistance grant shall be authorized by an order or resolution of the sponsoring body, supported by findings and conclusions justifying an assistance grant, and published at least 21 days before the award.

C. Grant proposal. An assistance grant shall be based on a grant proposal presented by the grantee or subrecipient that, at a minimum, includes:

- (1) a detailed description of the proposed project, how the project would accomplish a purpose specified in, and satisfy conditions of, the funding source, the project timeline and the source and availability of other funds required to complete the project;

- (2) the identity, financial and performance qualifications of each grantee, vendor or contractor who will be directly or indirectly receive award funds, including qualifications of the project manager and all key grantee, vendor and contractor personnel;
- (3) the form and substance of each contract the grantee proposes to procure with the award funds;
- (4) the identify and qualifications of the grantee's fiscal agent, if required;
- (5) sufficient information to establish that the proposal meets an exception to the merit-based program; and
- (6) any other information requested by the sponsoring body.

D. Match requirement. Unless a funding source prohibits requiring a match, or specifies a match requirement, a sponsoring body may specify match, and match waiver, requirements. Match and match waiver requirements shall be specified in the justification order and included in the award agreement.

E. Contracting. To the largest extent possible, the sponsoring body will encourage the funding program participation by New Mexico-based organizations, organizations located (and hiring from) within the proposed project footprint, woman and minority owned organizations, veteran owned businesses and tribally-owned/based organizations and businesses.

[1.12.21.10 NMAC - N, 4/11/2023; A, 4/9/2024]

1.12.21.13 CHALLENGES AND DISPUTES:

These rules apply when a person seeks to challenge any action or inaction authorized, taken, required or governed by these rules, by a funding source or by any state or federal law that governs a program and is not, by law or agreement, within the exclusive subject matter jurisdiction of another dispute resolution process or forum.

A. Roles. Any challenge brought pursuant to these rules shall be determined by the secretary or the secretary's designee. If a person challenges an action taken directly by the secretary, or an action allegedly owed directly by the secretary, the secretary shall be recused and the OBAE director shall determine the matter.

(1) The secretary or director may appoint a hearing officer or special master to take evidence, conduct proceedings, including hearings, and make recommended findings, conclusions and decisions.

(2) An appointed hearing officer or special master may be a council member, employee of DoIT, or contractor.

B. Parties. The only parties to a challenge brought pursuant to these rules shall be the person who submits the challenge, who shall be referred to as a "petitioner", and the sponsoring body whose action or inaction is the subject of the challenge. These rules do not establish a forum or provide a process for resolving disputes between private parties.

C. Initiation. A challenge shall be initiated by submitting a complete challenge form to the DoIT law clerk, or that person's designee. The challenge form, including the law clerk's contact e-mail, is available on DoIT's website. A person who does not have access to e-mail may contact DoIT's law clerk by phone to arrange for an alternative filing method. A person who submits a challenge shall be referred to as the "Petitioner".

D. Time. Unless a sponsoring body specifies a different time limit, a person shall have no more than 21 days from when that person received actual or constructive notice of the act, or failure to act, that is the subject of a challenge to submit the challenge form. For good cause, upon request or *sua sponte*, and when doing so would not interfere with program objectives or funding source directions, a sponsoring body may extend this time limit.

E. Standing. Only a person who is aggrieved by the action or inaction that is the subject of a challenge has standing to make the challenge. For purposes of this requirement, a person is aggrieved if the action or inaction could directly and immediately have an adverse impact on a property interest of the person.

F. Real party in interest. A challenge shall only be made by a real party in interest, and the petitioner's interest must be apparent from the information in the challenge form.

G. Representation. An individual petitioner may, but is not required to, be represented by legal counsel in connection with a challenge. A petitioner who is a corporate entity shall be represented by legal counsel of its choosing, and at its expense, in connection with a challenge.

H. Procedures. Within ten days of receiving a challenge, the secretary shall issue a process order to govern the ensuing proceedings through decision. The time limits, processes and rules of evidence that govern a challenge shall be specified by the secretary through a general order, through the process order or through a combination of such orders.

(1) The procedures and rules of evidence that apply to a particular challenge shall satisfy the minimum procedural due process requirements pertaining to the right or interest that is at issue.

(2) Time limits and deadlines shall be commensurate with the exigencies of a particular challenge.

(3) A general order or process order may adopt by reference any established rule of procedure or evidence followed by any other New Mexico agency, state court or New Mexico federal court.

(4) For good cause, on motion or *sua sponte*, a hearing officer may waive, amend or supplement any provision in the applicable process order, but not of a general order.

(5) Every general order shall become effective when posted on DoIT's website.

(6) A process order shall provide a link to any general order applicable to a proceeding.

I. Decision. The secretary or director, as applicable, shall issue a final decision and order within the time specified in the process order.

(1) A decision and order shall include findings of fact, statements of law and conclusions sufficient to support judicial review.

(2) Findings of fact shall be supported by evidence of record, or administratively noticed. Unless due process requirements mandate otherwise, a finding of fact may be based on hearsay evidence that is admissible under the rules of evidence that apply in New Mexico state courts, or that is otherwise deemed reliable.

(3) The secretary or director, as applicable, shall not reject a finding of fact proposed by a hearing officer without reviewing all evidence in the record of the proceedings.

(4) A decision and order shall be deemed final upon service of the parties to the proceeding.

(5) If the secretary or director, as applicable, fails to timely render a decision and order, the challenge shall be deemed rejected as of the date the decision and order was due.

J. Service. Service, when required, shall be accomplished by e-mail, if the required recipient has provided DoIT with an e-mail address, or otherwise by regular, first class, mail.

(1) DoIT's law clerk shall be responsible for completing service when service is required by DoIT, the secretary, the director, a hearing officer or a special master.

(2) The process order shall be served on the petitioner and any other party to the proceeding.

(3) A party to a proceeding shall contemporaneously serve each other party to a proceeding a copy of any correspondence, pleading or evidence submitted to DoIT, the secretary, the director, the hearing officer or the special master in connection with a proceeding governed by a process order.

(4) A party to a proceeding is not required to prepare or file certificates of service. Every party to a proceeding shall maintain a contemporaneous service log using the form available on DoIT's website.

Within five days of the issuance of a final decision and order, each party shall file with DoIT's law clerk a copy of that party's service log and provide a copy of same to every other party. The service log(s) shall be considered part of the record of the proceeding.

K. Records. DoIT's law clerk is the custodian of all filings and records pertaining to a proceeding.

(1) All filings shall be submitted to DoIT's law clerk.

(2) DoIT's law clerk shall be copied on any correspondence pertaining to a proceeding submitted to the secretary, the director, a hearing officer or a special master.

(3) Failure to copy or serve DoIT's law clerk when required shall result in the exclusion of the omitted material from consideration and from the record of the proceedings.

L. Intervention. Any person who has a property interest that may be adversely impacted by the decision on a challenge may apply for leave to intervene in the challenge proceeding. An application to intervene shall be made within 10 days from when the applicant received actual or constructive notice of a challenge.

M. Confidentiality. Information or data submitted to a sponsoring body pursuant to an approved confidentiality request shall not be disclosed to, or used by, any party to a challenge proceeding unless the owner of the confidential information waives confidentiality.

[1.12.21.13 NMAC - N, 04/11/2023]

1.12.21.14 DEFAULT, CURE AND AWARD TERMINATION:

A sponsoring body may unilaterally terminate an award only as authorized by, and subject to the requirements of, these rules.

A. Uncured material default. A sponsoring body may terminate an award based on a grantee's uncured failure to comply with or satisfy a material term of an award,

including, but not limited to, failure to meet a financial, reporting, budget, performance, service level, pricing or deadline requirement.

B. Notice of default. Before terminating an award, a program administrator shall provide a grantee notice of the default and an opportunity to cure.

(1) Unless exigent circumstances justify a shorter period, a grantee shall be allowed at least 30 days to cure the noticed default.

(2) If a default presents a risk to health, life, or financial welfare of any person or to the state unless cured in fewer than 30 days, and the circumstances creating that exigency were not within the control of the program administrator or sponsoring body, the period allowed to cure a default may be less than 30 days as necessary to mitigate or eliminate the risk.

C. Additional provisions. As required by a funding source, or as necessary to meet funding deadlines or program objectives, an award may include additional termination provisions not in conflict with these rules. These rules do not apply to, or preclude mutual termination of an award.

D. Validity. A termination shall not be effective unless approved by the sponsoring body in an order or resolution, as applicable, supported by findings and conclusions.

E. Effect. Upon termination of an award, ownership and title to all tangible and intangible property purchased or created by the grantee with award funds shall be transferred as directed by the sponsoring body in the termination order or resolution. The grantee shall return all unexpended award funds to the program administrator and all unexpended and unpaid award funds shall revert to the award funding source.

F. Survival. These termination provisions shall survive award close out and apply for so long as the grantee is obligated to comply with any material provision of an award, including for the duration of any warranty, service or price level agreement. A grantee's failure to cure a material default after award closure shall have the same effect as an uncured default prior to award closure.

G. Termination alternatives. These rules do not preclude a sponsoring body from imposing a sanction other than termination, from mandating corrective action, from excusing a default or from modifying an award when termination is not in the best interests of the program.

(1) A sponsoring body shall only excuse a default or modify an award for good cause.

(2) Good cause exists when circumstances beyond the contemplation and control of the grantee and sponsoring body impede or prevent grantee from curing a material default, and the proposed forbearance or modification is consistent with

program qualifications, deadlines and objectives, legal mandates and funding commitments.

[1.12.21.14 NMAC - N, 04/11/2023]

CHAPTER 13: PUBLIC RECORDS

PART 1: GENERAL PROVISIONS [REPEALED]

[This part was repealed on July 15, 2013.]

PART 2: FEES

1.13.2.1 ISSUING AGENCY:

State Records Administrator.

[7/1/95; 1.13.2.1 NMAC - Rn, 1 NMAC 3.100.1 & A, 3/14/01; A, 6/30/05; A, 9/15/14]

1.13.2.2 SCOPE:

All state, federal, municipal and county agencies, historical records repositories, businesses and the general public.

[7/1/95; 1.13.2.2 NMAC - Rn, 1 NMAC 3.100.2 & A, 3/14/01]

1.13.2.3 STATUTORY AUTHORITY:

Statutory authority for 1.13.2 NMAC is found in Chapter 14, Article 3, NMSA 1978. Specifically, Section 14-3-6 NMSA 1978 authorizes the state records administrator to adopt regulations. Section 14-3-15.1 NMSA 1978 provides for the payment of reasonable fees for the service of providing information contained in information databases by the agency that inserted the information. It further mandates the assessment of a fee by the agency providing access or use where information contained in a database is "searched, manipulated, or retrieved or a copy of the database is made for any private nonpublic use." The section also authorizes the imposition of certain conditions on the use of such information or databases. Section 14-3-8.1 creates the records center revolving fund, in which money from the sale of "publications, services, equipment, supplies and materials" is deposited. Section 14-3-19 NMSA 1978 allows the state commission of public records to sell certain items and services at a cost plus five percent handling charge. All receipts from such sales go into the records center revolving fund.

[7/1/95; 1.13.2.3 NMAC - Rn, 1 NMAC 3.100.3 & A, 3/14/01; A, 7/15/03; A, 6/30/05]

1.13.2.4 DURATION:

Permanent.

[7/1/95; 1.13.2.4 NMAC - Rn, 1 NMAC 3.100.4, 3/14/01]

1.13.2.5 EFFECTIVE DATE:

September 15, 2014, unless a later date is cited at the end of a section.

[7/1/95; 1.13.2.5 NMAC - Rn, 1 NMAC 3.100.5 & A, 3/14/01; A, 9/15/14]

1.13.2.6 OBJECTIVE:

To set fees for goods and services provided by the state records center and archives.

[7/1/95; 1.13.2.6 NMAC - Rn, 1 NMAC 3.100.6 & A, 3/14/01]

1.13.2.7 DEFINITIONS:

A. "Acid-free" means having a pH of 7.0 or greater.

B. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

C. "Administrative law division" means an organizational unit of the commission of public records and is under the control of the state records administrator.

D. "Archival" means the material properties inherent in any medium permitting its preservation under controlled conditions.

E. "Archives and historical services division" means an organizational unit of the commission of public records and is under the control of the state records administrator.

F. "Certified copy" means a reproduction of a public record expressly verified by the custodial agency as a true and accurate representation of the official copy of the record.

G. "Clip" means a selected part of a motion picture film.

H. "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978).

I. "Digital restoration" means digitally improving the overall appearance of a scanned photograph by adjusting brightness or contrast or both, sharpening, adjusting overall color, cropping, etc.

J. "DVD" means digital video disc, an optical disc storage medium.

K. "Enhancement" means digitally repairing a scanned photograph to remove signs of deterioration and damage (spots, tears, red eye, fold lines, etc.).

L. "Electronic media" means optical storage discs and magnetic tapes. Does not include hard drives.

M. "JPEG" means a compressed image file format, commonly used for the compression of photographic images, developed by the joint photograph experts group.

N. "MiniDV" means a video digital storage format available in small cassettes with high storage capacity.

O. "Oversized material" means maps, architectural drawings, books and textual and other documents larger than 12 inches by 16 inches.

P. "Record" means all books, papers, maps, photographs, recordings, tapes or other documentary materials, regardless of physical form or characteristics.

Q. "Requester" means any individual who is not a commercial-use requester. This term does not include requests citing the Inspection of Public Records Act, which are handled in accordance with the law and agency policy.

R. "Records management division" means an organizational unit of the commission of public records and is under the control of the state records administrator.

S. "Rule" means any rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, issued or promulgated by an agency of state government and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, and as further defined in Subsection C of Section 14-4-2 NMSA 1978 and Attorney General Opinion No. 93-1, that is filed with the administrative law division.

T. "State records center" means the central records depository that is the principal state facility for the storage and disposition of inactive records of state agencies.

U. "TIFF" means tagged image file format, a bitmap image format used for storing images.

[1.13.2.7 NMAC - N, 3/14/01; A, 7/15/03; A, 6/30/05; A, 6/1/06; A, 7/1/09; A, 7/31/12; A, 9/15/14; A, 07/11/2017]

1.13.2.8 PRICING:

All fees cited in 1.13.2 NMAC are per item, unless otherwise specified.

[9/15/98; 1.13.2.8 NMAC - Rn, 1 NMAC 3.100.9.5 & A, 3/14/01; A, 7/1/09]

1.13.2.9 STORAGE BOXES:

Cubic foot records storage box - \$2.00.

[7/1/95, 1/1/98; 1.13.2.9 NMAC - Rn, 1 NMAC 3.100.8.1 & A, 3/14/01; A, 7/1/09; A, 7/15/10; A, 9/15/14]

1.13.2.10 ARCHIVAL QUALITY SUPPLIES:

The archives and historic services division shall publish, in conjunction with an approved statewide price agreement, a listing of all archival supplies it may make available to all other governmental agencies and to the general public. Any supply listed may be available at state cost plus five percent. Contact the archives and historical services division at 505-476-7956 for pricing and availability.

[1.13.2.10 NMAC - N, 3/14/01; A, 4/30/02; A, 6/30/04; A, 6/1/06; A, 7/1/09; A, 7/15/10; A, 7/31/12; A, 9/15/14]

1.13.2.11 PHOTOCOPY FEES:

A. Paper photocopies (made by staff).

(1) 8 ½ x 11 - \$0.25

(2) 8 ½ x 14 - \$0.30

(3) 11 x 17 - \$0.35

B. Certification of paper copies - \$0.50 per page.

C. Self-service photocopies (made by patron in archives and historic services division).

(1) 8 ½ x 11 - \$0.10.

(2) 8 ½ x 14 - \$0.10.

(3) 11 x 17 - \$0.15.

[7/1/95, 1/1/98, 9/15/98; 1.13.2.11 NMAC - Rn, 1 NMAC 3.100.9.1 through 1 NMAC 3.100.9.4 and 1 NMAC 3.100.13 & A, 3/14/01; A, 6/30/04; A, 7/1/09; A, 7/31/12; A, 9/15/14]

1.13.2.12 MICROPHOTOGRAPHY FEES:

A. Microfilm to paper or electronic media (made by archives staff).

(1) 8 ½ x 11 - \$0.50 per page.

(2) 8 ½ x 14 - \$0.60 per page.

B. Self-service microfilm to paper copies.

(1) 8 ½ x 11 - \$0.10.

(2) 8 ½ x 14 - \$0.10.

(3) 11 x 17 - \$0.15.

C. Self-service microfilm to electronic media. The use of outside electronic media/devices is prohibited.

(1) \$0.25 - blank CD.

(2) \$5.25 - thumb drive.

D. Microfilm duplication.

(1) 16mm - \$12.00 per reel.

(2) 35mm - \$16.00 per reel.

E. Microfilm processing. 16 mm and 35 mm - \$19.85 per reel.

[7/1/95, 9/15/98, 12/15/98; 1.13.2.12 NMAC - Rn, 1 NMAC 3.100.10 & A, 3/14/01; A, 4/30/02; A, 6/30/04; A, 6/30/05; A, 7/1/09; A, 7/31/12; A, 9/15/14]

1.13.2.13 DIGITAL REPRODUCTION OF PHOTOGRAPHS, DOCUMENTS, OVERSIZED RECORDS AND MOVING IMAGE MATERIAL:

A. Requests for duplication and reproduction of public records that are covered under Section 14-3-15.1 NMSA 1978 or are copyrighted or otherwise contractually restricted shall be accompanied by a letter of intent describing the proposed use and SRCA form 96-18 "conditions for publication/reproduction."

B. Photographs and documents. Prices are assessed per individual image.

- (1) 8 x 10 print on photo quality paper from digital images file - \$17.00.
- (2) 8 x 10 print on photo quality paper from original source material - \$21.00.
- (3) Digital image file (JPEG) from digital image file delivered via e-mail or on CD/DVD - \$14.00. Digital image files delivered via e-mail shall be limited to 8 x 10 images scanned at 300 dots per inch (dpi).
- (4) Digital image file (JPEG) from original source material delivered via e-mail or on CD/DVD - \$19.00. Digital image files delivered via e-mail shall be limited to 8 x 10 images scanned at 300 dpi.

C. Moving image and audio material. Prices are assessed per moving image title and audio tape/reel.

- (1) Digital video/audio file on patron supplied drive from digital/video audio file - \$15.00.
- (2) Digital video/audio file on patron supplied drive from original source material - \$47.00.
- (3) MiniDV tape from digital video file or miniDV master - \$20.00.
- (4) MiniDV tape from original source material - \$47.00.
- (5) DVD/CD from digital video/audio file or miniDV master - \$15.00.
- (6) DVD/CD from original source material - \$47.00.

D. Oversized records (color or black and white). Prices are assessed per individual image.

- (1) Hard copy reproduction from a digital image file - \$17.00.
- (2) Hard copy reproduction from the original source material - \$21.00.
- (3) Digital image file (JPG) from a digital image file delivered via CD or DVD - \$14.00.
- (4) Digital image file (JPG) from the original source material delivered via CD or DVD - \$19.00.
- (5) Sizes greater than 35.5 x 48 add \$4.00 per each additional foot for hard copy reproductions. The width cannot exceed 35.5 inches.

(6) E-mail delivery of digital image files for oversized material is not available.

E. Where items are fragile or require specialized handling, the SRCA may charge the costs of the additional labor.

F. Fees for digital restoration or enhancement or clip selection of digitized materials or motion picture films vary according to the extent of work required. The minimum fee for digital restoration or enhancement or clip selection shall be \$15.00 per reproduced item, in addition to the reproduction fee set forth in Subsection B of this section. For work requiring over one hour, \$15.00 per additional hour shall be charged.

G. Expedited orders can be requested for an additional fee of \$20.00. Waiting time will be reduced by one week.

[7/1/95, 4/30/96, 12/15/98; 1.13.2.13 NMAC - Rn, 1 NMAC 3.100.11 & A, 3/14/01; A, 4/30/02; A, 7/15/03; A, 6/30/05; A, 6/1/06; A, 06/30/07; A, 7/1/09; A, 7/31/12; A, 9/15/14]

1.13.2.14 SRCA PUBLICATIONS:

A. Calendar to the Spanish archives of New Mexico II - \$5.00.

B. Calendar to the Mexican archives of New Mexico - \$3.00.

C. Calendar to the territorial archives of New Mexico - \$3.00.

D. Calendar to land records of New Mexico (Spanish archives of New Mexico I) - \$5.00.

E. Calendar to the Sender collection - \$12.00.

F. Guide to "lost" records of Zuni - \$7.00.

G. Microfilm manual - \$18.50.

H. Genealogy charts - \$8.00.

I. New Mexico administrative code training manual - extra copies (individuals attending training receive one copy of the manual without charge) - \$22.50.

J. Billy the Kid packet - \$49.00.

K. Guide to the archdiocese of Santa Fe: the AASF and LDS series - \$7.00.

L. New Mexico county marriage register inventory - \$7.00.

[7/1/95, 9/15/98, 12/15/98; 1.13.2.14 NMAC - Rn, 1 NMAC 3.100.12 & A, 3/14/01; A, 4/30/02; A, 7/15/03; A, 6/30/04; A, 7/1/09; A, 9/15/14]

1.13.2.15 REQUIREMENTS FOR SRCA FORM 96-18:

A. This form delineates conditions for publication and reproduction of images held by the SRCA as public records and shall be completed and submitted to the administrator as provided in 1.13.2 NMAC and as evidence of agreement by the requester to the terms and conditions prescribed therein and in 1.13.2 NMAC. Information contained on the form shall include, but not be limited to, the following:

- (1) provision for reservation of rights by the administrator;
- (2) formats for required credit line;
- (3) requirements relating to method of payment; and
- (4) description of respective rights and responsibilities of the administrator and the requester, including copyright restrictions, relating to reproduction and publication.

B. The form shall require of the requester:

- (1) the description of the image to be published and the required credit line;
- (2) the printed name and the signature of the requester;
- (3) the address of the requester; and
- (4) the date of the request.

C. The director of the archives and historical services division and the administrator shall approve the requested use by their signatures on the form.

[7/1/95; 1.13.2.15 NMAC - Rn, 1 NMAC 3.100.14 & Rp, 3/14/01; A, 9/15/14]

[The original language, which was repealed and replaced by the 3/14/01 text relating to SRCA form 96-18, addressed fees for diskettes.]

1.13.2.16 TRAINING PROGRAMS:

The SRCA offers without charge basic training in subjects integral to the performance of its statutory duties. Programs for which fees are imposed under this section provide advanced or other training beyond those basic requirements, and fees for these services are as set forth below.

- A. One-half-day session - \$25.00.
- B. One-day session - \$40.00.
- C. One-and-one-half-day session - \$55.00.
- D. Two-day session - \$75.00.

E. Special workshops may be priced to cover costs plus five percent for expected participants.

[1.13.2.16 NMAC - N, 3/14/01; A, 7/15/03; A, 6/1/06]

1.13.2.17 ELECTRONIC COPIES OF RECORDS:

- A. Portable document format file (PDF) from any source- \$0.25 per page.
- B. PDF from digital image file - \$1.75 per page.
- C. PDF from original source - \$3.25 per page.
- D. PDF of rule in either electronic or original form - \$0.25 per page.
- E. Certification of PDF copies - \$0.50 per page.

[PDF file(s) can be sent electronically at no charge or can be transferred to CD. A CD can be provided by records center at a cost of \$0.25 per blank CD. The use of external drives is prohibited.]

[1.13.2.17 NMAC - N, 4/30/02; A, 7/1/09; A, 7/31/12; A, 9/15/14]

1.13.2.18 CHARGES FOR PUBLISHING IN THE NEW MEXICO REGISTER:

There shall be a \$3.00 per column inch charge to agencies publishing material in the New Mexico register.

[1.13.2.18 NMAC - N, 7/15/03; A, 7/1/09; A, 10/15/14; A, 1/1/2017]

[Charges for publishing in the New Mexico register are also found in 1.24.15.12 NMAC.]

1.13.2.19 COPIES OF THE NEW MEXICO REGISTER:

- A. Individual copies of the New Mexico register - \$12.00.
- B. Annual paper subscription fees for the New Mexico register - \$270.00.

[1.13.2.19 NMAC - N, 7/15/03; A, 7/1/09]

[Fees for copies of the New Mexico register are also found in 1.24.15.13 NMAC.]

1.13.2.20 RECORDS STORAGE SERVICES:

Paper storage for state agencies:

(1) Records that have not met their legal retention - no charge.

(2) Records that have met their legal retention and for which the records management division has issued a disposition notice - \$0.50 per box, per month (see Section 1.13.10.11 NMAC).

B. Paper storage for municipalities, the judicial branch and counties - \$0.50 per box, per month, regardless of whether retention has been met.

C. Microfilm storage for state agencies:

(1) Records that have not met their legal retention - no charge.

(2) Records that have met their legal retention and for which the records management division has issued a disposition notice - \$0.25 per roll, per month (see Section 1.13.10.11 NMAC).

D. Microfilm storage for municipalities, the judicial branch and counties - \$0.25 per roll, per month, regardless of whether retention has been met.

[1.13.2.20 NMAC - N, 6/30/05; A, 7/1/09; A, 9/15/14; A, 07/11/2017]

1.13.2.21 RECORDS DESTRUCTION SERVICES:

A. Standard storage box equivalent (15" x 12" x 10") or smaller - \$0.50 per box.

B. Map box equivalent (10x10x38) or smaller - \$0.75 per box.

C. Microfilm - \$0.25 per roll.

D. Microfiche - \$14.00 per standard storage box equivalent (15" x 12" x 10") or smaller.

E. Electronic media - \$10.00 per standard storage box equivalent (15" x 12" x 10") or smaller.

[1.13.2.21 NMAC - N, 6/1/06; A, 7/1/09; Repealed, 7/31/12; N, 07/11/2017]

1.13.2.22 STORAGE OF DISASTER RECOVERY BACKUP FILES:

There shall be a \$10.00 fee to obtain a new, replacement, or additional access card for the disaster recovery backup vault.

[1.13.2.22 NMAC - N, 9/15/14]

PART 3: MANAGEMENT OF ELECTRONIC RECORDS

1.13.3.1 ISSUING AGENCY:

State Commission of Public Records - State Records Center and Archives.

[1.13.3.1 NMAC - Rp, 1.13.3.1 NMAC, 6/30/2008]

1.13.3.2 SCOPE:

All state agencies.

[1.13.3.2 NMAC - Rp, 1.13.3.2 NMAC, 6/30/2008]

1.13.3.3 STATUTORY AUTHORITY:

Section 14-3-6 of the Public Records Act (Chapter 14, Article 3, NMSA 1978) gives the state records administrator the authority to establish and maintain an active, continuing program for economical and efficient management of the public records of state government.

[1.13.3.3 NMAC - Rp, 1.13.3.3 NMAC, 6/30/2008]

1.13.3.4 DURATION:

Permanent.

[1.13.3.4 NMAC - Rp, 1.13.3.4 NMAC, 6/30/2008]

1.13.3.5 EFFECTIVE DATE:

June 30, 2008 unless a later date is sited at the end of a section.

[1.13.3.5 NMAC - Rp, 1.13.3.5 NMAC, 6/30/2008]

1.13.3.6 OBJECTIVE:

The objective of this rule is to establish an architecture for the management of public records on electronic media that:

A. ensures proper records and information management practices are implemented and adhered to by state government entities;

B. ensures uniformity and facilitates the accessibility of public records of government entities

C. maintains accountability and preserves electronic records; and

D. provides guidance to users and managers of electronic systems in New Mexico government about:

(1) the issues associated with managing electronic records, special record keeping and accountability concerns that arise in the context of electronic government;

(2) archival strategies for the identification, management and preservation of electronic records with enduring value; identification and appropriate disposition of electronic records with short-term value; and

(3) improving access to state government records.

[1.13.3.6 NMAC - Rp, 1.13.3.6 NMAC, 6/30/2008]

1.13.3.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. 14-3-2 and 14-3-15 NMSA 1978.

C. "Application" means a software program designed for end user to do work, such as word processing, accounting, or illustrating. Software programs such as wordperfect, excel, and pagemaker are examples of end user applications.

D. "Archives" means a place where public records or other historical documents are kept.

E. "Commission of public records" means the governing body of the state records center and archives.

F. "Computer" means an electronic device designed to accept data (input), perform prescribed mathematical and logical operations at high speed (processing), and supply the results of these operations (output). This includes, but is not limited to, mainframe computers, minicomputers, and microcomputers, personal computers,

portable computers, pocket computers, tablet computers, telephones capable of storing information, PDAs, smart phones and other devices.

G. "Custodial agency" means the agency responsible for the maintenance, care, or keeping of public records, regardless of whether the records are in that agency's actual physical custody and control.

H. "Custodian" means the person (guardian) responsible for the maintenance, care, or keeping of a public body's records, regardless of whether the records are in that person's actual physical custody and control. The statutory head of the agency using or maintaining the records or their designee.

I. "Custody" means the guardianship or records, archives, and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

J. "Data" is the plural for "datum" which means a single piece of information. Data refers to a collection of information, electronic or non-electronic. Data can also refer to raw facts, figures, or symbols.

K. "Database" means a structured collection of records or data that is stored in a computer system. A database relies upon software to organize the storage of the data and to enable a person or program to extract desired information.

L. "Destruction" means the disposal of records of no further value by shredding, burial, incineration, pulping, electronic overwrite, or some other process, resulting in the obliteration of information contained on the record.

M. "Disposition" means the final action that puts into effect the results of an appraisal decision for a series of records; i.e., transfer to archives or destruction.

N. "Draft copies" means the working copies (rough versions) of documents prior to a draft final (conclusive document) being produced.

O. "Draft final" means the conclusive document produced.

P. "Electronic records" means records whose informational content has been encoded and recorded on a medium like magnetic tape, drums, discs, or punched paper tape and can be retrieved by finding aids known as software documentation. The encoded information is retrievable only with the help of a computer.

Q. "Filing" means the process of sequencing and sorting records to make them easy to retrieve when needed.

R. "General schedule" means records retention and disposition schedule that specifies the disposition of support records common to many offices or agencies within government

S. "Human readable form" means information that can be recognized and interpreted without the use of technology.

T. "Information" means data that has been transformed and made more valuable by processing.

U. "Information system" means an electronic framework by which hardware and software resources are coordinated to manipulate and convert inputs into outputs in order to achieve the objective of an enterprise.

V. "Information system database" means a subset of logically arranged data stored on media accessible by the computer.

W. "Life cycle" means the life span of a record from its creation or receipt to its final disposition.

X. "Medium, media" means the physical material on which information can be recorded.

Y. "Microforms" means microfilm media, including reels, fiche, jackets, and computer output microfilm (COM) containing micro images.

Z. "Non-records or non-essential records" means records listed on a records retention schedule for routine destruction, the loss of which presents no obstacle to restoring daily business. The following specific types of materials are non-records: extra copies of correspondence documents preserved only for convenience of reference blank forms or books which are outdated materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the office or agency preliminary and non-final drafts of letters, reports, and memoranda which may contain or reflect the working or deliberative process by which a final decision or position of the agency, board, department, or subdivision thereof is reached shorthand notes, stenographic tapes, mechanical recordings which have been transcribed, except where noted on agency retention schedules routing and other interdepartmental forms which are not significant evidence of the activity concerned and do not otherwise have value as described above stocks of publications already sent to archives and processed documents preserved for supply purposes only form and guide letters, sample letters, form paragraphs subject files, including copies of correspondence, memoranda, publications, reports, and other information received by agency and filed by subject (also referred to as reading files or information files).

AA. "Operating system" means the master control software that runs a computer. When the computer is turned on, the operating system is the first program that gets loaded into the memory of the machine.

BB. "Permanent records" means records considered being unique or so valuable in documenting the history or business of an organization that they are preserved in an archives.

CC. "Permanent archival records" means records identified in either general records retention and disposition schedule or a program records retention and disposition schedule possessing a retention requirement of transfer to the SRCA.

DD. "Personal digital assistant" means a handheld device that combines computing, telephone, fax, and networking features. PDAs are also called palmtops, hand-held computers and pocket computers. A PDA is a small computer that literally fits in your palm. Palmtops that use a pen rather than a keyboard for input are often called hand-held computers or PDAs. Because of their small size, most palmtop computers do not include disk drives. However, many contain slots in which you can insert disk drives, modems, memory, and other devices. Palmtops are also called PDAs, hand-held computers and pocket computers.

EE. "Program" means a coded set of instructions, written by humans, that directs a computer's functions. The program can be stored on disk (in which case the program is software) or in a chip (which is firmware).

FF. "Public records" means all books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business, preserved or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein (14-3-2 NMSA 1978).

GG. "Records" means information preserved by any technique in any medium now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

HH. "Records center" means a facility designed and constructed to provide low-cost, efficient storage and reference service on records that have become inactive but have not reached their disposition date. The state records center, as defined by 14-3-2 (E), NMSA 1978, is the "...central records depository which is the principal state facility for the storage, disposal, allocation or use of non-current records of agencies, or materials obtained from other sources."

II. "Records custodian" means the statutory head of the agency or their designee.

JJ. "Records liaison officer" means the individual in the custodial agency designated by the records custodian to cooperate with, assist, and advise the state records administrator in the performance of the administrator's duties (14-3-4, NMSA 1978). The records liaison officer in an agency is responsible for implementing the records retention and disposition schedules within their agency. The records liaison officer is also responsible for authorizing the storage and or destruction of their agency's records.

KK. "Records retention and disposition schedules" means rules adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing records of an agency, establishing a timetable for their life cycle and providing authorization for their disposition.

LL. "Records series" means file units, documents, or electronic records arranged according to a filing system or maintained as a unit because they relate to a particular subject or function, result from the same activity, have a particular form, or share some other relationship arising from their creation, receipt, or use.

MM. "Recycle bin" means an icon on a microsoft windows based operating system desktop that represents a directory where deleted files are temporarily stored. This enables and user to retrieve files that you may have accidentally deleted or delete the files permanently.

NN. "Scheduling" means the action of establishing retention periods for records and providing for their proper disposition at the end of active use.

OO. "Smart phones" means a phone that uses an identifiable operating system, often with the ability to add applications (e.g. for enhanced data processing, internet connectivity or electronic message).

PP. "Software" means the set of instructions for a computer to carry out a specified procedure.

QQ. "System" means an integrated framework that has one or more objectives and coordinates the resources needed to convert inputs to outputs. The word system often is used in a generic sense in referring to a computer setup--what type of computer and cpu operating system, how much hard disk space, how much memory, or what software package and peripherals are used.

RR. "Transfer" means moving inactive records to a records center or archives. Moving records into the SRCA also includes the transfer of custody from the custodial agency to the SRCA.

SS. "TIFF" means tagged image file format, a standardized format for storage of digitalized images, which contains a header or tag that defines the exact data structure of the associated image.

TT. "USB flash drives" means a small, portable flash memory card that plugs into a computer's USB port and functions as a portable hard drive. USB flash drives are small and can plug into any computer with a USB drive.

UU. "Vital records" means records essential to the continuing operation of an agency. They are either intrinsically irreplaceable or irreplaceable because copies do not have the same value as the originals. They are essential to the continuity of services during a disaster or to the restoration of daily business when it has been interrupted. They are the records that would be required to protect the legal and financial interests of an agency, preserve the rights of the people, and resume operations after a major disaster like fire or flood.

VV. "Voice mail" means a telecommunication message that is digitized and can be stored and subsequently retrieved in audio or visual format.

WW. "Working copies" means the rough versions of documents prior to a conclusive document produced.

[1.13.3.7 NMAC - Rp, 1.13.3.7 NMAC, 6/30/2008]

1.13.3.8 ACRONYMS:

- A. "BMP"** stands for microsoft windows bitmap format.
- B. "JPEG"** stands for joint photographic experts group
- C. "MPEG"** stands for moving picture experts group.
- D. "PDA"** is short for personal digital assistant.
- E. "PDF"** stands for portable document format.
- F. "RRDS"** stands for records retention and disposition schedule.
- G. "SGML"** standard generalized markup language.
- H. "SRCA"** stands for the New Mexico state records center and archives.
- I. "TIFF"** stands for tagged image file format.
- J. "USB"** stands for universal serial bus.

[1.13.3.8 NMAC - Rp, 1.13.3.8 NMAC, 6/30/2008]

1.13.3.9 [RESERVED]

1.13.3.10 INTRODUCTION — ACCOUNTABILITY:

A. Public acceptance of New Mexico state government and the roles of its employees depend on trust and confidence. This trust is founded on all of government being accountable for its actions. Access to full and accurate records is at the heart of the accountability process. Records are the means by which the evidence of past and current action, decisions, procedures and policy are preserved for future analysis and access.

(1) Records are fundamental tools in the business of government and their absence can lead to inefficiencies or failure in operational procedures. The absence of records can open agency employees to accusations of fraud and impropriety, political embarrassment and an inability to defend the state in cases of legal action or claims against the government.

(2) Records can also be transferred from one medium to another and from one context to another through copying, imaging or digital transfer. Electronic records are easily updated, deleted, altered and manipulated. If appropriate measures are not taken, the essential characteristics of records (content, structure, context) can be altered or lost in the process. Careful planning and system design are required to ensure that these characteristics of records are both captured and maintained.

(3) These guidelines are intended to provide guidance to agencies on the management of electronic records throughout their entire lifecycle, from initial system design to the final disposal or permanent preservation of state records. This "records lifecycle" view is critical in an electronic environment because, by the disposition stage (when actions are taken regarding records no longer needed for current government business), records may be irretrievable if not properly managed while they are in active use. The administrative rule covers records created using all types of computerized environments, including such diverse elements as personal computers, distributed networks, mainframes, spatial data systems, and multimedia systems.

B. Although there exists sensitive or confidential data, all data generated by a state or local government agency in New Mexico are public unless they have been legally declared closed to public inspection by state or federal statute. State agencies are not empowered to make exemptions to the Inspection of Public Records Act (Sections 14-2-1 through 14-2-12 NMSA 1978). Agency heads often have valid concerns about security and privacy rights, thus, questions related to concerns about specific sensitive information or data elements are more properly addressed to legal council for the agency or to the office of the attorney general for the state of New Mexico. Exceptions to this general rule exist throughout state and federal law.

C. In a court of law the evidence may be in documentary, oral, audio-visual, electronic or object form. It shall satisfy the tests of evidence and be admissible in that legal context. Evidence as a concept, however, is not confined to legal contexts. Within business and public sector environments, the evidence from previous actions and

decisions is used as a basis for the formulation of new decisions and actions. Organizations keep records as evidence or proof that an activity or transaction did or did not occur. Beyond this more immediate use, researchers also use records as historical evidence on which to base their conclusions.

D. There is no specification in the Inspection of Public Records Act (Sections 14-2-1 through 14-2-12 NMSA 1978) of any means which access to public records shall take. The means of access is left to the discretion of the public agency. The public should not be given direct access if such an action would compromise the security and safety of the records themselves. Common sense urges caution where valuable records are concerned. Hardcopy and digital file storage areas may contain both "open" and "closed" records material, and the alteration, destruction, or theft of files represent clear dangers to public records. If a member of the public demands access that the agency believes will compromise records security but that is not otherwise clearly prohibited in federal or state statutes, that agency is urged to contact their legal council or the office of the attorney general for guidance.

[1.13.3.10 NMAC - Rp, 1.13.3.10 NMAC, 6/30/2008]

1.13.3.11 SYSTEM RELIABILITY, THE CREATION AND CAPTURE OF ELECTRONIC RECORDS AND THE MAINTENANCE AND ACCESSIBILITY OF THE RECORDS:

A. The electronic records system should be administered and configured with the best practices in mind for information and resource management to ensure the reliability of the records being produced. Towards this goal of reliability the life cycle of the records shall be taken into account where some records may finite life spans others may have an indefinite life may have to be viewed or regenerated forever. To this end there are four aspects: preservation- the information shall be in a form that can be physically preserved; the information shall possess the quality of accessibility; the information shall be able to be read (readability); and the information shall retain its comprehensibility - to be read and understood in their original context without question.

(1) Information shall be physically preserved. The information in an electronic system shall be preserved in a physical media that is of sufficient quality and capacity to contain the information being preserved. There are many ways to accomplish this and the commission of public records (state records center and archives) does not endorse, warrant, certify, or approve any particular hardware or software product or product combination used in any electronic records management activity. The implementation of these processes, including the specifications for products used therein, remains at the discretion of the individual public agency. However, the records should be full and accurate to the extent necessary to: facilitate action by current and future employees, at all levels; allow for proper scrutiny of the conduct of business by anyone authorized to undertake such scrutiny; and protect the financial, legal and other rights of the agency, its clients and anyone else affected by its actions and decisions. The agency shall provide convincing, documented evidence that the electronic records were created,

protected, and otherwise managed in accordance with systems and procedures designed to ensure the reliability, accuracy, and security of both the records and the process or system used to produce the records. Many paper records are being eliminated when the information has been placed on magnetic, optical, or other data processing media. In these cases, the information on the data processing medium shall be retained for the length of time specified in records retention and disposition schedules and is subject to the same confidentiality and access restrictions as paper records.

(2) Information shall be accessible. When conducting transactions electronically, the first challenge is to maintain records in a way that will enable retrieval of all documents relevant to a transaction when they are needed. The second challenge is to ensure that the records are not retained for any longer than necessary, in order to avoid both overloading systems and to avoid indiscriminate dumping. A special problem with electronic records is that they lack familiar physical and visual clues about their origins, such as official letterhead, or their authenticity, such as written signatures. Special measures shall be taken to ensure that they are also reliable and authentic. Paper record-keeping systems have traditionally been employed to file letters, minutes, reports, spreadsheets, invoices, notes, etc. These systems employ classified and indexed files at a subject or transaction level to consolidate and co-locate the documents generated or received in the course of a business activity. Separate folders provide a business context and link the individual documents to a particular transaction and into the wider agency record-keeping system. In recent years, agencies have adopted records management, document management, workflow and imaging software. Regardless of the technology, however, the objective remains the same: capture records so that they can be easily retrieved at a later date, understood, and interpreted as evidence of what transpired in an agency.

(a) the record shall have information content that is (and continues to be) an accurate reflection of what actually occurred at a particular time in the function, activity or transaction in question; and

(b) be able to be reconstructed electronically when required, so that each component is brought together as a whole and presented in an intelligible way; and

(c) possess a unique identifier or indexing that facilitates in the access of the information through the use of folder naming conventions or through searches or queries; and

(d) have been officially incorporated (either actively or passively) into an agency's or person's record-keeping system.

(3) Information shall be readable. Electronic records may exist independently of their physical format; however, by reducing records to their essential characteristics, we can allow for the existence of records, regardless of the current technology. Systems shall link the content of a record to its administrative or business context. In electronic

environments, the essential characteristics rarely sit neatly together in a single, format-based package. Though all of the elements of an electronic record may exist within a single computer file, they may also be distributed across the entire state network. The integrity of these elements and the links between them are much more important than where they physically reside. If one is not able to place records in their appropriate administrative context, then they have seriously diminished value as evidence. In order for records to serve as evidence, three essential characteristics shall be maintained. Whenever one of the characteristics is altered, the ability of records to accurately reflect the activities of an agency is diminished. This means that records shall possess the following essential characteristics:

(a) content, that which conveys information (e.g., text, data, symbols, numerals, images, and sound);

(b) structure, appearance and arrangement of the content (e.g., relationships between fields, entities, language, style, fonts, page and paragraph breaks, links and other editorial devices);

(c) context, be able to be placed in context so that the circumstances of its creation and subsequent use by an agency or person can be understood in conjunction with its information content.

(4) Information shall retain its context. One of the major differences between electronic records and those on traditional media is that electronic records are not human-readable, thus their physical appearance alone does not provide sufficient information to determine their origin, purpose, uses or other aspects of the context in which they were created and maintained. Maintaining content, structure and context of electronic records is, therefore, both more vital and difficult than with traditional records. Meeting these conditions requires high quality records management and a sustained commitment, on the part of state agencies and the SRCA.

B. The creation and capture of electronic records.

(1) Strategies for capturing electronic records will differ, depending on the opportunities presented by an agency's hardware and software environment. The complexity of electronic records and the rapid acceleration of new formats and technologies provides the background for the creation of the myriad of electronic records that are being created from simple text records to modeling simulations. Even records that might be perceived as simple record formats can contain a complexity that underlies the information, for example a spreadsheet can be viewed on a monitor as figures; however, within the spreadsheet formulas can be found. Additionally, some records may require several elements at one to become a coherent record, for example a multimedia presentation consisting of audio, text, and video. The organizational environment will influence the point at which records are captured. This will include perceptions about what constitutes a record, assignment of responsibility, agency requirements to create records, and staff understanding of the technology involved and

when and where a record should be captured and when a draft or non-record crosses the threshold and becomes a record.

(a) Local environment, where the initial work is done to create a draft. Often time, in the creation of correspondence the local environment will hold a copy of a finalized product, which is then printed, and the official copy is placed in a paper folder. What remains in the local environment is then a copy and can be considered a non-record.

(b) Group environment, where recognizable drafts are produced and maybe shared with peers and unit management. The record creator is responsible for capturing his or her own records and assigning management practices to them at the point of creation. This could be implemented as a screen the user fills in before documents can be saved or messages can be sent. A user interface could be designed so that users can choose between a number of icons representing business tasks or style templates, e.g., "send policy" or "make appointments." The choice of icon can engage the appropriate application, distribution lists, style sheets, and records disposal authorities. The sender thus affects scheduling but need not make conscious decisions about assigning retention periods to records.

(c) Corporate environment, where centralized applications such as databases and corporate level wide information are found.

(2) The reliability of a record, whether it is a traditional paper based record, analog or digital is dependent to varying degrees on a level of competence or skill of the creator of the record and formal training or support programs can ensure that staff understand and adhere to established policies and procedures. In the past, the need for grammar, spelling and typing skills were required in the business realm, currently the entry level skill of a person in a business environment requires a rudimentary understanding of computer systems. To this end varying levels of training, education, and skill are required from those creating records to those who are administering or maintaining electronic records systems. Training for the management of electronic records, all records creators should have, based on their level of responsibility in their respective agency, training in basic records management, advanced records management and archival preservation.

(3) Audit trails can provide a means to assist in accomplishing security related objectives such as individual accountability, the reconstruction of events, intrusion detection, and problem identification. An audit trail should include sufficient information to establish what events occurred and who or what caused them. The audit trail can also be used to document the reliability of a system as well as attest to the integrity of the records maintained in the system. Ideally, the audit trail should be generated by the system to include such things as the transaction, maintenance and disposition of records as well as the modification of records, fields or of the system itself.

(4) The storage of records on electronic media. Draft finales (or official copies of record) may be created and maintained solely in electronic media. Electronic records with a set retention that can be destroyed within 10 years may be sent to the SRCA for storage in the electronic media vault and upon meeting their retention may be destroyed by the SRCA per 1.13.30 NMAC *Destruction of Public Records*.

(5) Draft finales (or official copies of record) may be created and maintained solely in electronic media.

(6) Preservation- the records shall be in a form that can be physically preserved. Records created and maintained on local hard drive(s) are the working copies or draft copies of official records created by and for state government. Once a draft final is produced (paper, microfilm, electronic), these working copies or draft copies are no longer needed and are considered non-records. Final drafts shall be generated in paper, microform, or electronic media. Draft copies or working copies shall be transferred to recycle bin for destruction after no longer needed for reference.

(7) Records may be created and maintained on a system network drive(s). Records placed on a network drive(s) are meant to be shared by the users of the network. Users not creating a record (document) may only have read and copy access to the record. Records on the network drive(s) may be draft copies or final drafts of agency documents. Electronic records from outside sources may also be placed on an agency's network drive(s) as a means of disseminating information. Records placed on network drive(s) are not the agency's official copies of record. They are placed on network drives to disseminate information only and are considered non-records. Non-records may be destroyed by the custodial agency when the record no longer has any informational value to the agency. However, if a record has been created on a network drive, it shall be copied to paper, microform or electronic media and maintained until its retention has been met. To ensure that records maintained on a network drive(s) are accessible and to ensure that proper records and information management principles are followed, the following guideline shall be adhered to.

(a) Electronic file folders shall be created on the network drive(s) for filing electronic records (documents). The electronic records may be draft copies (working copies) or draft finals.

(b) Names of electronic file folders shall correspond to record series listed and described in records retention and disposition schedules issued by the state records center and archives.

(c) If final draft has been created on network drive, generate copy in paper, microform, or electronic media and retain elsewhere until minimum retention has been attained. When retention has been met, destroy record per 1.13.30 NMAC *Destruction of Public Records and Non-records*.

(d) Electronic files that are located on a network share and are deleted from a user's desktop computer, they are deleted permanently and are never transferred to a recycle bin. For information on the destruction of records, see 1.13.30 NMAC *Destruction of Public Records and Non-records*.

(8) To insure the agency always has available the necessary electronic records to conduct its agency's program requirements, agency shall backup all electronic records and databases at appropriate time periods and in an appropriate manner to insure that electronic records and databases are protected from accidental or deliberate loss. Electronic records and databases should be backed up, at minimum, on a weekly basis. If major changes or additions are made to electronic records or database groups during the week, backups should be made immediately instead of waiting for the normally scheduled backup. Electronic records and databases that are seldom changed or updated would need to back up only as major changes to the information occur. For cycle rotation of system backup refer to RRDS for General Administrative Records, *operations system backup* 1.15.2.302 NMAC.

(9) Different backup media (floppies, reels, cassettes, optical disks, disk packs, USB flash drives) retain information for different periods of time before deterioration of the information may begin. The longer the backup media will be retained without replacement of information, the more stable the backup media needs to be.

C. The maintenance and accessibility of electronic records. Agencies shall safeguard all electronic records to insure that individuals do not alter, erase, or in any way change the content of the record for fraudulent purposes. In addition to safeguarding against deliberate tampering with records, agencies shall also guard against storage media deterioration and technology changes that can leave electronic records inaccessible over a period of time because of hardware or software obsolescence. To eliminate the possibility of creating a situation where information can no longer be retrieved, agencies shall provide for future record accessibility by migrating all electronic records when there are major changes to the next generation of hardware or software; or migrating only current electronic records to new hardware or software, and converting records not migrated to "human readable form".

(1) The migration of information on electronic media. Agencies shall safeguard all electronic records to insure that individuals do not alter, erase, or in any way change the content of the record for fraudulent purposes. In addition to safeguarding against deliberate tampering with records, agencies shall also guard against storage media deterioration and technology changes that can leave electronic records inaccessible over a period of time because of hardware or software obsolescence. To eliminate the possibility of creating a situation where information can no longer be retrieved, agencies shall provide for future record accessibility by:

(a) migrating all electronic records when there are major changes to the next generation of hardware or software; or

(b) migrating only current electronic records to new hardware or software, and converting records not migrated to "human readable form".

(2) Backup of electronic records. To insure the agency always has available the necessary electronic records to conduct its agency's program requirements, agency shall backup all electronic records and databases at appropriate time periods and in an appropriate manner to insure that electronic records and databases are protected from accidental or deliberate loss.

(a) Backup frequency. Electronic records and databases should be backed up, at minimum, on a weekly basis. If major changes or additions are made to electronic records or database groups during the week, backups should be made immediately instead of waiting for the normally scheduled backup. Electronic records and databases that are seldom changed or updated would need to back up only as major changes to the information occur. For cycle rotation of system backup refer to RRDS for General Administrative Records, *operations system backup* 1.15.2.302 NMAC.

(b) Backup media. Different backup media (floppies, reels, cassettes, optical disks, disk packs, USB flash drives) retain information for different periods of time before deterioration of the information may begin. The longer the backup media will be retained without replacement of information, the more stable the backup media needs to be.

(3) Permanent, permanent-archival, or long-term records on electronic media. Permanent public records are either maintained permanently by and at the custodial agency or by the custodial agency in an appropriate environmental setting. Permanent-archival records are scheduled in the custodial agency's records retention and disposition schedule to be transferred to the SRCA permanently or transferred to the SRCA for review and final disposition.

[1.13.3.11 NMAC - Rp, 1.13.3.11 NMAC, 6/30/2008]

1.13.3.12 PERMANENT ELECTRONIC RECORDS MAINTAINED BY THE CUSTODIAL AGENCY:

If the custodial agency opts to maintain their permanent electronic records on-site, the custodial agency shall develop and implement guidelines and procedures that address the following elements of an on-site archival program.

A. Policy. Develop an archives repository written policy for access to agency permanent electronic records that addresses the following areas:

- (1) program objectives;
- (2) system reliability;

- (3) custody - legal and physical;
- (4) rationale for alternatives adopted;
- (5) processibility;
- (6) migration;
- (7) archives repository or outsource implementation; and
- (8) audit for compliance.

B. Quality control. Develop written quality control procedures that take into account the following:

- (1) utilization of the functionalities of an archival preservation system software;
- (2) document any action taken with regard to facilitating long-term access to electronic records;
- (3) insert documentation records into the encapsulation wrapper that contains the relevant electronic records; and
- (4) periodic quality control audits.

C. Environmental control and monitoring program recommendation. Ensure the continued readability of electronic records by putting in place a program that provides for a stable storage environment and good care and handling procedures. Such a program should include the following:

- (1) maintain a stable storage environment in which the temperature is 59 plus or minus 5 degrees fahrenheit and the relative humidity (RH) is 40 percent;
- (2) install a filter system to remove airborne dust particles and gas pollutants;
- (3) prohibit the consumption of food and beverages and smoking in the storage facility;
- (4) implement a program to read annually a statistical sample of the storage media to identify real or impending catastrophic loss of information;
- (5) select all storage units (e.g., videocassette tapes, computer disks) annually if there are fewer than 50 of them;

(6) select a 20 percent random sample of the storage media when the total number of storage units. ranges between 50 and 1809;

(7) select a random sample of 381 items of the storage media when the total number of storage media is 1810 or greater; and

(8) rewind all tapes under constant tension after processing.

D. Transfer of records. Guidelines for the transfer of electronic records that include the following:

(1) select up to three storage media that are widely used by agencies in their current operations (e.g., 3480 tape cartridges, digital linear tape, and CR-ROM) that may be used to transfer electronic records to the archives repository;

(2) select a standard archival storage medium and encourage agencies and organizations to use it when transferring electronic records; and

(3) all electronic records transferred shall be encoded with a standard encoding scheme such as ASCII.

E. Reformat electronic records. Guidelines for the reformatting of electronic records that include the following:

(1) select either digital linear tape or other suitable tape cartridges as the storage medium;

(2) reformat electronic records at the time of their transfer to the archives repository or when new storage devices and media are installed;

(3) ensure the authenticity of reformatted electronic records by employing a strict quality control procedure that may include bit or byte comparisons, comparisons of hash-digest, or digital time stamping;

(4) utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when reformatting electronic records; and

(5) at the time of reformatting, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

F. Copy electronic records. Guidelines for the periodic copying of electronic records that include the following:

(1) copy electronic records at the time of their transfer to the archives repository;

(2) copy electronic records every ten years in the absence of the installation of new storage devices and media;

(3) copy electronic records when the annual readability sample discloses ten or more temporary or read "errors" in a dataset;

(4) ensure the authenticity of copied electronic records by employing a strict quality control procedure that may include bit/byte comparisons, comparisons of hash-digest, or digital time stamping;

(5) utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when copying electronic records; and

(6) at the time of copying, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

G. Convert electronic records. Guidelines for the conversion of electronic records that include the following:

(1) the conversion of authentic electronic records from one software environment to another shall not result in the loss of any structure, content, or context;

(2) convert authentic electronic records whenever there is a software upgrade or a new software application environment is installed;

(3) adopt TIFF, PDF or SGML as a standard storage format; at the time of conversion encapsulate aggregated electronic records along with relevant documentation as SGML records;

(4) ensure the authenticity of converted electronic records by employing a strict quality control procedure that may include bit/byte comparisons, comparisons of hash-digest, or digital time stamping; utilize the functionalities of an archival preservation system software where possible in order to document fully all actions taken when converting electronic records;

(5) exercise the option of non-conversion of authentic electronic records only as a last resort when the risk of the loss of authenticity or processibility is acceptable; and

(6) at the time of conversion, create two copies, one of which would be considered a "backup" that is stored at an off-site location.

H. Migrate electronic records. Procedures for the migration (or non-migration) of electronic records that include the following:

(1) establish guidelines that unambiguously delineate the circumstances under which migration of electronic records will be carried out;

(2) establish guidelines that unambiguously delineate the circumstances under which non-migration of electronic records will be carried out;

(3) incorporate into the migration procedure the following ten steps for migrating electronic records from legacy information systems:

(a) incrementally analyze the legacy information system;

(b) incrementally decompose the legacy information system structure;

(c) incrementally design the target interfaces;

(d) incrementally design the target applications;

(e) incrementally design the target database;

(f) incrementally install the target environment;

(g) incrementally create and install the necessary gateways;

(h) incrementally migrate the legacy databases;

(i) incrementally migrate the legacy applications;

(j) incrementally migrate the legacy interfaces;

(k) incrementally cut over to the target information;

(4) establish migration quality control procedures that include testing the migration software with a sample of records to confirm that no degradation in the records occurs;

(5) validate migrated electronic records with records in the source legacy information system to ensure that no errors occur;

(6) if financial or technical resources preclude the migration of electronic records without some loss in content, structure, or context, document all the activities undertaken in order to establish the reliability of the new records that come into existence;

(7) in executing a "non-migration" option that transfers electronic records to paper or microfilm a visual inspection of a sample of these records should be compared with their electronic counterparts.

I. Starting a long-term electronic records access program. Guidelines and procedures that include the following:

- (1) develop a policy that calls for an integrated information technology plan that serves the overall goals and mission of the archival repository;
- (2) develop a five to seven year information technology plan that is based upon a realistic assessment of the financial resources that are likely to be available to the organization;
- (3) design a system that is geared to the specific needs and resources of the archival repository and for which computer literate and technically competent staff is available; and
- (4) assess the long-term costs and benefits of a "scaled back program" and where the benefits are marginal consider other storage alternatives such as paper or microfilm.

J. Multi-institutional cooperative programs. Guidelines and procedures that include the following:

- (1) develop a formal organizational structure for the participating archives repositories and a formal agreement (and legally binding) with the cooperative electronic records archives repository;
- (2) guarantee funding of the program for five years;
- (3) delineate explicitly the tasks to be carried out within specified time periods;
- (4) require that the findings and recommendations of this report be incorporated into the policy and procedures; and
- (5) contract with a competent, independent third party to conduct an annual information technology audit of the cooperative electronic records repository and deliver a report with recommendations to the participating archives repositories.

[1.13.3.12 NMAC - Rp, 1.13.3.12 NMAC, 6/30/2008]

1.13.3.13 DISPOSITION OF ELECTRONIC RECORDS:

A. The disposition of electronic record can have two possible avenues, either the information and the record media are destroyed or the information is obliterated. Unlike paper-based records the media for electronic records can remain useful and only the information needs to be destroyed thus the resulting best practices for the destruction of information. An agency will select the best practice based on the media, and the nature or sensitivity of the information. For a local hard disk, items one and two should be

sufficient, for other magnetic, optical, or solid-state storage media, agency information systems staff should be consulted:

- (1) erasure from electronic media and all back up media;
- (2) emptying of electronic trash receptacle;
- (3) witnessed overwriting of reusable magnetic media multiple times such as suggested by the US department of defense;
- (4) witnessed degaussing of the magnetic media; and
- (5) witnessed physical destruction of the media.

B. Permanent-archival records on electronic media transferred to the SRCA. Permanent-archival records are scheduled in the general records retention and disposition schedule or the custodial agency's records retention and disposition schedule to be transferred to the SRCA permanently or transferred to the SRCA for review and final disposition. When permanent public records on electronic media are transferred to the SRCA, the custodial agency shall meet the following criteria.

(1) **Media.** Records shall be transferred only on optical disc, adhering to the international organization for standardization 9660 or high sierra standard for readability using eight-dot three file naming.

(2) **Format.** Since data formats can become obsolete, only those formats with the widest support, and greatest permanence shall be used to store public records. The nature of the information stored shall dictate its storage format. For example:

(a) **Audio information.** Format this information as MPEG files.

(b) **Audio and visual information.** Format this information as MPEG files.

(c) **Picture or graphic files.** Format these files as JPEG, BMP, or TIFF files.

(d) **General business information files.** Format per the architectural configuration requirement published by the state information and technology management office regarding software utilized by state agencies.

(3) **Metadata.** Metadata shall be provided on either individual records (documents) or on the entire records series. Records shall be transferred with the following essential metadata fields:

(a) title

(b) subject;

(c) originator (name of custodial agency);

(d) dates (inclusive dates of records, dates records created);

(e) identifier (i.e., RRDS code, RRDS section number, schedule item number).

[1.13.3.13 NMAC - Rp, 1.13.3.13 NMAC, 6/30/2008]

PART 4: RECORDS MANAGEMENT REQUIREMENTS FOR ELECTRONIC MESSAGING

1.13.4.1 ISSUING AGENCY:

State Commission of Public Records and the State Records Administrator.

[1.13.4.1 NMAC - Rp, 1.13.4.1 NMAC, 3/31/2015]

1.13.4.2 SCOPE:

All state agencies as defined by the Public Records Act, Section 14-3-1 et seq. NMSA 1978.

[1.13.4.2 NMAC - Rp, 1.13.4.2 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.3 STATUTORY AUTHORITY:

Public Records Act, Sections 14-3-4 and 14-3-6 NMSA 1978.

[1.13.4.3 NMAC - Rp, 1.13.4.3 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.4 DURATION:

Permanent

[1.13.4.4 NMAC - Rp, 1.13.4.4 NMAC, 3/31/2015]

1.13.4.5 EFFECTIVE DATE:

March 31, 2015, unless a later date is cited at the end of a section.

[1.13.4.5 NMAC - Rp, 1.13.4.5 NMAC, 3/31/2015]

1.13.4.6 OBJECTIVE:

To ensure that electronic messages, and any attachments which may be transmitted with the electronic message, including text messages, social media and e-mail, that are identified as public records, are retained economically and efficiently for as long as they have legal, fiscal, business or historical value.

[1.13.4.6 NMAC - Rp, 1.13.4.6 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.7 DEFINITIONS:

A. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

B. "Attachments" are electronic file(s) sent along with an electronic message.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Electronic message" includes, but is not limited to, a text message, social media and e-mail that is created and delivered in an electronic format.

E. "Native format" means the file format that a software application uses to create or save files.

F. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and informational files.

G. "Social media" means forms of electronic communication through which users create online communities to share information, ideas, messages and other content (e.g., twitter, facebook, instagram, pinterest, linkedin, etc.).

H. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

[1.13.4.7 NMAC - Rp, 1.13.4.7 NMAC, 3/31/2015; A, 11/30/2015; A, 7/15/2016]

1.13.4.8 ABBREVIATIONS:

- A. "FRRDS"** means functional records retention and disposition schedule.
- B. "NMAC"** stands for New Mexico administrative code.
- C. "NMSA"** stands for New Mexico statutes annotated.

[1.13.4.8 NMAC - Rp, 1.13.4.8 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.9 PUBLIC RECORDS:

To comply with the Public Records Act, Section 14-3-1 et seq. NMSA 1978, electronic messages must be managed pursuant to established record retention and disposition schedules adopted by the commission and published in 1.21.2 NMAC, Retention and Disposition of Public Records.

[1.13.4.9 NMAC - Rp, 1.13.4.9 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.10 MANAGEMENT RESPONSIBILITIES:

The development and implementation of an electronic message management program is the responsibility of each agency records custodian, as defined by the Public Records Act, Section 14-3-2 (B) and (I) NMSA 1978. It is also management's responsibility to provide guidance to employees on the proper retention and legal disposition of electronic messages. Agency records management programs must clearly define the roles and responsibilities of users in creating, receiving, categorizing, retaining and disposing or archiving electronic messages.

[1.13.4.10 NMAC - Rp, 1.13.4.10 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.11 RETENTION AND SCHEDULING REQUIREMENTS:

Electronic messages determined to be a public record shall be classified, filed and retained on the basis of content.

A. Attachments classified as public records shall be categorized under the appropriate record classification identified in 1.21.2 NMAC, Retention and Disposition of Public Records.

B. An electronic message that contains multiple subjects with different retention periods shall be retained according to the longest retention period.

C. An electronic message scheduled as permanent may be transferred to the state archives under the provisions of 1.13.10 NMAC, Records Storage and Access.

D. Non-record electronic messages may be destroyed without the prior approval of the state records administrator.

[1.13.4.11 NMAC - Rp, 1.13.4.11 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.12 IDENTIFYING THE OFFICIAL COPY OF RECORD:

An agency policy for managing electronic messages should include directions regarding how to determine the official copy of record. Typically, the official copy is an electronic message received from an outside source, the sender's copy or the final electronic message of a thread discussion.

[1.13.4.12 NMAC - N, 3/31/2015; A, 11/30/2015]

1.13.4.13 FILING ELECTRONIC MESSAGES:

Procedures for filing electronic messages will vary based on the agency's needs and the particular hardware and software in use.

A. The department of information technology may provide an agency with a centrally managed enterprise electronic messaging system. However, the department of information technology's system is not designed to be a records management system. Agencies using a department of information technology system must instruct all public officials using the system how to copy public records from their electronic messaging account to a records management system.

B. Electronic messages sent or received from a computer outside a state electronic messaging system that is classified as a public record, shall be transferred to an agency's records management system for proper retention and disposition.

C. Non-records are not required to be retained by an agency and regular deletion should be included in an agency's procedure for management of electronic messages.

D. Electronic systems used to manage electronic messages shall ensure that messages and attachments classified as public records are maintained in their native format until their final disposition and can be accessed, retrieved and read.

[1.13.4.13 NMAC - Rp, 1.13.4.12 NMAC, 3/31/2015; A, 11/30/2015; A, 7/15/2016]

1.13.4.14 DISPOSITION:

Electronic messages and attachments that are classified as public records are subject to the provisions in 1.13.10 NMAC, Records Storage and Access and 1.13.30 NMAC, Disposition of Public Records and Non-Records.

A. Electronic messages and attachments, classified as public records, shall not be destroyed without the prior written approval of the state records administrator (1.13.30 NMAC, Disposition of Public Records and Non-Records).

B. Electronic messages potentially relevant to a pending audit, investigation or litigation shall be preserved, even if the retention period has been met.

C. An electronic message that is legally confidential should be marked as confidential.

D. An electronic message that is legally confidential and transferred to the state archives shall be identified as confidential and the legal designation for confidentially shall be cited.

[1.13.4.14 NMAC - Rp, 1.13.4.14 NMAC, 3/31/2015; A, 11/30/2015]

1.13.4.15 [RESERVED]

[1.13.4.15 NMAC - Rp, 1.13.4.15 NMAC, 3/31/2015]

PART 5: NEW MEXICO HISTORICAL RECORDS GRANT PROGRAM GUIDELINES

1.13.5.1 ISSUING AGENCY:

State Commission of Public Records.

[1.13.5.1 NMAC - Rp, 1.13.5.1 NMAC, 8/1/2015]

1.13.5.2 SCOPE:

Eligible applicants include state, county, municipal and tribal government offices, political subdivisions and non-profit organizations. See 1.13.5.8 NMAC.

[1.13.5.2 NMAC - Rp, 1.13.5.2 NMAC, 8/1/2015]

1.13.5.3 STATUTORY AUTHORITY:

Subsection F of Section 14-3-4 NMSA 1978 authorizes the commission to adopt regulations to carry out the purposes of the Public Records Act; Section 14-3-14 NMSA 1978 authorizes the commission, upon recommendation of the state records administrator, to appoint advisory groups to more effectively obtain the best professional thinking regarding any particular group or type of records. 36 CFR Part 1206 authorizes the commission to receive national historical publications and records commission grants to make subgrants to eligible organizations within the state in support of historical records activities.

[1.13.5.3 NMAC - Rp, 1.13.5.3 NMAC, 8/1/2015]

1.13.5.4 DURATION:

permanent.

[1.13.5.4 NMAC - Rp, 1.13.5.4 NMAC, 8/1/2015]

1.13.5.5 EFFECTIVE DATE:

August 1, 2015 unless a later date is cited at the end of a section.

[1.13.5.5 NMAC - Rp, 1.13.5.5 NMAC, 8/1/2015]

1.13.5.6 OBJECTIVE:

The New Mexico historical records advisory board receives funds from the New Mexico legislature or the national historical publications and records commission to fund its historical records grant programs for improving preservation of and access to New Mexico's historical records. Subject to funding availability, grants may be awarded annually to applicants who demonstrate the ability and commitment to solving their historical records problems.

[1.13.5.6 NMAC - Rp, 1.13.5.6 NMAC, 8/1/2015]

1.13.5.7 DEFINITIONS:

A. "Access" means the availability of archives, records or manuscripts in terms of physical condition, legal permission and intellectual entry.

B. "Accession" means a term used as both a noun and a verb for the act and procedures involved in a transfer of legal title and the taking of records or papers into the physical custody of an archival agency, records center or manuscript repository and the materials involved in such a transfer.

C. "Administrator" means the state records administrator.

D. "Archives" means the non-current records of an organization or institution preserved because of their continuing value in meeting the needs of the creating organization.

E. "Arrangement of collections" means the process and results of organizing records or manuscripts, particularly by function or activity of their creator.

F. "Collection policy" means a statement adopted by an archival agency, records center or manuscript repository to guide its accessioning and de-accessioning decisions in order to carry out its formal mission.

G. "Commission" refer to Public Records Act, Subsection C of Section 14-3-.2 NMSA 1978.

H. "Data universal numbering system number" means a unique, nine digit identification number issued by Dun and Bradstreet.

I. "Deaccession" means the act, or the materials involved in the act, of a transfer out of the custody of an archives and is the opposite of accession.

J. "Documentary edition" means a published edition of documents derived directly from original records and often accompanied by editorial commentary and annotations.

K. "Evaluation" means a mechanism by which the effectiveness of the project can be measured by describing the extent to which a project's goals have been met. Narrative, graphic or statistical methods can be used to assess the product or to analyze the process. Participant or user assessments are also helpful in some cases.

L. "Finding aid" means a descriptive device created by an archives, records center or repository to establish the size, condition, content or arrangement of a collection or record group.

M. "Non-profit organization" means any organization, which by its articles of association and bylaws prohibits acts of private inurement, that is, transferring of the organization's earnings to persons in their private capacity; nonprofit organizations are required to use their earnings for their program activities and these earnings are tax-exempt if the organization has met the approval of the internal revenue service as falling within a category such as 501(c)(3).

N. "Original records" means archives or public records as created by a governmental or quasi-governmental body and manuscripts such as letters, diaries, photographs or other first-hand reports.

O. "Political subdivisions" means any county; incorporated city; town or village; drainage, conservancy, irrigation, water and sanitation or other district; mutual domestic association; public water cooperative association; community ditch association; or community land grant organizes and governed pursuant to Chapter 49, Article 1 NMSA 1978.

P. "Preservation" means the provision of adequate facilities for the protection, care and maintenance of archives, records and manuscripts, particularly to promote their future availability.

Q. "Public officer" refer to Governmental Conduct Act, Subsection I of Section 10-16-2 NMSA 1978.

R. "Supply inventory" includes expenditures for furniture, fixtures, machinery, or other equipment that cost less than one thousand dollars (\$1,000) per unit.

[1.13.5.7 NMAC - Rp, 1.13.5.7 NMAC, 8/1/2015]

1.13.5.8 ELIGIBILITY:

A. To be **eligible** for an historical records grant, the applicant shall be one of the entities listed below.

(1) A governmental organization including:

(a) state agencies as prescribed in the Public Records Act; except the commission;

(b) county offices;

(c) municipal offices;

(d) political subdivisions; or

(e) tribal government offices.

(2) A non-profit and tax-exempt organization verified as such by:

(a) a copy of its IRS issued letter establishing tax-exempt status; and

(b) a copy of certification of its good standing status with the New Mexico secretary of state.

B. Previous grant recipients shall be in compliance with the stipulations of all previous awards in order to be eligible.

C. To be eligible for an historical records grant, applicants shall not be disbarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

D. Board member organizations or their employers are not eligible to apply for NMHRAB funding.

E. Funding shall not be used to process any collection held by the commission of public records.

[1.13.5.8 NMAC - Rp, 1.13.5.8 NMAC, 8/1/2015; A, 11/28/2017]

1.13.5.9 CONDITIONS FOR RECEIVING A HISTORICAL RECORDS GRANT:

A. The applicant shall:

(1) demonstrate legal custody of historically significant original records at the time of the grant application deadline;

(2) provide a copy of its collection policy or a statement from its governing body indicating its commitment to sound practices concerning the historical material included in the project;

(3) demonstrate the ability to carry out the objective of the proposal within the grant period;

(4) describe the records, their importance in documenting New Mexico's history and the proposed project that affects the records;

(5) include a mechanism for evaluating the impact of the project on its historical records' environment; and

(6) provide a letter from its governing body indicating support of the project and continuation of the project's purposes beyond the grant period.

B. Upon approval, the applicant shall become a vendor pursuant to state law.

C. Records treated in the proposed project shall be made available in New Mexico for public research to all qualified users on equal terms unless specific exemption is granted by the commission. Specific records in proposals submitted by tribal governments, for example, may be excluded from this criterion.

D. The applicant shall not charge fees for public access to the materials in its holdings. However, reasonable fees may be charged for copying material or providing special services or facilities not provided to all researchers.

E. A person qualified by credentials or training shall carry out the objectives of the proposed project.

F. Proposals for digitization projects shall be acceptable only if they take into consideration the issue of migration to newer technologies. Digitization projects shall follow scanning guidelines specified by the commission for creating master and access copies.

[1.13.5.9 NMAC - Rp, 1.13.5.9 NMAC, 8/1/2015; A, 11/28/2017]

1.13.5.10 TYPES OF PROJECTS FUNDED:

Following are examples of projects that could be funded.

A. Preservation projects that mitigate unstable or deteriorating conditions of historical records through the identification, organization and description, conservation treatment or reformatting of the records to another medium. National historical publications and records commission funding shall not be used for the following activities:

(1) to undertake an archival project centered on the papers of an appointed or elected public official who remains in major office, or is politically active, or the majority of whose papers have not yet been accessioned in a repository; and

(2) to undertake arrangement, description or preservation projects involving federal government records that are in the custody of the national archives and records administration, in the custody of some other federal agency or that have been deposited in a non-federal institution without an agreement authorized by the national archives and records administration.

B. Access projects that promote the availability of historical records by developing finding aids, indexing significant collections, creating electronic catalog records, distributing collection guides, providing online access to finding aids, digitizing historical records and placing copies in other repositories that have agreed to accept them.

C. Regional or statewide training programs that focus on developing best practices that can be used to train staff in more than one repository or in a repository experiencing high turnover.

D. Program development projects that establish or elevate standards of archival or records management practice in the applicant's repository.

[1.13.5.10 NMAC - Rp, 1.13.5.11 NMAC, 8/1/2015; A, 11/28/2017]

1.13.5.11 ALLOWABLE GRANT FUNDING EXPENSES:

A. Grant funds may be used to:

(1) supplement organizational staff or hire temporary staff, but cannot be used to supplant the organization's staffing budget;

(2) to purchase information technology items costing less than one thousand dollars (\$1,000) per unit;

(3) to purchase supply inventory costing less than one thousand dollars (\$1,000) per unit;

(4) to purchase office supplies costing less than one thousand dollars (\$1,000) per unit; and

(5) to pay for contractual services fees (consultants and vendors).

B. Matching funds may include:

(1) project staff's time, benefits and travel;

(2) project volunteer's time and travel; and

(3) all allowable grant funding expenses as identified in Subsection A of 1.13.5.11 NMAC.

C. Pursuant to the Governmental Conduct Act, current public officers and employees of the state and family members of the public officer or employee are not eligible to serve as paid consultants unless the consulting fee is under one thousand dollars (\$1,000.00). Former state officers and employees of the state are not eligible to serve as paid consultants for one year after their resignation or replacement unless the consulting fee is under one thousand dollars (\$1,000.00). The Governmental Conduct Act defines family as an individual's spouse, parents, children or siblings, by consanguinity or affinity.

[1.13.5.11 NMAC - Rp, 1.13.5.12 NMAC, 8/1/2015]

1.13.5.12 FUNDING:

Depending on available funds, the maximum award is limited to eight thousand five hundred dollars (\$8,500) per applicant. Applicants shall provide a minimum match valued at twenty-five percent (25%) of the total grant award in either cash or in-kind services or materials as identified in Subsection B of 1.13.5.11 NMAC. The match shall be rendered during the project period as specified in the grant award.

[1.13.5.12 NMAC - Rp, 1.13.5.13 NMAC, 8/1/2015]

1.13.5.13 APPLICATION FOR HISTORICAL RECORDS GRANTS:

A. An applicant shall submit one completed application with original signatures and supporting documents and the number of identical copies as specified on the application. An applicant may submit attachments to support its application.

B. The following information shall be included in the application:

(1) applicant information including legal name, data universal numbering system number, address, contact name, phone number and e-mail address (if available);

- (2)** signature by an individual legally authorized to obligate the applicant;
- (3)** project title and amount of both the grant request and the proposed match;
- (4)** applicant's status as defined in Subsection A of 1.13.5.8 NMAC;
- (5)** a summary statement of no more than 200 words in length that briefly summarizes the nature and purpose of the project proposed for funding;
- (6)** a project description narrative limited to four pages in length submitted on the form prescribed by the administrator; the narrative shall explain the significance of the material to be affected by the project, the scope of work to be performed and the outcome and impact that the completed project would produce;
- (7)** the budget and budget narrative for the project submitted on the form prescribed by the administrator;
- (8)** the project work plan for the project submitted on the form prescribed by the administrator; and
- (9)** required attachments including:
 - (a)** project work plan;
 - (b)** project budget;
 - (c)** statement demonstrating the applicant's legal custody of the affected records, or written permission from the organization that has legal custody;
 - (d)** collection policy or statement from the affected organization's governing body indicating its commitment to sound practices concerning the historical material included in the project;
 - (e)** a letter from the affected organization's governing body indicating support of the project and continuation of the project's purposes beyond the grant period;
 - (f)** resumes of key personnel;
 - (g)** job descriptions of staff to be hired;
 - (h)** contractor and vendor scopes of work and minimum qualifications; and
 - (i)** cost proposals or quotes from each contractor and vendor.
- (10)** a non-profit organization must also submit:

(a) a copy of its tax-exempt or 501(c)(3), or equivalent, status;

(b) a copy of certification of its good standing status with the New Mexico secretary of state; and

(c) evidence that it has made provisions for the transfer of its holdings to a like organization or an appropriate repository for public access upon dissolution.

C. Applications shall conform to the following formatting requirements on the project description narrative: size 12 point font in times new roman and minimum one inch margins.

D. Completed applications (original and copies) shall be received by the deadline set forth in the application.

E. Applications that do not comply with these criteria shall be rejected.

[1.13.5.13 NMAC - Rp, 1.13.5.14 NMAC, 8/1/2015]

1.13.5.14 REVIEW PROCESS:

Grant applications shall be subjected to a four-stage process.

A. First, all applications shall be screened for eligibility and compliance with 1.13.5 NMAC. Organizations that have submitted ineligible and non-compliant applications shall be notified by commission staff.

B. Second, eligible applications shall be reviewed for technical content by commission professional staff. At this level applicants may be advised of areas that need clarification.

C. Third, eligible proposals shall be evaluated by the New Mexico historical records advisory board and ranked according to published evaluation criteria published in 1.13.5.15 NMAC.

D. Fourth, recommendations for funding shall be submitted to the administrator for consideration and final approval.

[1.13.5.14 NMAC - Rp, 1.13.5.16 NMAC, 8/1/2015]

1.13.5.15 EVALUATION CRITERIA:

Grant applications shall be evaluated on the following criteria:

A. significance of the materials;

B. scope of work;

C. outcome and impact;

D. project budget;

E. entities that have never received a historical records grant;

F. entities that have not received a historical records grant for three or more fiscal years prior to the fiscal year in which the grant period will occur; and

G. conditions identified by the national historical publications and records commission for grant recipients as outlined in the commission's federal grant award.

[1.13.5.15 NMAC - N, 8/1/2015]

1.13.5.16 POST-AWARD REQUIREMENTS:

Successful grant applicants shall comply with the following post-award requirements:

A. Register as a vendor pursuant to state law.

B. Execute a grant agreement or grant contract with the commission.

C. Display the commission, New Mexico historical records advisory board and national historical publications and records commission logos and note financial support on all printed materials and websites promoting the grant project.

D. Where applicable, include an online publishing component to increase the public's online access to descriptive information and digital collections.

E. Submit interim reports by January 31 of the fiscal year for which the grant award is made or as required in the grant agreement or grant contract on the form prescribed by the administrator. Progress reported shall be substantially in line with the project work plan included in the grant agreement or grant contract. Any appreciable deviation from the work plan shall be justified in the progress report.

(1) If work has not been initiated as stipulated in the grant agreement or grant contract, the commission reserves the right to nullify the entire grant award.

(2) If progress reported lags substantially behind that described in the grant agreement or grant contract, the grant administrator shall review the project, consult with the grantee to determine whether timely completion of the project is feasible and make a recommendation to the administrator on continuation of the project. Based on the recommendation, the commission reserves the right to terminate the grant or require an amended scope of work and reduced award.

(3) Failure to submit the interim report by the established deadline may result in suspension of further reimbursements or payments until the report is submitted and accepted. If the report is not submitted within 30 days of the due date of the interim report, no further requests for reimbursements or payments shall be honored until the report is received.

F. Complete the scope of work and performance measures as identified in the grant agreement or grant contract no later than June 15 of the fiscal year for which the grant award is made.

G. Submit final reports and requests for reimbursement within 15 days of project completion or no later than June 30 of the fiscal year for which the grant award is made, whichever is earlier, on the form prescribed by the administrator.

H. Request funds for reimbursement based on deliverables completed. Reimbursement requests must include original receipts for items purchased and proof of payment for contractual fees.

I. Maintain grant records for at least two years after completion of the project.

J. Complete the project within the grant period specified in the grant award.

[1.13.5.16 NMAC - Rp, 1.13.5.17 NMAC, 8/1/2015]

PART 6: NEW MEXICO HISTORICAL RECORDS SCHOLARSHIP PROGRAM GUIDELINES [REPEALED]

[This part was repealed on March 15, 2016.]

PART 7: NEW MEXICO OFFICE OF THE STATE HISTORIAN SCHOLARS PROGRAM

1.13.7.1 ISSUING AGENCY:

State Commission of Public Records - State Records Center and Archives

[1.13.7.1 NMAC - N, 06/30/05]

1.13.7.2 SCOPE:

Scholars meeting the eligibility requirements set forth in 1.13.7 NMAC to pursue research at New Mexico archival repositories.

[1.13.7.2 NMAC - N, 06/30/05; A, 05/15/07]

1.13.7.3 STATUTORY AUTHORITY:

Section 14-3-6 NMSA 1978 provides that the state records administrator shall adopt regulations necessary for carrying out the Public Records Act, which governs the management of the public records, including those held in the state archives.

[1.13.7.3 NMAC - N, 06/30/05; A, 06/01/06]

[The program was first funded through a special appropriation in Laws 2005, Chapter 34, Section 4, Subsection E. Money to continue the program was included in the agency's subsequent fiscal year base budget.]

1.13.7.4 DURATION:

Permanent.

[1.13.7.4 NMAC - N, 06/30/05; A, 06/01/06]

1.13.7.5 EFFECTIVE DATE:

June 30, 2005, unless a later date is cited at the end of a section.

[1.13.7.5 NMAC - N, 06/30/05]

1.13.7.6 OBJECTIVE:

To promote an understanding and appreciation of New Mexico history by providing financial incentive to fellows conducting research on New Mexico history and cultures.

[1.13.7.6 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07]

1.13.7.7 DEFINITIONS:

A. Fellowship means a contract with the state records center and archives, under the terms of which the contractor (fellow) receives compensation for research and other deliverables as defined in the contract and pursuant to the provisions of 1.13.7 NMAC.

B. Research means, for purposes of 1.13.7 NMAC, research conducted using primary sources from New Mexico archival repositories containing material relative to the history and cultures of New Mexico.

C. Independent scholar means an individual, regardless of academic credentials, who is recognized as an authority in any field or discipline that advances an understanding and appreciation of New Mexico history. Independent scholars may include individuals such as community historians, tribal elders, etc.

D. Archival repository means an archival repository in New Mexico that contains material relative to the history and cultures of New Mexico.

[1.13.7.7 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07; A, 07/01/09]

1.13.7.8 ELIGIBILITY:

Applicants for fellowships shall meet the requirements described below.

A. An applicant shall:

(1) be enrolled in a graduate program in an accredited college or university and conducting research toward a graduate degree at that institution, subject to the provisions of Subsection B of 1.13.7.8 NMAC; or

(2) hold a graduate degree in a field or discipline from an accredited college or university, subject to the provisions of Subsection B of 1.13.7.8 NMAC; or

(3) be an independent scholar.

B. An applicant may be studying or working in any field or discipline, provided that the research proposed shall foster an understanding and appreciation of New Mexico history and that his or her academic or work experience shall qualify him or her to conduct the proposed research.

[1.13.7.8 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07]

1.13.7.9 FELLOWSHIPS - TERMS AND CONDITIONS:

A. Fellowships shall be awarded for a maximum of \$1,000 per month. The amount of a fellowship shall be determined by budget availability. The funding shall be used to support research relating to the advancement of an understanding and appreciation of New Mexico history and cultures.

B. The duration of a fellowship shall be one to two months, except as provided in Subsection C of 1.13.7.9 NMAC, and shall be determined by the nature of the proposed research project and budget availability.

C. A fellowship with duration of greater than two months may be awarded, if the proposed research is sufficiently extensive and the benefit to the state of New Mexico and to the advancement of an understanding and appreciation of New Mexico history is determined to be sufficiently significant. The sufficiency of the research and the significance of the benefit shall be determined by the fellowship awards committee.

D. Fellowships shall be awarded only for research projects based on research conducted using primary sources available in New Mexico archival repositories containing material relative to the history and cultures of New Mexico. A minimum of 80 hours per month of on-site research in these archival repositories shall be required.

E. Fellowships shall be awarded only for research projects that shall benefit the state of New Mexico and its citizens by advancing an understanding and appreciation of New Mexico history.

F. Each fellow shall be required to meet the post-award requirements set forth in 1.13.7.13 NMAC.

[1.13.7.9 NMAC - N, 06/30/05; A, 06/01/06; A, 05/15/07]

1.13.7.10 APPLICATION FOR FELLOWSHIP:

A. An applicant for a fellowship shall complete an application package that shall contain the following items.

(1) A signed cover letter that shall contain, at a minimum:

(a) a statement explaining the applicant's interest in the scholar's program;

(b) the eligibility criterion under which the application is being made (see 1.13.7.8 NMAC);

(c) the length of the fellowship requested and the preferred dates of the fellowship (within the time limits set forth in 1.13.7.14 NMAC); and

(d) the amount of the fellowship requested (see 1.13.7.9 NMAC).

(2) An abstract, not to exceed 300 words, which shall define the topic of the proposed research and summarize its purpose and objectives.

(3) A research proposal, no more than six pages in length, which shall describe what is to be accomplished during the fellowship period; the status of the applicant's research on the proposed research topic; the specific relevance of the proposed archival repository collections to the project; the significance of the research to the advancement of an understanding and an appreciation of New Mexico history; and the expected results or products of the research.

(4) An up-to-date curriculum vitae, which shall not exceed four pages and which shall also, in addition to academic and work experience, reflect the applicant's full name; residential and, if applicable, business addresses; and residential and, if applicable, business telephone numbers and e-mail addresses.

(5) Copies of certified transcripts or of diplomas, if the application is made pursuant to an eligibility criterion requiring award of academic degrees or enrollment in an academic program (see 1.13.7.8 NMAC).

(6) Two letters of support. If the applicant is a graduate student enrolled in a Ph.D. program, one of the letters shall be from the applicant's dissertation chair or advisor. If the applicant is enrolled in a master's degree program, one of the letters shall be from the student's graduate advisor. Original copies of the letters shall be included with the application or may be forwarded directly from the supporters. If the applicant chooses the latter option, he or she shall include a statement to that effect in the application package, and the applicant shall be responsible for ensuring that the letters of support are received by the deadline.

B. The cover letter, the abstract, the proposal and the curriculum vitae shall be produced using word processing software, shall be in 12-point type (preferably Times New Roman) and shall be double-spaced, with one-inch margins on all sides.

C. The application package shall be collated (clipped, not stapled) and five copies submitted by the deadlines provided in 1.13.7.14 NMAC.

D. Incomplete applications shall not be considered for funding; however, they shall not be returned.

[1.13.7.10 NMAC - N, 06/30/05; A, 05/15/07]

1.13.7.11 FUNDING AND COMPENSATION:

A. The New Mexico office of the state historian scholars program is contingent on sufficient appropriation and operating budget.

B. Although an applicant shall request, pursuant to 1.13.7.10 NMAC, a fellowship for a given amount, duration and time, the decisions concerning these issues shall be made by the fellowship awards committee and shall be based on funding availability, the nature of the proposed research and access to collections and the number of fellowships awarded. All research and all post-award requirements conducted under a fellowship shall be completed by the end date of the fellowship period and, in all cases, no later than June 30 of the fiscal year in which the fellowship is awarded.

C. A successful applicant shall enter into a contract issued by the state records center and archives, which shall describe the specific research topic, research requirements, specific deliverables, timetables and compensation provisions.

D. As set forth in 1.13.7.8 NMAC, compensation shall not exceed \$1000 per month. For a fellowship of one-month duration, payment shall be made at the conclusion of the fellowship, subject to the successful completion of all fellowship requirements. For a fellowship of duration of longer than one month, payment shall be made monthly, subject to the successful completion of identified deliverables. The deliverables shall be delineated in the acceptance agreement.

[1.13.7.11 NMAC - N, 06/30/05; A/E, 04/14/06; A, 06/01/06; A, 07/01/09]

1.13.7.12 REVIEW AND AWARD PROCESS:

A. The staff of the office of the state historian, a division of the state records center and archives, shall conduct an initial review of all applications to ensure that all required materials have been received and that the applicant meets the minimum qualifications. Applicants who do not meet minimum qualifications or whose applications are incomplete shall be notified in writing; however, application packages shall not be returned.

B. Qualifying applications shall be reviewed and rated and fellowships awarded, using an established rating system which shall take into consideration such factors as qualifications of the applicant, proposed use of identified archival collections, practicality of the proposal, value and use of proposed research in the advancement of the understanding and appreciation of New Mexico history, and budget availability.

C. Qualifying applications shall be reviewed and rated and awards made by a fellowship awards committee. Members of the committee shall be the state historian, two archivists, and two historians who shall be qualified by academic credentials or experience to evaluate the significance of the historical research proposed. The four members shall be appointed by the state historian, subject to the approval of the state records administrator. Members of the committee shall serve without compensation and shall declare any conflict of interest with respect to any applicant and shall not participate in the evaluation of any application where such a conflict may exist.

D. During the review process, the committee may request clarifying information from applicants, but the decisions of the committee shall be final.

[1.13.7.12 NMAC - N, 06/30/05; A, 05/15/07]

1.13.7.13 POST-AWARD REQUIREMENTS:

Successful fellowship applicants shall comply with the following post-award requirements.

A. Research work shall take place at New Mexico archival repositories containing material relative to the history and cultures of New Mexico.

B. Prior to the conclusion of the fellowship period, each fellow shall be required to give a public lecture based on the research accomplished during the fellowship period.

C. Each fellow shall be required to submit a report of research findings prior to the conclusion of the fellowship. Each fellow shall produce and submit a three-page or longer, historical essay that may be included in the New Mexico history web project. In addition, the fellow shall submit any completed research findings that result in reports, papers, chapters and manuscripts to the state records center and archives. All submitted material shall be included in the state archives unpublished manuscript

collection and shall be accessible to the public. Failure to comply with this requirement shall require immediate reimbursement to the state of the fellowship award. These requirements shall be further defined in the acceptance agreement.

[1.13.7.13 NMAC - N, 06/30/05; A, 06/01/06; 05/15/07; A, 07/01/09]

1.13.7.14 TIMETABLE - APPLICATIONS AND AWARDS:

A. Completed applications shall be received by the office of the state historian by the deadline set forth in the call for proposals.

B. The staff of the office of the state historian shall conduct an initial review to determine if applications are complete and applicants meet minimum qualification within ten working days of the receipt of applications.

C. The fellowship review committee shall conduct its review and evaluation process of qualifying applications and award fellowships within one month of deadline set forth in the call for proposals. Successful applicants shall be notified by e-mail or, if an applicant has no e-mail address, by registered mail, return receipt requested. An applicant shall satisfy the requirements of Subsections D and E of 1.13.7.14 NMAC prior to beginning research and within the timeframes specified or the award may be rescinded.

D. Successful applicants shall notify the office of the state historian, a division of the state records center and archives, of their acceptance or rejection of fellowships within five days of notification of award. Notification shall be made by e-mail, or if the applicant has no e-mail address, by registered U.S. mail, return receipt requested.

E. Acceptance agreements shall be completed and signed prior to the beginning of research or within one month of notification of acceptance, whichever is earlier.

F. All research and deliverables identified in the acceptance agreement shall be completed by the end of the fellowship period, but in all cases no later than June 30 of the fiscal year in which the fellowship is awarded.

[1.13.7.14 NMAC - N, 06/30/05; A/E, 04/14/06; A, 06/01/06; A, 05/15/07]

PART 8: NEW MEXICO OFFICE OF THE STATE HISTORIAN SERVICE LEARNING STUDENT INTERNSHIP PROGRAM [REPEALED]

[This part was repealed on March 15, 2016.]

PART 9: NEW MEXICO HISTORICAL RECORDS ADVISORY BOARD

1.13.9.1 ISSUING AGENCY:

State Commission of Public Records

[1.13.9.1 NMAC - N, 01/12/2015]

1.13.9.2 SCOPE:

New Mexico Historical Records Advisory Board

[1.13.9.2 NMAC - N, 01/12/2015]

1.13.9.3 STATUTORY AUTHORITY:

Section 14-3-14 NMSA 1978 authorizes the state commission of public records, upon recommendation of the state records administrator, to appoint advisory groups to more effectively obtain the best professional thinking regarding any particular group or type of records. 36 CFR Part 1206 requires each state to appoint a state historical records advisory board to be eligible to receive national historical publications and records commission grants.

[1.13.9.3 NMAC - N, 01/12/2015]

1.13.9.4 DURATION:

Permanent.

[1.13.9.4 NMAC - N, 01/12/2015]

1.13.9.5 EFFECTIVE DATE:

January 12, 2015, unless a later date is cited at the end of a section.

[1.13.9.5 NMAC - N, 01/12/2015]

1.13.9.6 OBJECTIVE:

To establish a process for the state commission of public records to appoint members to a state historical records advisory board.

[1.13.9.6 NMAC - N, 01/12/2015]

1.13.9.7 DEFINITIONS:

A. "Administrator" refer to Public Records Act, Section 14-3-2(A) NMSA 1978.

B. "Agency" refer to Public Records Act, Section 14-3-2(B) NMSA 1978.

C. "Archives" refer to 1.13.10.7 NMAC.

D. "Archives and historical services division" refer to 1.13.10.7 NMAC.

E. "Commission" refer to Public Records Act, Section 14-3-2(C) NMSA 1978.

F. "Coordinator" means the state coordinator for the New Mexico Historical Records Advisory Board.

G. "Public record" refer to Public Records Act, Section 14-3-2(G) NMSA 1978.

H. "Records center" refer to Public Records Act, Section 14-3-2(H) NMSA 1978.

I. "Records management division" refer to 1.13.10.7 NMAC.

[1.13.9.7 NMAC - N, 01/12/2015]

1.13.9.8 ABBREVIATIONS AND ACRONYMS:

A. "CFR" stands for code of federal regulations.

B. "NHPRC" stands for national historical publications & records commission.

C. "NMAC" stands for New Mexico administrative code.

D. "NMHRAB" stands for New Mexico historical records advisory board.

E. "NMSA" stands for New Mexico statutes annotated.

F. "USC" stands for United States code.

[1.13.9.8 NMAC - N, 01/12/2015]

1.13.9.9 NEW MEXICO HISTORICAL RECORDS ADVISORY BOARD RESPONSIBILITIES:

A. The NMHRAB is an advisory group appointed by the commission for the purpose of coordinating state and local historical records projects within the state.

B. The commission may receive NHPRC grants to support the work of the NMHRAB; to operate statewide historical records services; and to make sub-grants to eligible organizations within the state in support of historical records activities.

C. The NMHRAB shall develop, revise and submit to the NHPRC an annual state plan including priorities for state historical records projects.

D. The NMHRAB shall review and comment on applications for NHPRC records projects grants submitted from New Mexico, according to the manual of suggested practices issued by the NHPRC.

E. The NMHRAB should meet at least twice a year and at such other times as it deems necessary and as necessary funding permits.

F. A member failing to attend two consecutive regular and properly notices meeting of the NMHRAB without reasonable excuse may be removed from the board at the next commission meeting.

G. A majority of the NMHRAB currently serving constitutes a quorum.

H. With the exception of an immediate resignation or removal by the commission, NMHRAB members will continue to serve until a successor has been appointed by the commission.

I. The NMHRAB may recommend the adoption, amendment or repeal of rules related to the administration of the NMHRAB to the commission for rulemaking action.

J. Members of the NMHRAB shall serve without compensation other than actual expenses of attending meetings of the NMHRAB or while in performance of their official duties in connection with the business of the NMHRAB.

[1.13.9.9 NMAC - N, 01/12/2015]

1.13.9.10 NMHRAB COORDINATOR RESPONSIBILITIES:

A. The coordinator is responsible for the NHPRC state program.

B. The state records administrator shall serve as the coordinator.

C. The coordinator shall report the NMHRAB appointment process, membership and recommendations to the NHPRC at least on an annual basis.

D. The coordinator shall serve as the chair of the NMHRAB.

E. The coordinator shall appoint a deputy state coordinator to assist in carrying out the duties and responsibilities of the coordinator and to serve as an acting coordinator at the coordinator's direction or upon the coordinator's absence, resignation or inability to serve.

F. The coordinator will provide for the timely orientation and training of new members to the NMHRAB. Training should include orientation to all statutes, rules, policies and procedures of the NMHRAB.

G. The coordinator may recommend the adoption, amendment or repeal of rules relating to the administration of the NMHRAB to the commission for rulemaking action.

[1.13.9.10 NMAC - N, 01/12/2015]

1.13.9.11 NMHRAB APPOINTMENT AND COMPOSITION:

A. The NMHRAB shall consist of six members appointed by the commission and the coordinator.

B. Members appointed by the commission will serve three-year terms; provided that at the time of initial appointment, the commission may appoint members to abbreviated terms to allow staggering of subsequent appointments. Vacancies will be filled in the manner of the original appointment.

C. A majority of the NMHRAB members should have recognizable experience in the administration of records, manuscripts or archives.

D. The NMHRAB should be as broadly representative as possible of the public and private archives, records offices, and research institutions and organizations of New Mexico.

E. The coordinator will solicit recommendations for membership from the current NMHRAB and submit NMHRAB approved recommendations to the commission.

F. The commission's decision with reference to appointments will be entered on its minutes and the coordinator will then notify the appointed member(s) regarding the date of appointment and term of appointment.

[1.13.9.11 NMAC - N, 01/12/2015]

PART 10: RECORDS STORAGE AND ACCESS

1.13.10.1 ISSUING AGENCY:

State Records Administrator.

[1.13.10.1 NMAC - Rp, 1.13.10.1 NMAC, 11/30/2015]

1.13.10.2 SCOPE:

All state agencies and any public entity that use the state records center services.

[1.13.10.2 NMAC - Rp, 1.13.10.2 NMAC, 11/30/2015; A, 7/11/2017]

1.13.10.3 STATUTORY AUTHORITY:

Public Records Act, Section 14-3-6 NMSA 1978.

[1.13.10.3 NMAC - Rp, 1.13.10.3 NMAC, 11/30/2015]

1.13.10.4 DURATION:

Permanent.

[1.13.10.4 NMAC - Rp, 1.13.10.4 NMAC, 11/30/2015]

1.13.10.5 EFFECTIVE DATE:

November 30, 2015, unless a later date is cited at the end of a section.

[1.13.10.5 NMAC - Rp, 1.13.10.5 NMAC, 11/30/2015]

1.13.10.6 OBJECTIVE:

To establish requirements for the custody, access, storage and disposition of records stored at the state records center by agencies that utilize the records center services.

[1.13.10.6 NMAC - Rp, 1.13.10.6 NMAC, 11/30/2015]

1.13.10.7 DEFINITIONS:

A. "Chief records officer" means a person designated by an agency's records custodian to administrate the agency's records management program, refer to 1.13.12.9 NMAC.

B. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

C. "Custody" means the guardianship of records, archives and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

D. "Destruction" means the disposal of records of no further operational, legal, fiscal, or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

E. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

F. "Functional records retention and disposition schedule" means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the

function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

G. "Inactive record" means a record no longer needed to conduct current business but required to be maintained for operational, legal, fiscal or historical purposes until it meets its retention.

H. "Master microfilm" means the original microform produced from which duplicates or intermediates can be obtained.

I. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records provided by information system technology pursuant to rules adopted by the commission.

J. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

K. "Pending litigation" means threatened, pending or active proceedings in a court of law whose activity is in progress but not yet completed.

L. "Pick-up only personnel" means personnel authorized by a records custodian, chief records officer or record liaison officer to only pick-up records from the records center.

M. "Records liaison officer" means a person designated by the records custodian to interact with the state commission of public records, refer to 1.13.12.10 NMAC.

N. "Retention" means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

O. "Trigger event" means the event which begins the retention period.

[1.13.10.7 NMAC - Rp, 1.13.10.7 NMAC, 11/30/2015; A, 7/11/2017; A, 9/11/2018]

1.13.10.8 CUSTODY OF RECORDS:

In accordance with the functional records retention and disposition schedule, agency records stored at the records center shall remain in the custody of the records custodian of the custodial agency until:

A. they are destroyed or transferred to archives with written approval from the administrator; and

B. the written consent of the records custodian or designated chief records officer of the custodial agency.

[1.13.10.8 NMAC - Rp, 1.13.10.8 NMAC, 11/30/2015; A, 7/11/2017]

1.13.10.9 BOX REQUIREMENTS:

A. Agencies utilizing the records center shall use storage boxes 15" x 12" x 10" in size. Records with a retention of permanent must be submitted in acid-free boxes. Agencies submitting boxes for storage containing paper records shall:

(1) place only one type of record classification with disposition dates within a three year range in each box;

(2) place the records in the box vertically, in the same order in which the records were maintained and shall coincide with the records index;

(3) place letter-sized folders across the 12-inch side, facing the front of the box;

(4) place legal-sized folders across the 15-inch side, starting from left to right;

(5) leave at least one-inch of space for ease of access;

(6) place the lid on the box;

(7) place all documents (with the exception of oversize materials) in accurately labeled standard file folders; and

(8) do not place hanging file folders in the boxes.

B. The records management division has the final authority with regard to the rejection of any box shipment or portion thereof. Reasons for rejection include, but are not limited to, the following:

(1) Any box shipment that does not agree with its corresponding storage or disposition forms shall be rejected upon delivery. The custodial agency shall be required to remove the boxes from the records center immediately.

(2) Any shipment submitted for storage that is damaged or overfilled shall be rejected upon delivery. The custodial agency shall be required to remove the shipment from the records center immediately.

(3) Any box shipment submitted for storage or disposition that is deemed hazardous by the administrator shall be rejected upon delivery. The custodial agency shall be required to remove the shipment from the records center immediately. For any box rejected for contamination, the custodial agency will be required to request permission from the administrator for onsite destruction.

(4) Any box submitted for storage that is less than three quarters full (12 inches) shall be returned to the agency, including any boxes withdrawn for viewing.

(5) Any box shipment containing glossy exterior boxes.

C. Blueprints and maps submitted for storage shall be placed in boxes designed for that purpose.

[1.13.10.9 NMAC - Rp, 1.13.10.10 NMAC, 11/30/2015; A, 11/28/2017]

1.13.10.10 RECORDS CENTER ACCESS AND WITHDRAWAL OF RECORDS REQUIREMENTS:

A. Access to records stored in the records center shall be authorized in writing by the records custodian, chief records officer or records liaison officer.

B. Public access to records stored at the records center is prohibited. All requests for inspection of records shall be directed to the records custodian of the custodial agency.

C. Requests for withdrawal of records stored in the records center shall be made by the records custodian, chief records officer or records liaison officer. Withdrawal of records shall be requested on a form approved by the administrator.

D. Requests for withdrawals shall be at the box level. The records center will not honor requests for withdrawal of records at the folder level.

E. Requests to withdraw between one to 10 boxes shall be processed by the records management division within three business days. Requests to withdraw 10 or more boxes shall be evaluated and processed based on the work load of the records management division.

F. Emergency withdrawal requests will be processed within one business day of receipt. Emergency requests shall be made on a form approved by the administrator and accompanied by a letter of explanation from the records custodian or chief records officer.

G. Withdrawn boxes not retrieved within five business days of request will be returned to inventory in the records center.

[1.13.10.10 NMAC - Rp, 1.13.10.11 NMAC, 11/30/2015]

1.13.10.11 STORAGE OF RECORDS WITH A FINITE RETENTION AT THE RECORDS CENTER:

A. The records management division provides storage to agencies for inactive public records. Non-record materials shall not be submitted for storage in the records center.

B. Records involved in pending litigation, an audit or investigation are not eligible for transfer to the records center.

C. Agencies shall submit storage transmittal form(s) electronically using a form approved by the administrator.

D. Each storage transmittal form shall contain records of one media type and designate one storage location.

E. Records will not be accepted for storage whose retention will be met within 36 months.

F. Barcode labels provided by the records center staff shall be affixed to the records storage boxes prior to delivery. The labels shall be placed two to three-inches below the handle side of the storage box.

G. The records custodian, the chief records officer and the records liaison officer shall be notified by the records management division when records in storage have met the legal retention period and are eligible for destruction.

H. If an agency does not respond to the authorization to destroy records by the established deadline, the administrator shall charge the custodial agency a storage fee for the storage of records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

I. A storage fee shall be charged for records that are eligible for destruction but are not destroyed at the request of the custodial agency. For information on the fee schedule, refer to 1.13.2 NMAC.

J. Destruction, returns and storage services will be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.10.11 NMAC - Rp, 1.13.10.13 NMAC, 11/30/2015; A, 7/11/2017; A, 6/12/2018]

1.13.10.12 STORAGE OF PERMANENT PAPER RECORDS:

A. Records with a retention of permanent shall include a records index on a form approved by the administrator.

B. A copy of the records index form shall be placed in the storage box. An electronic copy of the records index form shall be submitted with the corresponding storage transmittal form.

C. Records with a retention of permanent are not eligible for storage in the Albuquerque records center. Such requests shall be submitted for storage in the Santa Fe records center.

D. The barcode labels shall be affixed to the records storage boxes prior to delivery to the records center. Barcode labels provided by the records center staff shall be affixed to the records storage boxes prior to delivery. The labels shall be placed two to three-inches below the handle side of the storage box.

[1.13.10.12 NMAC - Rp, 1.13.10.14 NMAC, 11/30/2015]

1.13.10.13 [RESERVED]

[1.13.10.13 NMAC - Rp, 1.13.10.15 NMAC, 11/30/2015; Repealed, 7/11/2017]

1.13.10.14 STORAGE OF MICROFILM:

A. For storage requirements, refer to 1.13.10.11 and 1.13.10.12 NMAC.

B. All state agencies and any public entity shall have an approved microphotography plan on file with the records management division before master microfilm can be stored. For microfilm plan requirements, refer to 1.14.2 NMAC. For information on the fee schedule, refer to 1.13.2 NMAC.

C. Microfilm shall pass inspection before it is approved for storage.

[1.13.10.14 NMAC - Rp, .1.13.10.16 NMAC, 11/30/2015; A, 6/28/2017; A, 11/28/2017]

PART 11: ACCESS TO PUBLIC RECORDS, RESEARCH IN THE NEW MEXICO ARCHIVES

1.13.11.1 ISSUING AGENCY:

Commission of Public Records - New Mexico State Records Center and Archives

[07/01/96; 1.13.11.1 NMAC - Rn, 1 NMAC 3.2.10.2.1 & A, 07/15/03]

1.13.11.2 SCOPE:

Researchers using the New Mexico archives and research rooms.

[07/01/96; 1.13.11.2 NMAC - Rn, 1 NMAC 3.2.10.2.2, 07/15/03]

1.13.11.3 STATUTORY AUTHORITY:

Section 14-3-8 NMSA 1978. Records center. Requires the establishment of a records center in Santa Fe under the supervision and control of the administrator. This facility receives the inactive and infrequently used records of present and former state agencies/governments. Records in the custody of the administrator and retained by the center shall be open to the inspection of the general public, subject to reasonable rules and regulations prescribed by the administrator. Facilities for the use of these records in research by the public shall be provided in the center.

[07/01/96; 1.13.11.3 NMAC - Rn, 1 NMAC 3.2.10.2.3 & A, 07/15/03]

1.13.11.4 DURATION:

Permanent.

[07/01/96; 1.13.11.4 NMAC - Rn, 1 NMAC 3.2.10.2.4, 07/15/03]

1.13.11.5 EFFECTIVE DATE:

July 1, 1996 unless a later date is cited at the end of a section.

[07/01/96; 1.13.11.5 NMAC - Rn, 1 NMAC 3.2.10.2.5 & A, 07/15/03]

1.13.11.6 OBJECTIVE:

To establish guidelines for public use of records, donated documents, and research rooms of the New Mexico state record center and archives; to guarantee the security and preservation of documents and records; and to provide public access to the archives of New Mexico.

[07/01/96; 1.13.11.6 NMAC - Rn, 1 NMAC 3.2.10.2.6, 07/15/03]

1.13.11.7 DEFINITIONS:

A. "**Archives**" means the permanent records of the state of New Mexico, which may include the government and private records of the Spanish, Mexican, territorial and statehood periods. It also refers to the state archives of the commission of public records.

B. **"Archivist"** means a professionally trained staff member of the archives and historical services division of the NMSRCA responsible for the appraisal, arrangement, description, preservation and use of archival material.

C. **"Documents"** means any recorded information regardless of media, including books, correspondence, reports, maps, manuscripts, may include paper, microforms, photographs, sound recordings, motion pictures, drawings and electronic files.

D. **"Public records"** means all books, papers, maps, photographs or other documentary materials, regardless of physical form or characteristics, made or received by any agency in pursuance of law or in connection with the transaction of public business and preserved, or appropriate for preservation, by the agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or because of the informational and historical value of data contained therein. (Section 14-3-2 NMSA 1978). For the purpose of this rule, public records do not include the current records of state government.

E. **"Records"** means information preserved by any technique in any medium now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology (1.13.70 NMAC).

F. **"Records center"** means the New Mexico state records center and archives. It is the principal central records repository for the non-current records of agencies, former governments of the state, and materials obtained from other sources.

G. **"Researcher"** means a person who requests access to original documents or copies of original documents in the archives.

[07/01/96; 1.13.11.7 NMAC - Rn, 1 NMAC 3.2.10.2.7, 07/15/03; A, 06/01/06]

1.13.11.8 GUIDELINES FOR USE OF ARCHIVES RESEARCH ROOM:

A. Research room hours are 12:00 pm to 4:30 pm, Monday through Friday, except holidays or other times specified by NMSRCA.

(1) Reference assistance is available from 12:00 pm to 4:30 pm.

(2) Historical films and videos can be viewed by appointment only.

(3) Requests to view 10 or more photographs require an appointment.

(4) Material shall not be pulled from the vault between 12:00 pm and 1:00 pm or after 4:15 pm.

B. All researchers and visitors shall sign the daily log as they enter the research rooms.

C. Researchers shall complete a user registration form (SRC 96-20).

(1) Researchers shall be asked to update registration forms periodically.

(2) To register, researchers shall provide photographic identification. Acceptable forms of identification include a driver's license, a school or business identification card, or a passport.

D. The NMSRCA prohibits researchers from carrying boxes, briefcases, satchels, valises, backpacks, purses, folders, coats, newspapers, or other large containers into the research rooms.

(1) Researchers will be provided lockers for their belongings on a first-come, first-serve basis. Lockers are available for a quarter.

(2) Researchers' personal belongings must be removed from the lockers each night.

E. Except as provided in Paragraphs (1) through (4) of Subsection E of 1.13.11.8 NMAC, only paper and pencils may be taken into the research rooms.

(1) Researchers may use a personal computer provided their use does not disturb others. The speakers shall be disabled or lowered to an inaudible level.

(2) Cell phones brought into the research rooms are subject to the following procedures.

(a) Cell phones must be placed on vibrate mode.

(b) Calls must be made or answered outside of the research rooms.

(3) Researchers may use still digital or film cameras in the research rooms provided their use does not disturb others and subject to the following procedures.

(a) Researchers shall request approval from the archivist on duty before the equipment is allowed into the research rooms.

(b) Equipment is subject to inspection by staff prior to admittance.

(c) Flash photography is not allowed in any research room. Violators will be asked to put their cameras away.

(d) Researchers shall place a "New Mexico state records center and archives" template on each page photographed. Staff will supply the template. Template shall be returned to staff once work is completed.

(e) Researchers shall follow the copyright law of the United States (Title 17, United States Code) which governs the making of photocopies or other reproductions of copyrighted material. If publishing materials, researchers shall comply with 1.13.11.10 NMAC.

(4) Notes, references, list of documents to be consulted, such as one spiral notebook may be admitted if they are essential to a researchers work but are subject to inspection upon entering or leaving the research rooms.

(5) Researchers may use approved optical scanners in the research rooms provided their use does not disturb others and subject to the following procedures.

(a) Researchers shall request approval from the archivist on duty before the equipment is allowed into the research room.

(b) Equipment is subject to inspection by staff prior to admittance.

(c) Prior to scanning, researchers shall present the material to be scanned to the archivist on duty for approval. The archivist shall refuse a request if he or she determines that scanning would damage the materials.

(d) If approved for scanning, researchers shall follow scanning guidelines. Guidelines will be provided by the archivist on duty.

(e) Researchers shall follow the copyright law of the United States (Title 17, United States Code) which governs the making of photocopies or other reproductions of copyrighted material. If publishing materials, researchers shall comply with 1.13.11.10 NMAC.

F. No eating, drinking, or smoking is permitted in the research rooms.

G. Loud talking or other activities likely to disturb other researchers is prohibited.

H. Children under the age of 16 years shall not be admitted in the research rooms unless they are accompanied by an adult. The archivist on duty may waive this requirement with respect to individual researchers.

I. Researchers refusing to comply with NMSRCA research room guidelines or whose actions present a danger to the documents or annoyance to other researchers shall be denied access to archival collections and shall be asked to leave by the director of archives and historical services.

[07/01/96; 1.13.11.8 NMAC - Rn, 1 NMAC 3.2.10.2.8 & A, 07/15/03; A, 06/01/06; A, 06/30/09; A, 01/14/11, A, 07/31/12]

1.13.11.9 GUIDELINES FOR USE OF DOCUMENTS:

A. Researchers shall complete a records request form (SRC Form 11A) when requesting documents.

(1) The name of the collection, series, box, and folder number shall be noted.

(2) The researcher shall hand the completed request form to an archivist or the person at the reference desk.

B. Researchers shall use documents only in research rooms. Documents shall not be removed from the research room.

C. Original records shall not normally be made available when microfilm or digital copies are available.

D. Archivists may limit the quantity of materials delivered to a researcher at one time.

(1) Only one folder, box, or container of documents may be made available to a researcher at one time.

(2) The researcher may exchange one container (box) for another by informing an archivist or the person at the reference desk.

E. The researcher is responsible for all records delivered to him until he returns them.

(1) Before leaving the research room, even for a short time, the researcher shall notify the person at the reference desk and place all documents in their proper container.

(2) When the researcher is finished using the records, they shall be returned to the reference desk.

(3) Researchers shall return all materials to the archivist on duty by 4:30 pm. No exceptions shall be made.

F. Researchers shall keep unbound records in the order in which they are delivered to him.

(1) Documents that appear to be in disorder shall not be rearranged by the researcher, but shall be referred to an archivist.

(2) Researchers shall not remove documents from more than one folder at a time.

G. Researchers shall not write on, lean on, fold, trace, erase, staple, or handle documents in any way likely to damage them.

H. The use of protective gloves shall be required with the use of documents.

I. Use of microfilm readers at the NMSRCA is on a first-come, first-serve basis. When other researchers are waiting to use a microfilm reader, a 3-hour limit may be placed on using a reader. During periods of heavy use, researchers may sign a waiting list for the use of a microfilm reader.

J. Microfilm is available on a self-service basis.

(1) Archivists may assist researchers in identifying rolls of film.

(2) After using each roll, the researcher shall rewind the film and place the roll in the re-file basket.

(3) Researchers shall bring to the attention of an archivist microfilm placed in the wrong box or file cabinet.

(4) Researchers shall bring to the attention of an archivist microfilm that is backwards on the reel.

K. Reference books may be taken off the shelf by researchers.

(1) Books shall not be re-shelved by researchers.

(2) Books shall only be used in the research room.

L. Fragile, oversized, and certain rare books shall not be photocopied.

[07/01/96; 1.13.11.9 NMAC - Rn, 1 NMAC 3.2.10.2.9 & A, 07/15/03; A, 06/01/06; A, 06/30/09]

1.13.11.10 DUPLICATION, CITATION, PUBLICATION, AND COPYRIGHT:

A. Documents may be photocopied or duplicated for a fee. (1.13.2 NMAC)

B. Certain documents may not be copied due to physical condition, possible damage, or legal restrictions.

(1) Archivists shall determine the suitability of documents to be photocopied.

(2) Original documents which are available on microfilm or some form of digital media shall not be photocopied when a legible copy can be made from the microfilm or digital media.

(3) Researchers shall not remove documents from folders when requesting photocopies.

(4) Researchers shall not tag documents to be copied with adhesive note pads. Researchers shall ask an archivist or the person at the reference desk for assistance.

C. Permission to examine materials is not an authorization to publish them.

(1) Permission to reproduce for publication unpublished documents shall be obtained from the holder of the copyright.

(2) Permission to reproduce and publish previously published works in its entirety shall be obtained from the holder of the copyright.

(3) The researcher making and using copied material is responsible for obtaining any needed permission or release of copyright from the owner or author.

D. Requests to use reproductions of film and photographs in publications shall be made in writing.

(1) Each researcher must complete and sign SRC Form 96-18, conditions for publication and reproduction.

(2) A letter of intent that details how the reproduction will be used shall be submitted to the administrator.

(3) Approval to use the requested materials will be made in writing.

E. Documents shall be properly cited and credited in publications, exhibits, or other use. Citations should follow this format: identification of item, name of collection, photo or film number (if applicable), New Mexico state records center and archives.

[11/3/69...07/01/96; 1.13.11.10 NMAC - Rn, 1 NMAC 3.2.10.2.10, 07/15/03; A, 06/01/06]

1.13.11.11 ACCESS:

A. Under the Inspection of Public Records Act, Section 14-2-1 NMSA 1978, access to certain records is restricted. For certain law enforcement records, see 1.13.11.17 NMAC for inspection or duplication.

B. The use of donated materials shall be subject to restrictions placed by the donor.

C. Access to materials which are not arranged or are being processed may also be restricted.

D. Access to fragile or very valuable materials may also be restricted.

E. Access to permanent agency records in the custody of the NMSRCA, but not yet accessioned into the archives shall be requested by the state records administrator.

[07/01/96; 1.13.11.11 NMAC - Rn, 1 NMAC 3.2.10.2.11, 7/15/2003; A, 6/1/2006; A, 9/24/2019]

1.13.11.12 LOAN OF DOCUMENTS:

A. All loans shall be authorized by the administrator.

B. Requests shall be made in writing at least 60 days before the documents leave the NMSRCA.

C. Borrower shall complete, sign and agree to all security measures, insurance requirements, packing, transporting, display, storage and handling provisions listed in the outgoing loan agreement, Form SRC 96-24.

D. Loans shall be made for a period not to exceed one year.

E. The NMSRCA shall approve any arrangements to include loaned records in related publications.

F. The NMSRCA reserves the right to require other safeguards than those listed on the outgoing loan agreement form and to withdraw records from exhibit at any time.

[07/01/96; 1.13.11.12 NMAC - Rn, 1 NMAC 3.2.10.2.12, 07/15/03; A, 06/01/06]

1.13.11.13 REQUIREMENTS FOR RECORDS REQUEST FORM, SRC FORM 11A:

A. This form delineates information required to retrieve public records from the archives vault by archivist, for viewing by requestor in the main archives research room.

B. The form shall require of the requester:

- (1) printed name and signature of the requester;
- (2) intended use of materials by the requester; and
- (3) collection information, which may include the following:
 - (a) collection title;
 - (b) accession number

(c) box and folder number; and

(d) description of item.

C. The form shall require of the archivist:

- (1) serial number of container and vault location for each item;
- (2) total number of items retrieved;
- (3) signature of archivist retrieving items and date and time; and
- (4) signature of archivist re-shelving items and date and time.

[07/01/96, 1.13.11.13 NMAC - Rn, 1 NMAC 3.2.10.2, SRCA Form 11A & A, 07/15/03]

1.13.11.14 REQUIREMENTS FOR CONDITIONS FOR PUBLICATION/REPRODUCTION, SRC FORM 96-18:

A. This form delineates conditions for publication and reproduction of images held by the SRCA as public records and shall be completed and submitted to the SRCA as provided in 1.13.2 NMAC and as evidence of agreement by the requestor to the terms and conditions prescribed therein and in 1.13.2 NMAC. Information contained on the form shall include, but not be limited to, the following:

- (1) provision for reservation of rights by the SRCA;
- (2) formats for required credit line;
- (3) requirements relating to the method of payment; and
- (4) description of respective rights and responsibilities of the SRCA and the requestor, including copyright restrictions, relating to reproduction and publication.

B. The form shall require of the requestor:

- (1) the description of the image to be published and the required credit line;
- (2) the printed name and signature of the requestor;
- (3) the address of the requestor; and
- (4) the date of the request.

C. The director of the archives and historical services division of the SRCA and the state records administrator shall approve the requested use by their signatures on the form.

[07/01/96, 1.13.11.14 NMAC - Rn, 1 NMAC 3.2.10.2, SRCA Form 96-18 & A, 07/15/03]

1.13.11.15 REQUIREMENTS FOR USER REGISTRATION FORM, SRC FORM 96-20:

A. This form delineates the information required of the researcher to become a registered patron of the archives research rooms. All researchers shall complete this onetime registration form before entry into the archives research rooms.

B. The form shall require from the researcher, but not be limited to, the following:

- (1) name and signature of researcher;
- (2) signature of parent or guardian of researcher, as provided for in Subsection H of 1.13.11.8 NMAC.
- (3) physical and email addresses of researcher;
- (4) telephone number of researcher;
- (5) user description of researcher;
- (6) researcher's willingness to share research information with other researchers; and
- (7) date.

C. Researcher's signature signifies that they have read the rules and procedures for using the public records held by the archives and historical services division of SRCA, and that they have agreed to abide by them.

[07/01/96, 1.13.11.15 NMAC - Rn, 1 NMAC 3.2.10.2, SRCA Form 96-20 & A, 07/15/03]

1.13.11.16 REQUIREMENTS FOR OUTGOING LOAN AGREEMENT, SRC FORM 96-24:

A. This form delineates the conditions for an organization to borrow public records held by the archives and historical services division of the SRCA. Information contained on the form shall include, but not limited to, the following:

- (1) protection of the borrowed items;

- (2) insurance coverage of the borrowed items;
- (3) packing and shipping of borrowed items and their cost;
- (4) appropriate credit line for borrowed items;
- (5) return of borrowed items; and
- (6) extensions and cancellations of loan agreement.

B. This form shall require of the requesting organization:

- and
- (1) signature and title of authorized representative of requesting organization;
 - (2) date.

C. This form shall require of the director of the archives and historical services division:

- (1) title, address, and telephone number of requesting organization;
- (2) description of items to be borrowed;
- (3) time period of loan;
- (4) name of insurance carrier;
- (5) amount of insurance value;
- (6) name of person who packed borrowed items;
- (7) address borrowed items shipped to;
- (8) date borrowed items were returned;
- (9) credit line for borrowed items; and
- (10) special requirements for installation and handling of borrowed items.

D. Signatures of authorized representatives from the SRCA and the borrowing organization signify an agreement between the two entities to the conditions set forth in this form.

1.13.11.17 REQUIREMENTS FOR LAW ENFORCEMENT RECORDS:

A. The inspection and reproduction of public records shall be made in accordance with the Inspection of Public Records Act and the terms and conditions prescribed within this rule and 1.13.2 NMAC.

B. The requestor shall provide the following information:

- (1) the printed name of the requestor;
- (2) the requestor's address; and
- (3) the date of the request.

C. If SRCA staff determines that there may be protected personal identifier information or other information made confidential by law in any records responsive to a request for archival records, staff may request that the originating agency or court of originating jurisdiction ("originating agency") conduct a review of records prior to release.

D. For any records request made, an originating agency shall review any records sent to it by SRCA and provide a response in conformance within the time limits provided by IPRA.

E. If photocopy/duplication request is made by requestor, costs shall be paid prior to release of documents.

[N, 9/24/2019]

PART 12: DESIGNATION OF RECORDS MANAGEMENT PERSONNEL

1.13.12.1 ISSUING AGENCY:

State Commission of Public Records.

[1.13.12.1 NMAC - Rp, 1.13.12.1, 11/28/2017]

1.13.12.2 SCOPE:

All agencies that utilize the records center services and state archives.

[1.13.12.2 NMAC - Rp, 1.13.12.2, 11/28/2017]

1.13.12.3 STATUTORY AUTHORITY:

Public Records Act, Section 14-3-4 NMSA 1978.

[1.13.12.3 NMAC - Rp, 1.13.12.3, 11/28/2017]

1.13.12.4 DURATION:

Permanent.

[1.13.12.4 NMAC - Rp, 1.13.12.4, 11/28/2017]

1.13.12.5 EFFECTIVE DATE:

November 28, 2017, unless a later date is cited at the end of a section.

[1.13.12.5 NMAC - Rp, 1.13.12.5, 11/28/2017]

1.13.12.6 OBJECTIVE:

To establish requirements for the designation of personnel to interact with the commission of public records and the state records administrator for the access, storage and disposition of records stored at the state records center and archives.

[1.13.12.6 NMAC - Rp, 1.13.12.6, 11/28/2017]

1.13.12.7 DEFINITIONS:

A. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

B. "Destruction" means the disposal of records of no further operational, legal, fiscal, or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Pending litigation" means threatened, pending or active proceedings in a court of law whose activity is in progress but not yet completed.

E. "Records custodian" means the statutory head of the agency using or maintaining the records or the custodian's designee as defined in Section 14-3-2 NMSA, 1978.

F. "State archives" means the principle location within the state records center and archives that maintains, preserves and makes available to the public the permanent and historical records of the state of New Mexico.

[1.13.12.7 NMAC - Rp, 1.13.12.7, 11/28/2017]

1.13.12.8 RECORDS MANAGEMENT PROGRAM PERSONNEL HEIRARCHY:

A. The statutory records custodian for each agency may designate one individual to act as a designated records custodian on his or her behalf. The designee shall be appointed each fiscal year using a form approved by the administrator. For designated records custodian responsibilities please see 1.13.12.9 NMAC.

B. The records custodian for each agency may designate one chief records officer to oversee the agency's records management program. The chief records officer shall be appointed each fiscal year using a form approved by the administrator. For chief records officer responsibilities, refer to 1.13.12.10 NMAC.

C. The records custodian for each agency may designate one or more records liaison officer(s) responsible for authorizing the storage and destruction of agency records. The records liaison officer shall be appointed each fiscal year using a form approved by the administrator. For record liaison officer responsibilities, refer to 1.13.12.11 NMAC.

D. A records custodian, chief records officer or records liaison officer may designate personnel to pick-up agency records from the records center. Pick-up personnel shall be appointed each fiscal year using a form approved by the administrator. For pick-up personnel responsibilities, refer to 1.13.12.12 NMAC.

E. If a records custodian does not designate a chief records officer or record liaison officer, the records custodian shall remain responsible for all of the duties of the personnel listed above.

F. The records custodian shall notify the state commission of public records concerning any status changes regarding designated records management personnel.

[1.13.12.8 NMAC - Rp, 1.13.12.8, 11/28/2017]

1.13.12.9 DESIGNATED RECORDS CUSTODIAN:

If a statutory records custodian elects to designate an individual to serve on his or her behalf as a designated records custodian, the following requirements and responsibilities are assigned.

A. The designated records custodian shall be the individual responsible for satisfying all statutory requirements of the records custodian as delineated in the Public Records Act (14-3-1 NMSA, 1978).

B. All designated records custodians shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

C. Designated records custodians are required to attend the basic records management training once every three fiscal years.

[1.13.12.9 NMAC - N, 11/28/2017; A, 06/12/2018]

1.13.12.10 CHIEF RECORDS OFFICER:

If a chief records officer is designated by the records custodian, the following responsibilities are assigned.

A. The chief records officer shall be the individual with the authority to oversee the agency's records management program.

B. The chief records officer shall perform the following duties:

(1) coordinate the response to the disposition authorization (destruction and transfer to state archives);

(2) establish and maintain a centralized tracking system for the agency's storage containers (including the containers' indices, metadata and locators) and the disposition of records;

(3) disseminate information on any pending litigation, a discovery order, subpoena, government investigation or audit;

(4) ensure staff is adequately trained on proper records management practices; and

(5) develop policies and procedures pertaining to records management issues (i.e., handling confidential materials, new hire orientation, e-mail management, disposition of records when an employee leaves the agency, metadata development, etc.).

C. The chief records officer shall have the same authorities and responsibilities as a record liaison officer. The chief records officer shall have the authority to submit records for direct transfer to archives.

D. All chief records officers shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

E. Chief records officers are required to attend the basic records management training once every three fiscal years.

[1.13.12.10 NMAC - Rp, 1.13.12.9, 11/28/2017; A, 06/12/2018]

1.13.12.11 RECORDS LIAISON OFFICER:

If a record liaison officer is designated by the records custodian, the following responsibilities are assigned.

A. Records liaison officers shall be authorized to interact with the state commission of public records and the state records administrator for the purposes of storage, withdrawal, access or disposition of records.

B. All records liaison officers shall attend the required basic records management training offered by the state commission of public records before they can store, withdraw, access or request the disposition of records.

C. Records liaison officers are required to attend the basic records management training once every three fiscal years.

[1.13.12.11 NMAC - Rp, 1.13.12.10, 11/28/2017; A, 06/12/2018]

1.13.12.12 PICK-UP ONLY PERSONNEL:

Pick-up personnel are authorized to pick-up agency records from the records center.

[1.13.12.12 NMAC - Rp, 1.13.12.11, 11/28/2017]

1.13.12.13 DIGITAL SIGNATURE ISSUANCE AND USAGE:

A. A records custodian, chief records officer or records liaison officer may request a digital signature. This signature may be used exclusively for the purpose of submitting approved designation and destruction forms to the state commission of public records.

B. To request a digital signature, records management personnel shall submit a digital signature request each fiscal year using a form approved by the administrator. The original signed form must be:

(1) submitted in person to the agency analysis bureau by the records custodian, chief records officer or records liaison officer and accompanied by a government issued form of photo identification; or

(2) submitted to the agency analysis bureau by mail and include the notarized signature of the records custodian, chief records officer or records liaison officer.

C. The records custodian shall notify the state commission of public records concerning any status changes regarding the authority to utilize a digital signature by designated records management personnel.

D. The digital signature shall be the last function performed on an electronic form before saving and submitting the form. Forms modified after a digital signature has been affixed will be rejected.

[1.13.12.13 NMAC - Rp, 1.13.12.12, 11/28/2017]

PART 13-19: [RESERVED]

PART 20: STORAGE OF DISASTER RECOVERY BACKUP FILES AT THE STATE COMMISSION OF PUBLIC RECORDS - STATE RECORDS CENTER AND ARCHIVES

1.13.20.1 ISSUING AGENCY:

State Commission of Public Records - State Records Center and Archives.

[1.13.20.1 NMAC - Rp, 1 NMAC 3.2.20.3.1, 6/30/2005]

1.13.20.2 SCOPE:

All state agencies.

[1.13.20.2 NMAC - Rp, 1 NMAC 3.2.20.3.2, 6/30/2005]

1.13.20.3 STATUTORY AUTHORITY:

Section 14-3-8 NMSA 1978. A records center is established in Santa Fe under the supervision and control of the administrator. The center, in accordance with the regulations established by the administrator and the commission, shall be the facility for the receipt, storage or disposition of all inactive and infrequently used records. Section 14-3-6 NMSA 1978 provides the state records administrator the authority to establish records and information management programs for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.

[1.13.20.3 NMAC - Rp, 1 NMAC 3.2.20.3.3, 6/30/2005]

1.13.20.4 DURATION:

Permanent.

[1.13.20.4 NMAC - Rp, 1 NMAC 3.2.20.3.4, 6/30/2005]

1.13.20.5 EFFECTIVE DATE:

June 30, 2005 unless a later date is cited at the end of a section.

[1.13.20.5 NMAC - Rp, 1 NMAC 3.2.20.3.5, 6/30/2005]

1.13.20.6 OBJECTIVE:

To establish procedures for offsite storage of disaster recovery backup files and electronic media at the state records center and archives.

[1.13.20.6 NMAC - Rp, 1 NMAC 3.2.20.3.6, 6/30/2005]

1.13.20.7 DEFINITIONS:

A. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

B. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, the territorial government and the Spanish and Mexican governments in New Mexico (Section 14-3-2 NMSA 1978).

C. "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978).

D. "Electronic disaster recovery files" means the process of creating a secondary copy of data for the purpose of disaster recovery, i.e., being able to recover or restore the data should an unplanned event make the primary data inaccessible.

[1.13.20.7 NMAC - Rp, 1 NMAC 3.2.20.3.7, 6/30/2005]

1.13.20.8 SPACE AVAILABILITY:

The state records center and archives provides secure, vault storage for public records contained in electronic disaster recovery files. This service is dependent on the space available.

[1.13.20.8 NMAC - Rp, 1 NMAC 3.2.20.3.8, 6/30/2005]

1.13.20.9 DISASTER RECOVERY BACKUP FILES:

A. An agency requesting permission to store electronic disaster recovery files with the state records center shall complete the request to store electronic disaster recovery files form approved by the administrator.

B. The form shall include but not be limited to the following: agency name; name of contact person; division; phone number; fax number; physical address; mailing address; e-mail address; names of persons authorized to access and retrieve disaster recovery files; signature of authorized personnel; type and quantity of media; description of electronic media contents; name and signature of agency record custodian; and signature of the administrator.

C. The *request to store electronic disaster recovery files* form shall be re-submitted to the administrator when changes are made that differ from the original request (e.g., deleting or adding authorized personnel).

D. At a minimum, each individual unit (tape, disk, etc.) of disaster recovery backup files shall be clearly identified with the agency name.

E. Access.

(1) Access to disaster recovery backup files is permitted through the use of an automated key system. Key cards shall be issued at cost plus five percent processing fee to agencies by the administrator when a request for storage of electronic disaster recovery files is approved.

(2) Lost key cards shall be reported immediately to the records management division so that the keys can be deactivated on the automated key system. Key cards shall be replaced at cost plus five percent processing fee.

(3) Regular access to electronic media shall be between the hours of 8:00 a.m. to 12:00 noon and 1:00 p.m. to 5:00 p.m., Monday through Friday.

(4) Authorized agency personnel requesting after hours access to electronic media shall be required to provide personal identification prior to access.

(5) Agencies requiring twenty-four hour Monday through Sunday access to disaster recovery backup files shall make such requests in writing to the administrator. Requests shall state the reasons for requiring around the clock access to disaster recovery backup files. The administrator shall review all requests and shall either approve or deny such access.

F. Storage and terms of use.

(1) The records management division shall provide locker(s) within a secured environmentally controlled vault.

(2) The requesting agency shall be required to provide the pad lock for the locker(s).

- (3) If an agency abandons a locker it may forfeit future use of the vault storage.
- (4) No food or drink is allowed in the vault.
- (5) Only authorized personnel are allowed in the vault.
- (6) Authorized personnel are not allowed to move furniture or equipment into the vault.
- (7) Agencies that fail to comply with the "terms of use" may have their vault services terminated.

G. Renewal of authorization.

(1) At the close of the calendar year, agencies shall receive a notice from the records management division asking agencies to review and update the authorization list.

(2) Agencies shall have 15 working days to respond to the notice. If no response is received services may be terminated.

[1.13.20.9 NMAC - Rp, 1 NMAC 3.2.20.3.9, 6/30/2005; A, 9/3/2014]

PART 21-29: [RESERVED]

PART 30: DISPOSITION OF PUBLIC RECORDS AND NON-RECORDS

1.13.30.1 ISSUING AGENCY:

State Commission of Public Records and the State Records Administrator.

[1.13.30.1 NMAC - Rp, 1.13.30.1 NMAC, 11/28/2017]

1.13.30.2 SCOPE:

All state agencies and any public entity that use the state records center services.

[1.13.30.2 NMAC - Rp, 1.13.30.2 NMAC, 11/28/2017]

1.13.30.3 STATUTORY AUTHORITY:

Public Records Act, Sections 14-3-4 and 14-3-6 NMSA 1978.

[1.13.30.3 NMAC - Rp, 1.13.30.3 NMAC, 11/28/2017]

1.13.30.4 DURATION:

Permanent.

[1.13.30.4 NMAC - Rp, 1.13.30.4 NMAC, 11/28/2017]

1.13.30.5 EFFECTIVE DATE:

November 28, 2017, unless a later date is cited at the end of a section.

[1.13.30.5 NMAC - Rp, 1.13.30.5 NMAC, 11/28/2017]

1.13.30.6 OBJECTIVE:

To establish requirements for the proper and orderly destruction of public records.

[1.13.30.6 NMAC - Rp, 1.13.30.6 NMAC, 11/28/2017]

1.13.30.7 DEFINITIONS:

A. "Chief records officer" means a person designated by an agency's records custodian to administrate the agency's records management program, refer to 1.13.12.10 NMAC.

B. "Confidential" means information provided to, created by or maintained by a government agency and that is exempt from release under state or federal laws.

C. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

D. "Degaussing" means the process of removing magnetism from magnetically recorded tape thereby rendering the information unreadable.

E. "Destruction" means the disposal of records of no further operational, legal, fiscal or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

F. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

G. "Functional records retention and disposition schedule" means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

H. "Inactive record" means a record no longer needed to conduct current business but required to be maintained for operational, legal, fiscal or historical purposes until it meets its retention.

I. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

J. "On-site destruction" means destruction of records approved by the state records administrator to be destroyed at a location other than the records center.

K. "Permanent records" means records considered unique or so valuable in documenting the history or business of an organization that they are preserved in an archives.

L. "Records" means information preserved by any technique in any medium now known or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology.

M. "Records liaison officer" means a person designated by the records custodian to interact with the state commission of public records, refer to 1.13.12.11 NMAC.

N. "Records management" means the systematic control of all records from creation or receipt through processing, distribution, maintenance and retrieval, to their ultimate disposition.

O. "Recycling" means the process that recovers the raw materials of a medium allowing for the reuse of various media. Overwriting on magnetic media is a means of recycling.

P. "Retention" means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

Q. "State archives" means the principle location within the state records center and archives that maintains, preserves and makes available to the public the permanent and historical records of the state of New Mexico.

R. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a

subsequent record. Transitory messages are not required to control, support or to document the operations of government.

S. "Trigger event" means the event which begins the retention period.

[1.13.30.7 NMAC - Rp, 1.13.30.7 NMAC, 11/28/2017; A, 3/13/2018; A, 9/11/2018]

1.13.30.8 ASSIGNMENT OF RESPONSIBILITIES:

Section 14-3-4 NMSA 1978 authorizes the commission of public records to appoint a state records administrator to carry out the purposes of the Public Records Act. The state records administrator is responsible for establishing records management programs within state government for the purpose of ensuring the efficient and economical management of public records throughout their lifecycle from their creation, utilization, maintenance, retention, preservation and final disposition.

A. The commission of public records hereby delegates the authority to order the routine destruction of public records, in accordance with adopted records retention and disposition schedules, to the state records administrator.

B. The state records administrator shall prescribe the appropriate method of destruction of public records.

C. The state records center and archives, in accordance with the rules established by the state records administrator and the commission of public records, is the authorized facility for the receipt, storage or disposition of all inactive and infrequently used records of present or former state agencies.

[1.13.30.8 NMAC - Rp, 1.13.30.8 NMAC, 11/28/2017]

1.13.30.9 DISPOSITION OF RECORDS:

A. Agencies shall ensure the proper authorized disposition of their records regardless of format or medium.

B. Records may be destroyed with the written approval of the state records administrator and the written consent of the records custodian, designated chief records officer or records liaison officer of the custodial agency.

C. Records may be transferred to the state archives with the written approval of the state records administrator and the written consent of the records custodian or designated chief records officer of the custodial agency; once the transfer is authorized and the records are in the physical custody of the state archives, the legal custody of the records is vested in the state records administrator.

D. Agencies shall follow rules issued by the state records administrator governing the methods of destruction.

[1.13.30.9 NMAC - Rp, 1.13.30.9 NMAC, 11/28/2017]

1.13.30.10 DIRECT TRANSFER OF RECORDS TO THE STATE ARCHIVES:

A. An agency may transfer records with a retention of permanent directly to the state archives. Records eligible for direct transfer to archives shall be submitted on a form approved by the state records administrator. No direct transfer of records shall occur without the review and approval of the state records administrator.

B. Records transferred directly to state archives shall be accompanied by an itemized records index on a form approved by the state records administrator. A copy of the index for each box shall be placed in the corresponding box. The complete index shall be attached to the request and an electronic copy shall be submitted to the state archives on a format approved by the state records administrator. The shipment box number (i.e., 1 of 10, 2 of 20, etc.) shall be affixed to the boxes prior to delivery to the state archives. All folders in the box shall be clearly labeled and identify the contents of the folder.

C. Records involved in litigation, an audit or investigation are not eligible for transfer to the state archives.

D. Only closed records shall be accepted for transfer to the state archives.

[1.13.30.10 NMAC - Rp, 1.13.30.10 NMAC, 11/28/2017]

1.13.30.11 ON-SITE DESTRUCTION OF RECORDS:

On-site destruction of records may occur at the custodial agency's location. For approval of on-site destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator or designee may inspect records prior to approval of on-site destruction.

C. The state records administrator may suspend destruction of records determined to have historical value and, upon approval of the Commission, transfer the records to the state archives.

D. For legal and audit purposes, the agency shall retain a certificate of destruction as proof of the records destroyed. The certificate of destruction shall include, at a minimum, the following information:

(1) For paper records:

- (a)** place and date of pick up;
- (b)** printed name and signature of employee(s) performing service;
- (c)** printed name and signature of witnesses;
- (d)** number of pounds destroyed/shredded (vendor) or number of boxes (agency certified);
- (e)** date of destruction/shredding;
- (f)** identification of company's authorizing agent by name and position;
- (g)** printed name and signature of official certifying the destruction (vendor or designated records management personnel); and
- (h)** statement that shredded records cannot be read, interpreted, or reconstructed.

(2) For electronic records:

- (a)** records classification;
- (b)** printed name and signature of employee(s) performing destruction;
- (c)** printed name and signature of record owner;
- (d)** number of e-records destroyed;
- (e)** date of destruction;
- (f)** printed name and signature of official certifying the destruction (designated records management personnel); and
- (g)** statement that destroyed records cannot be read, interpreted, or reconstructed.

E. Approved methods for on-site destruction of records are as follows:

(1) Records that contain confidential or sensitive information shall be destroyed through a bonded and insured document recycling vendor by shredding in such a manner that the information cannot be read, interpreted or reconstructed.

(2) Records that do not contain confidential or sensitive information shall be destroyed by:

(a) recycling by a bonded document recycling vendor;

(b) shredding; or

(c) dumpsite burial.

(3) Records which have been contaminated may be destroyed by:

(a) any of the approved methods described above; or

(b) incineration.

(4) Agencies shall select from the following methods of destruction for electronic records:

(a) erasure from electronic media and all back up media;

(b) overwriting of reusable magnetic media multiple times as recommended by the United States (U.S.) department of defense;

(c) degaussing of the magnetic media; or

(d) physical destruction of the media as recommended by the U.S. department of defense.

[1.13.30.11 NMAC - Rp, 1.13.30.11 NMAC, 11/28/2017; A, 6/12/2018; A, 12/31/2019]

1.13.30.12 RECORDS DELIVERED TO THE RECORDS CENTER FOR DESTRUCTION:

Agencies storing records at their location may deliver records that have met their retentions to the records center for destruction. For approval to deliver records to the records center for destruction, the records custodian, chief records officer or records liaison officer shall submit a request on a form approved by the state records administrator.

A. The form may be submitted electronically with a valid digital signature issued by the state records administrator.

B. The state records administrator or designee may inspect records prior to the acceptance of the shipment for destruction.

C. The state records administrator may suspend destruction of records determined to be of historical value and, upon approval of the Commission, transfer the records to the state archives.

D. The approved request for destruction shall match items delivered to the records center for destruction. When a discrepancy is found between what is listed on the approved request and what is delivered to the records center, the shipment shall be rejected and the agency shall remove the shipment from the records center.

E Agencies utilizing the records centers for destruction services shall use boxes equivalent to 15" x 10" x 12" in size.

F. Records destroyed through the records center shall be assessed a fee per box. Agencies shall have a purchase order in place prior to delivery of the shipment to the records center. For information on the fee schedule, refer to 1.13.2 NMAC.

G. Destruction, returns and storage services will be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.30.12 NMAC - Rp, 1.13.30.12 NMAC, 11/28/2017; A, 6/12/2018]

1.13.30.13 DISPOSITION OF RECORDS STORED IN THE RECORDS CENTER:

A. Upon receiving a disposition authorization notice for records stored in the records center, only the custodial agency's records custodian or chief records officer shall review the report of records to be destroyed or transferred to archives and respond by the established deadline. Records liaison officers do not have authority to sign the disposition authorization notice for records stored at the records center.

B. Failure to return a completed disposition authorization notice by the established deadline shall result in a storage fee for records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

C. Records destroyed through the annual destruction process shall be assessed a fee per box. For information on the fee schedule, refer to 1.13.2 NMAC.

D. Destruction, returns and storage services will be suspended if the agency has an invoice that is 90 days or more past due.

[1.13.30.13 NMAC - Rp, 1.13.30.13 NMAC, 11/28/2017; A, 6/12/2018]

1.13.30.14 DESTRUCTION OF NON-RECORDS:

Destruction of non-records is the sole responsibility of the custodial agency and does not require the prior approval of the state records administrator. That responsibility includes identifying whether the information is a non-record or a public record. All state agencies and any public entity that use the state records center services shall submit a request on a form approved by the state records administrator. For the proper destruction of records with or without confidential or sensitive information, refer to 1.13.30.11 NMAC.

[1.13.30.14 NMAC - Rp, 1.13.30.14 NMAC, 11/28/2017]

1.13.30.15 DESTRUCTION OF RECORDS HELD BY CONTRACTORS:

All records or data created or managed by a contractor or non-government entity for a governmental agency shall be disposed of in accordance with the procedures established in 1.13.30 NMAC.

[1.13.30.15 NMAC - Rp, 1.13.30.15 NMAC, 11/28/2017]

1.13.30.16 MANAGEMENT RESPONSIBILITIES:

The development and implementation of a records management program is the responsibility of each agency records custodian, as defined by the Public Records Act. It is also management's responsibility to provide guidance to employees on the proper legal disposition of public records and non-records. Agency records management programs must clearly define the roles and responsibilities of users disposing public records and non-records.

[1.13.30.16 NMAC - Rp, 1.13.30.16 NMAC, 11/28/2017]

PART 31-39: [RESERVED]

PART 40: PRIVATE COLLECTION DEVELOPMENT POLICY

1.13.40.1 ISSUING AGENCY:

Commission of Public Records - State Records Center and Archives (SRCA).

[4/15/98; 1.13.40.1 NMAC - Rn, 1 NMAC 3.2.40.5.1, 06/30/04]

1.13.40.2 SCOPE:

Potential donors of archival material.

[4/15/98; 1.13.40.2 NMAC - Rn, 1 NMAC 3.2.40.5.2, 06/30/04]

1.13.40.3 STATUTORY AUTHORITY:

Section 1-3-5 NMSA 1978. Gifts, donations and loans. The commission may receive either as donations or loans from private sources, other state agencies, counties, municipalities, the federal government, and other states or countries, archival materials of any physical form or characteristics which are deemed to be of value to the state and the general public for historical reference or research purposes. Acceptance of both donations and loans shall be at the discretion of the commission upon advice of the administrator. Accepted donations shall become, without qualification or restriction, the property of the state of New Mexico. Loans shall be accepted only after a written agreement covering all terms and conditions of each loan has been signed by the lender, the administrator and approved by the commission.

[4/15/98; 1.13.40.3 NMAC - Rn, 1 NMAC 3.2.40.5.3 & A, 06/30/04]

1.13.40.4 DURATION:

Permanent.

[4/15/98; 1.13.40.4 NMAC - Rn, 1 NMAC 3.2.40.5.4, 06/30/04]

1.13.40.5 EFFECTIVE DATE:

April 15, 1998 unless a later date is cited at the end of a section.

[4/15/98; 1.13.40.5 NMAC - Rn, 1 NMAC 3.2.40.5.5 & A, 06/30/04]

1.13.40.6 OBJECTIVE:

To provide criteria for evaluating documents for acquisition from sources other than state agencies which will enhance the current body of archival collections. Archival materials collected shall support New Mexico history in its broad context with original source materials which document government policy, political leadership, the legislative process, citizenship, land ownership, water rights and family histories.

[4/15/98; 1.13.40.6 NMAC - Rn, 1 NMAC 3.2.40.5.6 & A, 06/30/04]

1.13.40.7 DEFINITIONS:

A. **Access** means the availability of archives, records, or manuscripts in terms of physical condition, legal permission and legal entry.

B. **Accession** means a term used as both a noun and a verb for the act and procedures involved in a transfer of legal title and the taking of records or papers into the physical custody of an archival agency, records center or manuscripts repository and the materials involved in such a transfer.

C. **Acquisition** means the process of identifying and acquiring by donation or purchase archival materials from sources outside of state government.

D. **Administrator** means the state records administrator, who also serves as the director of the state records center and archives appointed by the commission of public records.

E. **Archival material** means the non-current records or papers of an individual, family, organization or institution preserved because of their continuing historical, informational or intrinsic value.

F. **Archives** means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico. The term also refers to the organizational unit of the SRCA storing these records.

G. **Artifact** means an object of archaeological interest, produced by man.

H. **Collection policy** means a statement of policy adopted by an archival agency, records center, or manuscripts repository to guide its accessioning and de-accessioning decisions in order to carry out its formal mission.

I. **Collection** means an artificial accumulation of documents brought together on the basis of some common characteristic, a grouping of records created by private individuals and organizations or the total holdings of a manuscript repository.

J. **De-accession** means the act, or the materials involved in the act, of a transfer out of the custody of an archives and is the opposite of accession.

K. **Deed of gift** means a legal document accomplishing the donation of archival materials to the SRCA through transfer of title.

L. **Documents** means any recorded information regardless of media, including books, correspondence, reports, maps, manuscripts, microforms, photographs, sound recordings, motion pictures, architectural drawings and electronic files.

M. **Donation** means a gift.

N. **Material culture** means physical objects used by a society other than documents.

O. **Personal papers** means a natural accumulation of documents created or accumulated by an individual or family belonging to him or her and subject to his or her disposition.

P. **Private collection** means a body of archival materials relating to an individual, family, organization or institution acquired through donation or purchase rather than in accordance with state statute.

Q. **Record** means recorded information, regardless of media or characteristics, made or received and maintained by an institution.

R. **Repository** refers to the SRCA as a facility where documents are deposited, donated, or stored for safekeeping.

S. **Researcher** means a person who has applied for access to public records or private collections in accordance with 1.13.11 NMAC.

[4/15/98; 1.13.40.7 NMAC - Rn, 1 NMAC 3.2.40.5.7 & A, 06/30/04]

1.13.40.8 BACKGROUND:

The commission of public records (commission) was created by the New Mexico legislature in 1959 and assigned the responsibility for the care, custody, preservation and disposition of public records created by state, county and local governments. The state records center and archives (SRCA) is the facility established by the commission to fulfill its statutory mandate. The SRCA currently houses public records from the executive, legislative and judicial branches of state government, including documents dating from New Mexico's Spanish (1621-1821), Mexican (1821-1846), and territorial (1846-1912) periods of history. The archives also maintains an extensive collection of personal papers which have been donated by families, attorneys, political figures and benevolent organizations. A collection policy is a standard archives practice for publicly declaring an archives's intent to collect documents that pertain to certain subject areas, geographical areas, languages, or physical forms of material.

[4/15/98; 1.13.40.8 NMAC - Rn, 1 NMAC 3.2.40.5.8 & A, 06/30/04]

1.13.40.9 USES OF PRIVATE COLLECTIONS IN STATE REPOSITORY:

Private collections support the SRCA's mission to protect, preserve and provide access to public records which document the rights and history of the people of New Mexico, and to provide information to and about government. In addition, collections support research, exhibit and public outreach.

A. Research: Archival collections provide resources for scholars and researchers studying government and history by strengthening and augmenting existing collections in the fields of New Mexico government and history.

B. Exhibits: Archival collections support exhibit programs that interpret New Mexico's heritage to statewide, national and international visitors.

(1) Exhibits may be prepared from private collections and displayed in the archives.

(2) Documents from private collections may also be loaned to other institutions for exhibition with the approval of the commission.

(3) Reproductions and duplicates of documents from private collections may be used for exhibits outside the agency with permission of the administrator.

C. Outreach: The SRCA shall promote the use of private collections through increased public awareness of the nature and importance of the archival materials. The acquisition of collections may be publicized in local newspapers and agency publications.

[4/15/98; 1.13.40.9 NMAC - Rn, 1 NMAC 3.2.40.5.9 & A, 06/30/04]

1.13.40.10 ACQUISITIONS:

A. Purchases. Purchase of documents may be financed through monetary donations made to the SRCA and is restricted to materials which meet private collection policy criteria as stated in 1.13.40.11 NMAC.

B. Loans.

(1) The commission shall not accept materials without a signed loan agreement.(SRC form 97-34), 1.13.40.17 NMAC.

(2) A loan agreement shall not exceed a period of five years without review.

(3) Loaned material shall be maintained intact, subject to the terms and conditions of the loan agreement.

C. Donations.

(1) Donations shall be subject to acceptance by the commission of public records based on collection policy criteria as stated in 1.13.40.11 NMAC.

(2) The commission shall not accept materials without a legal transfer of title, executed by a deed of gift as described in (SRC form 77) 1.13.40.18 NMAC.

(3) Donations accepted by the commission shall become the unqualified property of the state of New Mexico.

[4/15/98; 1.13.40.10 NMAC - Rn, 1 NMAC 3.2.40.5.10 & A, 06/30/04]

1.13.40.11 COLLECTION STRENGTHS, WEAKNESSES AND PRIORITIES:

Collections maintained by the SRCA are strongest in the area of government administration. However, through the centuries many government records for the Spanish, Mexican and territorial periods have been pilfered or destroyed. Consequently there are gaps within collections. Prior to the creation of the SRCA in 1960 and the establishment of a records management program for the retention, preservation and disposition of public records, state agencies and elected officials disposed of records at will. Therefore there are many discontinuances within the public records maintained for state government for the years 1912 to 1959. The SRCA would like to collect archival materials that supplement current collections and meet the agency's objective.

A. Identified collection strengths. Since its creation in 1960, the SRCA has actively collected the state's official permanent government records. In that year the state archives, in its capacity as the official custodian of the state archives, acquired from the historical society of New Mexico the Spanish, Mexican and territorial archives of New Mexico. These collections provide important documentation in the following subjects and time periods.

(1) Spanish period. Administrative, civil, judicial, military and land grant records of the Spanish government in New Mexico for the years 1680-1821.

(2) Mexican period. Administrative, civil, judicial, military, legislative and land grant records of the Mexican government in New Mexico for the years 1821-1846.

(3) Territorial period. Administrative, judicial, military and legislative records of the territory of New Mexico for the years 1889-1912.

(4) Statehood. Executive and legislative documents from 1960 to the present.

B. Identified collection weaknesses.

(1) Spanish colonial documents, 1598 -1680. As a result of the 1680 Pueblo Revolt, administrative, civil, judicial, military and ecclesiastical records for this period were destroyed. The SRCA has very few documents for this time period.

(2) Spanish period documents, 1680 -1821. Many documents for this time period have been lost as a result of theft or disasters, either man-made or natural.

(3) Military and territorial periods, 1846 -1889. Administrative, judicial, military and legislative records from 1846 to 1889 were removed by officials upon completion of their term of office. Therefore the SRCA has a sparse collection of governors and territorial officials papers.

(4) Statehood government records, 1912 -1959. Executive, legislative, judicial and military records from 1912 to 1960.

(5) Congressional papers, 1912-present. The SRCA has not actively collected the papers of U.S. senators and representatives from New Mexico.

(6) County records, 1850-1912. Many records kept by territorial county officials have been lost through theft and disasters (man-made and/or natural). Counties are not required by statute to transfer permanent records to the SRCA.

C. Identified collection priorities. The SRCA places major emphasis on acquiring archival collections relating to any of the following subjects which would enhance existing collections.

(1) Administrative government documents, 1598 -1959. Correspondence, decrees, orders, and reports.

(2) Military documents, 1598 -1959. Enlistment papers, muster rolls, service records.

(3) Civil documents, 1598 -1912. Wills and settlement of estates, land grant petitions, deeds and conveyances of property.

(4) Ecclesiastical documents, 1598 -1846. Inquisition and ecclesiastical court reports, church censuses, reports regarding civil and military matters.

(5) County documents, 1850 -1912. Probate records, county commission journals, county clerk record books, sheriff, treasurer and justice of the peace record books.

(6) Judicial documents, 1598 -1912. Judicial proceedings, criminal and civil docket books, record books and case files.

(7) Personal papers of New Mexico legislators and U.S. congressmen, 1850 - present.

(8) Maps, 1598 -1950. Expedition, land grant, military reconnaissance, land use, road and highway maps, postal route, railroad and USGS quadrangle maps.

(9) Photographs, 1840 -1950. Historical buildings, historical events and celebrations, political figures, Indian pueblos and reservations.

(10) Motion picture film. Film documenting or depicting historical events and celebrations, buildings, political figures and state government functions.

D. Geographical areas and chronological periods collected. The SRCA places emphasis on acquiring materials pertaining to localities within the geographical boundaries of the state of New Mexico for the period 1598 to the present. However, archival materials pertaining to the areas of southern Colorado, eastern Arizona, west

Texas and northern Chihuahua, which were part of New Mexico during the years 1598 to 1862, are also collected. All materials shall meet the criteria for acquisition as stated in 1.13.40 NMAC.

E. Languages, other than English, collected. Documentary materials in any language which meet the criteria for acquisition as stated in 1.13.40 NMAC will be collected.

F. Physical forms of material collected.

(1) Manuscripts. Handwritten or typed documents, including a letterpress or carbon copy.

(2) Personal papers. Documents created or accumulated by an individual or family, subject to donor's disposition.

(3) Books. Pertaining to New Mexico history, politics, and government, including Spanish dictionaries published prior to 1900.

(4) Media. The SRCA will not actively solicit any form of non-print media which it cannot support. However, older collections may contain vinyl records, film, cassettes and electronic records. Contemporary collections may also contain audio and videotapes and collections in the future may contain computer, optical, compact or other forms of disks. Therefore non-print media shall also be accepted.

(5) Government publications. The SRCA is a depository for state publications. Government publications that are accessioned as part of a collection shall only be retained if they inherently relate to the papers in that collection.

(6) Serials. Publications issued at regular intervals shall be collected if they relate to existing collections, New Mexico history or state government.

(7) Newspapers. Extended runs of newspapers shall generally not be collected. However some single issues which have importance in relation to individual collections may be retained in association with those collections.

(8) Microforms. Microforms may be included as part of a collection if they meet the SRCA acquisition criteria.

(9) Maps. See Paragraph (8) of Subsection C of 1.13.40.11 NMAC. Hand-copied, print, microfilm, blueprint, aerial photographs and computer-assisted maps.

(10) Photographs. See Paragraph (9) of Subsection C of 1.13.40.11 NMAC. Generally all photographic processes will be accepted.

(11) Motion Picture Film. See Paragraph (10) of Subsection C of 1.13.40.11 NMAC. Moving image materials including film, magnetic tape, and digital formats.

[4/15/98; 1.13.40.11 NMAC - Rn, 1 NMAC 3.2.40.5.11 & A, 06/30/04]

1.13.40.12 LIMITATIONS AND EXCLUSIONS:

A. The commission of public records shall generally NOT accept:

- (1) materials that are not pertinent to New Mexico government or history;
- (2) materials pertaining to New Mexico of no historical, informational or evidential value;
- (3) materials to which the donor does not have legal title;
- (4) duplications of original material under other ownership or custody with the exception of scholarly research material;
- (5) artifacts or material culture;

B. Unsolicited donations:

- (1) will be evaluated in terms of their suitability and relationship to other holdings in the archives;
- (2) with the approval of the administrator unsolicited donations that are not suitable or pertinent will be returned to the donor; see 1.18.369 NMAC.
- (3) The commission has the right to refuse private collections inappropriate to its holdings transferred by will.

C. Closed collections and restrictions.

- (1) The commission shall not accept collections that are permanently closed to public access by the donor.
- (2) The commission may accept collections that are temporarily closed by the donor to public access for a reasonable period of time.
- (3) Access to classified and confidential materials shall be subject to state and federal laws.

D. Monetary appraisal of private collections. The commission and the SRCA are prohibited by law from appraising the monetary value of donations. Pursuant to the Deficit Reduction Act of 1984, PL 98-369

[4/15/98; 1.13.40.12 NMAC - Rn, 1 NMAC 3.2.40.5.12 & A, 06/30/04]

1.13.40.13 COOPERATION WITH OTHER REPOSITORIES:

The SRCA recognizes that other institutions collect in the same or overlapping areas, and it is further recognizes that other institutions may be more appropriate repositories for material donated to the SRCA. Therefore, opportunities to acquire artifacts, cultural material and other textural materials not covered by the collection policy shall be referred to an appropriate repository.

[4/15/98; 1.13.40.13 NMAC - Rn, 1 NMAC 3.2.40.5.13 & A, 06/30/04]

1.13.40.14 ACCESS TO PRIVATE COLLECTIONS BY RESEARCHERS:

The policy of the SRCA is to make all materials available to researchers on equal terms, subject to the appropriate care and handling of materials and within limitations set by the donor in the deed of gift. See 1.13.11 NMAC, Research in the New Mexico Archives.

A. Donors. Donors shall have access to their donated collections during regularly scheduled hours.

B. General public. With registration, any researcher may use the collections during regularly scheduled hours, subject to agency guidelines.

C. State, federal, county and municipal employees. With registration, employees may use collections during regularly scheduled hours, subject to agency guidelines.

D. Access to materials. The SRCA staff shall monitor the use of materials by researchers at all times in order to guard the safety and security of materials.

E. Guidelines. Researchers shall sign a visitors log, (SRC form 64), as described in 1.13.40.20 NMAC; follow the guidelines for use of documents, 1.13.11.9 NMAC; and complete a user registration form (SRC form 96-20), as described in 1.13.40.19 NMAC.

[4/15/98; 1.13.40.14 NMAC - Rn, 1 NMAC 3.2.40.5.14 & A, 06/30/04]

1.13.40.15 STATEMENT OF DE-ACCESSIONING POLICY:

A. Duplicates and material that do not reflect the collection policy of the SRCA may be deaccessioned, subject to terms of acquisition, agency policy and state law.

B. Deaccessioned items may be transferred to another repository, returned to the donor or donor's family or discarded.

C. Preservation policies regarding the care and storage of deteriorating materials, and reformatting of fragile material to a more stable media, may require disposal or return of original documents.

D. The SRCA reserves the right to deaccession any materials within its collections subject to the terms of acquisition and the notification of the donor or his or her heirs.

[4/15/98; 1.13.40.15 NMAC - Rn, 1 NMAC 3.2.40.5.15 & A, 06/30/04]

1.13.40.16 REVISION OF REGULATION:

A. The SRCA reserves the right to make changes to this regulation as seems reasonable and prudent.

B. Efforts shall be made to conform to the intent of the agreement made between the archives and the donor at the time of the accession.

[4/15/98; 1.13.40.16 NMAC - Rn, 1 NMAC 3.2.40.5.16 & A, 06/30/04]

1.13.40.17 REQUIREMENTS FOR INCOMING LOAN AGREEMENT, SRC FORM 97-34:

A. This form delineates the conditions for an organization or individual to loan their records to the SRCA. Information contained on the form shall include, but shall not be limited to, the following:

- (1) description of documents or collections, including;
 - (a) title of documents or collections;
 - (b) date of documents or collections;
- (2) terms and conditions of loan agreement; and
- (3) term of loan, including;
 - (a) beginning date of loan; and
 - (b) termination date of loan.

B. This form shall require of the requesting organization the following information:

- (1) name of organization or individual;
- (2) address of organization or individual;

- (3) phone number of organization or individual; and
- (4) signature of lender.

C. This form shall require the following signatures from the commission of public records - SRCA:

- (1) signature of the archives and historical services division director;
- (2) signature of the state records administrator; and
- (3) signature of the chairman of the commission of public records.

D. Signatures of the archives and historical services division director and the lending organization or individual signify: an agreement between the two entities to the conditions set forth in this form and are required to be notarized.

E. Signatures of the state records administrator and the chairman of the commission of public records signify approval of the loan agreement.

[4/15/98, 1.13.40.17 NMAC - Rn, 1 NMAC 3.2.40.5, SRC Form 96-34 & A, 06/30/04]

1.13.40.18 REQUIREMENTS FOR DEED OF GIFT, SRC FORM 77:

A. This form delineates the legal transfer of ownership of documents or collections from the donor to the commission of public records - SRCA. Information contained on the form shall include, but is not limited to, the following:

- (1) name of donor;
- (2) address of donor;
- (3) description of donated materials;
- (4) any access restrictions; and
- (5) terms of donation.

B. Signatures of the archives and historical services division director and the donor signify: an agreement between the two entities to the conditions set forth in this form and are required to be notarized.

C. Signatures of the state records administrator and the chairman of the commission of public records signify approval of the deed of gift.

[4/15/98, 1.13.40.18 NMAC - Rn, 1 NMAC 3.2.40.5, SRC Form 77 & A, 06/30/04]

1.13.40.19 REQUIREMENTS FOR USER REGISTRATION FORM, SRC FORM 96-20:

A. This form delineates the information required of the researcher to become a registered patron of the archives research rooms. All researchers shall complete this one time registration form before entry into the archives research rooms.

B. The form requests the following researcher information:

- (1) name and signature of researcher;
- (2) signature of parent or guardian of the researcher, as provided for in Subsection H of 1.13.11.8 NMAC;
- (3) physical and email (if available) addresses of the researcher;
- (4) telephone number of the researcher;
- (5) user description of researcher;
- (6) indication of the researcher's willingness to share research information with other researchers; and
- (7) date.

C. The researcher's signature signifies that he has read the rules and procedures for using the public records held by the archives and historical services division of SRCA, and that he has agreed to abide by them.

[4/15/98, 1.13.40.19 NMAC - Rn, 1 NMAC 3.2.40.5, SRCA Form 96-20 & A, 06/30/04]

1.13.40.20 REQUIREMENTS FOR VISITOR'S LOG, SRC FORM 64:

A. This form delineates the information required of the researcher to perform research in the archives research rooms. All researchers shall complete this form upon arrival to and departure from the archives research rooms.

B. The form requests the following researcher information:

- (1) printed full name of researcher;
- (2) intended use;
- (3) date;
- (4) time in; and

(5) time out.

[4/15/98, 1.13.40.20 NMAC - Rn, 1 NMAC 3.2.40.5, SRCA Form 96-64 & A, 06/30/04]

PART 41-49: [RESERVED]

PART 50: GUIDELINES FOR RECORD KEEPING SYSTEMS [RESERVED]

PART 51-69: [RESERVED]

PART 70: PERFORMANCE GUIDELINES FOR THE LEGAL ACCEPTANCE OF PUBLIC RECORDS PRODUCED BY INFORMATION TECHNOLOGY SYSTEMS [REPEALED]

[This part was repealed on July 15, 2016.]

CHAPTER 14: MICROPHOTOGRAPHY SYSTEMS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: MICROPHOTOGRAPHY SYSTEMS, MICROPHOTOGRAPHY STANDARDS

1.14.2.1 ISSUING AGENCY:

State Commission of Public Records - State Records Center and Archives.

[7-29-96; 1.14.2.1 NMAC - Rn, 1 NMAC 3.2.60.1.1, 12-29-00; A, 06-01-06]

1.14.2.2 SCOPE:

All state agencies.

[7-29-96; 1.14.2.2 NMAC - Rn, 1 NMAC 3.2.60.1.2, 12-29-00]

1.14.2.3 STATUTORY AUTHORITY:

Sections 14-3-2, 14-3-15 and 14-3-17 of the Public Records Act (Chapter 14, Article 3 NMSA 1978) gives the state records administrator review and approval authority over microphotography systems of state agencies, and gives the commission of public records authority to establish microphotography standards. The operation of any microphotography system requires the written approval of the state records administrator, and compliance with the minimum standards established by the commission of public records.

[6-8-74...7-29-96; 1.14.2.3 NMAC - Rn, 1 NMAC 3.2.60.1.3 & A, 12-29-00; A, 06-01-06]

1.14.2.4 DURATION:

Permanent.

[7-29-96; 1.14.2.4 NMAC - Rn, 1 NMAC 3.2.60.1.4, 12-29-00]

1.14.2.5 EFFECTIVE DATE:

July 29, 1996, unless a later date is cited at the end of a section.

[7-29-96; 1.14.2.5 NMAC - Rn, 1 NMAC 3.2.60.1.5 & A, 12-29-00]

1.14.2.6 OBJECTIVE:

To establish methods for prescribing the capture, quality and permanence of microfilm and digital images produced by microphotography systems to: ensure that in their content and detail the microfilm and digital images represent accurate reproductions of the original records; that they serve the purposes for which the original records were created; and that they meet the legal acceptance requirements of records produced by information technology systems. See 1.13.70 NMAC, Performance Guidelines For the Legal Acceptance of Public Records Produced by Information Technology Systems.

[6-8-74...7-29-96; 1.14.2.6 NMAC - Rn, 1 NMAC 3.2.60.1.6 & A, 12-29-00; A, 06-01-06; A, 06-30-09]

1.14.2.7 DEFINITIONS:

A. "Agency" means any state agency, department, bureau, board, commission, institution or other organization of the state government, including district courts. See Sections 14-3-2 and 14-3-15 NMSA 1978.

B. "Approved microphotography system" means a microphotography system that has been approved in writing by the administrator under the provisions of Section 14-3-15 NMSA 1978.

C. "CD-ROM mastering process" means the creation of the first recording (the master) in the compact disk-read only memory replication process.

D. "CD-ROM premastering" see premastering.

E. "Compact disk" means read-only optical disk available in formats for audio, data and other information.

F. "Compact disk-read only memory" means optical disk that is created by a mastering process and used for reading.

G. "Compact disk-write once read many" means an optical disk that is written and then available for reading.

H. "Density" means the light-absorbing or light-reflecting characteristics of a photographic image, filter, etc.; or the number of pixels per square inch.

I. "Disposition" means the final action that puts into effect the results of an appraisal decision for a record series (e.g., transfer to archives or destruction).

J. "Document accountability" means the process whereby original documents are compared against the images produced, so that the film ensures the validity and integrity of the images.

K. "Dots per inch" means the measurement of output device resolution and quality, e.g., number of pixels per inch on display device. Measures the number of dots horizontally and vertically.

L. "Enhancement algorithms" means the set of techniques for processing an image so that the result is visually clearer than the original image.

M. "JPEG" means the specific compressed image file format specified by ISO. [See JPEG acronym]

N. "Imaging" means the process of converting human readable media, such as paper or microfilm, into information that can be stored and retrieved electronically.

O. "Master" (noun) means:

(1) in micrographics, the original microform produced from which duplicates or intermediates can be obtained (ISO); and

(2) in electronic imaging, the first recording, one from which duplicates can be obtained.

P. "Master" (verb) means creating the first recording.

Q. "Microphotography" means the transfer of images onto storage media including but not limited to film, tape, disk, or other information storage techniques that meet the Performance Guidelines for Legal Acceptance of Public Records produced by information technology system technologies pursuant to regulations adopted by the commission of public records. See Section 14-3-2 NMSA 1978.

R. "Microphotography program manager" means the person responsible for the microphotography system program in a state agency.

S. "Microphotography system" means all microphotography equipment, services, policies, procedures and supplies that together create, store and reproduce public records.

T. "Open system" means a system that implements sufficient open specifications for interfaces, services, and supporting formats to enable properly engineered image processing applications that can be ported with minimal changes across a wide range of systems; can inter-operate with other applications on local and remote systems; and can interact with users in a manner that facilitates access and maintenance of public records on such systems.

U. "Open system environment" means the comprehensive set of interfaces, services, and supporting formats, plus user aspects, for portability or interoperability of applications and data.

V. "Optical disk" means the medium that will accept and retain information in the form of marks in a recording layer that can be read with an optical beam. See also compact disk-read only memory, rewritable optical disk and write-once read many optical disk.

W. "Pixel" means the smallest element of a display surface that can be independently assigned color or intensity.

X. "Premaster" means the intermediate recording from which a master will be created.

Y. "Premastering" means the conversion to digital code, the addition of error correction codes and the intelligent preprocessing of the data records. It also includes the phase of optical disk production in which machine-readable and bit-stream data are converted to optical disk.

Z. "Records" means information preserved by any technique in any medium, now known, or later developed, that can be recognized by ordinary human sensory capabilities either directly or with the aid of technology.

AA. "Records custodian" means the statutory head of an agency or his designee.

BB. "Resolution" means the ability of a system to record fine detail, or the measure of that fine detail.

CC. "Scanner" means a device that converts a document into binary (digital) code by detecting and measuring the intensity of light reflected from paper or transmitted through microfilm.

DD. "Tag image file format" means the standardized format for storage of digitalized images, which contains a header or tag that defines the exact data structure of the associated image.

EE. "Traditional microfilm" means the production of traditional microfilm in which source documents are photographed utilizing a camera and images are captured on film.

[7-29-96, 1-12-98; 1.14.2.1.7 NMAC - Rn, 1 NMAC 3.2.60.1.7 & A, 12-29-00; A, 04-30-02; A, 06-01-06; A, 06-30-09; A, 07-15-10]

1.14.2.8 ABBREVIATIONS AND ACRONYMS:

- A.** "AIIM" stands for association for information and image management.
- B.** "ANSI" stands for American national standards institute.
- C.** "ARMA" stands for association of records managers and administrators.
- D.** "CCITT" stands for consultative committee for international telegraphy and telephony.
- E.** "CD-ROM" stands for compact disk-read only memory.
- F.** "CD-WORM" stands for compact disk-write once read many.
- G.** "COM" stands for computer output microfilm.
- H.** "Dmax" stands for density maximum.
- I.** "Dmin" stands for density minimum.
- J.** "DPI" stands for dots per inch.
- K.** "GIF" stands for graphic interchange format.
- L.** "ISO" stands for international standardization organization.
- M.** "JPEG" stands for joint photographic experts group.
- N.** "MS" stands for microphotography standard.

- O. "MTBF" stands for mean time between failure.
- P. "NISO" stands for national information standards organization.
- Q. "NIST" stands for national institute of standards and technology.
- R. "SRCA" stands for state records center and archives.
- S. "TIFF" stands for tag image file format.

[1.14.2.8 NMAC - N; A, 07-15-03]

1.14.2.9 MICROPHOTOGRAPHY SYSTEM APPROVAL:

A. The state records administrator shall approve all microphotography system plans for microfilm, COM and imaging. Original records shall not be destroyed until an agency has an approved microphotography plan and the state records administrator has approved the destruction (see *1.13.30 NMAC, Destruction of Public Records and Non Records*). Approval of a microphotography system plan shall be for five years, unless the system is modified (see Subsection D of 1.14.2.16 NMAC). Renewal of approval is contingent upon submission of a five year system review or an amended plan.

B. Agencies shall comply with the requirements in this rule for microfilming or digitizing public records to ensure that the informational content of the record is captured and preserved for the life of the record.

C. Agencies shall request in writing the approval of a new, a modified and an existing microphotography system plan not previously approved, including but not limited to microfilm, COM and digital imaging.

(1) Traditional microfilm: microphotography plans for traditional microfilm shall meet all requirements as specified in Sections 9, 10 and 11 of 1.14.2 NMAC.

(2) COM: microphotography plans for computer output microfilm shall meet all requirements as specified in Sections 9, 12, 13 and 14 of 1.14.2 NMAC.

(3) Digital imaging: microphotography plans submitted for digital imaging shall meet all requirements as specified in Sections 9, 14, 15 and 16 of 1.14.2 NMAC.

D. The approval of a microphotography system plan shall be obtained before any source documents are submitted for destruction.

[7-29-96, 1-12-98; 1.14.2.9 NMAC - Rn, 1 NMAC 3.2.60.1.8 & A, 12-29-00; A, 06-30-09; A, 07-15-10]

1.14.2.10 STANDARD FOR MICROFILM:

This standard applies to the production of traditional microfilm in which source documents are photographed utilizing a camera and images are captured on film. The measures outlined in this section are required to maintain the integrity of the original records and to ensure that the microfilm produced is an adequate substitute for the original record and serves the purpose for which such records were created.

A. Agencies utilizing a service provider for the filming, processing, duplication or the production of microforms shall have a written agreement in place to provide for compliance with this standard.

B. A microfilm system shall be determined to meet minimum standards if the combined results of the consumables (i.e., film, chemicals, etc.) and microfilm equipment meet the standards developed or approved by the American national standards institute for the production of microfilm (see 1.14.2.17 NMAC). The requirements of the most current revisions of said standard shall prevail unless otherwise specified in this rule.

C. Preparation for microfilming: Materials to be microfilmed require careful analysis and preparation to ensure the creation of quality microfilm that is readily usable and easily understood. Important factors to be considered in determining which record series should be filmed include retention period and volume. Only records in large volume or with long retention periods should normally be considered. Before microfilming, materials must be properly organized and collated.

(1) Records shall be carefully inspected for completeness and the description and retention period of the record verified.

(2) The proper order of the materials shall be determined before microfilming.

(3) Active records shall not be filmed with inactive records.

(4) Documents from different record series may be filmed on a single roll provided retention periods are the same.

D. Microfilm qualifications: Agencies shall produce a *master* negative microfilm and a *working copy*. An agency shall have a re-inspection program and process in place for all master microfilm produced.

(1) Master microfilm shall:

(a) be of a silver gelatin composition;

(b) meet the minimum standards for the production of master microfilm specified in this section for density, resolution, targeting and spacing;

(c) shall be re-filmed if it fails inspection;

(d) be stored off-site (for security purposes) for the full period prescribed by the agency's records retention and disposition schedule.

(2) Working copy microfilm is designated for reference or everyday use in an office and may be of silver halide, diazo, or of a vesicular composition. An agency shall produce a minimum of one working copy of microfilm.

(3) If multiple working copies of security or preservation microfilm are needed, it is recommended that the production of such microfilm conform to a three-generation system as noted in section 7.1 of ANSI/AIIM MS48-1990. Such a system consists of master negative; a second-generation copy of the master negative that serves as a duplicate negative to be used for producing additional copies; and one or more third-generation working copies produced from the second-generation film.

(4) Agencies using microfilm systems that do not produce an original silver gelatin film shall make a silver gelatin duplicate negative that meets this standard before depositing such film for storage at the SRCA.

E. Microfilm targets. All microfilm shall have the following targets to be in compliance with this rule:

(1) Statement of intent and purpose. A statement of intent and purpose shall be filmed at the beginning and end of each roll of film and shall contain the following information:

(a) authority under which microfilming is being done;

(b) name of the agency for which the microfilming is being done;

(c) statement indicating the records microfilmed are in the legal custody of the agency, and that the records were created as part of the normal course of business;

(d) statement certifying the agency is microfilming in accordance with an approved microphotography plan on file with the SRCA;

(e) statement certifying that it is the policy of the agency to microfilm the specified records and that the microfilm is an accurate representation of the original copy which will be maintained as the legal copy of record in lieu of paper, and that the paper records are destroyed after microfilming in accordance with all requirements of the Public Records Act; and

(f) name, title, and signature of records custodian or microphotography program manager.

(2) Resolution target. Each roll of film will contain a photographic image of a standard resolution test card or chart. ISO test chart no. 2 as specified by ANSI/AIIM

MS51-1991 (*American National Standard for Microcopying--ISO Test Chart No. 2--Description and Use in Photographic Documentary Reproduction*), must be filmed at the beginning and ending of each roll. These chart images should be used to monitor resolution as filming progresses. The line patterns must be read in each corner and in the center of each chart (or on a diagonal for rotary cameras) and the lowest resolution reading must be posted to the film container and to the guide sheet or other laboratory record. The cause of a substandard resolution must be identified and corrected prior to further production filming. All substandard film shall be corrected before shipping to the SRCA for storage.

(a) Rotary cameras. A minimum resolving power of 2.5 shall be read on the required test chart.

(b) Planetary cameras. A minimum resolving power of 4.0 shall be read on the required test chart.

(c) Resolution readings shall be determined by following the procedures for determining microfilm resolution as set forth in ANSI/AIIM MS23.

(3) Density target. The required background transmission density maximum (Dmax) for source document microfilm is based on filming a target consisting of a blank sheet of 20 lb white bond paper.

(a) Paper records dated prior to 1960, the relative Dmax shall read between .9 and 1.19.

(b) Paper records dated 1960 and after, the relative Dmax shall read between .85 and 1.29.

(c) Density targets shall appear at the beginning and end of each roll.

(d) Density readings shall be measured at the center of the density target.

(e) Density minimum (Dmin). The required base plus fog density (relative Dmin) for unexposed processed microfilms shall not exceed 0.10.

(4) Start of roll target. Start of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming;

- (e) name of camera operator; and
 - (f) description of first record image on the roll of film.
- (5) End of roll target. End of roll target shall contain the following information:
 - (a) roll number;
 - (b) name of agency and office to which the records belong;
 - (c) record(s) or file(s) being microfilmed;
 - (d) date of filming and name of camera operator; and
 - (e) description of last record image on the roll of film.

F. Microfilm image sequence and spacing. The following image sequence and spacing shall be used:

- (1) Start of roll:
 - (a) film leader;
 - (b) a single statement of intent and purpose;
 - (c) a single resolution target;
 - (d) a single density target;
 - (e) a single start of roll target; and
 - (f) four spaces.
- (2) Record images. Source documents are to be filmed between the start and end of roll targets.
- (3) End of roll:
 - (a) four spaces;
 - (b) a single end of roll target;
 - (c) a single density target;
 - (d) a single resolution target;

(e) a single statement of intent and purpose; and

(f) film trailer.

G. Chemical testing of processed film will be required in order to comply with the standards set forth in ANSI/NAPM IT9.17-1993, ANSI/ISO 417-1993 (*American National Standard for Photography--Determination of Residual Thiosulfate and Other Related Chemicals in Processed Photographic Materials--Methods Using Iodine-Amylose, Methylene Blue and SilverSulfide*). Methylene blue test will be used to meet this requirement.

(1) For records possessing a permanent retention, a methylene blue test shall be conducted on a six inch unexposed clear strip of leader cut from a processed roll of microfilm. The methylene blue test shall be conducted on the microfilm strip within two weeks after the processing of the microfilm.

(2) Systems producing more than 10 rolls per week, shall maintain proof of biweekly test results.

(3) Residual thiosulphate ion shall not exceed 1.4 micrograms per square centimeter as tested by the methylene blue test.

(4) Test results shall be maintained for the retention period of the records on microfilm produced (until film is eligible for destruction) or until the microfilm is regenerated.

(5) Annual proof of methylene blue testing shall be submitted to the state records center and archives by the end of each fiscal year in which microfilm is produced.

H. Splicing and erasures. Roll form master negative microfilm shall have no splicing or erasures between certification statements, unless expungement of a particular image or images is authorized in writing by the custodial agency.

I. Post-film inspection:

(1) Master negative microfilm shall be inspected by state agencies or by vendors filming for agencies. Inspection shall consist of verification of the following:

(a) targets;

(b) indexing;

(c) labeling;

(d) document accountability;

- (e) density;
 - (f) resolution; and
 - (g) visual observation of major defects and errors.
- (2) Agencies shall inspect duplicate film for the following:
 - (a) major defects and errors;
 - (b) indexing accuracy;
 - (c) document accountability; and
 - (d) legibility.
- (3) Microforms failing to pass inspection shall be refilmed.

J. Master microforms stored at the state records center are subject to audit by the SRCA at any time and shall comply with the standards set out in Subsection I of 1.14.2.10 NMAC. In the event densitometer readings by an agency or vendor consistently vary from those of the SRCA, the agency or vendor shall calibrate their densitometers to correspond to readings obtained by densitometers at the SRCA.

K. Microfilm container identification.

- (1) All master microfilm roll containers shall contain the following minimum information:
 - (a) name and address of the custodial agency;
 - (b) date filmed;
 - (c) identification of the first and last document on the roll of film;
 - (d) identification of the inclusive dates of the oldest and the most recent document by month, date and year;
 - (e) records series names and corresponding records retention and disposition schedule item number;
 - (f) disposition trigger date (i.e., date file closed, date contract terminated, etc.);
 - (g) name and address of the entity producing the roll of film; and

(h) roll number.

(2) Master microfilm rolls that do not contain the required information on the label shall be returned to the agency for re-labeling. If SRCA is required to ship the master microfilm rolls back to the agency, the custodial agency shall be responsible for the shipping costs.

L. Indexing requirements. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall include the following:

(1) agency code;

(2) record series title and corresponding records retention and disposition schedule item number;

(3) retention period;

(4) inclusive dates;

(5) trigger date;

(6) date filmed; and

(7) access restrictions.

M. Destruction of original copy.

(1) Prior to the final destruction of any microfilmed paper records, all requirements of this rule shall be met.

(2) Agencies shall submit a request for destruction which includes the following information:

(a) a statement that the records for destruction have been microfilmed;

(b) that the microfilm has been filmed in accordance to 1.14.2. NMAC microphotography standards;

(c) roll numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

[9-8-77, 5-27-79, 1-7-81, 1-13-82, 3-29-92, 4-6-92, 7-29-96, 8-24-96, 1-12-98; 1.14.2.10 NMAC - Rn, 1 NMAC 3.2.60.1.9& A, 12-29-00; A, 04-30-02; A, 07-15-03; A, 06-01-06; A, 06-30-09]

1.14.2.11 MICROFILM SYSTEM PLAN:

The microfilm system plan shall address each of the elements in this section:

- A.** purpose of the system;
- B.** specific goals of the system including identification of the official copy of record;
- C.** record series to be microphotographed as identified in the records retention and disposition schedule;
- D.** system specifications;
- E.** schema for indexing;
- F.** disposition of records (source documents) microfilmed;
- G.** disposition plan for microfilm (masters and working copies) when legal retention has been met;
- H.** off-site storage location of microfilm masters;
- I.** system implementation date; and
- J.** five year review, amendments and modifications.

[1.14.2.11 NMAC - N, 12-29-00; A, 07-15-03; A, 06-01-06]

1.14.2.12 STANDARD FOR COMPUTER OUTPUT MICROFILM (COM):

These standards apply to the production of master microfilm from records digitally created (born digital) or imaged (scanned) from paper.

A. State agencies shall utilize a COM system capable of recording faithfully onto microfilm all of the information contained in the digital image. Agencies utilizing a service provider for writing digital images to COM shall have a written agreement in place to provide for compliance with this standard.

B. The following standards for production, testing, and inspection of COM shall be met:

- (1)** ANSI/AIIM MS1;

- (2) ANSI/AIIM MS5;
- (3) ANSI/AIIM MS28;
- (4) ANSI/AIIM MS39;
- (5) ANSI/AIIM MS43; and
- (6) ANSI/NAPM IT9.17.

C. Record grouping. Before converting images to COM records shall be properly organized and grouped.

(1) Records shall be carefully inspected for completeness and the description and retention period of the record verified.

(2) The proper order of the materials shall be determined before conversion to COM.

(3) Active records shall not be filmed with inactive records.

(4) Documents from different record series may be filmed on a single roll provided retention periods are the same.

D. Film writer quality control. State agencies shall ensure that the film writer has the correct density/contrast level by using a reference white target file with a range of 0.9 to 1.1.

E. Quality monitoring of images. Quality monitoring of images is controlled at the time of document scanning. See *1.14.2.14 NMAC, standard for imaging*.

F. Resolution standard: A system used to create microfilm from digital images shall have a self-test process to ensure that all of the available pixels are consistently available for recording purposes. The COM unit shall be tested regularly to ensure optimal functionality.

G. Density:

(1) Density of master negative COM shall measure between 0.80 to 1.20.

(2) Required base plus fog density (relative Dmin) for unexposed processed microfilms shall not exceed 0.10.

(3) Background density on positive appearing silver masters shall be no greater than 0.30.

H. Reduction ratios: The selection of a reduction ratio is application specific. An agency shall take into account the characteristics of the record, the task the system is designed to perform, and the user requirements to be satisfied when selecting a reduction ratio.

I. Image resolution: Resolution shall be adequate to duplicate all details of the document in order that the COM qualify as a true copy of the original record. Image resolution shall meet standards specified in Subsection G of 1.14.2.14 NMAC.

J. Image formats. Digital images shall be in a standard image format such as Group IV TIFF, BMP or PDF.

K. Blip coding. To effectively organize a roll of COM the use of a multi-level blip coding strategy may be used. Blips are rectangular marks exposed by the film recorder under each page as they are written on the film. These marks can be programmed to appear in different sizes to identify file level, document level, page level, etc. images. Applying this sequence to recorded documents, a large blip designates the first page of a document while small blips indicate supporting pages within the document.

L. Page orientation. Pages can be recorded on microfilm in two ways. In "cine mode" where the text on a page runs perpendicular to the length of the film and in "comic mode" where the text on a page runs parallel to the length of the film. Unless a lower reduction ratio is needed for acceptable image quality, recording letter and legal sized pages in comic mode is preferable. This is accomplished by rotating the images 90° prior to recording or feeding the page "sideways" through the scanner. The advantage of comic mode recording is that more pages can be written on each roll of film saving storage space and promoting more efficient scanning in the event that the film needs to be used to recover lost image data.

M. Page spacing. Pages need to have sufficient separation to allow a film scanner to reliably differentiate adjacent pages on the film. There should be a minimum separation of 0.06" (1.5mm) between adjacent pages. Pages that touch each other at any point may preclude them from being captured separately by a microfilm scanner. Although maximizing packing density improves scanning efficiency, documents recorded on film should not span rolls.

N. COM targets. All microfilm shall have the following targets to be in compliance with this rule:

(1) Statement of intent and purpose. A statement of intent and purpose shall be filmed at the beginning and end of each roll of film and shall contain the following information:

(a) authority under which microfilming is being done;

(b) name of the agency for which the microfilming is being done;

(c) statement indicating the records microfilmed are in the legal custody of the agency, and that the records were created as part of the normal course of business;

(d) statement certifying the agency is microfilming in accordance with an approved microphotography plan on file with the SRCA;

(e) statement certifying that it is the policy of the agency to microfilm the specified records and that the microfilm is an accurate representation of the original copy which will be maintained as the legal copy of record in lieu of paper, and that the paper records are destroyed after microfilming in accordance with all requirements of the Public Records Act; and

(f) name, title, and signature of records custodian or microphotography program manager.

(2) Resolution test targets. COM produced from either scanned or born digital images shall include manufacturer's self-test targets specified in Subsection F of 1.14.2.12 NMAC.

(3) Density targets. See Subsection G of 1.14.2.12 NMAC.

(4) Start of roll target. Start of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming;

(e) name of camera operator; and

(f) description of first record image on the roll of film.

(5) End of roll target. End of roll target shall contain the following information:

(a) roll number;

(b) name of agency and office to which the records belong;

(c) record(s) or file(s) being microfilmed;

(d) date of filming and name of camera operator; and

(e) description of last record image on the roll of film.

O. Microfilm image sequence and spacing. The following image sequence and spacing shall be used:

(1) Start of roll:

(a) film leader;

(b) a single statement of intent and purpose;

(c) a single resolution target;

(d) a single density target;

(e) a single start of roll target; and

(f) four spaces.

(2) Digital or scanned images.

(3) End of roll:

(a) four spaces;

(b) a single end of roll target;

(c) a single density target;

(d) a single resolution target;

(e) a single statement of intent and purpose; and

(f) film trailer.

P. Microfilm qualifications: Agencies shall produce a *master* negative microfilm and a *working copy*. An agency shall have a re-inspection program and process in place for all master microfilm produced.

(1) Master microfilm shall:

(a) be of a wet silver gelatin composition;

(b) meet the minimum standards for the production of master microfilm specified in this section for density, resolution, targeting and spacing;

(c) shall be re-mastered if it fails inspection;

(d) be stored off-site (for security purposes) for the full period prescribed by the agency's records retention and disposition schedule.

(2) Working copy microfilm is designated for reference or everyday use in an office and may be of silver halide, diazo, or of a vesicular composition. An agency shall produce a minimum of one working copy of microfilm.

(3) If multiple working copies of security or preservation microfilm are needed, it is recommended that the production of such microfilm conform to a three-generation system as noted in section 7.1 of ANSI/AIIM MS48-1990. Such a system consists of master negative; a second-generation copy of the master negative that serves as a duplicate negative to be used for producing additional copies; and one or more third-generation working copies produced from the second-generation film.

(4) Agencies using COM systems that do not produce an original silver gelatin film shall make a silver gelatin duplicate negative that meets this standard before depositing such film for storage at the SRCA.

Q. Master COM shall be inspected by state agencies or by vendors filming for agencies. Inspection shall consist of verification of the following:

- (1)** targets;
- (2)** indexing;
- (3)** labeling;
- (4)** document accountability;
- (5)** density;
- (6)** resolution; and
- (7)** visual observation of major defects and errors.

R. Master COM stored at the SRCA are subject to audit by the SRCA staff at any time and shall comply with the standards set out in Subsection Q of 1.14.2.12 NMAC.

S. Microfilm container identification.

(1) All master microfilm roll containers shall contain the following minimum information:

- (a)** name and address of the custodial agency;

- (b)** date converted to COM;
- (c)** identification of the first and last document on the roll of film;
- (d)** identification of the inclusive dates of the oldest and the most recent document by month, date and year;
- (e)** records series names and corresponding records retention and disposition schedule item number;
- (f)** disposition trigger date (i.e., date file closed, date contract terminated, etc.);
- (g)** name and address of the entity producing the roll of film; and
- (h)** roll number.

(2) Master microfilm rolls that do not contain the required information on the label shall be returned to the agency for re-labeling. If SRCA is required to ship the master microfilm rolls back to the agency, the custodial agency shall be responsible for the shipping costs.

T. Indexing requirements. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall include the following:

- (1)** agency code;
- (2)** record series title and corresponding records retention and disposition schedule item number;
- (3)** retention period;
- (4)** inclusive dates;
- (5)** trigger date;
- (6)** date filmed; and
- (7)** access restrictions.

U. Destruction of original copy.

(1) Prior to the final destruction of any scanned paper records, all requirements of this rule shall be met.

(2) Agencies shall submit a request for destruction which includes the following information:

(a) a statement that the records for destruction have been scanned and converted to COM;

(b) that the microfilm has been filmed in accordance to 1.14.2. NMAC microphotography standards;

(c) roll numbers;

(d) record series; and

(e) shall be signed by the records custodian for destruction approval.

V. Expungement. An agency required to perform expungement of COM shall create and maintain an expungement certificate that details the reason for the expungement, the authority to expunge, the date of the original filming and the date of the expungement. The expungement certification shall indicate that the original and all known copies have been expunged.

[11-16-82, 12-20-88, 1-19-89, 3-29-92, 7-29-92, 8-24-96; 1.14.2.12 NMAC - Rn, 1 NMAC 3.2.60.1.10 & A, 12-29-00; A, 04-30-02; A, 07-15-03; A, 06-01-06; A, 06-30-09; A, 07-15-10]

1.14.2.13 COM SYSTEM PLAN:

A COM plan shall be submitted together with an imaging plan for approval by the state records administrator (see *1.14.2.16 NMAC, imaging system plan.*) Agencies with an approved imaging plan on file with the SRCA shall submit the COM plan as an addendum to the imaging plan. The COM system plan shall address each of the elements in this section.

A. purpose of the system;

B. specific goals of the system including the identification of the official copy of record;

C. record series affected as identified in the records retention and disposition schedule;

D. system specifications;

E. schema for indexing;

F. disposition of records (source documents) microfilmed;

G. disposition plan for COM (masters and working copies) when legal retention has been met;

H. off-site storage location of COM masters and re-inspection program and process;

I. system implementation date; and

J. statement certifying requirements specified in 1.14.2.12 NMAC *standard for computer output microfilm(COM)* have been implemented by the agency.

[1.14.2.13 NMAC - N, 12-29-00; A, 07-15-03; A, 06/01/06; A, 06-30-09; A, 07-15-10]

1.14.2.14 STANDARD FOR IMAGING:

This section is limited in scope to the conversion of documents to digitized images suitable for storage on optical, magnetic media, or converted to COM. The standards listed in this section are intended to maintain the integrity of the original record and to ensure that the image produced is an adequate substitute for the original record and serves the purpose for which such record was created or maintained.

A. All state agencies shall submit an imaging system plan to the state records administrator for approval prior to implementing a digital imaging system for the conversion of paper documents to a digital format. The imaging plan shall address all of the requirements as specified in 1.14.2.14 NMAC.

B. The imaging system shall be an open system. Variants from an open system, such as proprietary hardware, software or formats, shall require justification.

C. Media life expectancy issues.

(1) Life expectancy rating of any media to be employed by an imaging system used for keeping of public records shall correspond to, and not be less than, the retention period of the records, unless otherwise approved.

(2) Where the life expectancy of media is shorter than retention periods of records imaged, migration shall be addressed as a part of the submitted plan for approval. The migration plan shall provide for review of the hardware and software at least every five years. Where it has been determined that the media are not readable by current off-the-shelf equipment, the agency shall provide for migration to current, generally accessible media. This includes the accessibility of the index as well as accessibility of documents.

(3) Digital images converted to COM shall meet all of the requirements specified in 1.14.2.12 NMAC.

D. The agency shall verify completeness of image capture. Verification shall be completed at point of capture and before the mastering of an optical or magnetic disk and conversion to COM. Inspection of the images shall verify the following:

- (1) image filename;
- (2) aproved file format as defined in Subsection H of 1.14.2.14 NMAC;
- (3) 300 DPI for each image type;
- (4) image quality; and
- (5) indexing terms correspond to appropriate image.

E. The agency shall test disks for readability. During production each disk shall be tested for readability. In addition, every year a representative sample of stored disks shall be tested in order to early detect any deterioration.

F. Based upon the value of the records being imaged, the agency shall provide adequate system security and audit functions in accordance with the Performance Guidelines for the Legal Acceptance of Public Records, 1.13.70 NMAC.

G. Scanned images shall meet the following standards.

- (1) Scanning resolution shall be 300 DPI optical minimum, for text.
- (2) Photographic records and other halftone records shall have a scanning resolution at least equal to the original.
- (3) Resolution shall be adequate to duplicate all details of each document in order for that document to qualify as a true copy. Engineering, surveying and other records, the usage of which requires precise measurement, shall be imaged at a sufficiently high resolution to provide for that measurement.
- (4) Digitized images shall be legible for all purposes for which the original records might be used. All characters in digitized images shall be clearly formed and fully recognizable without regard to their surrounding contexts.

H. Image and media formats.

(1) Images shall be in a standard image format such as Group IV TIFF, PDF or BMP. Compression of images for storage is acceptable if the output resolution requirements for use are met. GIF and JPEG are acceptable compressed formats. Plain black and white "two level" images shall not be converted to JPEG; at least 16 gray levels are necessary before JPEG is a useful gray scale image.

(2) Where optical media is used, file and directory structures shall be compliant with ISO 9660 - High Sierra Level 1 - eight dot three file naming, limited nested subdirectories. Any variance shall be justified.

(3) Where optical media are used for permanent records storage, they shall be of the highest quality available. Any variance shall be justified.

I. Labeling requirements for all master security optical media stored at the SRCA.

(1) All master optical disc containers shall contain at a minimum the following information:

(a) name and address of the custodial agency;

(b) date mastered;

(c) identification of the first and last document on the disc;

(d) identification of the inclusive dates of the oldest and the most recent document by month, date and year;

(e) records series names and corresponding records retention and disposition schedule item number;

(f) disposition trigger dates (i.e., date file closed, date contract terminated, etc.);

(g) name and address of the entity producing the disc; and

(h) disc or other identification number.

(2) Master security optical media that do not contain the required information on the label shall be returned to the agency for re-labeling. If SRCA is required to ship the master optical media back to the agency, the custodial agency shall be responsible for the shipping costs.

(3) For optical media not stored at the SRCA the labeling shall consist of:

(a) agency name;

(b) date mastered;

(c) record series name and number;

(d) inclusive dates of the records series; and

(e) the overall content of the optical disk, independent of any index that may be contained on the disk itself.

J. The agency shall maintain an index for the purpose of tracking all microphotography records. The index shall include the following:

- (1)** agency code;
- (2)** record series title and corresponding records retention and disposition schedule item number;
- (3)** retention period;
- (4)** inclusive dates;
- (5)** trigger date;
- (6)** date filmed; and
- (7)** access restrictions.

K. Documents from different record series may be imaged on a single medium (magnetic disk, optical disk, etc.) provided destruction dates coincide, or the disposition plan provides for the maintenance of the media for the longest retention period of any record on the media.

L. Page counts in physical files shall be verified in the scanned versions and certified as complete prior to mastering or writing the optical disk. The certification of completeness shall be kept on file by the agency.

M. Expungement. An agency shall perform expungement of images in accordance with statutory requirements or court order.

(1) An agency shall create and maintain an expungement certificate that details the reason for the expungement, the authority to expunge, the date of the original scanning and the date of the expungement. The expungement certification shall indicate that the original and all known copies have been expunged. The potential for expungement orders shall be addressed in the imaging plan.

(2) When expungement of records is necessary, the plan shall provide for the remastering of all media that have been modified.

(3) When expungement of records is necessary, the plan shall provide for all index records and related image files to be obliterated from the database and the image file storage, and from all backup media.

N. Preservation: Preservation requirements are based on the retention period of the digital image.

(1) Digital records that have an established life cycle of fifteen years or less and are declared the official copy of record may be stored electronically.

(2) Digital records that have a long-term retention requirement of sixteen to fifty years shall meet the requirements specified in Subsection C of 1.14.2.14 NMAC. If converted to COM the requirements of Subsection C do not apply.

(3) Digital records that have a retention period greater than fifty years or have a permanent retention shall be converted to COM. For COM requirements see 1.14.2.11 NMAC and 1.14.2.12 NMAC.

O. Imaging systems shall meet the imaging standards developed by ANSI and enumerated in section 1.14.2.17 NMAC. If not, adequate justification must be provided. The requirements of the most current revision of the standard shall prevail, unless otherwise specified in this rule.

P. New imaging system applications shall be backward compatible with pre-existing applications, or, where they are not, a migration plan for pre-existing images and indexes shall be provided, or dual systems shall be run until the records retention periods for all pre-existing imaged records have expired.

[7-29-96, 8-24-96, 1-12-98; 1.14.2.14 NMAC - Rn, 1 NMAC 3.2.60.1.11 & A, 12-29-00; A, 07-15-03; A, 06-01-06; A, 06-30-09; A, 07-15-10]

1.14.2.15 IMAGING SYSTEM MANAGEMENT:

To ensure the reliability and accuracy of image systems and processes, agencies shall specifically address each of these management structure components.

A. Policies and procedures shall be implemented that define proper management, maintenance and use of the system. Policies and procedures shall provide detailed information on the imaged records throughout their entire life cycle. Such procedures shall include but are not limited to:

- (1) the steps leading up to the conversion of records;
- (2) the methods for storage of the records;
- (3) plans for disaster recovery, including plans for redressing tampering and deterioration of records;
- (4) steps involved in the retrieval and disposition of records;

- (5) staff roles and responsibilities;
- (6) staff maintenance of operation logs and run schedules to document reliability of the system;
- (7) monitoring, controlling, and verifying the accuracy and integrity of imaged records;
- (8) designing, implementing, and documenting quality control;
- (9) attesting to the accuracy and validity of records at the time they are created or updated;
- (10) developing and following systematic steps for data entry;
- (11) retaining any specially written program used to extract data from a system and producing labels for media containing electronic records that identify the exact title, creating program unit, date, purpose, source, and destination of records;
- (12) documenting any problems and resolution of problems including documenting any delays in data entry by keeping records of the date the original source documents were created and the date the data were entered, and keep records of any unusual delay in producing output;
- (13) documenting that procedures are being followed;
- (14) maintaining records for inspection and audit for the full retention period required by law; and
- (15) documenting the methods for ensuring that the imaged and converted records shall be accessible, useable, and understandable.

B. Management shall plan for the provision and maintenance of adequate facilities that ensure the converted and stored records shall be accessible, useable and understandable.

C. Management shall plan for document and test procedures for scanning and indexing records prior to implementation.

D. Management shall provide for formal instruction and training in system operation and maintenance, including image input, process and retrieval. Training and support programs shall be put in place to ensure that staff understands the policies and procedures.

E. Management shall establish controls that monitor the accuracy and authenticity of data, the continued reliability of hardware and software, and the integrity and security

of the system. [see 1.13.70 NMAC Performance Guidelines for the Legal Acceptance of Public Records]

F. Management shall establish controls that provide for the testing of procedures to ensure that the procedures accomplish their purpose.

G. Management shall ensure that the proposed imaging system provides adequate information to fulfill the requirements of state and federal law.

H. Management shall ensure that the imaging process or system can be shown to be trustworthy in producing accurate results.

I. Management shall ensure that the system creates or compiles records in the normal course of business to support the described function or activity.

J. Management shall ensure that the system preserves information over time in identical or functionally equivalent form to the original information.

K. Management shall ensure that records are kept in an understandable form and insure that they can be made accessible within a reasonable amount of time, and within the time established by law through the creation and implementation of a re-inspection process or program.

L. Management shall ensure that the records are organized in a manner that facilitates retrieval.

M. Management shall determine if special equipment has to be provided to display the records or to print copies of them.

[1.14.2.15 NMAC - N, 12-29-00; A, 06-01-06]

1.14.2.16 IMAGING SYSTEM PLAN:

The imaging system plan submitted to the administrator for approval shall address all the items in this section.

A. System description.

(1) The general purpose of the system including the identification of the official copy of record.

(2) The specific goals of system.

(3) The affected records series including record series name, records retention and disposition schedule number, retention period and valuation assessment.

(4) The technical description of the system, including:

(a) for hardware, the technical specifications for servers including, but not limited to, storage capacity, CPU(s), memory, redundancy, connectivity, related input and output devices such as scanner types (flatbed, planetary, etc.) as well as workstation configuration, and printers. For software, operating system and version, backup application and scheme, primary imaging application and version, including, but not limited to, data structure, indices, content, data dictionaries, enhancement algorithms, and compression techniques; and date of installation or proposed installation, upgrades, replacements, and conversions;

(b) system documentation, including, but not limited to, database entity relationship diagrams, general system architecture, network topology and protocols; security devices including bio-metrics;

(c) storage media master, including the off-site storage location of digital master(s), type and longevity such as MTBF;

(d) storage media working copy;

(e) backup process with data restoration and system recovery plan; and

(f) re-inspection plan and process.

(5) System security specifications including but not limited to, audit trails, intrusion detection, and disaster recovery.

(6) Plan for public access and finding aids.

(7) System's expected implementation date.

(8) System's expected life span.

B. Management control. The plan shall provide a description of management policies and procedures required by 1.14.2.15 NMAC, including but not limited to operating procedures, including methods for scanning or entering data; revising, updating, or expunging records; indexing; backing up disks, tapes, etc.; testing the readability of records; applying safeguards to prevent tampering and unauthorized access to protected information; and carrying out the disposition of original records.

C. Disposition of records.

(1) For disposition of original records created from 1950 to present, refer to 1.13.30 NMAC Destruction of Public Records and Non-Records.

(2) Original records of the state from 1912 to 1950, the American territorial, the Mexican Republic, and the Spanish colonial periods shall be transferred to the SRCA after the imaging and verification process is complete.

(3) For disposition of imaged records (masters and working copies), whose legal retention has been met, refer to 1.13.30 NMAC Destruction of Public Records and Non-Records.

D. Five year review, amendments and modifications.

(1) The agency shall submit to the administrator a review of their existing imaging system at least every five years. Included in the review shall be all of the management requirements of 1.14.2.15 NMAC.

(2) Prior to mastering any disks under a modified system an agency shall receive approval of an amended imaging systems plan. When an agency makes modifications to an existing imaging system, such modifications shall be incorporated into an amended plan which shall be submitted to the administrator for approval. Examples of modifications include, but are not limited to, expansion of records series being imaged, enhancement to hardware, modification to software, change in media, and changes in procedure. No records shall be destroyed that were imaged under a modified system until the amended plan has been approved.

[1.14.2.16 NMAC - N, 12-29-00; A, 07-15-03; A, 06-01-06]

1.14.2.17 ADDITIONAL MICROPHOTOGRAPHY STANDARDS.

In addition to those non-SRCA standards already incorporated into this rule, it is recommended that agencies employing or anticipating the use of a microphotography system refer to and consider the following national or international standards:

A. ANSI/AIIM MS1-1996 Recommended Practice for Alphanumeric Computer Output Microforms - Operational Practices for Inspection and Quality Control: This recommended practice describes operational and quality control guidelines for alphanumeric computer output microfilm (COM) recorders and microforms using black & white film as well as duplicates made from such films.

B. ANSI/AIIM MS5-1992 Micrographic Microfiche: This standard applies to microfiche produced as a result of source document and computer-output microfilming.

C. ANSI/AIIM MS6-1993 (R1999) Microfilm Package Labeling: This standard outlines the required and optional information that should be placed on unexposed photographic material packaging.

D. ANSI/AIIM MS14-1996 Specifications for 16 and 35 mm Roll Microfilm: This standard applies to 16mm and 35mm roll microfilm produced as a result of source document and computer output microfilming.

E. ANSI/AIIM MS17-1992 Micrographics -- Rotary (Flow) Microfilm Camera Test Chart and Test Target Descriptions and Use: This standard determines the optical performance of rotary microfilm cameras by using test chart outlined in this standard.

F. ANSI/AIIM MS18-1992 Splices for Imaged Film -- Dimensions and Operational Constraints: This standard covers the requirements for splicing processed microfilm and leaders and trailers independent of film width or type of base support.

G. ANSI/AIIM MS19-1993 Recommended Practice for Identification of Microforms: This document provides methods for identifying the contents of microforms.

H. ANSI/AIIM MS23-1998 Practice for Operational Procedures/Inspection and Quality Control of First-Generation Silver-Microfilm of Documents: This document discusses equipment, supplies, and recommended practices necessary to establish and operate a satisfactory micrographics program.

I. ANSI/AIIM MS24-1996 Test Target for Use in Micro recording Engineering Graphics on 35mm Microfilm: This standard specifies the minimum test target elements, their composition and other criteria which is utilized by a 35mm planetary microfilm camera when micro recording engineering drawings.

J. ANSI/AIIM MS26-1990 35mm Planetary Cameras (top light) -- Procedures for Determining Illumination Uniformity of Microfilming Engineering Drawings: This standard specifies the minimum test target elements and their criteria used in determining the uniformity of illumination on the copy board of a 35mm planetary camera.

K. ANSI/AIIM MS35-1990 Requirements and Characteristics of Original Black and White Documents That May Be Microfilmed: This standard practice describes the essential requirements and characteristics for the creation of documents that will facilitate microfilming.

L. ANSI/AIIM MS36-1990 Reader-Printers for Transparent Microforms-Performance Characteristics: This standard specifies the essential performance to view and make hardcopies from roll microfilm.

M. ANSI/AIIM MS38-1995 Recommended Practices for the Micro recording of Engineering Graphics -- Computer Output Microfilm: Specifies the procedures, dimensions, and quality values governing the micro recording of engineering documentation with a 35mm computer-output microfilmer (COM).

N. ANSI/AIIM MS39-1987 Information and Image Management - Operational Procedures, Quality Control and Inspection of Graphic Computer Output Microforms:

This document describes operational and quality control guidelines for graphic (COM) recorders and microforms using black and white film and duplicates made from such films.

O. ANSI/AIIM MS42-1989 Recommended Practice for the Expungement, Deletion, Correction or Amendment of Records on Microforms: This recommended practice applies to the removal of images from microforms when document expungement is ordered.

P. ANSI/AIIM MS43-1998 Recommended Practice for Operational Procedures/Inspection and Quality Control of Duplicate Microforms of Documents and From COM: This document provides guidelines for the production of duplicate microforms.

Q. ANSI/AIIM MS44-1988 (R1993) Recommended Practice for Quality Control of Image Scanners: This practice provides procedures for the ongoing control of quality within a digital document image management system.

R. ANSI/AIIM MS45-1990 Recommended Practice for Inspection of Stored Silver Gelatin Microforms for Evidence of Deterioration: This practice applies to all forms of silver-gelatin microfilm whether in roll, aperture card, jacket or microfiche format.

S. ANSI/AIIM MS48-1999 Recommended Practice for Microfilming Public Records on Silver Halide Film: This practice covers original first-generation microforms including rolls, microfiche, aperture cards, and jacket film.

T. ANSI/AIIM MS51-1991 Micrographics -- ISO Resolution Test Chart No.2 Description and Use: This standard specifies a method of determining resolution by measuring the minimum size of detail recognizable in processed microform.

U. ANSI/AIIM MS52-1991 Recommended Practice for the Requirements and Characteristics of Documents Intended for Optical Scanning: This standard describes the physical characteristics of paper documents that facilitate black and white optical scanning.

V. ANSI/AIIM MS61 - 1996 Application Programming Interface (API) for Scanners in Document Imaging Systems.

W. ANSI/AIIM MS62-1999 Recommended Practice for COM Records Systems Having an Internal Electronic Forms Generating System: This standard provides operational practices for inspection and quality control.

X. ANSI/AIIM MS111-1994 Recommended Practice for Microfilming Printed Newspapers on 35mm Roll Microfilm: The purpose of this practice is to establish consistent formats and criteria for microfilming printed newspapers.

Y. ANSI/NAPM IT9.1-1996 Imaging Materials - Processed-- Silver -- Gelatin Type - Black and White Film Specifications for Stability: Specifies the manufacturing and processing requirements for silver-gelatin film.

Z. ANSI/PIMA IT9.2-1998 Imaging Media -- Photographic Processed Films, Plates, and Papers Filing Enclosures and Storage Containers: This standard sets forth the principal physical and chemical requirements for filing enclosures and containers designed for storing processed films, plates, and papers in sheet form.

AA. ANSI/NAPM IT9.6 1991 (R1996) Photographic Films -- Specifications for Safety Film: This international standard provides specifications and test procedures for establishing the safety of photographic films with respect to hazards from fire.

BB. ANSI/NAPM IT9.7 1993 Photography - Photographic Films and Papers Wedge Test for Brittleness: This standard specifies a method for determining and expressing quantitatively the brittleness of photographic film. It is applicable to film with or without a gelatin backing and may also be applied to either raw or processed film, although the brittleness of a particular film may be quite different after processing than it was before processing. This is a revision of PH1.31-1973.

CC. ANSI/PIMA-IT9.11 1998 Imaging Media -- Processed Safety Photographic Film Storage: The recommendations contained in this standard deal with the storage conditions, storage facilities, and handling and inspection procedures for processed safety photographic film in roll, strip, card, or sheet form, regardless of size.

DD. ANSI/NAPM IT9.14 1992 (R1997) Imaging Media -- (Photographic film and papers) -- Method for Determining the Resistance of Photographic Emulsions to Wet Abrasion: This standard, a revision and redesignation of ANSI/NAPM IT11 1993, establishes a laboratory test method for determining the resistance of photographic emulsion or gelatin backing to abrasion damage during processing.

EE. ANSI/NAPM IT9.15-1993 Imaging Media -- Photography -- The Effectiveness of Chemical Conversion of Silver Images Against Oxidation -- Method for Measuring: This standard describes methods for evaluating the effectiveness of chemical conversion treatment intended to increase the resistance of wet processed silver images to oxidation.

FF. ANSI/NAPM IT9.17-1993, ANSI/ISO 417-1993 Micrographics - Photography --Determination of Residual Thiosulfate and Other Related Chemicals in Processed Photographic Materials--Methods Using Iodine-Amylose, Methylene Blue and SilverSulfide.

GG. ANSI/NAPM IT9.21 1996 Life Expectancy of Compact Disks (CD-ROM): This standard provides a method for estimating the life expectancy of compact disks, based on the effects of temperature and relative humidity.

HH. ANSI/PIMA IT9.26 1997 Imaging Materials - Life Expectancy of Magneto-Optic (MO) Disks: This standard provides a method for estimating the life expectancy of magneto-optic disks, based on the effects of temperature and relative humidity.

II. ISO/IEC 1544:2001 Information Technology - Digital compression and coding of continuous-tone still images: Standard for JPEG 2000.

JJ. Compuserve, Inc. 1990 GIF Graphics Interchange Format (tm) - A standard defining a mechanism for the storage and transmission of raster-based graphics information, version 89a.

KK. ISO/IEC 10918-1:1994 Information technology - Digital compression and coding of continuous-tone still images: Requirements and guidelines. This is the basic JPEG standard.

LL. ISO/IEC 10918-2:1995 Information technology - Digital compression and coding of continuous-tone still images: Compliance testing. This provides testing requirements for JPEG formats.

MM. ISO/IEC 10918-3:1997 Information technology - Digital compression and coding of continuous-tone still images: Extensions. This standard provides for extensions on the basic JPEG standard.

NN. ISO/IEC 10918-3:1997/Amd 1:1999 Provisions to allow registration of new compression types and versions in the SPIFF header. This is an extension of the basic JPEG standard.

OO. ISO/IEC 10918-4:1999 Information technology - Digital compression and coding of continuous-tone still images: Registration of JPEG profiles, SPIFF profiles, SPIFF tags, SPIFF colour spaces, APPn markers, SPIFF compression types and Registration Authorities (REGAUT)

PP. ISO 9660:1988 Information Processing - Volume and File Structure of CD-ROM for Information Interchange.

QQ. ISO 9848:1993 Photography -- Source Document Microfilms -- Determination of ISO Speed and ISO Average Gradient: This international standard ANSI/NAPM specifies a method for determining the ISO speed and ISO average IT2.51-1993 gradient of black-and-white camera negative photographic films used for first generation microfilming of source document at exposure times typically found with tungsten sources, including any handwritten or printed alphanumeric and line documents such as books, periodicals, business correspondence, and engineering drawings.

RR. ISO 12639:1998 Graphic Technology - Prepress Digital Data Exchange - Tag Image File Format For Imaging Technology.

[3-29-92, 7-29-96; 1.14.2.17 NMAC - Rn, 1 NMAC 3.2.60.1.12 & A, 12-29-00; A, 06-30-09]

PART 3: MICROPHOTOGRAPHY SYSTEMS, MICROPHOTOGRAPHY EQUIPMENT: INVENTORY AND TRANSFER

1.14.3.1 ISSUING AGENCY:

Commission of Public Records - State Records Center and Archives

[5/25/95; 5/15/97; 1.14.3.1 NMAC - Rn, 1 NMAC 3.2.60.3.1, 6/30/05]

1.14.3.2 SCOPE:

All state agencies.

[5/25/95; 5/15/97; 1.14.3.2 NMAC - Rn, 1 NMAC 3.2.60.3.2, 6/30/05]

1.14.3.3 STATUTORY AUTHORITY:

A. Section 14-3-6 NMSA 1978. Administrator; duties. It shall be the duty of the head of each state agency to cooperate with the administrator in conducting surveys and to establish and maintain an active, continuing program for economical and efficient management of the agency's records.

B. Section 14-3-15 (D) NMSA 1978. Reproduction on film; evidence; review; inventory and approval of systems. The administrator shall establish and maintain an inventory of all microfilm equipment owned or leased by state agencies. The administrator is authorized to arrange the transfer of microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system. Subsection D applies only to state agencies and not to state educational institutions. (1978 Opinion Attorney General No. 78-23) Subsection D applies only to state agencies and not to counties or other governmental organizations. (1979 Opinion Attorney General No. 79-26)

C. Section 14-3-15 (G) NMSA 1978. Reproduction on film; evidence; review, inventory and approval of systems. "State agency" shall include the district courts.

D. Senate Bill 687. Section 2. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information system technologies pursuant to regulations adopted by the commission.

[5/25/95; 5/15/97; 1.14.3.3 NMAC - Rn, 1 NMAC 3.2.60.3.3, 6/30/05]

1.14.3.4 DURATION:

Permanent

[5/25/95; 1.14.3.4 NMAC - Rn, 1 NMAC 3.2.60.3.4, 6/30/05]

1.14.3.5 EFFECTIVE DATE:

May 25, 1995 unless a later date is cited at the end of a section or paragraph.

[5/25/95; 1.14.3.5 NMAC - Rn, 1 NMAC 3.2.60.3.5, 6/30/05]

1.14.3.6 OBJECTIVE:

A. To establish and maintain an inventory of all microphotography equipment including imaging (optical, CD-ROM, etc.) owned or leased by state agencies.

B. To arrange the transfer of microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system.

[5/25/95; 1.14.3.6 NMAC - Rn, 1 NMAC 3.2.60.3.6, 6/30/05]

1.14.3.7 DEFINITIONS:

A. Administrator: state records administrator. (Section 14-3-2(B) NMSA 1978).

B. Agency: Any agency, authority, board, bureau, commission, committee, department, institution or officer of state government. (Section 14-3-2 (D) NMSA 1978). Subsection D applies only to state agencies and not to state educational institutions. (1978 Opinion Attorney General No. 78-23). Subsection D applies only to state agencies and not to counties or other governmental organizations. (1979 Opinion Attorney General No. 79-26). For the purposes of this section, state agency shall include the district courts. (Section 14-3-15 (G) NMSA 1978).

C. Microphotography: Microphotography means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records produced by information systems technologies pursuant to regulations adopted by the New Mexico commission of public records.

D. Microphotography equipment: Microphotography equipment includes but is not limited to cameras, processors, duplicators, densitometers, microscopes, microfilm readers, microfilm reader printer, and or the equipment of any system that employs a mechanical, photo-optical, magnetic, electronic or other technological device for producing or reproducing records.

[5/25/95; 1.14.3.7 NMAC - Rn, 1 NMAC 3.2.60.3.7, 6/30/05]

1.14.3.8 MICROPHOTOGRAPHY EQUIPMENT INVENTORY:

- A.** The administrator shall establish and maintain a yearly inventory of all microphotography equipment owned and or leased by state agencies.
- B.** The administrator shall create an awareness among state agencies of the existence of excess microphotography equipment.
- C.** The administrator shall identify those agencies that are in need of microphotography equipment.
- D.** The administrator to initiate contact between agencies in need of microphotography equipment.
- E.** Agencies effected shall arrange the actual physical transfer of microphotography equipment from one agency to another.
- F.** Agencies effected shall negotiate the responsibility of payment of costs incurred in the physical transfer of microphotography equipment.

[5/25/95; 5/15/97; 1.14.3.8 NMAC - Rn, 1 NMAC 3.2.60.3.8, 6/30/05]

1.14.3.9 METHODS OF INVENTORY:

- A. Initial inventory.** Initial inventory shall be done via survey. Survey shall consist of microphotography equipment inventory form (SRC 95-01). Agencies shall return the completed microfilm equipment inventory forms to the state records center within thirty days of date of receipt.
- B. Subsequent inventories.** Subsequent inventories shall be done annually (at the beginning of each fiscal year). Subsequent inventories shall be done via survey. Survey shall consist of microphotography equipment inventory form (SRC 95-01). Agencies shall return the completed microfilm equipment inventory form to the state records center within thirty days of date of receipt.

[5/25/95; 5/15/97; 1.14.3.9 NMAC - Rn, 1 NMAC 3.2.60.3.9, 6/30/05]

1.14.3.10 MICROPHOTOGRAPHY EQUIPMENT TRANSFER:

The administrator is authorized to arrange the transfer of microphotography equipment from a state agency which does not use it, and which has released it, to a state agency needing such equipment for a current microphotography system.

[5/25/95; 5/15/97; 1.14.3.10 NMAC - Rn, 1 NMAC 3.2.60.3.10, 6/30/05]

1.14.3.11 METHODS OF EQUIPMENT TRANSFER:

A. Agencies with an excess of microphotography equipment. State agencies identifying an excess of microphotography within their agency, shall request from the state records administrator the following forms: microfilm equipment status (SRC 95-02) and microfilm equipment transfer order (SRC 95-03).

B. Agency requesting transfer of equipment. Agency requesting transfer of equipment shall complete forms microfilm equipment status (SRC 95-02) and microfilm equipment transfer order (SRC 95-03).

C. If the microphotography equipment is deemed to be in good working condition, it shall be added to the microphotography equipment inventory.

D. If the microphotography equipment is deemed to be in poor condition or not working, agency in possession of equipment shall be notified by state records administrator of non-acceptance of equipment for transfer.

E. Agencies needing microphotography equipment. Agencies in need of microfilm equipment shall make their needs known in writing to the state records administrator.

F. The staff of the micrographics bureau (state records center, records management division) shall search through the inventory of microphotography equipment to locate a match between need and availability of microphotography equipment.

G. The state records administrator shall notify the agency in need of microphotography equipment and the agency in excess of microphotography equipment. The state records administrator shall furnish both agencies with copies of microfilm equipment status (SRC 95-02) and microfilm equipment transfer order (SRC 95-03) which have been approved.

H. The micrographics unit shall forward microfilm equipment inventory form to receiving agency requesting new inventory numbers for equipment received.

[5/25/95; 5/15/97; 1.14.3.11 NMAC - Rn, 1 NMAC 3.2.60.3.11, 6/30/05]

CHAPTER 15: GENERAL RECORDS RETENTION AND DISPOSITION SCHEDULES (GRRDS) [REPEALED]

PART 1: GENERAL PROVISIONS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 2: GRRDS GENERAL ADMINISTRATIVE RECORDS [REPEALED]

[This part was repealed on October 1, 2015.]

**PART 3: GRRDS, GENERAL ADMINISTRATIVE RECORDS (FOR USE BY
LOCAL GOVERNMENT AND EDUCATIONAL INSTITUTIONS)
[REPEALED]**

[This part was repealed on November 30, 2015.]

PART 4: GRRDS, GENERAL FINANCIAL [REPEALED]

[This part was repealed on October 1, 2015.]

**PART 5: GRRDS, GENERAL FINANCIAL SCHEDULE (INTERPRETIVE)
[REPEALED]**

[This part was repealed on November 30, 2015.]

PART 6: GRRDS, GENERAL PERSONNEL RECORDS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 7: GRRDS, GENERAL PERSONNEL (INTERPRETIVE) [REPEALED]

[This part was repealed on November 30, 2015.]

PART 8: GRRDS, GENERAL MEDICAL RECORDS [REPEALED]

[This part was repealed on October 1, 2015.]

**PART 9: GRRDS, GENERAL HOSPITAL AND MEDICAL CENTER
RECORDS [REPEALED]**

[This part was repealed on October 1, 2015.]

**CHAPTER 16: LEGISLATIVE RECORDS RETENTION
AND DISPOSITION SCHEDULES (LRRDS)
[REPEALED]**

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-110: [RESERVED]

PART 111: LRRDS, LEGISLATIVE COUNCIL SERVICE [REPEALED]

[This part was repealed on October 1, 2015.]

PART 112: LRRDS, LEGISLATIVE FINANCE COMMITTEE [REPEALED]

[This part was repealed on October 1, 2015.]

PART 113-116: [RESERVED]

**PART 117: LRRDS, LEGISLATIVE SCHOOL STUDY COMMITTEE
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 118: [RESERVED]

PART 119: LRRDS, LEGISLATIVE MAINTENANCE [REPEALED]

[This part was repealed on October 1, 2015.]

**CHAPTER 17: JUDICIAL RECORDS RETENTION AND
DISPOSITION SCHEDULES (JRRDS) [REPEALED]**

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-204: [RESERVED]

PART 205: JRRDS, SUPREME COURT LAW LIBRARY [REPEALED]

[This part was repealed on October 1, 2015.]

PART 206-209: [RESERVED]

PART 210: JRRDS, JUDICIAL STANDARDS COMMISSION [REPEALED]

[This part was repealed on October 1, 2015.]

PART 211-214: [RESERVED]

PART 215: JRRDS, COURT OF APPEALS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 216: JRRDS, SUPREME COURT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 217: [RESERVED]

PART 218: JRRDS, NEW MEXICO MAGISTRATE COURTS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 219: JRRDS, BOARD GOVERNING THE RECORDING OF JUDICIAL PROCEEDINGS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 220: JRRDS, ADMINISTRATIVE OFFICE OF THE COURTS [REPEALED]

PART 221-229: [RESERVED]

PART 230: JRRDS, NEW MEXICO DISTRICT COURTS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 231-243: [RESERVED]

PART 244: JRRDS, BERNALILLO COUNTY METROPOLITAN COURT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 245-263: [RESERVED]

PART 264: JRRDS, ADMINISTRATIVE OFFICE OF THE DISTRICT ATTORNEYS AND THE DISTRICT OFFICES [REPEALED]

[This part was repealed on October 1, 2015.]

CHAPTER 18: EXECUTIVE RECORDS RETENTION AND DISPOSITION SCHEDULES (ERRDS) [REPEALED]

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-304: [RESERVED]

PART 305: ERRDS, OFFICE OF THE ATTORNEY GENERAL [REPEALED]

[This part was repealed on October 1, 2015.]

PART 306-307: [RESERVED]

PART 308: ERRDS, OFFICE OF THE STATE AUDITOR [REPEALED]

[This part was repealed on October 1, 2015.]

PART 309-332: [RESERVED]

**PART 333: ERRDS, TAXATION AND REVENUE DEPARTMENT
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 334-336: [RESERVED]

PART 337: ERRDS, STATE INVESTMENT COUNCIL [REPEALED]

[This part was repealed on October 1, 2015.]

PART 338-340: [RESERVED]

**PART 341: ERRDS, DEPARTMENT OF FINANCE AND ADMINISTRATION
[REPEALED]**

[This part was repealed on October 1, 2015.]

**PART 342: ERRDS, PUBLIC SCHOOL INSURANCE AUTHORITY
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 343: ERRDS, RETIREE HEALTH CARE AUTHORITY [REPEALED]

[This part was repealed on October 1, 2015.]

PART 344-349: [RESERVED]

PART 350: ERRDS, GENERAL SERVICES DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 351: [RESERVED]

PART 352: ERRDS, EDUCATIONAL RETIREMENT BOARD [REPEALED]

[This part was repealed on October 1, 2015.]

PART 353-354: [RESERVED]

PART 355: ERRDS, PUBLIC DEFENDER DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 356: ERRDS, NM OFFICE OF THE GOVERNOR [REPEALED]

[This part was repealed on October 1, 2015.]

PART 357-359: [RESERVED]

PART 360: ERRDS, LIEUTENANT GOVERNOR'S OFFICE [REPEALED]

[This part was repealed on October 1, 2015.]

PART 361: ERRDS, OFFICE OF THE CHIEF INFORMATION OFFICER [REPEALED]

[This part was repealed on October 1, 2015.]

PART 362-365: [RESERVED]

PART 366: ERRDS, PUBLIC EMPLOYEES RETIREMENT ASSOCIATION [REPEALED]

[This part was repealed on October 1, 2015.]

PART 367-368: [RESERVED]

PART 369: ERRDS, COMMISSION OF PUBLIC RECORDS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 370: ERRDS, SECRETARY OF STATE [REPEALED]

[This part was repealed on October 1, 2015.]

PART 371-377: [RESERVED]

PART 378: ERRDS, STATE PERSONNEL OFFICE [REPEALED]

[This part was repealed on October 1, 2015.]

PART 379: ERRDS, PUBLIC EMPLOYEE LABOR RELATIONS BOARD [REPEALED]

[This part was repealed on October 1, 2015.]

PART 380-393: [RESERVED]

PART 394: ERRDS, OFFICE OF THE STATE TREASURER [REPEALED]

[This part was repealed on October 1, 2015.]

PART 395-403: [RESERVED]

PART 404: ERRDS, BOARD OF EXAMINERS FOR ARCHITECTS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 405-417: [RESERVED]

PART 418: ERRDS, TOURISM DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 419: ERRDS, ECONOMIC DEVELOPMENT DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 420: ERRDS, REGULATION AND LICENSING DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 421-429: [RESERVED]

PART 430: ERRDS, PUBLIC REGULATION COMMISSION [REPEALED]

[This part was repealed on October 1, 2015.]

PART 431-439: [RESERVED]

**PART 440: ERRDS, OFFICE OF SUPERINTENDENT OF INSURANCE
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 441-445: [RESERVED]

PART 446: ERRDS, BOARD OF MEDICAL EXAMINERS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 447-448: [RESERVED]

PART 449: ERRDS, BOARD OF NURSING [REPEALED]

[This part was repealed on October 1, 2015.]

PART 450-459: [RESERVED]

PART 460: ERRDS, STATE FAIR COMMISSION [REPEALED]

[This part was repealed on October 1, 2015.]

PART 461-463: [RESERVED]

**PART 464: ERRDS, STATE BOARD OF LICENSURE FOR
PROFESSIONAL ENGINEERS AND SURVEYORS [REPEALED]**

[This part was repealed on October 1, 2015.]

PART 465: ERRDS, GAMING CONTROL BOARD [REPEALED]

[This part was repealed on October 1, 2015.]

PART 466-468: [RESERVED]

PART 469: ERRDS, STATE RACING COMMISSION [REPEALED]

[This part was repealed on October 1, 2015.]

PART 470-478: [RESERVED]

PART 479: ERRDS, BOARD OF VETERINARY MEDICINE [REPEALED]

[This part was repealed on October 1, 2015.]

PART 480-504: [RESERVED]

PART 505: ERRDS, CULTURAL AFFAIRS DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 506-507: [RESERVED]

PART 508: ERRDS, NEW MEXICO LIVESTOCK BOARD [REPEALED]

[This part was repealed on October 1, 2015.]

PART 509-515: [RESERVED]

PART 516: ERRDS, DEPARTMENT OF GAME AND FISH [REPEALED]

[This part was repealed on October 1, 2015.]

PART 517-520: [RESERVED]

**PART 521: ERRDS, ENERGY, MINERALS AND NATURAL RESOURCES
DEPARTMENT [REPEALED]**

[This part was repealed on October 1, 2015.]

PART 522-538: [RESERVED]

PART 539: ERRDS, STATE LAND OFFICE [REPEALED]

[This part was repealed on October 1, 2015.]

PART 540-549: [RESERVED]

PART 550: ERRDS, OFFICE OF THE STATE ENGINEER [REPEALED]

[This part was repealed on October 1, 2015.]

PART 551-568: [RESERVED]

**PART 569: ERRDS, NM ORGANIC COMMODITY COMMISSION
[REPEALED]**

[This part was repealed effective 7/14/2011.]

PART 570-600: [RESERVED]

**PART 601: ERRDS, COMMISSION ON THE STATUS OF WOMEN
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 602-604: [RESERVED]

**PART 605: ERRDS, MARTIN LUTHER KING JR COMMISSION
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 606: ERRDS, COMMISSION FOR THE BLIND [REPEALED]

[This part was repealed on October 1, 2015.]

PART 607-608: [RESERVED]

PART 609: ERRDS, INDIAN AFFAIRS DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 610-623: [RESERVED]

**PART 624: ERRDS, AGING AND LONG TERM SERVICES DEPARTMENT
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 625-629: [RESERVED]

PART 630: ERRDS, HUMAN SERVICES DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

**PART 631: ERRDS, DEPARTMENT OF WORKFORCE SOLUTIONS
[REPEALED]**

[This part was repealed on October 1, 2015.]

**PART 632: ERRDS, WORKER'S COMPENSATION ADMINISTRATION
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 633-643: [RESERVED]

**PART 644: ERRDS, DIVISION OF VOCATIONAL REHABILITATION
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 645-646: [RESERVED]

**PART 647: ERRDS, DEVELOPMENTAL DISABILITIES PLANNING
COUNCIL [REPEALED]**

[This part was repealed on October 1, 2015.]

PART 648-664: [RESERVED]

PART 665: ERRDS, DEPARTMENT OF HEALTH [REPEALED]

[This part was repealed on October 1, 2015.]

PART 666: [RESERVED]

**PART 667: ERRDS, NEW MEXICO DEPARTMENT OF ENVIRONMENT
[REPEALED]**

PART 668: [RESERVED]

PART 669: ERRDS, HEALTH POLICY COMMISSION [REPEALED]

[This part was repealed on October 1, 2015.]

PART 670: ERRDS, VETERAN'S SERVICES DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 671-689: [RESERVED]

**PART 690: ERRDS, CHILDREN, YOUTH AND FAMILIES DEPARTMENT
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 691-704: [RESERVED]

PART 705: ERRDS, DEPARTMENT OF MILITARY AFFAIRS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 706-759: [RESERVED]

PART 760: ERRDS, ADULT PAROLE BOARD [REPEALED]

[This part was repealed on October 1, 2015.]

PART 761-764: [RESERVED]

**PART 765: ERRDS, JUVENILE PUBLIC SAFETY ADVISORY BOARD
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 766-769: [RESERVED]

PART 770: ERRDS, CORRECTIONS DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 771-779: [RESERVED]

**PART 780: ERRDS, CRIME VICTIMS REPARATION COMMISSION
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 781-789: [RESERVED]

PART 790: ERRDS, DEPARTMENT OF PUBLIC SAFETY [REPEALED]

[This part was repealed on October 1, 2015.]

PART 791-793: [RESERVED]

PART 794: ERRDS, MOUNTED PATROL [REPEALED]

[This part was repealed on October 1, 2015.]

**PART 795: ERRDS, HOMELAND SECURITY AND EMERGENCY
MANAGEMENT DEPARTMENT [REPEALED]**

[This part was repealed on October 1, 2015.]

PART 796-804: [RESERVED]

PART 805: ERRDS, DEPARTMENT OF TRANSPORTATION [REPEALED]

[This part was repealed on October 1, 2015.]

PART 806-923: [RESERVED]

PART 924: ERRDS, PUBLIC EDUCATION DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 925: [RESERVED]

**PART 926: ERRDS, SCHOOL FOR THE BLIND AND VISUALLY IMPAIRED
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 927: ERRDS, NEW MEXICO SCHOOL FOR THE DEAF [REPEALED]

[This part was repealed on October 1, 2015.]

PART 928-939: [RESERVED]

**PART 940: ERRDS, PUBLIC SCHOOLS FACILITIES AUTHORITY
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 941-949: [RESERVED]

PART 950: ERRDS, HIGHER EDUCATION DEPARTMENT [REPEALED]

[This part was repealed on October 1, 2015.]

PART 951-952: [RESERVED]

PART 953: ERRDS, NEW MEXICO STATE UNIVERSITY [RESERVED]

**PART 954: ERRDS, NEW MEXICO DEPARTMENT OF AGRICULTURE
[REPEALED]**

[This part was repealed on October 1, 2015.]

PART 955-968: [RESERVED]

**PART 969: ERRDS, UNIVERSITY OF NEW MEXICO HOSPITAL
[REPEALED]**

[This part was repealed on May 12, 2008.]

PART 970-979: [RESERVED]

**PART 980: ERRDS, NM OFFICE OF THE MEDICAL INVESTIGATOR
[REPEALED]**

[This part was repealed on October 1, 2015.]

CHAPTER 19: LOCAL GOVERNMENT RECORDS RETENTION AND DISPOSITION SCHEDULES [REPEALED]

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: LGRRDS, OFFICE OF THE COUNTY ASSESSOR [REPEALED]

[This part was repealed on November 30, 2015.]

PART 3: LGRRDS, OFFICE OF THE COUNTY CLERK [REPEALED]

[This part was repealed on November 30, 2015.]

**PART 4: LGRRDS BOARD OF COUNTY COMMISSIONERS, COUNTY
MANAGERS [REPEALED]**

[This part was repealed on November 30, 2015.]

PART 5: LGRRDS, OFFICE OF THE COUNTY SHERIFF [REPEALED]

[This part was repealed on November 30, 2015.]

PART 6: LGRRDS, OFFICE OF THE COUNTY TREASURER [REPEALED]

[This part was repealed on November 30, 2015.]

PART 7: LGRRDS, SOUTHERN SANDOVAL COUNTY ARROYO FLOOD CONTROL AUTHORITY (SSCAFCA) [REPEALED]

[This part was repealed on November 30, 2015.]

PART 8: LGRRDS, NEW MEXICO MUNICIPALITIES [REPEALED]

[This part was repealed on November 30, 2015.]

PART 9: LGRRDS, NEW MEXICO MUNICIPAL COURTS [REPEALED]

[This part was repealed on November 30, 2015.]

PART 10: LGRRDS, MIDDLE RIO GRANDE CONSERVANCY DISTRICT [REPEALED]

[This part was repealed on November 30, 2015.]

PART 11: LGRRDS, SOIL AND WATER CONSERVATION DISTRICTS AND WATERSHED DISTRICTS [REPEALED]

[This part was repealed on November 30, 2015.]

CHAPTER 20: EDUCATION RECORDS RETENTION AND DISPOSITION SCHEDULES (EDRRDS) [REPEALED]

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: EDRRDS, NEW MEXICO PUBLIC SCHOOLS [REPEALED]

[This part was repealed on October 1, 2015.]

PART 3: EDRRDS, NEW MEXICO COLLEGES AND UNIVERSITIES [REPEALED]

[This part was repealed on October 1, 2015.]

CHAPTER 21: FUNCTIONAL RECORDS RETENTION AND DISPOSITION SCHEDULES (FRRDS)

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: RETENTION AND DISPOSITION OF PUBLIC RECORDS

1.21.2.1 ISSUING AGENCY:

State Commission of Public Records.

[1.21.2.1 NMAC - N, 10/1/2015]

1.21.2.2 SCOPE:

All agencies as defined in the Public Records Act, Section 14-3-1 et seq. NMSA 1978.

[1.21.2.2 NMAC - N, 10/1/2015]

1.21.2.3 STATUTORY AUTHORITY:

Public Records Act, Section 14-3-1 et seq. NMSA 1978.

[1.21.2.3 NMAC - N, 10/1/2015]

1.21.2.4 DURATION:

Permanent.

[1.21.2.4 NMAC - N, 10/1/2015]

1.21.2.5 EFFECTIVE DATE:

October 1, 2015, unless a later date is cited at the end of a section.

[1.21.2.5 NMAC - N, 10/1/2015]

1.21.2.6 OBJECTIVE:

To establish a records retention schedule for the orderly management, retention, disposition and preservation of records necessary for carrying out the Public Records Act, Section 14-3-1 et seq. NMSA 1978, and to provide recommendations for the retention and preservation of records of state governmental entities not subject to the act.

1.21.2.7 DEFINITIONS:

The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the Public Records Act, Section 14-3-1 et seq. NMSA 1978 shall have the respective meanings accorded such terms in the act.

A. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

B. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

C. "Executive level" means elected and appointed officials, statutory agency heads and management personnel with decision making authority granted by the agency head.

D. "Historical" means records deemed to have archival value by the commission.

E. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of official records, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters, and reading files or informational files.

F. "Official copy of record" the single record determined to be the official copy for the purposes of fulfilling the retention requirements.

G. "Retention" means the period of time during which the official copy of record shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

H. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

I. "Trigger event" means the event which begins the retention period.

[1.21.2.7 NMAC - N, 10/1/2015; A, 11/30/2016; A, 9/11/2018]

1.21.2.8 ABBREVIATIONS AND ACRONYMS:

- A. "ADA"** stands for Americans with Disabilities Act.
- B. "CDC"** stands for center for disease control.
- C. "DUI"** stands for driving under the influence.
- D. "EEOC"** stands for equal employment opportunity commission.
- E. "NMAC"** stands for New Mexico administrative code.
- F. "NMSA"** stands for New Mexico statutes annotated.
- G. "WCA"** stands for workers' compensation administration.

[1.21.2.8 NMAC - N, 10/1/2015]

1.21.2.9 INSTRUCTIONS:

A. The records retention and disposition schedule identifies the types of records maintained by all agencies and specifies a period of time for which the official copy of record must be retained. A retention period may be stated in terms of months or years and is contingent upon the occurrence of a trigger event. Each record classification will be itemized by NMAC section number and title in the format listed below.

- (1) Category** - describes the hierarchy of the function
 - (2) Description** - describes the function of the record classification
 - (3) Retention** - defines the length of time records must be kept before they are eligible for destruction or archival preservation
- B.** Record classification descriptions are not intended to be exhaustive. Descriptions may include records that do not appear in the files, and conversely, files may include records not listed in the description.
- C.** Refer questions concerning the confidentiality of a record to legal counsel for the agency. For the destruction of confidential records, please refer to 1.13.30 NMAC.
- D.** Public records should be maintained in their native format (paper/digital). Records may be microfilmed or digitized provided a microphotography plan has been approved by the state records administrator. Refer to Section 14-3-17 NMSA 1978 and

1.14.2 NMAC. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes.

E. Agencies are encouraged to create secondary and tertiary descriptors for each classification (e.g., account receivable - invoices - acme inc., goods and services - IT consulting - data hub LLC., infrastructure project files - railroad project - Lamy station upgrade, etc.). These additional descriptors will assist with the accessibility of the records.

F. Upon storage or disposition, public records shall be classified according to content and retained at a minimum for the length of time specified in the records retention and disposition schedule.

G. For guidance on electronic messaging, refer to 1.13.4 NMAC.

H. For guidance on the destruction of non-record material, refer to 1.13.30 NMAC.

I. Records classifications related to the legislative branch of government provided herein are applicable for legislative agencies that utilize the records center services and permanent archival repository.

J. Non-scheduled public records created by an agency in pursuance of law or in connection with the transaction of public business shall have a retention period of permanent until such time the non-scheduled record has been scheduled and a retention period adhering to operational, legal, fiscal, historical or other purposes is established.

K. For guidance on classifying county and municipal records, refer to the records retention and disposition guidance for counties and municipalities.

L. For guidance on destruction of county records, refer to Section 14-1-8 NMSA 1978.

M. Classifications that have a disposition of transfer to archives may be submitted for direct transfer before the allotted time period specified in the retention with the approval of the custodial agency and state records administrator.

N. Upon adoption of this rule, records retained at the records center shall be reclassified according to the new records classifications for retention and disposition.

O. The official copy of a record may contain duplicates of other records. If your program requires the submission of documentation, and your agency is not required to submit this documentation to another agency for additional or final processing, your agency is the keeper of the official copy of record.

P. Records transferred to the state archives will be reviewed for final disposition.

[1.21.2.9 NMAC - N, 10/1/2015; A, 11/30/2015; A, 11/30/2016; A, 9/11/2018]

1.21.2.10-1.21.2.100 [RESERVED]

1.21.2.101 AUTHORIZATION:

A. Category: Administration - general management.

B. Description: Records related to authorization of personnel or entities to perform specific duties and not identified in other classifications.

C. Retention: destroy 10 years from date file closed.

[1.21.2.101 NMAC - N, 10/1/2015]

1.21.2.102 CALENDARS AND SCHEDULES:

A. Category: Administration - general management.

B. Description: Appointments and schedules and related records.

C. Retention: destroy one year from close of calendar year in which created.

[1.21.2.102 NMAC - N, 10/1/2015]

1.21.2.103 CALENDARS AND SCHEDULES - GOVERNOR:

A. Category: Administration - general management.

B. Description: Governor's appointments and schedules and related records.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.103 NMAC - N, 10/1/2015]

1.21.2.104 CORRESPONDENCE - EXECUTIVE LEVEL:

A. Category: Administration - general management.

B. Description: Internal and external communications and related records to or from executive level personnel including, but not limited to, directives and not identified in other classifications.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.104 NMAC - N, 10/1/2015]

1.21.2.105 CORRESPONDENCE - GENERAL:

A. Category: Administration - general management.

B. Description: Routine correspondence and related records of day-to-day office administration and not identified in other classifications.

C. Retention: destroy one year from close of calendar year in which created.

[1.21.2.105 NMAC - N, 10/1/2015]

1.21.2.106 [RESERVED]

1.21.2.107 DENIED, REJECTED OR WITHDRAWN RECORDS:

A. Category: Administration - general management.

B. Description: Records including, but not limited to, applications, complaints or requests which are incomplete, have no merit or have been denied, rejected or withdrawn.

C. Retention: destroy two years from date file closed.

[1.21.2.107 NMAC - N, 10/1/2015]

1.21.2.108 DISTRIBUTION, MAILING AND CONTACT LISTS:

A. Category: Administration - general management.

B. Description: Lists of individuals and organizations for mailing, contact or distribution.

C. Retention: destroy when superseded or obsolete.

[1.21.2.108 NMAC - N, 10/1/2015]

1.21.2.109 INDEXES AND FINDING AIDS:

A. Category: Administration - general management.

B. Description: Indexes, lists and finding aids used to provide access to records or information.

C. Retention: retain until disposition of corresponding record.

[1.21.2.109 NMAC - N, 10/1/2015]

1.21.2.110 LOGS:

A. Category: Administration - general management.

B. Description: Logs used to monitor or control.

C. Retention: retain until no longer needed for reference.

[1.21.2.110 NMAC - N, 10/1/2015]

1.21.2.111 PLANNING AND DEVELOPMENT:

A. Category: Administration - general management.

B. Description: Records related to planning and development.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.111 NMAC - N, 10/1/2015]

1.21.2.112 PROGRAM AND PROJECT FILES:

A. Category: Administration - general management.

B. Description: Records related to administrative programs and projects not identified in other classifications.

C. Retention: destroy five years from date file closed.

[1.21.2.112 NMAC - N, 10/1/2015]

1.21.2.113 PROGRAM AND PROJECT FILES - GOVERNOR'S:

A. Category: Administration - general management.

B. Description: Records related to administrative programs and projects of the governor's and lieutenant governor's office.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.113 NMAC - N, 10/1/2015]

1.21.2.114 PUBLICATIONS:

A. Category: Administration - general management.

B. Description: Agency publications intended for distribution to the public.

C. Retention: permanent, transfer to state library when published.

[1.21.2.114 NMAC - N, 10/1/2015; A, 11/30/2015]

[Refer to 1.25.10 NMAC, Publications: Filing, Distribution, Format and Style]

1.21.2.115 [RESERVED]

[1.21.2.115 NMAC - N, 10/1/2015; Repealed, 11/30/2016]

1.21.2.116 REPORTS - GENERAL:

A. Category: Administration - general management.

B. Description: General reports not identified in other classifications.

C. Retention: destroy two years from date file created.

[1.21.2.116 NMAC - N, 10/1/2015]

1.21.2.117 REPORTS - HISTORICAL:

A. Category: Administration - general management.

B. Description: Historical reports including, but not limited to the following subject matter: vital records, natural resources, emissions, professional licensure registries, disease management, rural health care, student nutrition, emergency response, homeland security, infrastructure, tribal education and statutorily required reports; and not identified in other classifications.

C. Retention: permanent, transfer to archives one year from date file created.

[1.21.2.117 NMAC - N, 10/1/2015]

1.21.2.118 REPORTS - STATISTICAL:

A. Category: Administration - general management.

B. Description: Statistical reports.

C. Retention: destroy five years from date file created.

[1.21.2.118 NMAC - N, 10/1/2015]

1.21.2.119 SPEECHES AND PRESENTATIONS:

A. Category: Administration - general management.

B. Description: Speeches, presentations and related records, does not include records related to training.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.119 NMAC - N, 10/1/2015; A, 11/30/2016]

[For training materials, refer to Section 1.21.2.254 NMAC]

1.21.2.120 SURVEYS:

A. Category: Administration - general management.

B. Description: Surveys or questionnaires and related records.

C. Retention: destroy five years from date file created.

[1.21.2.120 NMAC - N, 10/1/2015]

1.21.2.121 TRACKING:

A. Category: Administration - general management.

B. Description: Records related to the tracking of data for the purpose of reporting.

C. Retention: destroy five years from date file created.

[1.21.2.121 NMAC - N, 10/1/2015]

1.21.2.122 GRANT ADMINISTRATION:

A. Category: Administration - general management.

B. Description: Records related to grant administration.

C. Retention: destroy three years from the date file closed.

[1.21.2.122 NMAC - Rn & A, 1.21.2.338 NMAC, 11/30/2016]

1.21.2.123-1.21.2.130 [RESERVED]

1.21.2.131 BUILDING FILES:

A. Category: Administration - buildings, facilities and infrastructure.

B. Description: Records related to government owned buildings and facilities including, but not limited to, capital improvements, as-built and as-constructed drawings, does not include routine maintenance and construction projects.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.131 NMAC - N, 10/1/2015]

1.21.2.132 CONSTRUCTION PROJECT FILES - CAPITAL PROJECTS:

A. Category: Administration - buildings, facilities and infrastructure.

B. Description: Records related to the planning, design and construction of projects using capital funds.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.132 NMAC - N, 10/1/2015]

1.21.2.133 INFRASTRUCTURE PROJECT FILES:

A. Category: Administration - buildings, facilities and infrastructure.

B. Description: Records related to the planning, design and construction of specific projects including, but not limited to, facility and infrastructure projects.

C. Retention: permanent, transfer to archives 25 years from date file closed.

[1.21.2.133 NMAC - N, 10/1/2015]

1.21.2.134 MAINTENANCE AND REPAIR RECORDS:

A. Category: Administration - buildings, facilities and infrastructure.

B. Description: Records related to the maintenance and repair of government owned and operated buildings and facilities.

C. Retention: destroy three years from the close of the fiscal year in which file closed.

[1.21.2.134 NMAC - N, 10/1/2015]

1.21.2.135 MAPS, DRAWINGS AND PLANS:

A. Category: Administration - buildings, facilities and infrastructure.

B. Description: Maps, drawings or plans of government owned assets including, but not limited to, property, facilities, buildings and infrastructure.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.135 NMAC - N, 10/1/2015]

1.21.2.136 SAFETY, SECURITY AND ACCESS:

A. Category: Administration - buildings, facilities and infrastructure.

B. Description: Records related to safety and security for government owned or operated buildings.

C. Retention: destroy three years from date file closed.

[1.21.2.136 NMAC - N, 10/1/2015]

1.21.2.137 WORK ORDERS:

A. Category: Administration - buildings, facilities and infrastructure.

B. Description: Records related to work and job orders for repair and maintenance of property.

C. Retention: destroy one year from date file closed.

[1.21.2.137 NMAC - N, 10/1/2015]

1.21.2.138-1.21.2.140 [RESERVED]

1.21.2.141 AWARDS - COMMUNITY AND PUBLIC RELATIONS:

A. Category: Administration - community and public relations.

B. Description: Records related to awards and recognition.

C. Retention: permanent, transfer to archives one year from date file closed.

[1.21.2.141 NMAC - N, 10/1/2015]

1.21.2.142 COMPLAINTS:

A. Category: Administration - community and public relations.

B. Description: Records related to complaints by the public relating to policies, procedures or business practices including, but not limited to, filing forms, recommendations, responses and resolution.

C. Retention: destroy one year from date file closed.

[1.21.2.142 NMAC - N, 10/1/2015]

1.21.2.143 OUTREACH - HISTORICAL:

A. Category: Administration - community and public relations.

B. Description: Records related to community outreach with historical significance.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.143 NMAC - N, 10/1/2015]

1.21.2.144 PRESS AND NEWS RELEASES:

A. Category: Administration - community and public relations.

B. Description: Records related to official government press, news releases and notices.

C. Retention: permanent, transfer to archives five years from date file created.

[1.21.2.144 NMAC - N, 10/1/2015]

1.21.2.145 PROGRAMS - COMMUNITY AND PUBLIC RELATIONS:

A. Category: Administration - community and public relations.

B. Description: Records related to community programs not identified in other classifications.

C. Retention: destroy three years from date file closed.

[1.21.2.145 NMAC - N, 10/1/2015]

1.21.2.146 PUBLICITY AND PROMOTION:

A. Category: Administration - community and public relations.

B. Description: Records related to marketing of the government including, but not limited to, advertising and public relations with the media including newspapers, television and magazines.

C. Retention: permanent, transfer to archives five years from date file created.

[1.21.2.146 NMAC - N, 10/1/2015]

1.21.2.147-1.21.2.150 [RESERVED]

1.21.2.151 EQUIPMENT FILES:

A. Category: Administration - equipment and vehicle management.

B. Description: Records related to equipment including, but not limited to, history, logs, manuals and operating procedures; and not identified in other classifications.

C. Retention: destroy three years from date of disposition of equipment.

[1.21.2.151 NMAC - N, 10/1/2015]

1.21.2.152 MAINTENANCE AND REPAIRS:

A. Category: Administration - equipment and vehicle management.

B. Description: Records related to maintenance and repair of vehicles and equipment.

C. Retention: destroy three years from the close of the fiscal year in which created.

[1.21.2.152 NMAC - N, 10/1/2015]

1.21.2.153 VEHICLE FILES:

A. Category: Administration - equipment and vehicle management.

B. Description: Records related to vehicles including, but not limited to, history, logs, manuals and operating procedures; and not identified in other classifications.

C. Retention: destroy three years from date of disposition of vehicle.

[1.21.2.153 NMAC - N, 10/1/2015]

1.21.2.154-1.21.2.155 [RESERVED]

1.21.2.156 ACCESS AND CONTROL:

- A. Category:** Administration - information technology.
- B. Description:** Records related to security and access to information technology.
- C. Retention:** destroy three years from date file closed.

[1.21.2.156 NMAC - N, 10/1/2015]

1.21.2.157 SYSTEMS AND NETWORKS:

- A. Category:** Administration - information technology.
- B. Description:** Records related to development and maintenance of voice and data networks, infrastructure and computer applications.
- C. Retention:** destroy when superseded or obsolete.

[1.21.2.157 NMAC - N, 10/1/2015]

1.21.2.158 WEB MANAGEMENT:

- A. Category:** Administration - information technology.
- B. Description:** Records related to management of public websites including, but not limited to, design, graphics, formats and links.
- C. Retention:** destroy one year from date file closed.

[1.21.2.158 NMAC - N, 10/1/2015]

1.21.2.159-1.21.2.160 [RESERVED]

1.21.2.161 ACCIDENTS AND PROPERTY DAMAGE:

- A. Category:** Administration - risk management.
- B. Description:** Records related to reporting damage to government owned and operated property including, but not limited to, claims.
- C. Retention:** destroy three years from date file closed.

[1.21.2.161 NMAC - N, 10/1/2015]

1.21.2.162 GENERAL LIABILITY - CLAIMS:

- A. Category:** Administration - risk management.
- B. Description:** Records related to general liability claims.
- C. Retention:** destroy three years from date file closed.

[1.21.2.162 NMAC - N, 10/1/2015]

1.21.2.163 INSURANCE CERTIFICATES AND BONDS:

- A. Category:** Administration - risk management.
- B. Description:** Records of insurance certificates and bonds provided by contractors, vendors and other non-governmental entities.
- C. Retention:** destroy five years from date file closed.

[1.21.2.163 NMAC - N, 10/1/2015]

1.21.2.164 INSURANCE POLICIES:

- A. Category:** Administration - risk management.
- B. Description:** Records related to insurance of government owned and operated property and assets.
- C. Retention:** destroy 10 years from date file closed.

[1.21.2.164 NMAC - N, 10/1/2015]

1.21.2.165 WAIVERS AND RELEASES - RISK MANAGEMENT:

- A. Category:** Administration - risk management.
- B. Description:** Waivers and releases of liability and related records.
- C. Retention:** destroy two years from date file closed.

[1.21.2.165 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.166-1.21.2.170 [RESERVED]

1.21.2.171 COLLECTION MANAGEMENT - LIBRARY:

A. Category: Administration - historical and cultural resource management.

B. Description: Records related to the management of items and objects owned or managed by a library.

C. Retention: destroy when no longer needed for reference.

[1.21.2.171 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.172 COLLECTION MANAGEMENT - MUSEUMS AND ARCHIVES:

A. Category: Administration - historical and cultural resource management.

B. Description: Records related to the management of items and objects owned or managed by a museum or archive.

C. Retention: permanent.

[1.21.2.172 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.173 LENDING:

A. Category: Administration - historical and cultural resource management.

B. Description: Records related to borrowing, lending and returning of library items including, but not limited to, tracking.

C. Retention: destroy when superseded or obsolete.

[1.21.2.173 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.174 PATRON MANAGEMENT:

A. Category: Administration - historical and cultural resource management.

B. Description: Records related to the management of patrons.

C. Retention: destroy five years from date file closed.

[1.21.2.174 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.175 REQUESTS:

A. Category: Administration - historical and cultural resource management.

B. Description: Records related to requests from the public.

C. Retention: destroy three years from the close of the calendar year in which file closed.

[1.21.2.175 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.176 SCHOLARLY RESEARCH:

A. Category: Administration - historical and cultural resource management.

B. Description: Records related to scholarly research.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.176 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.177 CULTURAL RESOURCES:

A. Category: Administration - historical and cultural resource management.

B. Description: Records related to the preservation of cultural resources.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.177 NMAC - Rn & A, 1.21.2.438 NMAC, 03/15/2016]

1.21.2.178-1.21.2.180 [RESERVED]

1.21.2.181 ASSESSMENTS:

A. Category: Administration – education.

B. Description: Records related to proficiency and learning assessments.

C. Retention: destroy five years from date file closed.

[1.21.2.181 NMAC - N, 10/1/2015]

1.21.2.182 COURSE DEVELOPMENT AND ADMINISTRATION:

A. Category: Administration – education.

B. Description: Records related to development of courses including, but not limited to, outlines and syllabi.

C. Retention: destroy five years from date file closed.

[1.21.2.182 NMAC - N, 10/1/2015]

1.21.2.183 ENROLLMENT - EDUCATION:

- A. Category:** Administration – education.
- B. Description:** Records related to student enrollment and withdrawal.
- C. Retention:** destroy two years from date file closed.

[1.21.2.183 NMAC - N, 10/1/2015]

1.21.2.184 EXAMINATION AND TESTING:

- A. Category:** Administration – education.
- B. Description:** Records related to examination and testing including, but not limited to, grade results.
- C. Retention:** destroy two years from close of calendar year in which file created.

[1.21.2.184 NMAC - N, 10/1/2015]

1.21.2.185 PROGRAMS - EDUCATION:

- A. Category:** Administration – education.
- B. Description:** Records related to academic, athletic and social programs.
- C. Retention:** destroy five years from date file created.

[1.21.2.185 NMAC - N, 10/1/2015]

1.21.2.186 PROGRAMS - HIGHER EDUCATION:

- A. Category:** Administration – education.
- B. Description:** Records related to higher education programs.
- C. Retention:** destroy three years from date file closed.

[1.21.2.186 NMAC - N, 10/1/2015]

1.21.2.187 REGISTRATION:

- A. Category:** Administration – education.

B. Description: Records related to class registration.

C. Retention: destroy one year from date file closed.

[1.21.2.187 NMAC - N, 10/1/2015]

1.21.2.188 STUDENT RECORDS:

A. Category: Administration – education.

B. Description: Records related to student evaluations, discipline, assessments and attendance; does not include transcripts.

C. Retention: destroy two years from date file closed.

[1.21.2.188 NMAC - N, 10/1/2015]

1.21.2.189 STUDENT TRANSCRIPTS:

A. Category: Administration – education.

B. Description: Official student transcripts.

C. Retention: permanent, transfer to archives 100 years from date of birth.

[1.21.2.189 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.190-1.21.2.200 [RESERVED]

1.21.2.201 CLAIMS - BENEFITS MANAGEMENT:

A. Category: Employee services - benefits management.

B. Description: Records related to employee benefit claims.

C. Retention: destroy three years from date file closed.

[1.21.2.201 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.202 ENROLLMENT - BENEFITS:

A. Category: Employee services - benefits management.

B. Description: Records related to employee enrollment in government benefit plans.

C. Retention: destroy five years from termination of coverage.

[1.21.2.202 NMAC - N, 10/1/2015]

1.21.2.203 PLANS:

A. Category: Employee services - benefits management.

B. Description: Records related to benefit plans and statements.

C. Retention: destroy 10 years from date file closed.

[1.21.2.203 NMAC - N, 10/1/2015]

1.21.2.204-1.21.2.205 [RESERVED]

1.21.2.206 EMPLOYMENT SCREENING:

A. Category: Employee services - employer and labor services.

B. Description: Records related to pre-employment screening.

C. Retention: destroy five years from date file created.

[1.21.2.206 NMAC - N, 10/1/2015]

1.21.2.207 LABOR RELATIONS:

A. Category: Employee services - employer and labor services.

B. Description: Records related to labor relations.

C. Retention: destroy three years from date file closed.

[1.21.2.207 NMAC - N, 10/1/2015]

1.21.2.208 PROGRAMS - EMPLOYER AND LABOR SERVICES:

A. Category: Employee services - employer and labor services.

B. Description: Records related to programs for labor and employer services not identified in other classifications.

C. Retention: destroy five years from date file closed.

[1.21.2.208 NMAC - N, 10/1/2015]

1.21.2.209-1.21.2.210 [RESERVED]

1.21.2.211 DEDUCTIONS AND GARNISHMENTS:

A. Category: Employee services - payroll management.

B. Description: Records related to deduction and garnishments from employee paychecks.

C. Retention: destroy three years from the close of the fiscal year in which created.

[1.21.2.211 NMAC - N, 10/1/2015]

1.21.2.212 PAYROLL REGISTERS:

A. Category: Employee services - payroll management.

B. Description: Payroll registers.

C. Retention: destroy 50 years from date file created.

[1.21.2.212 NMAC - N, 10/1/2015]

1.21.2.213 REPORTS - PAYROLL:

A. Category: Employee services - payroll management.

B. Description: Reports for payroll.

C. Retention: destroy three years from the close of the fiscal year in which created.

[1.21.2.213 NMAC - N, 10/1/2015]

1.21.2.214 TAXES - PAYROLL:

A. Category: Employee services - payroll management.

B. Description: Records related to payroll taxes for employees including, but not limited to, withholding, remittances, filings and returns.

C. Retention: destroy 10 years from close of calendar year in which created.

[1.21.2.214 NMAC - N, 10/1/2015]

1.21.2.215-1.21.2.220 [RESERVED]

1.21.2.221 AWARDS - PERSONNEL MANAGEMENT:

A. Category: Employee services - personnel management.

B. Description: Records related to programs that award and recognize employee contributions to improvements in service, operations and the work environment.

C. Retention: destroy three years from date file closed.

[1.21.2.221 NMAC - N, 10/1/2015]

1.21.2.222 ADVERSE ACTION AND REDUCTION IN FORCE:

A. Category: Employee services - personnel management.

B. Description: Records related to adverse action and reduction in force.

C. Retention: destroy 30 years from date file closed.

[1.21.2.222 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.223 CERTIFICATIONS:

A. Category: Employee services - personnel management.

B. Description: Employee certifications.

C. Retention: destroy three years from date file closed.

[1.21.2.223 NMAC - N, 10/1/2015]

1.21.2.224 DRUG AND ALCOHOL TESTING:

A. Category: Employee services - personnel management.

B. Description: Records related to drug and alcohol testing of employees.

C. Retention: destroy five years from date file closed.

[1.21.2.224 NMAC - N, 10/1/2015]

1.21.2.225 EMPLOYEE MEDICAL RECORDS:

A. Category: Employee services - personnel management.

B. Description: Records related to employee medical records excluding cases of hazardous material exposure.

C. Retention: destroy three years from date of separation from employment.

[1.21.2.225 NMAC - N, 10/1/2015]

1.21.2.226 EMPLOYEE MEDICAL RECORDS - HAZARDOUS MATERIALS:

A. Category: Employee services - personnel management.

B. Description: Records related to employee medical records specific to cases of hazardous material exposure.

C. Retention: destroy 30 years from date of separation from employment.

[1.21.2.226 NMAC - N, 10/1/2015]

1.21.2.227 EMPLOYMENT DISCLOSURE:

A. Category: Employee services - personnel management.

B. Description: Records related to the disclosure of secondary employment.

C. Retention: destroy one year from close of calendar year in which created.

[1.21.2.227 NMAC - N, 10/1/2015]

1.21.2.228 EMPLOYMENT ELIGIBILITY VERIFICATION (I-9):

A. Category: Employee services - personnel management.

B. Description: Records related to employment eligibility verification form I-9.

C. Retention: destroy three years from date of separation from employment.

[1.21.2.228 NMAC - N, 10/1/2015]

1.21.2.229 EVALUATIONS - PERFORMANCE:

A. Category: Employee services - personnel management.

B. Description: Performance evaluations and related records.

C. Retention: destroy three years from date of separation from employment.

[1.21.2.229 NMAC - N, 10/1/2015]

1.21.2.230 GRIEVANCES AND INVESTIGATIONS:

A. Category: Employee services - personnel management.

B. Description: Records related to filing of grievances and investigations related to employees.

C. Retention: destroy three years from date of separation from employment.

[1.21.2.230 NMAC - N, 10/1/2015]

1.21.2.231 LEAVE RECORDS:

A. Category: Employee services - personnel management.

B. Description: Employee leave records and related records.

C. Retention: destroy three years from close of fiscal year in which created.

[1.21.2.231 NMAC - N, 10/1/2015; A, 06/30/2016]

1.21.2.232 MILITARY FILES:

A. Category: Employee services - personnel management.

B. Description: Records related to military service.

C. Retention: permanent, transfer to archives 62 years from date file closed.

[1.21.2.232 NMAC - N, 10/1/2015]

1.21.2.233 PERSONNEL FILES - CONTRIBUTING:

A. Category: Employee services - personnel management.

B. Description: Records related to an individual government employee who contributes to a retirement plan, does not include medical files.

C. Retention: destroy 50 years from date file created.

[1.21.2.233 NMAC - N, 10/1/2015]

1.21.2.234 PERSONNEL FILES - NON-CONTRIBUTING:

A. Category: Employee services - personnel management.

B. Description: Records related to a temporary individual government employee who does not contribute to a retirement plan, does not include medical files.

C. Retention: destroy three years from the date file closed.

[1.21.2.234 NMAC - N, 10/1/2015]

1.21.2.235 TIME AND ATTENDANCE:

A. Category: Employee services - personnel management.

B. Description: Records related to reporting and approving employee attendance.

C. Retention: destroy one year from the close of the fiscal year in which file closed.

[1.21.2.235 NMAC - N, 10/1/2015]

1.21.2.236 VOLUNTEER FILES:

A. Category: Employee services - personnel management.

B. Description: Records related to volunteers.

C. Retention: destroy three years from date file closed.

[1.21.2.236 NMAC - N, 10/1/2015]

1.21.2.237-1.21.2.240 [RESERVED]

1.21.2.241 CONTRIBUTIONS:

A. Category: Employee services - retirement administration.

B. Description: Records related to employee contributions to retirement or pension funds.

C. Retention: destroy 65 years from date file created.

[1.21.2.241 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.242 MEMBER FILES - BENEFITS EXHAUSTED:

A. Category: Employee services - retirement administration.

B. Description: Record related to membership in retirement funds and plans for retired employees.

C. Retention: destroy five years from date file closed.

[1.21.2.242 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.243 MEMBER FILES - OTHER:

A. Category: Employee services - retirement administration.

B. Description: Record related to membership in retirement funds and plans for former employees who are not eligible for retirement benefits.

C. Retention: destroy 65 years from date file closed.

[1.21.2.243 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.244-1.21.2.245 [RESERVED]

1.21.2.246 RECRUITMENT:

A. Category: Employee services - staffing and recruiting.

B. Description: Records related to recruitment of employees.

C. Retention: destroy three years from date file closed.

[1.21.2.246 NMAC - N, 10/1/2015]

1.21.2.247 POSITIONS AND CLASSIFICATIONS:

A. Category: Employee services - staffing and recruiting.

B. Description: Records related to preparation of job descriptions and position classifications.

C. Retention: destroy three years from date file closed.

[1.21.2.247 NMAC - N, 10/1/2015]

1.21.2.248-1.21.2.250 [RESERVED]

1.21.2.251 COURSE MANAGEMENT:

A. Category: Employee services - training management.

B. Description: Records related to management of courses not identified in other classifications.

C. Retention: destroy five years from date file closed.

[1.21.2.251 NMAC - N, 10/1/2015]

1.21.2.252 EMPLOYEE TRAINING FILES:

A. Category: Employee services - training management.

B. Description: Records related to employee's training history.

C. Retention: three years after date of separation from employment.

[1.21.2.252 NMAC - N, 10/1/2015]

1.21.2.253 INSTRUCTOR MANAGEMENT:

A. Category: Employee services - training management.

B. Description: Records related to the management of training instructors.

C. Retention: destroy five years from date file closed.

[1.21.2.253 NMAC - N, 10/1/2015]

1.21.2.254 TRAINING MATERIALS:

A. Category: Employee services - training management.

B. Description: Records related to training and course materials not identified in other classifications.

C. Retention: destroy three years from date file closed.

[1.21.2.254 NMAC - N, 10/1/2015]

1.21.2.255-1.21.2.260 [RESERVED]

1.21.2.261 CLAIMS - WORKERS' COMPENSATION AND UNEMPLOYMENT:

A. Category: Employee services - workers' compensation and unemployment.

B. Description: Records related to workers' compensation and unemployment claims.

C. Retention: destroy three years from date file closed.

[1.21.2.261 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.262 EMPLOYER ACCOUNT FILES:

A. Category: Employee services - workers' compensation and unemployment.

B. Description: Records related to employer accounts of workers' compensation and unemployment.

C. Retention: destroy four years from close of calendar year in which file closed.

[1.21.2.262 NMAC - N, 10/1/2015]

1.21.2.263 REPORTS - INJURIES:

A. Category: Employee services - workers' compensation and unemployment.

B. Description: Records related to reports of injuries resulting in no action or claim.

C. Retention: destroy two years from date file created.

[1.21.2.263 NMAC - N, 10/1/2015]

1.21.2.264 UNDERWRITING:

A. Category: Employee services - workers' compensation and unemployment.

B. Description: Records related to underwriting for workers' compensation and unemployment policies.

C. Retention: destroy 10 years from date file closed.

[1.21.2.264 NMAC - N, 10/1/2015]

1.21.2.265 WCA ACCIDENT REPORTING:

A. Category: Employee services - workers' compensation and unemployment.

B. Description: Records related to workers' compensation administration accident reporting.

C. Retention: destroy 60 years from date file closed.

[1.21.2.265 NMAC - N, 10/1/2015]

1.21.2.266-1.21.2.300 [RESERVED]

1.21.2.301 ACCOUNTS PAYABLE:

A. Category: Financial and accounting - accounting management.

B. Description: Records relating to accounts payable including, but not limited to, purchasing and reimbursements.

C. Retention: destroy six years from date audit report released.

[1.21.2.301 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.302 [RESERVED]

[1.21.2.302 NMAC - N, 10/1/2015; Repealed, 11/30/2015]

1.21.2.303 ACCOUNTS RECEIVABLE:

A. Category: Financial and accounting - accounting management.

B. Description: Records related to accounts receivable including, but not limited to, invoicing.

C. Retention: destroy six years from date audit report released.

[1.21.2.303 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.304 ACCOUNT TRANSFERS:

A. Category: Financial and accounting - accounting management.

B. Description: Records relating to transferring of funds.

C. Retention: destroy three years from date audit report released.

[1.21.2.304 NMAC - N, 10/1/2015]

1.21.2.305 COLLECTIONS:

A. Category: Financial and accounting - accounting management.

B. Description: Records related to collections of funds including, but not limited to, bankruptcy.

C. Retention: destroy three years from date audit report released.

[1.21.2.305 NMAC - N, 10/1/2015]

1.21.2.306 DONATIONS:

A. Category: Financial and accounting - accounting management.

B. Description: Records related to donations of funds and assets to or from a government entity.

C. Retention: destroy three years from date audit report released.

[1.21.2.306 NMAC - N, 10/1/2015]

1.21.2.307 FUNDS MANAGEMENT:

A. Category: Financial and accounting - accounting management.

B. Description: Records related to the management of funds including, but not limited to, inmate and patient funds.

C. Retention: destroy three years from date audit report released.

[1.21.2.307 NMAC - N, 10/1/2015]

1.21.2.308 JOURNAL ENTRIES:

A. Category: Financial and accounting - accounting management.

B. Description: Journal entries.

C. Retention: destroy three years from date audit report released.

[1.21.2.308 NMAC - N, 10/1/2015]

1.21.2.309 LEDGERS:

A. Category: Financial and accounting - accounting management.

B. Description: Records relating to ledger management.

C. Retention: destroy three years from date audit report released.

[1.21.2.309 NMAC - N, 10/1/2015]

1.21.2.310 REPORTS - ACCOUNTING:

A. Category: Financial and accounting - accounting management.

B. Description: Records related to accounting processes and controls.

C. Retention: destroy one year from date audit report released.

[1.21.2.310 NMAC - N, 10/1/2015]

1.21.2.311-1.21.2.315 [RESERVED]

1.21.2.316 FIXED ASSETS:

A. Category: Financial and accounting - asset management.

B. Description: Records related to the control of fixed assets.

C. Retention: destroy three years from date audit report released.

[1.21.2.316 NMAC - N, 10/1/2015]

1.21.2.317 INVENTORIES:

A. Category: Financial and accounting - asset management.

B. Description: Records related to the control of supplies and stock inventory.

C. Retention: destroy three years from date audit report released.

[1.21.2.317 NMAC - N, 10/1/2015]

1.21.2.318 SURPLUS AND DISPOSAL:

A. Category: Financial and accounting - asset management.

B. Description: Records related to the disposal of surplus equipment.

C. Retention: destroy three years from date audit report released.

[1.21.2.318 NMAC - N, 10/1/2015]

1.21.2.319-1.21.2.320 [RESERVED]

1.21.2.321 BANK RELATIONSHIP:

A. Category: Financial and accounting - bank administration.

B. Description: Records relating to the establishment, maintenance and termination of bank accounts.

C. Retention: destroy three years from the close of the fiscal year in which file closed.

[1.21.2.321 NMAC - N, 10/1/2015]

1.21.2.322 STATEMENTS AND REPORTS - BANK ADMINISTRATION:

A. Category: Financial and accounting - bank administration.

B. Description: Records related to bank account and credit card statements and reconciliations.

C. Retention: destroy three years from date audit report released.

[1.21.2.322 NMAC - N, 10/1/2015]

1.21.2.323-1.21.2.325 [RESERVED]

1.21.2.326 ANNUAL BUDGET:

A. Category: Financial and accounting - budget management.

B. Description: Records related to the request, recommendation and approved annual budget.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.326 NMAC - N, 10/1/2015]

1.21.2.327-1.21.2.330 [RESERVED]

1.21.2.331 RECONCILIATIONS AND BALANCING:

A. Category: Financial and accounting - financial statements and reports.

B. Description: Records related to reconciliations and balancing for financial reports and statements.

C. Retention: destroy three years from date audit report released.

[1.21.2.331 NMAC - N, 10/1/2015]

1.21.2.332-1.21.2.335 [RESERVED]

1.21.2.336 CASE FILES - LOANS:

A. Category: Financial and accounting - financial aid and loan management.

B. Description: Records related to loan programs including, but not limited to, loan documents and tracking.

C. Retention: destroy three years from close of fiscal year in which file closed.

[1.21.2.336 NMAC - N, 10/1/2015; A, 11/28/2017]

1.21.2.337 EDUCATIONAL FINANCIAL AID:

A. Category: Financial and accounting - financial aid and loan management.

B. Description: Records related to scholarships, loans, grants and other aid.

C. Retention: destroy three years from the date file closed.

[1.21.2.337 NMAC - N, 10/1/2015; A, 11/28/2017]

1.21.2.338 [RESERVED]

[1.21.2.338 NMAC - N, 10/1/2015; Repealed, 11/30/2016]

1.21.2.339-1.21.2.340 [RESERVED]

1.21.2.341 INVESTMENTS:

A. Category: Financial and accounting - investment management.

B. Description: Records related to investments including, but not limited to, bonds, debt issuance and certificates of deposit.

C. Retention: destroy six years from date file closed.

[1.21.2.341 NMAC - N, 10/1/2015; A, 11/30/2015; A, 03/15/2016]

1.21.2.342 STATEMENTS AND REPORTS - INVESTMENTS:

A. Category: Financial and accounting - investment management.

B. Description: Records related to investment statements and reports.

C. Retention: destroy three years from the date file closed.

[1.21.2.342 NMAC - N, 10/1/2015]

1.21.2.343-1.21.2.345 [RESERVED]

1.21.2.346 BIDS, PROPOSALS AND QUOTES:

A. Category: Financial and accounting – procurement.

B. Description: Bids, quotes and proposals and related records.

C. Retention: destroy three years from date file closed.

[1.21.2.346 NMAC - N, 10/1/2015]

1.21.2.347 VENDOR MANAGEMENT:

A. Category: Financial and accounting – procurement.

B. Description: Records related to management of vendors.

C. Retention: destroy three years from date file closed.

[1.21.2.347 NMAC - N, 10/1/2015]

1.21.2.348-1.21.2.350 [RESERVED]

1.21.2.351 EXEMPTIONS:

A. Category: Financial and accounting - tax management.

B. Description: Records related to exemptions from taxation.

C. Retention: destroy one year from close of calendar year in which file created.

[1.21.2.351 NMAC - N, 10/1/2015]

1.21.2.352 [RESERVED]

1.21.2.353 REPORTS - TAX:

A. Category: Financial and accounting - tax management.

B. Description: Tax reports.

C. Retention: destroy 10 years from close of calendar year in which file closed.

[1.21.2.353 NMAC - N, 10/1/2015]

1.21.2.354 TAX ASSESSMENTS:

A. Category: Financial and accounting - tax management.

B. Description: Records related to the general assessment of taxes, reductions and refunds, including, but not limited to, cigarette, alcohol, road and fuel, lodgers, estate, corporate, personal and employer tax.

C. Retention: destroy 10 years from close of calendar year in which file created.

[1.21.2.354 NMAC - N, 10/1/2015]

1.21.2.355 VALUATIONS:

A. Category: Financial and accounting - tax management.

B. Description: Records related to valuation for tax purposes not identified in other classifications.

C. Retention: destroy 10 years from close of calendar year in which file created.

[1.21.2.355 NMAC - N, 10/1/2015]

1.21.2.356 VALUATIONS - HISTORICAL:

A. Category: Financial and accounting - tax management.

B. Description: Records related to valuations for tax purposes including, but not limited to, tax schedules and annual renditions.

C. Retention: permanent, transfer to archives five years from close of calendar year in which file created.

[1.21.2.356 NMAC - N, 10/1/2015]

1.21.2.357-1.21.2.360 [RESERVED]

1.21.2.361 UNCLAIMED PROPERTY:

A. Category: Financial and accounting - unclaimed property.

B. Description: Records related to unclaimed property.

C. Retention: destroy 10 years from close of calendar year from date of final disposition of property.

[1.21.2.361 NMAC - N, 10/1/2015]

1.21.2.362-1.21.2.400 [RESERVED]

1.21.2.401 COLLEGES AND UNIVERSITIES:

A. Category: Governance and compliance - accreditation and certification.

B. Description: Records related to accreditation and certification of colleges and universities.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.401 NMAC - N, 10/1/2015]

1.21.2.402 COURSES AND PROGRAMS:

A. Category: Governance and compliance - accreditation and certification.

B. Description: Records related to accreditation and certification of educational or training courses or programs.

C. Retention: destroy 10 years from date file closed.

[1.21.2.402 NMAC - N, 10/1/2015]

1.21.2.403 CORRECTIONAL FACILITIES:

A. Category: Governance and compliance - accreditation and certification.

B. Description: Records related to accreditation and certification of correctional facilities.

C. Retention: destroy five years from date file closed.

[1.21.2.403 NMAC - N, 10/1/2015]

1.21.2.404 INDIVIDUAL CERTIFICATION:

A. Category: Governance and compliance - accreditation and certification.

B. Description: Records related to accreditation and certification of individuals who meet specified criteria.

C. Retention: destroy five years from date individual is no longer certified.

[1.21.2.404 NMAC - N, 10/1/2015]

1.21.2.405 HOSPITALS AND MEDICAL:

A. Category: Governance and compliance - accreditation and certification.

B. Description: Records related to accreditation and certification of hospitals and medical facilities.

C. Retention: destroy 10 years from date file closed.

[1.21.2.405 NMAC - N, 10/1/2015]

1.21.2.406 SCHOOLS:

A. Category: Governance and compliance - accreditation and certification.

B. Description: Records related to accreditation and certification of schools.

C. Retention: destroy five years from date file closed.

[1.21.2.406 NMAC - N, 10/1/2015]

1.21.2.407-1.21.2.410 [RESERVED]

1.21.2.411 CORPORATIONS:

A. Category: Governance and compliance - audit, oversight and compliance.

B. Description: Records related to oversight of corporations including, but not limited to, corporate filings.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.411 NMAC - N, 10/1/2015]

1.21.2.412 ENVIRONMENTAL:

A. Category: Governance and compliance - audit, oversight and compliance.

B. Description: Records related to oversight of environmental programs.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.412 NMAC - N, 10/1/2015]

1.21.2.413 FEDERAL COMPLIANCE AND REPORTING:

A. Category: Governance and compliance - audit, oversight and compliance.

B. Description: Records related to oversight and federal compliance reporting.

C. Retention: destroy three years from date file closed.

[1.21.2.413 NMAC - N, 10/1/2015]

1.21.2.414 FINANCIAL - AUDITS:

A. Category: Governance and compliance - audit, oversight and compliance.

B. Description: Records related to financial audits of agencies and programs.

C. Retention: destroy three years from the close of the fiscal year in which file created.

[1.21.2.414 NMAC - N, 10/1/2015]

1.21.2.415 GENERAL - AUDITS AND COMPLIANCE:

A. Category: Governance and compliance - audit, oversight and compliance.

B. Description: Records related to general compliance and audits of agencies and programs.

C. Retention: destroy five years from date file closed.

[1.21.2.415 NMAC - N, 10/1/2015]

1.21.2.416 INSURANCE:

A. Category: Governance and compliance - audit, oversight and compliance.

B. Description: Records related to oversight of insurance companies and agencies.

C. Retention: destroy 10 years from date file closed.

[1.21.2.416 NMAC - N, 10/1/2015]

1.21.2.417-1.21.2.420 [RESERVED]

1.21.2.421 APPOINTMENTS - ELECTIONS:

A. Category: Governance and compliance - election management.

B. Description: Records related to appointments of election management positions.

C. Retention: destroy two years from date file closed.

[1.21.2.421 NMAC - N, 10/1/2015]

1.21.2.422 [RESERVED]

[1.21.2.422 NMAC - N, 10/1/2015; Repealed, 11/30/2015]

1.21.2.423 CANDIDACY:

A. Category: Governance and compliance - election management.

B. Description: Records related to candidacy including, but not limited to, nominating petitions.

C. Retention: destroy two years from date file closed.

[1.21.2.423 NMAC - N, 10/1/2015]

1.21.2.424 CANVASS:

A. Category: Governance and compliance - election management.

B. Description: Canvass of an election.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.424 NMAC - N, 10/1/2015]

1.21.2.425 ELECTION ADMINISTRATION - LOCAL:

A. Category: Governance and compliance - election management.

B. Description: Records related to the preparation of the canvass for elections in which no federal candidate appears on the ballot including, but not limited to, ballots, voting permits, signature rosters and tally sheets.

C. Retention: destroy 45 days from date file closed.

[1.21.2.425 NMAC - N, 10/1/2015]

1.21.2.426 [RESERVED]

1.21.2.427 ELECTION ADMINISTRATION - STATEWIDE:

A. Category: Governance and compliance - election management.

B. Description: Records related to the preparation of the canvass for elections in which a federal candidate appears on the ballot including, but not limited to, ballots, voting permits, signature rosters and tally sheets.

C. Retention: destroy 22 months from date file closed.

[1.21.2.427 NMAC - N, 10/1/2015]

1.21.2.428 FINANCIAL - CAMPAIGN:

A. Category: Governance and compliance - election management.

B. Description: Records related to candidate, elected and appointed officials financial records.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.428 NMAC - N, 10/1/2015; A, 11/30/2015; A, 9/11/2018]

1.21.2.429 INVESTIGATIONS:

A. Category: Governance and compliance - election management.

B. Description: Records related to election investigations.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.429 NMAC - N, 10/1/2015]

1.21.2.430 PETITIONS:

A. Category: Governance and compliance - election management.

B. Description: Records related to petitions, not including nominating petitions.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.430 NMAC - N, 10/1/2015]

1.21.2.431 REPORTS - ELECTION:

A. Category: Governance and compliance - election management.

B. Description: Records related to the reporting on the administration and management of elections.

C. Retention: destroy two years from date file closed.

[1.21.2.431 NMAC - N, 10/1/2015]

1.21.2.432 VOTER REGISTRATION:

A. Category: Governance and compliance - election management.

B. Description: Records related to voter registration.

C. Retention: destroy six years from date file closed.

[1.21.2.432 NMAC - N, 10/1/2015]

1.21.2.433-1.21.2.435 [RESERVED]

1.21.2.436 AIR, LAND AND WATER QUALITY:

A. Category: Governance and compliance - environment management.

B. Description: Records related to environmental compliance for air, land and water quality.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.436 NMAC - N, 10/1/2015]

1.21.2.437 CONSENTS AND CLEARANCES:

A. Category: Governance and compliance - environment management.

B. Description: Records related to environmental consents and clearances.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.437 NMAC - N, 10/1/2015]

1.21.2.438 [RESERVED]

[1.21.2.438 NMAC - N, 10/1/2015; Repealed, 03/15/2016]

1.21.2.439 ENVIRONMENTAL IMPACT STATEMENTS:

- A. Category:** Governance and compliance - environment management.
- B. Description:** Environmental impact statements and related records.
- C. Retention:** permanent, transfer to archives five years from date file closed.

[1.21.2.439 NMAC - N, 10/1/2015]

1.21.2.440 REMEDIATION - SUPERFUND:

- A. Category:** Governance and compliance - environment management.
- B. Description:** Records related to remediations involving superfunds.
- C. Retention:** permanent, transfer to archives five years from date file closed.

[1.21.2.440 NMAC - N, 10/1/2015]

1.21.2.441 REVIEWS AND MONITORING:

- A. Category:** Governance and compliance - environment management.
- B. Description:** Records related to environmental reviews and monitoring.
- C. Retention:** destroy three years from date file closed.

[1.21.2.441 NMAC - N, 10/1/2015]

1.21.2.442 [RESERVED]

1.21.2.443 STORAGE TANKS:

- A. Category:** Governance and compliance - environment management.
- B. Description:** Records related to the installation, remediation and removal of storage tanks.
- C. Retention:** permanent, transfer to archives five years from date file closed.

[1.21.2.443 NMAC - N, 10/1/2015]

1.21.2.444 WATER FACILITIES - ENVIRONMENT MANAGEMENT:

A. Category: Governance and compliance - environment management.

B. Description: Records related to water facilities.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.444 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.445 WATER POLLUTION:

A. Category: Governance and compliance - environment management.

B. Description: Records related to water pollution including, but not limited to, national pollutant discharge elimination system (NPDES) permits and reporting.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.445 NMAC - N, 10/1/2015]

1.21.2.446-1.21.2.448 [RESERVED]

1.21.2.449 APPOINTMENTS - GOVERNANCE:

A. Category: Governance and compliance – governance.

B. Description: Records related to appointments not identified in other classifications.

C. Retention: destroy two years from date file closed.

[1.21.2.449 NMAC - N, 10/1/2015]

1.21.2.450 APPOINTMENTS - GOVERNOR:

A. Category: Governance and compliance – governance.

B. Description: Appointments made by the governor and related records.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.450 NMAC - N, 10/1/2015]

1.21.2.451 BYLAWS:

A. Category: Governance and compliance – governance.

B. Description: Bylaws.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.451 NMAC - N, 10/1/2015]

1.21.2.452 MEETINGS:

A. Category: Governance and compliance – governance.

B. Description: Records related to meetings of statutory and policy making bodies including, but not limited to, minutes and not identified in other classifications.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.452 NMAC - N, 10/1/2015]

[Those subject to the Open Meetings Act, Section 10-15-1(G) NMSA 1978, once the minutes are approved, audio recordings become non-record material.]

1.21.2.453 OATHS OF OFFICE:

A. Category: Governance and compliance – governance.

B. Description: Oaths of office and related records.

C. Retention: permanent, transfer to archives one year from date file closed.

[1.21.2.453 NMAC - N, 10/1/2015]

1.21.2.454-1.21.2.455 [RESERVED]

1.21.2.456 ADA ACCOMMODATIONS:

A. Category: Governance and compliance - human rights management.

B. Description: Records related to accommodations for disabilities under the Americans with Disabilities Act.

C. Retention: destroy three years from date file closed.

[1.21.2.456 NMAC - N, 10/1/2015]

1.21.2.457 INVESTIGATIONS - CIVIL AND HUMAN RIGHTS:

A. Category: Governance and compliance - human rights management.

B. Description: Records related to civil and human rights investigations including, but not limited to, grievances and complaints.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.457 NMAC - N, 10/1/2015]

1.21.2.458-1.21.2.465 [RESERVED]

1.21.2.466 AIR QUALITY:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and testing of air quality.

C. Retention: destroy five years from date file closed.

[1.21.2.466 NMAC - N, 10/1/2015]

1.21.2.467 ASBESTOS:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and monitoring of asbestos.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.467 NMAC - N, 10/1/2015]

1.21.2.468 CONSTRUCTION MATERIAL SAMPLES:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and monitoring of samples of construction materials.

C. Retention: destroy 20 years from date file closed.

[1.21.2.468 NMAC - N, 10/1/2015]

1.21.2.469 BUILDING AND CONSTRUCTION:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and monitoring of building and construction.

C. Retention: destroy 10 years from date file closed.

[1.21.2.469 NMAC - N, 10/1/2015]

1.21.2.470 INFRASTRUCTURE - INSPECTIONS AND MONITORING:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and monitoring of infrastructure including, but not limited to, safety.

C. Retention: permanent, transfer to archives 25 years from date file closed.

[1.21.2.470 NMAC - N, 10/1/2015]

1.21.2.471 EQUIPMENT AND VEHICLES:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and monitoring of equipment and vehicles.

C. Retention: destroy three years from date file closed.

[1.21.2.471 NMAC - N, 10/1/2015]

1.21.2.472 EQUIPMENT - RADIOACTIVE:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and monitoring of radioactive equipment.

C. Retention: destroy 75 years from date file closed.

[1.21.2.472 NMAC - N, 10/1/2015]

1.21.2.473 FIRE AND ELECTRICAL:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections for fire prevention and fire protection for buildings, facilities and structures including, but not limited to, fire reports.

C. Retention: destroy three years from date file closed.

[1.21.2.473 NMAC - N, 10/1/2015]

1.21.2.474 GENERAL - INSPECTION:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to general inspections and tests, not identified in other classifications.

C. Retention: destroy five years from date file closed.

[1.21.2.474 NMAC - N, 10/1/2015]

1.21.2.475 HAZARDOUS MATERIALS:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and testing of hazardous materials.

C. Retention: permanent, transfer to archives 25 years from date file closed.

[1.21.2.475 NMAC - N, 10/1/2015]

1.21.2.476 HERBICIDE, PESTICIDE AND CHEMICALS:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and testing of herbicides, pesticides and chemicals.

C. Retention: destroy 10 years from date file closed.

[1.21.2.476 NMAC - N, 10/1/2015]

1.21.2.477 HOSPITALS AND MEDICAL FACILITIES:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections of hospitals and medical facilities.

C. Retention: destroy five years from date file closed.

[1.21.2.477 NMAC - N, 10/1/2015]

1.21.2.478 INVESTIGATIONS - INSPECTIONS AND MONITORING:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and investigations not identified in other classifications.

C. Retention: destroy 25 years from date file closed.

[1.21.2.478 NMAC - N, 10/1/2015]

1.21.2.479 LABORATORY:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections and testing of laboratories including, but not limited to, equipment.

C. Retention: destroy 10 years from date file closed.

[1.21.2.479 NMAC - N, 10/1/2015]

1.21.2.480 MINES:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections of mines.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.480 NMAC - N, 10/1/2015]

1.21.2.481 TRADE AND SERVICE MARKS:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to the monitoring of trade and service marks.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.481 NMAC - N, 10/1/2015]

1.21.2.482 WATER FACILITIES - INSPECTIONS AND MONITORING:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to inspections of water treatment facilities.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.482 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.483 WATER QUALITY:

A. Category: Governance and compliance - inspections and monitoring.

B. Description: Records related to the inspection and testing of drinking and potable water.

C. Retention: destroy 10 years from date file closed.

[1.21.2.483 NMAC - N, 10/1/2015]

1.21.2.484-1.21.2.489 [RESERVED]

1.21.2.490 ADMINISTRATIVE RULES:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Administrative rules and related records.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.490 NMAC - N, 10/1/2015]

[For filing of administrative rules, refer to Section 14-4-3 NMSA 1978]

1.21.2.491 LEGISLATION:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Legislation and related records including, but not limited to, bills, enrolled acts and vetoed legislation.

C. Retention: permanent, transfer to archives one year from date file closed.

[1.21.2.491 NMAC - N, 10/1/2015]

1.21.2.492 LEGISLATIVE MEETINGS:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Legislative committee meetings.

C. Retention: permanent, transfer to archives 15 years from date file created.

[1.21.2.492 NMAC - N, 10/1/2015]

1.21.2.493 JOURNALS - HOUSE AND SENATE:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Journals of the house and senate and related records.

C. Retention: permanent, transfer to archives one year from date file closed.

[1.21.2.493 NMAC - N, 10/1/2015]

1.21.2.494 LOBBYIST:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Records related to lobbyists.

C. Retention: destroy 10 years from date file closed.

[1.21.2.494 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.495 ORDERS AND PROCLAMATIONS:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Orders and proclamations of an administrative, legislative or executive nature and related records.

C. Retention: permanent, transfer to archives from date file closed.

[1.21.2.495 NMAC - N, 10/1/2015]

[For filing or publication, refer to Section 14-4-7.1 NMSA 1978]

1.21.2.496 ORDINANCES AND RESOLUTIONS:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Records related to ordinances and resolutions.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.496 NMAC - N, 10/1/2015]

[For filing requirements, refer to Section 47-6-10 NMSA 1978]

1.21.2.497 RESEARCH:

A. Category: Governance and compliance - legislation and regulation management.

B. Description: Records related to legislative research.

C. Retention: permanent, transfer to archives 75 years from date file created or from date confidentiality waiver received.

[1.21.2.497 NMAC - N, 10/1/2015]

[Waiver required per Sections 2-3-13 NMSA 1978 and 14-3-7.1 NMSA 1978]

1.21.2.498-1.21.2.500 [RESERVED]

1.21.2.501 INSPECTIONS AND INVESTIGATIONS:

A. Category: Governance and compliance - occupational safety and health.

B. Description: Records related to occupational safety and health compliance inspections and investigations.

C. Retention: destroy 10 years from date file closed.

[1.21.2.501 NMAC - N, 10/1/2015]

1.21.2.502-1.21.2.505 [RESERVED]

1.21.2.506 SHORT-TERM PERMITS:

A. Category: Governance and compliance - permit management.

B. Description: Records related to short-term permits not identified in other classifications.

C. Retention: destroy three years from date file closed.

[1.21.2.506 NMAC - N, 10/1/2015]

1.21.2.507 TRANSPORTATION AND TRIP PERMITS:

A. Category: Governance and compliance - permit management.

B. Description: Records related to transportation and trip permits.

C. Retention: destroy three years from date file closed.

[1.21.2.507 NMAC - N, 10/1/2015]

1.21.2.508-1.21.2.510 [RESERVED]

1.21.2.511 POLICIES AND PROCEDURES:

A. Category: Governance and compliance - policy and standards management.

B. Description: Policies and procedures including, but not limited to, code of conduct.

C. Retention: permanent, transfer to archives one year from date superseded or obsolete.

[1.21.2.511 NMAC - N, 10/1/2015]

1.21.2.512 STANDARDS:

A. Category: Governance and compliance - policy and standards management.

B. Description: Records related to standards and best practices including, but not limited to, information technology standards.

C. Retention: permanent, transfer to archives one year from date superseded or obsolete.

[1.21.2.512 NMAC - N, 10/1/2015]

1.21.2.513-1.21.2.515 [RESERVED]

1.21.2.516 CONVERSION AUTHORIZATION:

A. Category: Governance and compliance - records management.

B. Description: Records related to the conversion of public records from one media format to another.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.516 NMAC - N, 10/1/2015]

1.21.2.517 DISPOSITION AUTHORIZATION:

A. Category: Governance and compliance - records management.

B. Description: Records related to the disposition of public records including, but not limited to, approvals.

C. Retention: destroy 25 years from date file closed.

[1.21.2.517 NMAC - N, 10/1/2015]

1.21.2.518 INFORMATION RELEASE:

A. Category: Governance and compliance - records management.

B. Description: Records related to requests for release of information, does not include public records requests.

C. Retention: destroy one year from date file closed.

[1.21.2.518 NMAC - N, 10/1/2015]

1.21.2.519 PUBLIC RECORDS REQUESTS:

A. Category: Governance and compliance - records management.

B. Description: Records related to requests for information under the Inspection of Public Records Act including, but not limited to, tracking, responses and written explanations of denials.

C. Retention: destroy four years from date request is deemed by the public body to be fulfilled or denied.

[1.21.2.519 NMAC - N, 10/1/2015; A, 7/1/2020]

1.21.2.520 RECORDS CUSTODY:

A. Category: Governance and compliance - records management.

B. Description: Records related to withdrawal and receipt of records.

C. Retention: destroy 25 years from date file closed.

[1.21.2.520 NMAC - N, 10/1/2015]

1.21.2.521-1.21.2.600 [RESERVED]

1.21.2.601 AGREEMENTS - OTHER:

A. Category: Legal and judiciary - contract management.

B. Description: Records related to agreements not identified in other classifications.

C. Retention: destroy six years from date file closed.

[1.21.2.601 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.602 INTERSTATE COMPACTS/AGREEMENTS:

A. Category: Legal and judiciary - contract management.

B. Description: Interstate compacts and agreements and related records.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.602 NMAC - N, 10/1/2015]

[For filing requirements, refer to Section 14-3-20 NMSA 1978]

1.21.2.603 COOPERATIVE AGREEMENTS:

A. Category: Legal and judiciary - contract management.

B. Description: Cooperative agreements including, but not limited to, memoranda of understanding.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.603 NMAC - N, 10/1/2015]

1.21.2.604 GOODS AND SERVICES:

A. Category: Legal and judiciary - contract management.

B. Description: Records related to contracting of goods and services.

C. Retention: destroy six years from date file closed.

[1.21.2.604 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.605 LEASES:

- A. Category:** Legal and judiciary - contract management.
- B. Description:** Leases and related records, does not include mineral leases.
- C. Retention:** destroy six years from date file closed.

[1.21.2.605 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.606 SETTLEMENTS:

- A. Category:** Legal and judiciary - contract management.
- B. Description:** Records related to settlements of contract or agreement disputes.
- C. Retention:** destroy 14 years from date file closed.

[1.21.2.606 NMAC - N, 10/1/2015]

1.21.2.607-1.21.2.610 [RESERVED]

1.21.2.611 CALENDARS:

- A. Category:** Legal and judiciary - court administration.
- B. Description:** Court calendars.
- C. Retention:** destroy one year from date file created.

[1.21.2.611 NMAC - N, 10/1/2015]

1.21.2.612 CASE FILES - LOWER COURTS (CIVIL):

- A. Category:** Legal and judiciary - court administration.
- B. Description:** Court case files, including, but not limited to, dockets; does not include DUI or domestic violence cases, district, appellate, supreme court or probate case files.

C. Retention:

- (1) Judgement satisfied:** destroy one year from date of satisfaction.

(2) Judgement not satisfied: destroy 14 years from date of judgement.

[1.21.2.612 NMAC - N, 10/1/2015; A, 7/1/2020]

1.21.2.613 CASE FILES - LOWER COURTS (CRIMINAL):

A. Category: Legal and judiciary - court administration.

B. Description: Court case files, including, but not limited to, dockets; does not include DUI or domestic violence cases, district, appellate, supreme court or probate case files.

C. Retention: destroy one year from date file closed.

[1.21.2.613 NMAC - N, 10/1/2015]

1.21.2.614 CASE FILES - JUVENILE:

A. Category: Legal and judiciary - court administration.

B. Description: Juvenile court case files.

C. Retention: destroy 22 years from date of birth.

[1.21.2.614 NMAC - N, 10/1/2015]

1.21.2.615 CASE FILES - COURT OF RECORD:

A. Category: Legal and judiciary - court administration.

B. Description: Court case files including, but not limited to, dockets. Court cases include, but are not limited to, all DUI and domestic violence cases, district, appellate, supreme court or probate case files.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.615 NMAC - N, 10/1/2015]

[Appellate case files include the associated court proceedings records]

1.21.2.616 CASE FILES - DISMISSED:

A. Category: Legal and judiciary - court administration.

B. Description: Dismissed case files.

C. Retention: destroy one year from date file closed.

[1.21.2.616 NMAC - N, 10/1/2015]

1.21.2.617 EXHIBITS:

A. Category: Legal and judiciary - court administration.

B. Description: Exhibits.

C. Retention: destroy one year from date of final disposition of associated case.

[1.21.2.617 NMAC - N, 10/1/2015]

1.21.2.618 JURY MANAGEMENT:

A. Category: Legal and judiciary - court administration.

B. Description: Records related to the management of juries.

C. Retention: destroy three months from date file closed.

[1.21.2.618 NMAC - N, 10/1/2015]

1.21.2.619 PROBATION FILES:

A. Category: Legal and judiciary - court administration.

B. Description: Records related to probation at the lower court level.

C. Retention: destroy five years from date file closed.

[1.21.2.619 NMAC - N, 10/1/2015]

1.21.2.620 COURT PROCEEDINGS:

A. Category: Legal and judiciary - court administration.

B. Description: records related to court proceedings including, but not limited to, tapes, court reporter notes, and transcripts. Does not include appellate case files.

C. Retention: destroy when associated case is no longer eligible for appeal or post-conviction proceedings in state or federal court.

[1.21.2.620 NMAC - N, 9/11/2018]

1.21.2.621-1.21.2.625 [RESERVED]

1.21.2.626 ADOPTIONS:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to adoptions including, but not limited to, agreement and consents.

C. Retention: permanent, transfer to archives 25 years from date file closed.

[1.21.2.626 NMAC - N, 10/1/2015]

1.21.2.627 ADVICE AND OPINIONS:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to research and correspondence related to legal issues including, but not limited to, precedents and opinions.

C. Retention: permanent, transfer to archives from date file closed.

[1.21.2.627 NMAC - N, 10/1/2015]

1.21.2.628 BONDS:

A. Category: Legal and judiciary - legal matter management.

B. Description: Court ordered bonds and related records.

C. Retention: destroy three years from the close of the fiscal year in which created.

[1.21.2.628 NMAC - N, 10/1/2015]

1.21.2.629 EXTRADITIONS AND REQUISITIONS:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to extraditions and requisitions.

C. Retention: destroy three years from date file closed.

[1.21.2.629 NMAC - N, 10/1/2015]

1.21.2.630 EXTRADITIONS AND RENDITIONS - GOVERNOR:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to extraditions and renditions issued by the governor.

C. Retention: permanent, transfer to archives when no longer needed for reference.

[1.21.2.630 NMAC - N, 10/1/2015]

1.21.2.631 SIGNATURE RECORDS:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to signatures including, but not limited to, facsimile and digital signatures.

C. Retention: destroy 10 years from date file closed.

[1.21.2.631 NMAC - N, 10/1/2015]

1.21.2.632 HEARINGS AND APPEALS:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to hearings and appeals.

C. Retention: destroy 10 years from date file closed.

[1.21.2.632 NMAC - N, 10/1/2015]

1.21.2.633 HEARINGS AND APPEALS - HISTORICAL:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to hearings and appeals which affect public policy.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.633 NMAC - N, 10/1/2015]

1.21.2.634 INVESTIGATIONS - LEGAL MATTER MANAGMENT:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to investigations with merit of alleged criminal activities and not identified in other classifications.

C. Retention: destroy 10 years from date file closed.

[1.21.2.634 NMAC - N, 10/1/2015; A, 11/30/2015]

1.21.2.635 INVESTIGATIONS - ATTORNEY GENERAL:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to investigations conducted by the attorney general.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.635 NMAC - N, 10/1/2015]

1.21.2.636 LEGAL CASE FILES:

A. Category: Legal and judiciary - legal matter management.

B. Description: Legal case files other than historical case files.

C. Retention: destroy 10 years from date file closed.

[1.21.2.636 NMAC - N, 10/1/2015]

1.21.2.637 LEGAL CASE FILES - HISTORICAL:

A. Category: Legal and judiciary - legal matter management.

B. Description: Legal case files pertaining to the office of the governor, attorney general and regulation and remediation.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.637 NMAC - N, 10/1/2015]

1.21.2.638 MISSING PERSON FILES:

A. Category: Legal and judiciary - legal matter management.

B. Description: Missing person files and related records.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.638 NMAC - N, 10/1/2015]

1.21.2.639 PUBLIC DEFENDER AND DISTRICT ATTORNEY CASE FILES - ADULT:

A. Category: Legal and judiciary - legal matter management.

B. Description: Public defender and district attorney case files for adults, does not include capital offenses.

C. Retention: destroy 10 years from date file closed.

[1.21.2.639 NMAC - N, 10/1/2015]

1.21.2.640 PUBLIC DEFENDER AND DISTRICT ATTORNEY CASE FILES - CAPITAL OFFENSES:

A. Category: Legal and judiciary - legal matter management.

B. Description: Public defender and district attorney case files related to capital offenses.

C. Retention: permanent, transfer to archives 25 years from date file closed.

[1.21.2.640 NMAC - N, 10/1/2015]

1.21.2.641 PUBLIC DEFENDER AND DISTRICT ATTORNEY CASE FILES - JUVENILE:

A. Category: Legal and judiciary - legal matter management.

B. Description: Public defender and district attorney case files for juveniles.

C. Retention: destroy 22 years from date of birth.

[1.21.2.641 NMAC - N, 10/1/2015]

1.21.2.642 WAIVERS AND RELEASES - LEGAL MATTER MANAGEMENT:

A. Category: Legal and judiciary - legal matter management.

B. Description: Records related to waivers and releases.

C. Retention: destroy two years from date file closed.

[1.21.2.642 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.643 VICTIM CLAIM FILES:

- A. Category:** Legal and judiciary - legal matter management.
- B. Description:** Victim claim files and related records.
- C. Retention:** destroy 100 years from date of birth of claimant.

[1.21.2.643 NMAC - N, 10/1/2015]

1.21.2.644 LEGAL CASE FILES - DISMISSED:

- A. Category:** Legal and judiciary – legal matter management.
- B. Description:** Dismissed case files.
- C. Retention:** destroy one year from date file closed.

[1.21.2.644 NMAC - N, 03/13/2018]

1.21.2.645-1.21.2.650 [RESERVED]

1.21.2.651 BRANDS:

- A. Category:** Legal and judiciary - licensing and registration.
- B. Description:** Records related to brands.
- C. Retention:** destroy six years from date file closed.

[1.21.2.651 NMAC - N, 10/1/2015]

1.21.2.652 BUSINESS LICENSES:

- A. Category:** Legal and judiciary - licensing and registration.
- B. Description:** Records related to licenses for businesses not determined to be historical.

- C. Retention:** destroy 10 years from date entity is no longer licensed.

[1.21.2.652 NMAC - N, 10/1/2015]

1.21.2.653 BUSINESS LICENSES - HISTORICAL:

- A. Category:** Legal and judiciary - licensing and registration.

B. Description: Records related to licenses for businesses including, but not limited to, financial institutions, funeral homes, zoo, burial transit, child placement agency (foster care), private investigation, construction/contractor, liquid petroleum and natural gas, liquor license, private post-secondary institution, higher education distance learning, small brewer, winegrower or craft distiller, body art, medical marijuana producer and racing establishments.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.653 NMAC - N, 10/1/2015]

1.21.2.654 CONCEALED FIREARMS:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to concealed firearms.

C. Retention: destroy two years from date file closed.

[1.21.2.654 NMAC - N, 10/1/2015]

1.21.2.655 DEALERS, AGENTS AND OUTFITTERS:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to licensed dealers, agents and outfitters.

C. Retention: destroy three years from date file closed.

[1.21.2.655 NMAC - N, 10/1/2015]

1.21.2.656 DISCIPLINE AND INVESTIGATIONS - GENERAL:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to general discipline and investigations of license and certification violations.

C. Retention: destroy 25 years from date file closed.

[1.21.2.656 NMAC - N, 10/1/2015]

1.21.2.657 DISCIPLINE AND INVESTIGATIONS - HISTORICAL:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to discipline and investigations of violations pertaining to licenses determined to be historical.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.657 NMAC - N, 10/1/2015]

1.21.2.658 DRIVERS' LICENSES:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to issuing and tracking drivers' licenses including, but not limited to, revocation and suspensions not identified in other classifications.

C. Retention: destroy three years from date file closed.

[1.21.2.658 NMAC - N, 10/1/2015]

1.21.2.659 DRIVERS' LICENSES - SUSPENSION AND REVOCATION:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to vehicular homicide and DUI license suspension and revocation.

C. Retention: destroy 55 years from date file closed.

[1.21.2.659 NMAC - N, 10/1/2015]

1.21.2.660 DRIVERS' LICENSES - LIFETIME SUSPENSION AND REVOCATION:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to permanent commercial driver's license suspensions and revocation.

C. Retention: destroy 100 years from date of birth of licensee.

[1.21.2.660 NMAC - N, 10/1/2015]

1.21.2.661 FACILITIES, ESTABLISHMENTS AND PRODUCTS:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to licensing and certification of facilities, establishments and products.

C. Retention: destroy five years from date file closed.

[1.21.2.661 NMAC - N, 10/1/2015]

1.21.2.662 MOTOR VEHICLES - TITLES:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to motor vehicle titles.

C. Retention: destroy 25 years from date of change of ownership.

[1.21.2.662 NMAC - N, 10/1/2015]

1.21.2.663 MOTOR VEHICLES - REGISTRATION:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to motor vehicle registration.

C. Retention: destroy three years from date file closed.

[1.21.2.663 NMAC - N, 10/1/2015]

1.21.2.664 MOTOR VEHICLES, IDENTIFICATION:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to motor vehicle identification.

C. Retention: destroy three years from date file closed.

[1.21.2.664 NMAC - N, 10/1/2015]

1.21.2.665 MOTOR VEHICLES, LICENSE PLATES:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to motor vehicle license plates.

C. Retention: destroy one year from date file closed.

[1.21.2.665 NMAC - N, 10/1/2015]

1.21.2.666 NOTARY:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to licenses for notaries.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.666 NMAC - N, 10/1/2015]

1.21.2.667 PROFESSIONAL LICENSES:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to professional licenses not identified as historical.

C. Retention: destroy 10 years from date individual is no longer licensed.

[1.21.2.667 NMAC - N, 10/1/2015]

1.21.2.668 PROFESSIONAL LICENSES - HISTORICAL:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to professional licenses including, but not limited to, attorney, architect, certified public accountants, body art and piercing, nutritionist, dietician, optometrist, osteopathic, pharmacist, podiatry, polygraph examiner, private investigator, psychologist, otolaryngologist, funeral service practitioner, physician, physician's assistant, nursing, medication aid and hemodialysis, well driller, midwife, radioactive material licensee and educator lifetime licensure.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.668 NMAC - N, 10/1/2015]

1.21.2.669 SECURITIES:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to licensing securities.

C. Retention: destroy five years from date file closed.

[1.21.2.669 NMAC - N, 10/1/2015]

1.21.2.670 SPORTSMEN'S LICENSURE:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to licenses and permitting for hunting, angling and trapping.

C. Retention: destroy five years from date file closed.

[1.21.2.670 NMAC - N, 10/1/2015]

1.21.2.671 SPORTSMEN'S LICENSURE - LIFETIME:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Records related to lifetime licenses and permitting for hunting, angling and trapping.

C. Retention: destroy 100 years from date of birth of licensee.

[1.21.2.671 NMAC - N, 10/1/2015]

1.21.2.672 TESTS AND EXAMINATIONS:

A. Category: Legal and judiciary - licensing and registration.

B. Description: Tests and examinations for licenses and certifications.

C. Retention: destroy two years from date file closed.

[1.21.2.672 NMAC - N, 10/1/2015]

1.21.2.673-1.21.2.675 [RESERVED]

1.21.2.676 APPRAISALS - VALUATIONS:

A. Category: Legal and judiciary - real property.

B. Description: Records related to appraisals for valuation, does not include tax valuations.

C. Retention: destroy five years from date file closed.

[1.21.2.676 NMAC - N, 10/1/2015]

1.21.2.677 LAND AND EASEMENTS:

A. Category: Legal and judiciary - real property.

B. Description: Records related to property rights, exchanges, sale or acquisition of land including, but not limited to, easements.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.677 NMAC - N, 10/1/2015]

1.21.2.678 RIGHT OF WAY:

A. Category: Legal and judiciary - real property.

B. Description: Records related to property rights of way.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.678 NMAC - N, 10/1/2015]

1.21.2.679 WATER RIGHTS:

A. Category: Legal and judiciary - real property.

B. Description: Records related to water rights and permits.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.679 NMAC - N, 10/1/2015]

1.21.2.680-1.21.2.699 [RESERVED]

1.21.2.700 FOOD AND DRUG INFORMATION:

A. Category: Natural resource management – agriculture.

B. Description: Records related to food and drug information.

C. Retention: destroy five years from date file closed.

[1.21.2.700 NMAC - N, 10/1/2015]

1.21.2.701 SURVEYS AND INSPECTIONS:

A. Category: Natural resource management – agriculture.

B. Description: Records related to agricultural surveys and inspections.

C. Retention: destroy five years from date file closed.

[1.21.2.701 NMAC - N, 10/1/2015]

1.21.2.702 WEIGHTS AND MEASURES:

- A. Category:** Natural resource management – agriculture.
- B. Description:** Records related to weights and measures.
- C. Retention:** destroy one year from date file closed.

[1.21.2.702 NMAC - N, 10/1/2015]

1.21.2.703-1.21.2.705 [RESERVED]

1.21.2.706 DISEASE MANAGEMENT - ANIMAL AND LIVESTOCK:

- A. Category:** Natural resource management - animal and livestock.
- B. Description:** Records related to the management and prevention of animal disease.
- C. Retention:** destroy 10 years from date file closed.

[1.21.2.706 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.707 INSPECTIONS:

- A. Category:** Natural resource management - animal and livestock.
- B. Description:** Records related to animal and livestock inspections.
- C. Retention:** destroy five years from date file closed.

[1.21.2.707 NMAC - N, 10/1/2015]

1.21.2.708 VETERINARIAN CLIENT/PATIENT FILES:

- A. Category:** Natural resource management - animal and livestock.
- B. Description:** Veterinarian client/patient records.
- C. Retention:** destroy four years from date file closed.

[1.21.2.708 NMAC - N, 7/1/2020]

1.21.2.709-1.21.2.710 [RESERVED]

1.21.2.711 CONSERVATION PLANS:

- A. Category:** Natural resource management - land and water.
- B. Description:** Conservation plans and related records.
- C. Retention:** permanent, transfer to archives five years from date file closed.

[1.21.2.711 NMAC - N, 10/1/2015]

1.21.2.712 FOREST MANAGEMENT:

- A. Category:** Natural resource management - land and water.
- B. Description:** Records related to the management of forests.
- C. Retention:** destroy five years from date file closed.

[1.21.2.712 NMAC - N, 10/1/2015]

1.21.2.713 LAND MANAGEMENT:

- A. Category:** Natural resource management - land and water.
- B. Description:** Records related to management of state trust land.
- C. Retention:** permanent, transfer to archives five years from date file closed.

[1.21.2.713 NMAC - N, 10/1/2015]

1.21.2.714 [RESERVED]

1.21.2.715 NATURAL RESOURCES:

- A. Category:** Natural resource management - land and water.
- B. Description:** Records related to the management of natural resources not identified in other classifications.
- C. Retention:** permanent, transfer to archives five years from date file closed.

[1.21.2.715 NMAC - N, 10/1/2015]

1.21.2.716 WATER MANAGEMENT AND PLANNING:

- A. Category:** Natural resource management - land and water.

B. Description: Records related to management of water including, but not limited to, planning.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.716 NMAC - N, 10/1/2015]

1.21.2.717-1.21.2.720 [RESERVED]

1.21.2.721 FACILITIES:

A. Category: Natural resource management – recreation.

B. Description: Records related to the management of government parks, trails and facilities.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.721 NMAC - N, 10/1/2015]

1.21.2.722 RECREATIONAL ACCESS:

A. Category: Natural resource management – recreation.

B. Description: Records related to recreational access to government property and facilities.

C. Retention: destroy two years from date file closed.

[1.21.2.722 NMAC - N, 10/1/2015]

1.21.2.723-1.21.2.725 [RESERVED]

1.21.2.726 FISH MANAGEMENT:

A. Category: Natural resource management – wildlife.

B. Description: Records related to the management of fish and aquatic animals.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.726 NMAC - N, 10/1/2015]

1.21.2.727 GAME MANAGEMENT:

A. Category: Natural resource management – wildlife.

B. Description: Records related to the management of protected species including, but not limited to, hunter survey, tagging and harvest information; and not identified in other classifications.

C. Retention: destroy five years from date file closed.

[1.21.2.727 NMAC - N, 10/1/2015]

1.21.2.728 GAME MANAGEMENT - HISTORICAL:

A. Category: Natural resource management – wildlife.

B. Description: Records related to the management of protected species including, but not limited to, bighorn sheep, species transplant, importation, protected mammal and wildlife surveys.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.728 NMAC - N, 10/1/2015]

1.21.2.729-1.21.2.800 [RESERVED]

1.21.2.801 CASE FILES - CHILD AND YOUTH SERVICES:

A. Category: Public health and social services - child and youth.

B. Description: Child and social service case files including abuse or neglect cases not resulting in transfer of custody to the state.

C. Retention: destroy 19 years from date of birth.

[1.21.2.801 NMAC - N, 10/1/2015]

1.21.2.802 CASE FILES - FOSTER CARE:

A. Category: Public health and social services - child and youth.

B. Description: Records related to abuse or neglect cases resulting in transfer of custody to the state.

C. Retention: permanent, transfer to archives 25 years from date file closed.

[1.21.2.802 NMAC - N, 10/1/2015]

1.21.2.803 CHILD SUPPORT SERVICES:

A. Category: Public health and social services - child and youth.

B. Description: Records related to child support services.

C. Retention: destroy three years from date file closed.

[1.21.2.803 NMAC - N, 10/1/2015]

1.21.2.804 FOSTER HOMES:

A. Category: Public health and social services - child and youth.

B. Description: Records related to foster care homes.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.804 NMAC - N, 10/1/2015]

1.21.2.805 JUVENILE RECORDS:

A. Category: Public health and social services - child and youth.

B. Description: Case files of at-risk or delinquent youth.

C. Retention: destroy 22 years from date of birth.

[1.21.2.805 NMAC - N, 10/1/2015]

1.21.2.806-1.21.2.810 [RESERVED]

1.21.2.811 ASSISTANCE - EMPLOYMENT:

A. Category: Public health and social services - family and aging.

B. Description: Records related to employment assistance.

C. Retention: destroy five years from date file closed.

[1.21.2.811 NMAC - N, 10/1/2015]

1.21.2.812 ASSISTANCE - EMPLOYMENT (REFUGEE):

A. Category: Public health and social services - family and aging.

B. Description: Records related to employment assistance for refugees.

C. Retention: permanent, transfer to archives 10 years from date file closed.

[1.21.2.812 NMAC - N, 10/1/2015]

1.21.2.813 ASSISTANCE - FINANCIAL:

A. Category: Public health and social services - family and aging.

B. Description: Records related to financial assistance.

C. Retention: destroy five years from date file closed.

[1.21.2.813 NMAC - N, 10/1/2015]

1.21.2.814 ASSISTANCE - MEDICAL:

A. Category: Public health and social services - family and aging.

B. Description: Records related to medical assistance.

C. Retention: destroy six years from date audit report released.

[1.21.2.814 NMAC - N, 10/1/2015]

1.21.2.815 ASSISTANCE - NUTRITION:

A. Category: Public health and social services - family and aging.

B. Description: Records related to nutrition assistance including, but not limited to, case files, participation and authorizations.

C. Retention: destroy three years after date file closed.

[1.21.2.815 NMAC - N, 10/1/2015]

1.21.2.816 CASE FILES - FAMILY AND AGING:

A. Category: Public health and social services - family and aging.

B. Description: Family and aging services case files.

C. Retention: destroy six years from date file closed.

[1.21.2.816 NMAC - N, 10/1/2015]

1.21.2.817-1.21.2.820 [RESERVED]

1.21.2.821 HAZARDOUS WASTE:

A. Category: Public health and social services - hazardous material management.

B. Description: Records related to hazardous waste, materials and biohazards, including agency programs and response.

C. Retention: destroy 30 years from date file closed.

[1.21.2.821 NMAC - N, 10/1/2015]

1.21.2.822 RADIOACTIVE MATERIAL:

A. Category: Public health and social services - hazardous material management.

B. Description: Records related to the receipt, maintenance and disposal of radioactive material.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.822 NMAC - N, 10/1/2015]

1.21.2.823 MATERIAL SAFETY DATA SHEETS:

A. Category: Public health and social services - hazardous material management.

B. Description: Records related to identifying hazardous materials and chemicals including, but not limited to, use and analyses.

C. Retention: destroy 30 years from date file closed.

[1.21.2.823 NMAC - N, 10/1/2015]

1.21.2.824-1.21.2.825 [RESERVED]

1.21.2.826 ANALYSIS - X-RAY AND CHEMICAL:

A. Category: Public health and social services - hospital and medical.

B. Description: Records related to the analysis of x-rays and chemicals.

C. Retention: destroy 12 years from date file closed.

[1.21.2.826 NMAC - N, 10/1/2015]

1.21.2.827 DISEASE MANAGEMENT - HOSPITAL AND MEDICAL:

A. Category: Public health and social services - hospital and medical.

B. Description: Records related to diseases including CDC reportable diseases.

C. Retention: destroy 80 years from date file closed.

[1.21.2.827 NMAC - N, 10/1/2015; A, 03/15/2016]

1.21.2.828 DRUGS AND CONTROLLED SUBSTANCES:

A. Category: Public health and social services - hospital and medical.

B. Description: Records related to drugs and controlled substances including, but not limited to, inventories and prescriptions.

C. Retention: destroy three years from date file closed.

[1.21.2.828 NMAC - N, 10/1/2015]

1.21.2.829 INCIDENTS:

A. Category: Public health and social services - hospital and medical.

B. Description: Records related to incidents including minor injury reports.

C. Retention: destroy three years from date file closed.

[1.21.2.829 NMAC - N, 10/1/2015]

1.21.2.830 PATIENT MANAGEMENT:

A. Category: Public health and social services - hospital and medical.

B. Description: Records related to management of patients including, but not limited to, accounts and client files.

C. Retention: destroy five years from date file closed.

[1.21.2.830 NMAC - N, 10/1/2015]

1.21.2.831 PATIENT RECORDS - ADULT:

A. Category: Public health and social services - hospital and medical.

B. Description: Adult patient records.

C. Retention: destroy 10 years from date file closed.

[1.21.2.831 NMAC - N, 10/1/2015]

1.21.2.832 PATIENT RECORDS - MINOR (≥9 YEARS OF AGE):

A. Category: Public health and social services - hospital and medical.

B. Description: Patient records for minors nine years of age or over at date of last discharge.

C. Retention: destroy 10 years from date of last discharge.

[1.21.2.832 NMAC - N, 10/1/2015]

1.21.2.833 PATIENT RECORDS - MINOR (≤8 YEARS OF AGE):

A. Category: Public health and social services - hospital and medical.

B. Description: Patient records for minors eight years of age or under at date of last discharge.

C. Retention: destroy 19 years from date of birth.

[1.21.2.833 NMAC - N, 10/1/2015]

1.21.2.834 PROGRAMS - HOSPITAL AND MEDICAL:

A. Category: Public health and social services - hospital and medical.

B. Description: Records related to clinical and health programs.

C. Retention: destroy five years from date file closed.

[1.21.2.834 NMAC - N, 10/1/2015]

1.21.2.835-1.21.2.840 [RESERVED]

1.21.2.841 CALIBRATION:

A. Category: Public health and social services - laboratory management.

B. Description: Calibration logs and files.

C. Retention: destroy 10 years from date file closed.

[1.21.2.841 NMAC - N, 10/1/2015]

1.21.2.842 CASE FILES - LABORATORY:

A. Category: Public health and social services - laboratory management.

B. Description: Records related to laboratory analysis.

C. Retention: destroy 10 years from date file closed.

[1.21.2.842 NMAC - N, 10/1/2015]

1.21.2.843 REPORTS - LABORATORY:

A. Category: Public health and social services - laboratory management.

B. Description: Laboratory samples and reports.

C. Retention: destroy four years from date file created.

[1.21.2.843 NMAC - N, 10/1/2015]

1.21.2.844 FORENSIC AND TOXICOLOGY ANALYSIS:

A. Category: Public health and social services - laboratory management.

B. Description: Records related to forensic or toxicology analysis.

C. Retention: destroy 10 years from date of final disposition of corresponding case.

[1.21.2.844 NMAC - N, 10/1/2015, A, 6/11/2019]

1.21.2.845 FORENSIC ANALYSIS - MEDICAL INVESTIGATOR:

A. Category: Public health and social services - laboratory management.

B. Description: Records related to forensic analysis conducted by the medical investigator.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.845 NMAC - N, 10/1/2015]

1.21.2.846-1.21.2.850 [RESERVED]

1.21.2.851 BIRTHS AND DEATHS:

A. Category: Public health and social services - vital records.

B. Description: Records related to births and deaths.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.851 NMAC - N, 10/1/2015]

1.21.2.852-1.21.2.900 [RESERVED]

1.21.2.901 COMPLAINTS AND INVESTIGATIONS:

A. Category: Public safety services - correctional institutions.

B. Description: Records related to investigations including, but not limited to, shakedown, site or staff and search logs.

C. Retention: destroy five years from date file closed.

[1.21.2.901 NMAC - N, 10/1/2015]

1.21.2.902 INMATE FILES - JAIL:

A. Category: Public safety services - correctional institutions.

B. Description: Jail inmate files.

C. Retention: destroy five years from date file closed.

[1.21.2.902 NMAC - N, 10/1/2015]

1.21.2.903 INMATE FILES - JUVENILE:

A. Category: Public safety services - correctional institutions.

B. Description: Juvenile inmate files.

C. Retention: destroy 22 years from date of birth.

[1.21.2.903 NMAC - N, 10/1/2015]

1.21.2.904 INMATE FILES - PENITENTIARY:

A. Category: Public safety services - correctional institutions.

B. Description: Penitentiary inmate files.

C. Retention: permanent, transfer to archives 50 years from date file closed.

[1.21.2.904 NMAC - N, 10/1/2015]

1.21.2.905 INMATE MAIL:

A. Category: Public safety services - correctional institutions.

B. Description: Records related to offenders mail including, but not limited to, unidentified foreign objects.

C. Retention: destroy five years from close of calendar year in which file closed.

[1.21.2.905 NMAC - N, 10/1/2015]

1.21.2.906 PAROLE AND PROBATION FILES:

A. Category: Public safety services - correctional institutions.

B. Description: Parole and probation files.

C. Retention: permanent, transfer to archives 50 years from date probation or parole completed.

[1.21.2.906 NMAC - N, 10/1/2015]

1.21.2.907 PROGRAMS - CORRECTIONAL INSTITUTION:

A. Category: Public safety services - correctional institutions.

B. Description: Records related to inmate programs including, but not limited to, medical and recreational.

C. Retention: destroy three years from date file closed.

[1.21.2.907 NMAC - N, 10/1/2015]

1.21.2.908 SAFETY RECORDS:

A. Category: Public safety services - correctional institutions.

B. Description: Safety records.

C. Retention: destroy five years from the close of the calendar year in which file created.

[1.21.2.908 NMAC - N, 10/1/2015]

1.21.2.909 SECURITY AND ACCESS:

A. Category: Public safety services - correctional institutions.

B. Description: Records related to security and access.

C. Retention: destroy five years from date file closed.

[1.21.2.909 NMAC - N, 10/1/2015]

1.21.2.910 SURVEILLANCE – CORRECTIONAL INSTITUTIONS:

A. Category: Public safety services - correctional institutions.

B. Description: Records related to surveillance including, but not limited to, radio, telephone and cameras.

C. Retention: destroy two years from date file closed.

[1.21.2.910 NMAC - N, 10/1/2015; A, 06/30/2016]

1.21.2.911 UNIT FILES:

A. Category: Public safety services - correctional institutions.

B. Description: Records related to unit files.

C. Retention: destroy three years from date file closed.

[1.21.2.911 NMAC - N, 10/1/2015]

1.21.2.912-1.21.2.915 [RESERVED]

1.21.2.916 DISASTER FILES:

A. Category: Public safety services - emergency and disaster management.

B. Description: Records related to management and history of disasters.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.916 NMAC - N, 10/1/2015]

1.21.2.917 EMERGENCY AND FIRE DRILLS:

A. Category: Public safety services - emergency and disaster management.

B. Description: Records related to emergency and fire drills.

C. Retention: destroy one year from date file closed.

[1.21.2.917 NMAC - N, 10/1/2015]

1.21.2.918 RESPONSE:

A. Category: Public safety services - emergency and disaster management.

B. Description: Records related to responses to a disaster or emergency situation including, but not limited to, communications with responding agencies, details of the activation and all documentation or issues relating to or arising from the disaster.

C. Retention: destroy five years from date file closed.

[1.21.2.918 NMAC - N, 10/1/2015]

1.21.2.919 RESPONSE - NATIONAL GUARD:

A. Category: Public safety services - emergency and disaster management.

B. Description: Records related to New Mexico national guard responses to a disaster or emergency situation including, but not limited to, communications with responding agencies, details of the activation and all documentation or issues relating to or arising from the disaster.

C. Retention: permanent, transfer to archives five years from date file closed.

[1.21.2.919 NMAC - N, 10/1/2015]

1.21.2.920-1.21.2.925 [RESERVED]

1.21.2.926 ACCIDENTS AND INCIDENTS:

A. Category: Public safety services - law enforcement.

B. Description: Records related to accident reports and incidents.

C. Retention: destroy 10 years from date file closed.

[1.21.2.926 NMAC - N, 10/1/2015]

1.21.2.927 ACCIDENTS AND INCIDENTS - FATALITY:

A. Category: Public safety services - law enforcement.

B. Description: Records related to accident reports and incidents involving fatalities.

C. Retention: destroy 25 years from date file closed.

[1.21.2.927 NMAC - N, 10/1/2015]

1.21.2.928 [RESERVED]

1.21.2.929 CASE FILES - LAW ENFORCEMENT:

A. Category: Public safety services - law enforcement.

B. Description: Law enforcement case files.

C. Retention: destroy 10 years from date file closed.

[1.21.2.929 NMAC - N, 10/1/2015]

1.21.2.930 CITATION MANAGEMENT:

A. Category: Public safety services - law enforcement.

B. Description: Records related to the management of citations, including, but not limited to, parking, traffic or game and fish violations; does not include DUI citations.

C. Retention: destroy three years from date file closed.

[1.21.2.930 NMAC - N, 10/1/2015]

1.21.2.931 CITATION MANAGEMENT - DUI:

A. Category: Public safety services - law enforcement.

B. Description: Records related to the management of DUI citations.

C. Retention: destroy 55 years from date file closed.

[1.21.2.931 NMAC - N, 10/1/2015]

1.21.2.932 CRIME REPORTING:

A. Category: Public safety services - law enforcement.

B. Description: Records related to the central repository for the reporting of crime.

C. Retention: destroy 99 years from date file created.

[1.21.2.932 NMAC - N, 10/1/2015]

1.21.2.933 EVIDENCE:

A. Category: Public safety services - law enforcement.

B. Description: Records relating to the tracking and disposition of evidence.

C. Retention: destroy three years from the close of the fiscal year in which file closed.

[1.21.2.933 NMAC - N, 10/1/2015]

1.21.2.934 FINGERPRINT IDENTIFICATION - CRIMINAL:

A. Category: Public safety services - law enforcement.

B. Description: Records related to criminal fingerprint identification.

C. Retention: destroy 99 years from date file created.

[1.21.2.934 NMAC - N, 10/1/2015]

1.21.2.935 FINGERPRINT IDENTIFICATION - NON-CRIMINAL:

A. Category: Public safety services - law enforcement.

B. Description: Records related to non-criminal fingerprint identification.

C. Retention: destroy upon completion of report.

[1.21.2.935 NMAC - N, 10/1/2015]

1.21.2.936 SEX OFFENDER REGISTRATION:

A. Category: Public safety services - law enforcement.

B. Description: Records related to sex offender registration.

C. Retention: destroy 99 years from date file created.

[1.21.2.936 NMAC - N, 10/1/2015]

1.21.2.937 VICTIM NOTIFICATION:

A. Category: Public safety services - law enforcement.

B. Description: Records related to victim notification program files.

C. Retention: destroy one year from date file created.

[1.21.2.937 NMAC - N, 10/1/2015]

1.21.2.938 SURVEILLANCE - LAW ENFORCEMENT:

A. Category: Public safety services - law enforcement.

B. Description: Records related to surveillance not identified in other classifications.

C. Retention: destroy two years from date file closed.

[1.21.2.938 NMAC - N, 06/30/2016]

1.21.2.939-1.21.2.940 [RESERVED]

1.21.2.941 FIRE FIGHTERS:

A. Category: Public safety services - training management.

B. Description: Records related to training for fire fighters including, but not limited to, certifications.

C. Retention: destroy 10 years from date individual is no longer certified.

[1.21.2.941 NMAC - N, 10/1/2015]

1.21.2.942 FORESTRY:

A. Category: Public safety services - training management.

B. Description: Records related to training for forestry.

C. Retention: destroy 10 years from date individual is no longer certified.

[1.21.2.942 NMAC - N, 10/1/2015]

1.21.2.943 LAW ENFORCEMENT:

A. Category: Public safety services - training management.

B. Description: Records related to training for law enforcement.

C. Retention: destroy 10 years from date individual is no longer certified.

[1.21.2.943 NMAC - N, 10/1/2015]

PART 3: LOCAL GOVERNMENT RECORDS MANAGEMENT GUIDANCE

1.21.3.1 ISSUING AGENCY:

State Records Administrator.

[1.21.3.1 NMAC - N, 11/30/2015]

1.21.3.2 SCOPE:

Local government including counties, municipalities and local public bodies.

[1.21.3.2 NMAC - N, 11/30/2015]

1.21.3.3 STATUTORY AUTHORITY:

Public Records Act, Section 14-3-18 NMSA 1978.

[1.21.3.3 NMAC - N, 11/30/2015]

1.21.3.4 DURATION:

Permanent.

[1.21.3.4 NMAC - N, 11/30/2015]

1.21.3.5 EFFECTIVE DATE:

November 30, 2015, unless a later date is cited at the end of a section.

[1.21.3.5 NMAC - N, 11/30/2015]

1.21.3.6 OBJECTIVE:

The administrator may advise and assist county and municipal officials in the formulation of programs for the disposition of public records maintained in county and municipal offices.

1.21.3.7 DEFINITIONS:

The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the Public Records Act, Section 14-3-1 et seq. NMSA 1978 shall have the respective meanings accorded such terms in the act.

A. "Agency" means the administrative subdivision of a county or municipal government.

B. "Archives" means the permanent records of the state of New Mexico, which may include government and private collections of the Spanish, Mexican, territorial and statehood periods, assessed to have significant historical value to warrant their preservation by the state of New Mexico.

C. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to archives or destruction).

D. "Executive level" means elected and appointed officials, statutory agency heads and management personnel with decision making authority granted by the agency head.

E. "File closed" means the date the trigger event occurred, or, for electronic records, equivalent to the date last modified unless otherwise stated in retention.

F. "Historical" means records deemed to have archival value by the commission.

G. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, transitory records, records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

H. "Retention" means the period of time during which records should be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

I. "Transitory" means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.

J. "Trigger event" means the closing event of a record which begins the retention period.

[1.21.3.7 NMAC - N, 11/30/2015]

1.21.3.8 ABBREVIATIONS AND ACRONYMS:

A. "NMAC" stands for New Mexico administrative code.

B. "NMSA" stands for New Mexico statutes annotated.

[1.21.3.8 NMAC - N, 11/30/2015]

1.21.3.9 INSTRUCTIONS:

A. This guide identifies the types of records maintained by county and municipal governments and specifies a recommended period of time which records should be retained. A retention period may be stated in terms of months or years and is contingent upon the occurrence of a trigger event. Each record classification will be itemized by section number and title in the format listed below.

(1) Category - describes the hierarchy of the function

(2) Description - describes the function of the record series

(3) Retention - defines the length of time records should be kept before they are eligible for destruction or archival preservation

B. Record classification descriptions are not intended to be exhaustive. Descriptions may include records that do not appear in the files, and conversely, files may include records not listed in the description.

C. Refer questions concerning the confidentiality of a record to legal counsel for the county or municipality. For the destruction of confidential records, please refer to 1.13.30.11 NMAC.

D. Public records should be maintained in their native format (paper/digital). Records may be microfilmed or digitized provided a microphotography plan has been approved by the state records administrator. Refer to Section 14-3-17 NMSA 1978 and 1.14.2 NMAC. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction as evidence in all courts or administrative agencies. Refer to Section 14-1-6 NMSA 1978.

E. Public records should be classified according to content and retained at a minimum for the length of time specified in this guide.

F. For guidance on electronic messaging refer to 1.13.4 NMAC.

G. For guidance on the destruction of non-record material refer to 1.13.30.14 NMAC.

H. Counties must provide the state records administrator a minimum of 60 days' notice of intent to destroy public records per Section 14-1-8 NMSA 1978.

[1.21.3.9 NMAC - N, 11/30/2015]

1.21.3.10 RECORDS CLASSIFICATION:

For guidance on record classifications created solely by local government refer to the *records retention and disposition guide*. For guidance on all other record classifications, refer to 1.21.2 NMAC.

[1.21.3.10 NMAC - N, 11/30/2015]

CHAPTER 22-23: [RESERVED]

CHAPTER 24: RULES

PART 1: GENERAL PROVISIONS

1.24.1.1 ISSUING AGENCY:

State Records Administrator.

[1.24.1.1 NMAC - N, 2/29/2000, A, 9/15/2014]

1.24.1.2 SCOPE:

All state agencies.

[1.24.1.2 NMAC - N, 2/29/2000]

1.24.1.3 STATUTORY AUTHORITY:

The State Rules Act, Section 14-4-1 et seq. NMSA 1978.

[1.24.1.3 NMAC - N, 2/29/2000]

1.24.1.4 DURATION:

Permanent.

[1.24.1.4 NMAC - N, 2/29/2000]

1.24.1.5 EFFECTIVE DATE:

February 29, 2000 unless a later date is cited at the end of a section.

[1.24.1.5 NMAC - N, 2/29/2000]

1.24.1.6 OBJECTIVE:

The objective of this rule is to establish the general provisions for the rules filed in this chapter.

[1.24.1.6 NMAC - N, 2/29/2000]

1.24.1.7 DEFINITIONS:

A. Terms beginning with the letter "A":

(1) **"Agency"** means any agency, board, commission, department, institution or officer of the state government except the judicial and legislative branches (Subsection A of Section 14-4-2 NMSA 1978).

(2) **"Amendment"** means a change or modification to the existing text of a rule. An amendment can be no less than a section. A repeal of less than a part is an amendment.

(3) **"Annotation"** means referenced material that is not part of the rule, located in brackets at the end of a section.

B. Terms beginning with the letter "B": [RESERVED]

C. Terms beginning with the letter "C":

(1) **"Chapter"** means the required NMAC designation for the normal division of a title. Chapter names and numbers are assigned by the records center, based upon the subject matter covered by agencies' rule filings. The chapter identifies distinct governmental functions, or subject-matter areas, usually, but not always, under the jurisdiction of a single agency.

(2) **"Cited material"** means the source document from which the rule text was derived. The source document need not be consulted in order to determine what the rule is.

(3) **"Compact disk (CD)"** means a digital optical disc data storage format.

(4) **"Compilation"** means the composition of filed rules into the New Mexico administrative code.

D. Terms beginning with the letter "D":

(1) **"Duration"** means the length of time a rule is intended to be in effect, either permanent or for a set period of time. It is placed in the required NMAC section entitled DURATION.

E. Terms beginning with the letter "E":

(1) **"Effective date"** means the date the rule goes into effect. It is placed in the required NMAC section entitled EFFECTIVE DATE. A rule's effective date cannot be earlier than the date of publication in the New Mexico register.

(2) **"Emergency rule"** means a rule filing whose immediate implementation is necessary for the public peace, health, safety or general welfare.

F. Terms beginning with the letter "F":

(1) **"Filing"** means the process by which one paper copy of a part or amendment, the corresponding electronic copy, the agency billing information sheet, and the NMAC transmittal form are delivered to the records center and, if accepted by the records center, are date stamped and accessioned. See also "rule filing".

(2) **"Filing date"** means the date a rule filing is date stamped by the records center.

G. Terms beginning with the letter "G": [RESERVED]

H. Terms beginning with the letter "H":

(1) **"History note"** means the required annotation of changes or repeals to a part or a section noted at the end of a modified section. At a minimum, this note contains the effective date of the original filing and the dates and identification numbers of any subsequent amendment(s), promulgation(s) and any repeal.

(2) **"History of the part"** means the material located after the last section of the part comprising pre-NMAC history and history of repealed material.

(3) **"History of repealed material"** means the listing of repealed pre-NMAC or NMAC material that pertains to the subject matter of the part. The listing contains the pre-NMAC rule number or NMAC number and the name and the effective date of repeal for each repealed rule or part. It is placed in the history of the part.

I. Terms beginning with the letter "I":

(1) **"Incorporation by reference"** see, "referenced material incorporated or adopted by rule".

(2) **"Integrated part"** means a compiled part that incorporates amendments to sections of that part.

(3) **"Issuing agency"** means the agency that originally promulgated the rule, or its successor agency. It is listed in the required NMAC section entitled ISSUING AGENCY.

(4) **"Issuing authority"** means the public official or employee of the issuing agency who is specifically authorized to approve the issuance of rules for that agency.

(5) **"Item"** means the normal division of a sub-paragraph that is always the eighth level of the NMAC hierarchy. Items are identified by a lower-case roman numeral within parentheses.

J. Terms beginning with the letter "J": [RESERVED]

K. Terms beginning with the letter "K": [RESERVED]

L. Terms beginning with the letter "L": [RESERVED]

M. Terms beginning with the letter "M": [RESERVED]

N. Terms beginning with the letter "N":

(1) **"Name"** means the textual designation of a title, chapter, part or section.

(2) **"New part"** means a part which did not previously exist in the New Mexico administrative code and where no pre-NMAC rules exist covering the same subject matter, or a complete replacement of an entire part and its amendments.

(3) **"NMAC"** means the New Mexico administrative code, the organizing structure for rules filed by New Mexico state agencies. The NMAC is also the body of filed rules and the published versions thereof. The hierarchy of the NMAC is structured by title, chapter, part and section.

(4) **"NMAC table of contents"** means the master list of approved NMAC titles maintained by the records center. It may also include chapter and part designations.

(5) **"Normal style"** means left justified, Times New Roman 10 point font, single-spaced text, with one inch margins and one-half inch header and footer.

(6) **"Notice of rulemaking"** means the advertisement published in the New Mexico register to provide public notice of an agency's intention to promulgate a rule(s) along with the date and time of hearings for the purpose of collecting public comment on the proposed rule(s).

(7) **"Number"** means the numerical designations assigned to titles, chapters, parts and sections that combine to form a unique numerical designation for a rule. Numbers need not be sequentially assigned and intermediate ranges may be reserved.

O. Terms beginning with the letter "O":

(1) **"Objective"** means the purpose of the rule or the reason for its necessity. It is stated in the required NMAC section entitled OBJECTIVE.

(2) **"Original filing"** means the first filing of new rule material.

P. Terms beginning with the letter "P":

(1) **"Paragraph"** means the normal division of a subsection and the sixth level of the NMAC hierarchy. Paragraphs are identified by a number within parentheses.

(2) **"Part"** means the required NMAC designation for the normal division of a chapter. A part consists of a unified body of rule material applying to a specific function or devoted to a specific subject matter. Structurally, a part is the equivalent of a rule.

(3) **"Pre-NMAC history"** means the regulatory filing history (list) of filed rules, prior to converting to NMAC style and format, that provided the source material for the specific NMAC part. It contains the rule number, the rule name and the filing date for each listed rule.

(4) **"Promulgation"** means the public declaration of the adoption of an official and final rule.

(5) **"Publication in the New Mexico register"** means the process of publishing in the New Mexico register in accordance with 1.24.15 NMAC. The publication date is the date of the issue of the New Mexico register in which a rule appears.

Q. Terms beginning with the letter "Q": [RESERVED]

R. Terms beginning with the letter "R":

(1) **"Recompile"** means the action of renumbering, reformatting and restructuring an existing rule without changing the text so that it complies with the current NMAC style and formatting requirements. Rules are recompiled for the

convenience of using the NMAC website. The original filing remains the official version of the rule.

(2) **"Records center"** means the commission of public records, state records center and archives, the agency responsible for administering the State Rules Act, Section 14-4-1 et seq. NMSA 1978.

(3) **"Referenced material incorporated or adopted by rule"** means a source document that must be consulted in order to determine what the rule is, where such incorporated or adopted material is not stated in the rule.

(4) **"Reformat"** means the application of adopted style and format requirements to current rules to conform to the NMAC structure promulgated by the records center.

(5) **"Renumbering"** means the assignment of a new number to an existing chapter, part or section.

(6) **"Repealer"** means a rule filing which revokes or annuls an entire part.

(7) **"Re-promulgation"** means the filing of pre-existing rule material with the express intent that it continue in effect, or resume being in effect. This was done specifically pursuant to Subsection D of 14-4-7 NMSA 1978.

(8) **"Reserved"** means portions of the New Mexico administrative code (NMAC) with the word RESERVED in square brackets. Chapters, parts and sections may be reserved to hold space between lower numbered and higher numbered portions of the hierarchy, or may be reserved by agencies with the intent to write rule text in that area.

(9) **"Restructuring"** means the reformatting and reorganizing of the hierarchy of the NMAC by assigning new designations to existing rule material without altering the content of that material.

(10) **"Rule"** means any rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, issued or promulgated by an agency of state government and purporting to affect one or more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, and as further defined in subsection C of Subsection 14-4-2 NMSA 1978 and Attorney General Opinion No. 93-1.

(11) **"Rule filing"** means the body of rule material organized for filing in accordance with Section 14-4-3 NMSA 1978 and 1.24.10 NMAC.

S. Terms beginning with the letter "S":

(1) **"Scope"** means the extent of a rule's coverage. It identifies to whom the rule applies and whom it affects - for example, to the general public, for-profit corporations, public utilities, all state agencies, etc. It includes exclusions from coverage, and cross-reference to other parts of the NMAC which deal with the same or similar subject matter. It also indicates whether the rule is exhaustive of the subject area and whether other rules may apply. It is stated in the required NMAC section entitled SCOPE.

(2) **"Section"** means the required NMAC designation for the normal subdivision of a part. It has both a name and number, is the smallest fillable unit of a rule filing of the NMAC and is the fourth level of the NMAC hierarchy.

(3) **"Statutory authority"** means the statute or constitutional provision which authorizes the promulgation of rules concerning the topic of the part. In the absence of express legislative authority, statutory authority cites to the general legislative authority of the agency over the topic of the rule. It is stated in the required NMAC section entitled STATUTORY AUTHORITY.

(4) **"Sub-paragraph"** means the normal subdivision of a paragraph that is always the seventh level of the NMAC hierarchy. Sub-paragraphs are identified by a lower case letter within parentheses.

(5) **"Subsection"** means the normal subdivision of a section and is always the fifth level of the NMAC hierarchy. A subsection is identified by a capital letter.

(6) **"Synopsis"** means a condensed version or outline of a rule.

T. Terms beginning with the letter "T":

(1) **"Title"** means the required NMAC designation for the major divisions of the NMAC. Each title brings together broadly related governmental functions and is the first level of the NMAC hierarchy. Titles shall be assigned by the records center.

(2) **"Title case"** means the style where the first letter of each significant word is capitalized.

U. Terms beginning with the letter "U":

(1) **"URL"** means the internet address of a web site.

(2) **"USB flash drive"** means a data storage device that includes flash memory with an integrated universal serial bus (USB) interface. USB flash drives are typically removable and rewritable, and physically much smaller than an optical disc.

(3) "U.S. law" means the United States code, the code of federal regulations, the federal register, New Mexico statutes, published portions of the NMAC and any material referenced therein.

V. Terms beginning with the letter "V": [RESERVED]

W. Terms beginning with the letter "W": [RESERVED]

X. Terms beginning with the letter "X": [RESERVED]

Y. Terms beginning with the letter "Y": [RESERVED]

Z. Terms beginning with the letter "Z": [RESERVED]

[1.24.1.7 NMAC - Rp 1 NMAC 3.3.10.7 & 1 NMAC 3.3.15.7 & 1 NMAC 3.3.20.7, 2/29/2000; A, 6/30/2004; A, 9/15/2014]

[The most recent amendment includes definitions not previously promulgated.]

PART 2-9: [RESERVED]

PART 10: NEW MEXICO ADMINISTRATIVE CODE

1.24.10.1 ISSUING AGENCY:

State Records Administrator.

[1.24.10.1 NMAC - Rp 1 NMAC 3.3.10.1, 2/29/2000; A, 9/15/2014]

1.24.10.2 SCOPE:

All state agencies. General provisions, including applicable definitions, are found in 1.24.1 NMAC. There are additional requirements on submitting a rule filing for publication in the New Mexico register (see 1.24.15 NMAC), for emergency rule filings (see 1.24.20 NMAC) and for transition to a new NMAC structure (see 1.24.11 NMAC).

[1.24.10.2 NMAC - Rp 1 NMAC 3.3.10.2, 2/29/2000]

1.24.10.3 STATUTORY AUTHORITY:

Section 14-4-7.2 NMSA 1978 directs the state records administrator to create and publish a New Mexico administrative code, and to adopt regulations setting forth procedures for compiling the code and prescribing the format and structure of the code. Section 14-4-3 NMSA 1978 directs that promulgated rules shall be in style and format required by and delivered to the state records administrator together with a concise explanatory statement to be filed noting the date and hour of filing.

[1.24.10.3 NMAC - Rp 1 NMAC 3.3.10.3, 2/29/2000; A, 7/1/2017]

1.24.10.4 DURATION:

Permanent.

[1.24.10.4 NMAC - Rp 1 NMAC 3.3.10.4, 2/29/2000]

1.24.10.5 EFFECTIVE DATE:

February 29, 2000, unless a later date is cited at the end of a section.

[1.24.10.5 NMAC - Rp, 1 NMAC 3.3.10.5, 2/29/2000; A, 9/15/2014; A, 11/30/2015]

1.24.10.6 OBJECTIVE:

The objective of this rule is to establish standards for uniform rule filings in an easily understood and common format. These standards are designed to ensure that rules are readily identifiable and available for public inspection; that each rule filing can be historically traced from its current status back to the original rule filing; and that rule filings are structured for expeditious compilation into the NMAC. The NMAC is designed to promote access and assist research by adopting a system for uniformly organizing state rules that facilitates fully searchable electronic access. Additionally, it is designed to facilitate electronic publication and availability via the internet.

[1.24.10.6 NMAC - Rp 1 NMAC 3.3.10.6, 2/29/2000]

1.24.10.7 DEFINITIONS:

[RESERVED]

[1.24.10.7 NMAC - Rp 1 NMAC 3.3.10.7, 2/29/2000]

1.24.10.8 NMAC STRUCTURE AND IDENTIFICATION:

A. The NMAC, a hierarchical structure, is divided into titles, chapters and parts, on the basis of subject matter. A title broadly organizes related governmental rule material in the first level of the hierarchy. The title is divided into chapters that identify distinct governmental functions. The chapter is divided into parts. The part relates to specific subject matter. It is at this level that rules are organized. The part is subdivided into sections. The section may be further subdivided into subsections, paragraphs and subparagraphs.

B. Each division of the NMAC through the section level shall have a name and number.

(1) The names and numbers of NMAC titles are listed in 1.24.10.26 NMAC, TABLE OF CONTENTS. Chapter names and numbers shall be assigned and maintained by the records center.

(2) The individual number of a title, chapter, part or section shall be expressed as a whole number. Titles shall be limited to two arabic digits; chapters shall be limited to three arabic digits; and parts and sections shall be limited to four arabic digits.

C. Subsections shall be indicated by at least one, but not more than three, upper-case alphabetic characters. Paragraphs are indicated by at least one, but not more than three, arabic digits within parentheses. Sub-paragraphs shall be indicated by at least one, but not more than three, lower-case alphabetic characters within parentheses.

D. The part name and number shall be assigned by the filing agency and subject to approval by the administrative law division of the state commission of public records.

(1) The part names shall be descriptive and not exceed 120 characters. Agencies shall use names that provide adequate notice of the nature and content of the part.

(2) The individual part number shall not exceed four arabic digits and shall not include dashes or alphabetic characters.

(3) "Part 1" of each chapter shall be used or reserved for the general provisions that apply to all the parts in that chapter.

E. At the beginning of each part, an agency shall identify the part by title number and name, chapter number and name, and part number and name.

F. The first seven sections of each part shall state:

(1) Section 1 - name of the issuing agency in a section entitled "ISSUING AGENCY";

(2) Section 2 - the scope of the part in a section entitled "SCOPE";

(3) Section 3 - the statutory authority under which a part is issued, in a section entitled "STATUTORY AUTHORITY";

(4) Section 4 - the intended duration of the part in a section entitled "DURATION";

(5) Section 5 - the effective date of the part in a section entitled "EFFECTIVE DATE";

(6) Section 6 - the objective of the part in a section entitled "OBJECTIVE";

(7) Section 7 - the definitions that apply just to the part in a section entitled "DEFINITIONS." If there are no definitions for the part, Section 7 shall be reserved i.e., [RESERVED]. An annotation to general provisions may be included.

G. Section 8, and all subsequent sections, shall encompass the body of rule material specific to the part.

H. A section has both a name and number assigned by the promulgating agency. Each section shall be identified at the beginning by the full NMAC number (title number, followed by a period, chapter number, followed by a period, part number, followed by a period and the section number) followed by the name of the section. Example: Section 12 of this part is 1.24.10.12 STYLE.

I. A section may be divided into subsections. Subsections may be used to further group similar paragraphs.

J. A paragraph is a unit of grammatical, tabular or other discrete, organized information that may be, although not advisably, divided into further units.

[1.24.10.8 NMAC - Rp 1 NMAC 3.3.10.15, 2/29/2000; A, 6/30/2004; A, 11/30/2015]

1.24.10.9 NMAC CITATION:

A. The format for full citation of material contained in the NMAC shall be the name of the part, followed by a comma, a space, the name of the issuing agency, followed by a comma, a space, the title number, followed a period, the chapter number, followed by a period, the part number, followed by a period, the section number, a space and the initials "NMAC." The citation shall be followed by the effective date in parentheses. Example: Disclosure of Taxpayer Information, New Mexico Taxation and Revenue Department, 3.1.3.8 NMAC (10/31/1996).

B. A modified full citation where the name of the issuing agency is omitted from the citation may be used. Example: Disclosure of Taxpayer Information, 3.1.3.8 NMAC (10/31/1996).

C. The short-form citation of the NMAC is the title, chapter, part and section number separated by periods and followed by "NMAC". Example: 3.1.3.8 NMAC.

D. Where a provision has been amended, the effective date shall be the effective date of the version that is being cited.

E. Where reference is to the whole part, the reference date shall be the original effective date together with the date of last amendment, i.e., (7/1/94 as amended through 1/1/2000).

F. Where citation below the level of a section is desired, designations below the section shall precede the citation. Example: Subsection A of 3.1.3.8 NMAC.

[1.24.10.9 NMAC - Rp 1 NMAC 3.3.10.8, 2/29/2000; A, 6/30/2004]

1.24.10.10 ISSUING AUTHORITY:

A. The issuing authority is responsible for ensuring compliance with the requirements set forth in this part.

B. Where delegation is authorized, the agency may, by rule or formal appointment, specify an issuing authority other than that named in statute. The agency shall forward, in writing, the title, name and signature of the designee to the state records administrator. The agency shall notify, in writing, the state records administrator of any change in the designation. Designation shall only be made by the issuing authority. Formally appointed designees are not allowed to appoint other designees.

C. The administrative law division shall not accept a rule filing or a concise explanatory statement signed by other than the issuing authority, or a formally appointed designee.

[1.24.10.10 NMAC - Rp 1 NMAC 3.3.10.9, 2/29/2000; A, 6/30/2004; A, 11/30/2015; A, 7/1/2017]

1.24.10.11 WHAT CONSTITUTES A RULE:

"Rule" and "proposed rule" have been defined and set forth within statute (See Section 14-4-2 NMSA 1978).

[1.24.10.11 NMAC - N, 2/29/2000; A, 6/30/2004; A, 7/1/2017]

1.24.10.12 STYLE:

A. Style shall be guided by relevant portions of the current edition of the legislative drafting manual of the New Mexico legislature published by the New Mexico legislative council service. The following provisions are specifically adopted.

(1) Chapter 4, Bill Drafting, the portion dealing with brackets, line-through and underscoring shall apply to proposed amendments and amendments for publication in the New Mexico register. This style shall not be applied to the integrated part.

(2) Chapter 7, Legislative Style and Language Provisions, except for the portion dealing with numbers, formulas and charts, as set forth:

(a) use words for numbers zero to nine (except for dates, numbers with decimals, money or technical, scientific or statistical matter;

(b) use figures for numbers 10 and greater, except when beginning a sentence;

(c) spell out numerical figures when using percentages; the word "percent" shall be spelled out except in tables, which use the percent symbol (%); (e.g., twenty-five percent)

(d) spell out fractions standing alone (e.g., one-half, one-third, etc.);

(e) insert a hyphen between the numerator and the denominator of a fraction, unless either element already contains a hyphen; do not spell out a portion of a fraction and express the other part as a figure; and

(f) use figures for fractions with numbers 10 and greater.

(3) Figures and symbols may represent amounts of money. It is not necessary to spell out the number. If a sum of money is spelled out, follow the spelling with figures and money symbol (\$) in parenthesis.

B. Special symbols shall be avoided and the common abbreviation or full spelling used instead. For example, deg. for degree and lbs. for pounds.

C. No rule filing shall be typed in all capital letters.

D. Indentions shall be standardized as follows.

(1) Section numbers shall be flush with the part's one-inch margin.

(2) One tab shall be used to indent the first line of a subsection. Tab once after the subsection designation before beginning the text.

(3) Paragraphs shall be indented two tabs. Tab once after the paragraph designation before beginning the text.

(4) Subparagraphs shall be indented three tabs. Items are to remain within the text of subparagraph. Upon request for need and upon approval by administrative law division, items may be indented four tabs. Tab once after the subparagraph or item designation before the beginning of the text.

(5) Automatic indents are not permitted.

E. Sections shall be clearly separated.

F. The name of the issuing agency in Section 1 and in full citation shall be typed in title case.

G. The first page of a new part or integrated part shall begin with the title, chapter and part numbers and names. The information shall be flush with the document's one-inch margin and typed in bold capital letters.

H. Use of tables is permissible but shall be used sparingly because tables may cause difficulties in the rule filing process and may increase publication costs. The agency shall be guided by the following when using tables.

(1) Tables shall be in portrait orientation.

(2) Text in tables shall be Times New Roman, 10-point font.

I. No rule filing shall contain footnotes.

[1.24.10.12 NMAC - N, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015]

1.24.10.13 ELECTRONIC STANDARDS:

A. Electronic storage media for rule filings shall be one of the following:

(1) USB-flash-drive; or

(2) CD; or,

(3) as an attachment via an e-mail address.

B. For rule filings, the electronic format shall be *MS Windows* version of *MS Word* software using Times New Roman, 10-point font, normal style.

C. Special coding, such as hanging indents, automatic tabbing, automatic numbering, body text style, non-breaking hyphens, automatic tracking, or any other special font shall not be used.

D. Use of images shall be limited. If necessary, they shall be included in the electronic version of the document as GIF or PDF files.

E. Page Layout:

(1) A rule filing shall be single-spaced with double spacing between sections.

(2) The original paper version of a rule filing shall be single-sided.

(3) Margins shall be a minimum of one inch on all four sides, excluding the footer.

(4) Tabs shall be set at 0.5 inches.

(5) The document shall have a footer for page identification which shall appear at the midpoint within the one-inch margin on the foot of every page. The footer shall contain the NMAC number down through the part number in the bottom left corner of the footer. The page number shall be located at the bottom right corner of the footer.

[1.24.10.13 NMAC - Rp, 1 NMAC 3.3.10.13, 2/29/2000; A, 6/30/2004; A, 9/15/2014]

1.24.10.14 PAPER VERSION STANDARDS:

A. Paper:

(1) Output shall be produced from, and not vary from, the electronic version of the rule filing.

(2) Size shall be 8.5 x 11 inches.

(3) Weight shall be a minimum of 20-lb. bond or copier paper.

(4) Color shall be white.

B. Ink: Color shall be black and uniform throughout.

C. Binding: Rule filings shall be unbound and consist of individual sheets.

D. Page Layout: In all other respects, paper version shall conform to the page layout described in 1.24.10.13 NMAC above.

[1.24.10.14 NMAC - Rp, 1 NMAC 3.3.10.13, 2/29/2000; A, 6/30/2004; A, 9/15/2014]

1.24.10.15 NMAC TRANSMITTAL

A. Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in hard copy with an original signature in black ink or with a digital signature, as defined in Paragraph 1 of Subsection D of 1.12.7.7 NMAC.

B. The administrative law division shall provide agencies with blank NMAC transmittal forms in electronic format.

C. The filing agency shall complete the NMAC transmittal form and submit to the administrative law division for review and approval prior to adoption of any rulemaking.

D. The NMAC transmittal form shall not be handwritten and shall be suitable for reproduction.

E. The following shall appear on the NMAC transmittal form:

- (1) issuing agency name and address;
- (2) three digit DFA account code for the agency (if applicable);
- (3) volume, issue, publication date in register for rule filing;
- (4) contact person's name, phone number, and e-mail address;
- (5) type of filing - i.e., new, amendment, renumber, repeal, repeal/replace or emergency filing;
- (6) total number of pages;
- (7) date(s) of any public hearing(s) on the proposed rule or amendment;
- (8) effective date of the rule filing;
- (9) NMAC title, chapter and part name and number;
- (10) description of amendment (for amendment filing only, i.e. "amending two sections");
- (11) amendment's NMAC citation (i.e., 1.24.10.15 and 16 NMAC);
- (12) sequence number and most recent filing date of the part (if applicable and designated for administrative law division use only);
- (13) declaration of incorporated material;
- (14) if reference materials are attached and are protected by copyright:
 - (a) indication if copyright permission was obtained;
 - (b) the proof of permission; or
 - (c) material is within the definition of public domain;
- (15) specific statutory or other authority authorizing the rulemaking by the issuing agency to promulgate rules;
- (16) any findings required by a provision of law for adoption of the rule;
- (17) rule adoption date; and
- (18) rule effective date.

F. Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form or with a digital signature. If authority is delegated, the box shall be checked. Any rule filing will be accepted, with a digital signature, and will be filed by the administrative law division.

G. Those portions of the transmittal form that are completed by the issuing agency under the concise explanatory statement heading shall be considered sufficient compliance with State Rules Act and shall be provided to the public at the time the issuing agency adopts any rule making.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017; A/E, 4/29/2020; A, 11/24/2020]

1.24.10.16 FILING A RULE:

A. At the time of filing the filing agency shall present the following, which has been reviewed and pre-approved by administrative law division:

- (1)** one paper version of the completed NMAC transmittal form;
- (2)** one electronic version of the text of the rule or amendment;
- (3)** one electronic version of the integrated part (if filing an amendment); and
- (4)** one electronic version of the billing information sheet.

B. Other material to be published in the New Mexico register in conjunction with promulgation of the rule or amendment shall be delivered to the administrative law division at the time of filing. Examples include synopses, short-form publication, conversion tables, any technical information relied upon in formulating the final rule, any comments or other material received by agency during rule hearing, and summaries of public comment.

C. At the time of filing, an agency may submit to the administrative law division an additional paper copy, for annotation on the first page of the rule with the date and hour of filing, to be returned to the agency (Section 14-4-3 NMSA 1978).

D. If a short-form publication or synopsis is made in accordance with the requirements of 1.24.15 NMAC, the full text of the rule shall be submitted as part of the rule filing. The full text shall be published in the NMAC at no additional cost to the agency.

E. No rule shall be valid and enforceable until it is filed with the administrative law division and published in the New Mexico register as provided by the State Rules Act. If properly submitted and not published as a result of error, the rule shall be deemed to

have been published three weeks after filing with the records center (Sections 14-4-3 and 14-4-5 NMSA 1978).

F. A valid purchase order number must be included on the billing information sheet at the time of filing. A purchase order must be submitted to the records center by paper or electronic version at least one business day prior to the publication date.

[1.24.10.16 NMAC - Rp, 1 NMAC 3.3.10.10, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

1.24.10.17 REJECTED RULE FILINGS:

A. The administrative law division shall refuse to file written material if it is not a rule as defined in the State Rules Act or if the materials submitted for rule filing do not conform to the style and format requirements detailed in 1.24.10 NMAC.

(1) Materials that are not rules may be filed as a publication.

(2) Rule filings that do not conform to style and format requirements shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

(3) Rule filings that do not meet the minimum statutory time periods for notice of proposed rulemaking, public participation, and public comments shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

B. The administrative law division shall identify material previously filed as a rule but not conforming to the definition of a rule. The material shall be removed from the rules collection and rule history database with 30 days written notice to the affected agency.

C. If an affected agency finds it previously filed material as a rule that does not conform to the definition of a rule, that agency shall notify the administrative law division in writing. If the administrative law division agrees the material does not conform to the definition of a rule, the material shall be removed from the rules collection and the rule history database within 30 days of receiving the notice.

[1.24.10.17 NMAC - N, 2/29/2000; A, 6/30/2004; A 9/15/2014; A, 11/30/2015; A, 7/1/2017]

1.24.10.18 AMENDMENTS OR REPEALS OF EXISTING RULES:

A. Amendments to a part shall be prepared by the agency in such a manner as to provide for full- section addition, substitution or deletion. Parts shall only be amended by replacement, deletion or addition of whole sections. Deleting, replacing or adding words and sentences to a section shall be accomplished by replacement of the whole section.

(1) If a section contains entirely new material, unrelated to the material formerly contained in the section with the same NMAC number, then the former section shall be repealed. The repeal shall be identified within the history note at the end of the section with the appropriate notation (see 1.24.10.20 NMAC).

(2) An addition of a new section is an amendment to the part.

(3) If an entire part is being amended, agencies shall have to file a repeal and replace of the part.

(4) The first sentence on the first page of the text of an amendment shall state, "This is an amendment to (insert appropriate title number, chapter number, part number) NMAC, Section (insert the section number of the amended sections), effective (insert appropriate effective date)." Example: This is an amendment to 1.12.10 NMAC, Sections 8, 9 & 10, effective June 1, 2015.

(5) For clarity, agencies may precede the text of an amendment with an explanatory paragraph to be published in the New Mexico register but which shall not be part of the rule or may publish a synopsis thereof.

B. Repeals shall be done by the issuing agency at the part level by identifying an expiration in the duration section of the part or by issuing a repealer. If less than a full part is being repealed, the rule filing shall be treated as an amendment. If other parts are affected by the repeal, they shall be amended as appropriate.

(1) If a part has been entirely rewritten and restructured so that a detailed section by section comparison is not possible, the agency may repeal the existing part and issue a new part with either the same or new part number as a repeal and replace. Where a new part number is used, an agency may record a reference to the pre-existing part in the historical note of the new part.

(2) The history note shall reflect the original NMAC effective date and number. When a part has been entirely repealed, its history shall be reflected in the history of the part, which shall remain in the NMAC.

(3) Once a part number has been used in the NMAC, the history of the part shall continue to contain all NMAC history for that part, regardless of repealers.

C. Superseding rule filings are not permitted. This activity shall be handled through amendment of the part or by repeal and replacement of the part.

[1.24.10.18 NMAC - Rp, 1 NMAC 3.3.10.12, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015]

1.24.10.19 ERRORS IN THE NEW MEXICO ADMINISTRATIVE CODE:

A. Agencies may report errors at any time. Differences detected between the official and compiled rules shall be reported to the administrative law division, in writing, as soon as possible.

B. The administrative law division shall effect correction of differences detected in the NMAC as soon as possible.

C. In instances where there is a difference between the filed rule and the NMAC, the filed rule prevails.

D. If the filed rule is in error it shall be corrected by agency amendment or by written authority by agency to correct minor stylistic changes (numerical, punctuation, misspellings) if caught by administrative law division post-filing.

[1.24.10.19 NMAC - N, 2/29/2000; A, 11/30/2015]

1.24.10.20 HISTORY NOTE:

History notes facilitate the use of the NMAC and track the historical development of a rule provision.

A. There shall be a history note appended at the end of each section.

B. The history note shall contain the original effective date of sections filed after the implementation of NMAC. It shall also detail all subsequent amendments and number changes by section. Standard notations identified in this section shall be used to minimally identify the types of modifications made to sections.

(1) History shall appear in chronological sequence in brackets at the end of each section. A semicolon shall separate each significant change noted in the sequence of a section's history. Significant changes are: an amendment; a section number or name change; and an insertion of new rule material at a section number where previously repealed material had been located. Minimum dates required for each change are:

(a) effective date of new material;

(b) effective date of amended sections;

(c) effective date of repealed material; and

(d) effective date of the change to section numbers and names.

(2) If the section has been amended, note the new effective date and the nature of changes if possible. If the section has been renumbered, list the former number and the effective date of change.

(3) Agencies shall provide information, in addition to dates, in the history using the following system: Identify the short form of the affected part or section followed by a space, a dash, a space and then the letter or combination of letters identifying the type of change. The last date in a series indicates the date of the last change to the section. Use:

(a) "A" for amendment, followed by a comma, a space and the effective date of amendment;

(b) "Re-pr" for re-promulgated, followed by a comma, a space and the effective date of re-promulgation;

(c) "Rp" for replaced, followed by a comma, followed by the short form citation of the rule replaced, followed by a comma, a space and the effective date of replacement;

(d) "Rn" for renumbered, followed by a comma, the former number, a space and the effective date of renumbering; and

(e) "N" for new, followed by a comma, a space and the effective date of the new material;

(f) "Repealed" for a section that is deleted and not replaced, followed by a comma, a space and the effective date of the deletion; and

(g) "E" for an emergency filing, in combination with the appropriate action code and a slash (/).

C. The history note is not part of the rule.

[1.24.10.20 NMAC - Rp 1 NMAC 3.3.10.15.11.1 through 1 NMAC 3.3.10.15.11.3, 2/29/2000; A, 6/30/2004]

1.24.10.21 HISTORY OF THE PART:

A. Pre-NMAC history is the first division of the history of the part and shall contain the pre-NMAC development of the rule material included in the part. The records center may add this material in brackets where it has not previously been part of the NMAC.

B. History of repealed material is the second division of the history of the part and shall contain repeals of NMAC parts or sections in full.

(1) When a section is repealed and not replaced, using the short form, followed by a space, a dash, a space, and then the word "repealed", a comma, a space and the effective date of the repeal.

(2) When only a section is repealed, and replaced, that history remains in the section history note.

(3) When a part is repealed, the history of the part shall identify the part using the short form and the name, followed by a space, a dash, a space, the word "repealed", a comma, a space, and the effective date of the repeal. The history of repealed material shall be retained in the NMAC.

[1.24.10.21 NMAC - Rp 1 NMAC 3.3.10.15.11.1 & 1 NMAC 3.3.10.15.11.4, 2/29/2000; A, 11/30/2015]

1.24.10.22 MATERIAL REFERENCED IN RULES:

A. The source of material, which is fully included in the text of the rule, may be given as a citation. Where there is no intent to include in the rule additional material by incorporation from the cited reference, the source material need not be attached.

B. Referenced material (including standards, codes and manuals) incorporated or adopted by rule must be filed as part of that rule which may be accomplished by attachment.

(1) Referenced material that has been formally published does not need to meet style and format requirements of 1.24.10 NMAC. A copy of this formally published material must be filed.

(2) Other attachments must meet all style, format and filing requirements, including provision of an electronic copy, unless an exception has been granted pursuant to 1.24.10.24 NMAC.

(3) References to United States U.S. law shall be deemed to be references to the current version of such law, including subsequent amendments, unless otherwise expressly stated in the rule. References to U.S. law do not require submittal or a copy. In lieu of submitting a paper copy of these references, the issuing authority shall on the NMAC transmittal form list the references and internet site. This information shall be verified by the records center at the appropriate internet site to ensure access is available to users of the NMAC. If an internet site is not available or cannot be located, one paper copy of the attachment shall be filed with the rule for historical reference.

(4) Referenced material, other than U.S. law (including material referenced in New Mexico statutes or the NMAC), shall be the version filed with or referenced by the rule and shall not include any subsequent amendments or changes to the referenced material, unless otherwise expressly stated in the rule.

C. Referenced material that is not incorporated in the rule may be referenced in either the text or in an annotation. Annotations are not part of the rule.

[1.24.10.22 NMAC - Rp 1 NMAC 3.3.10.17.1 & 1 NMAC 3.3.10.17.2, 2/29/2000; A, 6/30/2004; A, 11/30/2015]

1.24.10.23 REFERENCES TO COPYRIGHTED MATERIAL:

If an agency chooses to incorporate copyrighted material into a rule, it shall receive permission from the copyright holder prior to such incorporation. Such permission shall include the right to incorporate such material into the NMAC and to have such material subject to the laws, rules and contractual obligations of the state with respect to the NMAC. Any costs for such permission shall be the responsibility of the incorporating agency. A copy of such copyright permission shall be submitted with the filing. Failure to provide copyright permission shall result in rejection of the rule filing.

[1.24.10.23 NMAC - Rp 1 NMAC 3.3.10.17.3, 2/29/2000]

1.24.10.24 EXCEPTIONS:

Exceptions to any provision of 1.24.10 NMAC shall be requested in writing to the state records administrator and may be approved by the state records administrator on a filing-by-filing basis.

[1.24.10.24 NMAC - Rp 1 NMAC 3.3.10.18, 2/29/2000]

1.24.10.25 PROCEDURE FOR APPROVAL OF NEW CHAPTERS AND PARTS:

A. If a chapter on a specific subject does not exist in the NMAC hierarchy, an agency may send a written request to the state records administrator for the creation of a new chapter. If the state records administrator approves the request, a new chapter will be created in the NMAC.

B. In order to avoid any delay in filing a rule, agencies shall submit, in writing, proposed part names and numbers to the administrative law division of the records center. The administrative law division of the records center shall approve or reject proposed part names and numbers within two weeks or shall notify the agency of further delay in approval. When the administrative law division of the records center rejects part names and numbers, it shall propose alternative names and numbers for submitted parts and state the reason why the proposed names and numbers were unsatisfactory.

[1.24.10.25 NMAC - Rp 1 NMAC 3.3.10.20, 2/29/2000; A, 6/30/2004]

1.24.10.26 NMAC TABLE OF CONTENTS:

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[1.24.10.26 NMAC - Rp 1 NMAC 3.3.10.21, 2/29/2000]

PART 11: NEW MEXICO ADMINISTRATIVE CODE (NMAC) REVISIONS

1.24.11.1 ISSUING AGENCY:

New Mexico Commission of Public Records - State Records Center and Archives.

[1.24.11.1 NMAC - N, 2/29/2000]

1.24.11.2 SCOPE:

All state agencies. General provisions, including applicable definitions, are found in 1.24.1 NMAC. There are additional standards and procedures for uniform rule filings (see 1.24.10 NMAC); submitting a rule filing for publication in the New Mexico register (see 1.24.15 NMAC) and requirements for emergency rule filings (see 1.24.20 NMAC).

[1.24.11.2 NMAC - N, 2/29/2000]

1.24.11.3 STATUTORY AUTHORITY:

Section 14-4-7.2 NMSA 1978 directs the state records administrator to create and publish a New Mexico administrative code, and to adopt regulations setting forth procedures for compiling the code and prescribing the format and structure of the code. Section 14-4-3 NMSA 1978 directs that each agency of the executive branch of state government promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center.

[1.24.11.3 NMAC - N, 2/29/2000]

[The attorney general's advisory letter dated November 16, 1999 provides guidance on public notice and publication requirements used in the development of 1.24.11 NMAC.]

1.24.11.4 DURATION:

Permanent.

[1.24.11.4 NMAC - N, 2/29/2000]

1.24.11.5 EFFECTIVE DATE:

February 29, 2000 unless a later date is cited in the history note at the end of a section.

[1.24.11.5 NMAC - N, 2/29/2000]

1.24.11.6 OBJECTIVE:

The objective of this rule is to establish standards and procedures for compiling rules due to reorganization of the NMAC in accordance with 1.24.10 NMAC.

[1.24.11.6 NMAC - N, 2/29/2000]

1.24.11.7 DEFINITIONS:

[RESERVED]

[1.24.11.7 NMAC - N, 2/29/2000]

[See 1.24.1.7 NMAC for applicable definitions]

1.24.11.8 REVISIONS:

The state records administrator, in administering the State Rules Act, may restructure rules in the NMAC as necessary to create a useful compilation of state rules. Restructuring shall be undertaken only to improve the usability of the NMAC. The impact to affected agencies shall be minimized to the extent possible.

A. The records center shall restructure, as necessary, all rules that result from modifications to the NMAC structure, including but not limited to:

- (1)** changing title, chapter and part numbers; and
- (2)** adding information such as new section names, numbers and history notes.

B. The records center shall renumber parts or sections, as necessary, as a result of inserted material.

C. The records center shall provide public notice of the restructuring.

(1) The records center shall provide formal written notice to affected agencies of the restructuring at least thirty days in advance of publication of the restructuring.

(2) The records center shall publish in the New Mexico register a notice of the restructuring at least two weeks prior to its effective date.

[1.24.11.8 NMAC - N, 2/29/2000; A, 7/15/2003]

1.24.11.9 REFORMATTING:

After NMAC style and format requirements are modified, the records center shall cause affected rules to be reformatted into the current NMAC style and format.

A. The records center may format current rules not conforming to 1.24.10 NMAC and submit them to the issuing authority for review and approval. The agency shall have 30 days from this notice to submit written comments to the state records administrator.

If the agency fails to submit written comments, the reformat shall be deemed approved 31 days after submission of the rules to the agency. The reformatted rule is only prima facie evidence of the originally filed rule.

(1) Current rules not in NMAC style and format shall be assigned NMAC title, chapter and part numbers.

(2) Where required Sections 1 through 7 are missing, they shall be added and information supplied from existing rule material. When information for the required sections is not available from existing rule material, text from reliable sources may be added so long as it is presented in brackets until such time as the issuing authority formally promulgates the rule. Bracketed information is added to facilitate understanding and shall not be considered official rule text.

(3) The records center shall provide the agency an electronic version of each reformatted part compiled into the NMAC under this section.

B. Reformatted rules shall be included in the NMAC.

C. When an agency amends a part that was not filed in the current style and format, it shall reformat the entire part (or use the reformatting done by the records center) and officially adopt the current style and formatting requirements in conjunction with the amendment.

D. Errors in the NMAC shall be corrected in accordance with 1.24.10 NMAC.

[1.24.11.9 NMAC - N, 2/29/2000; A, 7/15/2003]

1.24.11.10 NMAC RESTRUCTURING:

If there is a compelling reason for restructuring any portion of the NMAC, the records center and the affected agency or agencies shall come to a consensus and make a written agreement detailing the changes; and

A. if the restructuring was requested by the affected agency or agencies, the affected agency or agencies shall publish a notice of the changes in the New Mexico register; or

B. if the restructuring was requested by the records center, the records center shall publish a notice of the changes in the New Mexico register.

[1.24.11.10 NMAC - N, 2/29/2000; A, 7/15/2003]

1.24.11.11 HISTORY NOTE AND HISTORY OF THE PART:

The records center may update the history note and history of the part, as necessary.

[1.24.11.11 NMAC - N, 2/29/2000; A, 7/15/2003]

PART 12-14: [RESERVED]

PART 15: NEW MEXICO REGISTER

1.24.15.1 ISSUING AGENCY:

State Records Administrator.

[1.24.15.1 NMAC - Rp 1 NMAC 3.3.15.1, 2/29/2000; A, 9/15/2014]

1.24.15.2 SCOPE:

All state agencies. General provisions, including applicable definitions, are found in 1.24.1 NMAC. There are additional requirements on submitting a rule filing to the records center, see 1.24.10 NMAC.

[1.24.15.2 NMAC - Rp 1 NMAC 3.3.15.2, 2/29/2000]

1.24.15.3 STATUTORY AUTHORITY:

Subsection E of Section 14-4-7.1 NMSA 1978 directs the state records administrator to adopt and promulgate rules necessary for the implementation and administration of the New Mexico register.

[1.24.15.3 NMAC - Rp 1 NMAC 3.3.15.3, 2/29/2000; A, 7/1/2017]

1.24.15.4 DURATION:

Permanent.

[1.24.15.4 NMAC - Rp 1 NMAC 3.3.15.4, 2/29/2000]

1.24.15.5 EFFECTIVE DATE:

February 29, 2000, unless a later date is cited at the end of a section.

[1.24.15.5 NMAC - Rp 1 NMAC 3.3.15.5, 2/29/2000; A, 9/15/2014; A, 11/30/2015]

1.24.15.6 OBJECTIVE:

The State Rules Act, Section 14-4-1 et seq. NMSA 1978, directs the state records administrator to publish a state register twice a month for notices of rule-making, proposed rules, adopted rules and other material relative to administrative law. The

register provides a method for informing the public of rule-making activity within the executive branch of state government.

[1.24.15.6 NMAC - Rp 3.3.15.6, 2/29/2000]

1.24.15.7 DEFINITIONS:

[RESERVED]

[1.24.15.7 NMAC - Rp 1 NMAC 3.3.15.7, 2/29/2000]

1.24.15.8 REQUIREMENTS FOR AGENCIES RELATIVE TO PUBLISHING NOTICES AND RULES IN THE NEW MEXICO REGISTER:

A. Agencies shall publish in the New Mexico register:

- (1)** notices of rule-making; and
- (2)** adopted rules filed with the administrative law division of the state records center under the State Rules Act, either in full text, short-form publication or in synopsis; synopses shall have prior approval of the state records administrator and such approval shall also be published;
- (3)** emergency rules.

B. Agencies may publish other materials related to administrative law at their discretion.

C. History notes, histories of the part, and amendments to history notes need not be published in the New Mexico register.

[1.24.15.8 NMAC - Rp 1 NMAC 3.3.15.8, 2/29/2000; A, 7/15/2003; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

1.24.15.9 REQUIREMENTS FOR NOTICES:

All notices submitted for filing must conform to the following requirements:

A. The content of any notice of proposed rulemaking must have at least the following:

- (1)** name of agency holding the hearing;
- (2)** a summary of or the actual full text of the proposed rule;
- (3)** a short explanation of the purpose of the proposed rule;

(4) a citation to specific legal authority authorizing the proposed rule and the adoption of the proposed rule;

(5) information on how a copy of full text of proposed rule may be obtained , if full text is not already included within the body of the notice;

(6) information on how a person may comment on proposed rule, where comments will be received and when comments are due;

(7) where and when the public rule hearing will be held, that includes the address, date and time and how a person may participate in the hearing;

(8) a citation to technical information, if any, that serves as a basis for the proposed rule and information on how the full text of the technical information may be obtained, if not already included within the body of the notice;

(9) an internet link providing free access to the full text of the proposed rule, if full text is not already included within the body of the notice.

B. The form of any notice must conform to the following:

(1) the notice heading shall be in bold or capital letters and be centered at top of page;

(2) the notice heading shall simply and accurately describe the rulemaking hearing;

(3) the text of the notice shall be flush with the document's left margin; and,

(4) the use of legal, case, or other headings is discouraged.

C. The administrative law division, as designation by the state records administrator, shall not accept for publication any notice of proposed rulemaking that does not on its face meet the statutory 30 day minimum time periods for public rule hearing, public participation and public comments.

[1.24.15.9 NMAC - N, 11/30/2015; A, 7/1/2017]

1.24.15.10 REQUIREMENTS FOR SYNOPSES:

Synopses of adopted rules must be certified as giving adequate notice of the contents of the rule. If an agency chooses to submit to the register a synopsis of an adopted rule in place of the full text it shall:

A. Have legal counsel (the in-house attorney or its assigned assistant attorney general) review the synopsis for its adequacy of notice.

B. Have legal counsel certify that the synopsis gives adequate notice of the content of the rule, considering at least the following:

- (1) whether the subject matter is fully disclosed;
- (2) whether the persons affected are fully disclosed;
- (3) whether the interests of the persons affected are described;
- (4) whether geographical applicability is clearly stated;
- (5) where a rule incorporates commercially published material (such as the Code of Federal Regulations, Uniform Plumbing Code, etc.) and such material is a substantial portion of the rule, whether such material is clearly identified in the synopsis;
- (6) whether the telephone number and address of the issuing agency or a URL are provided for obtaining the full text of the rule; and
- (7) whether the effective date of the rule is clearly stated.

C. Include with the synopsis the following certification by the agency's legal counsel that will be printed in the register along with the synopsis:

I CERTIFY THAT THIS SYNOPSIS GIVES ADEQUATE NOTICE OF THE CONTENTS OF THE RULE DESCRIBED ABOVE

THIS _____ DAY OF _____ 20__

BY: (name of certifying attorney)

D. The records center shall not ordinarily accept synopses of rules for publication in the register.

(1) Exceptions may be granted for a rule on a one-time-only basis if the state records administrator determines "that publication in the register of the full text of an adopted rule would be unduly cumbersome, expensive or otherwise inexpedient."

(2) Exceptions may be granted for a rule when an agency can demonstrate that a synopsis might be more informative than publication. This might be the case when a single word is added, grammar is corrected or the proposed change is so minor as to make publication of the full section unreasonable.

(3) If an agency wishes to request an exception:

(a) the request must be submitted to the state records administrator in writing, in hard copy, along with hard copies of the proposed synopsis, the certificate of adequate notice, and the full text of the rule at least 30 days prior to the intended filing date of the rule;

(b) the request shall disclose how the agency intends to provide complete copies of the rule to the affected persons and entities.

(4) The state records administrator shall provide a written response to the request.

(5) If the synopsis is approved, a copy of the written approval for the exception by the state records administrator must be included as part of the synopsis when it is published.

(6) For guidance on filing temporary emergency rules in synopsis form see 1.24.20 NMAC.

[1.24.15.9 NMAC - Rp 1 NMAC 3.3.15.8, 2/29/2000; 1.24.15.10 NMAC - Rn, 1.24.15.9 NMAC, 11/30/2015]

1.24.15.11 REQUIREMENTS FOR SHORT-FORM PUBLICATION:

A. Where a part is amended, an agency may select to publish just the section being modified.

B. Where changes are minor, an agency may choose to publish only the full text that is actually being changed.

(1) When less than a section is proposed to be published, the agency shall provide an explanatory paragraph describing the context and effect of the amendment.

(2) The full text of all changes being made by the amendment shall be published. At a minimum the published text shall be a full paragraph, but not less than a sentence.

(3) Legal counsel shall review any explanatory paragraph to ensure that the publication gives adequate notice of the amendment. In reviewing adequacy of notice, legal counsel shall consider the same elements as contained in 1.24.15.9 NMAC.

C. Publication of less than the full rule in the New Mexico register shall not affect filing requirements under 1.24.10 NMAC.

[1.24.15.10 NMAC - N, 2/29/2000; 1.24.15.11 NMAC - Rn, 1.24.15.10 NMAC, 11/30/2015]

1.24.15.12 TECHNICAL REQUIREMENTS FOR PUBLISHING IN THE NEW MEXICO REGISTER:

A. All agencies shall submit adopted rules in electronic format according to criteria established in 1.24.10.13 NMAC. Where requirements of 1.24.10 NMAC are met, referenced material need not otherwise be included. Electronic copies of notices and proposed rules may be submitted via e-mail, provided a paper copy is also faxed to the records center.

B. Each rule filing or notice shall be accompanied by a separate electronic document called the billing information sheet that contains the following information:

- (1)** agency and division (if applicable) names;
- (2)** three-digit agency DFA account code (for billing);
- (3)** contact person's name, address, phone number and e-mail address;
- (4)** part name(s) or document name(s);
- (5)** part number(s), if applicable;
- (6)** file names of electronic documents with application extension;
- (7)** New Mexico register volume number, issue number, and publication date;
- (8)** name of assigned administrative law division analyst; and
- (9)** purchase order number.

C. The agency shall submit one electronic copy of notices of rule-making or adopted rules to the administrative law division for submission to the New Mexico register.

(1) Agencies that do not deliver both an original paper copy and one electronic version of an adopted rule shall have the rule rejected.

(2) Material that is filed after the cut-off date for publication shall be published in the next issue, and, if necessary, the effective date shall be modified. For emergency rule filings under unique circumstances and only if not in conflict with any other statute, the state records administrator has authority to allow publication of material filed after submittal deadline.

(3) Submissions for publication in the New Mexico register shall comply with the standards established in Subsections B and C of 1.24.10.13 NMAC.

[1.24.15.11 NMAC - Rp, 1 NMAC 3.3.15.9, 2/29/2000; A, 7/15/2003; A, 9/15/2014;
1.24.15.12 NMAC - Rn & A, 1.24.15.11 NMAC, 11/30/2015]

1.24.15.13 CHARGES FOR PUBLISHING IN THE NEW MEXICO REGISTER:

There shall be a \$3.00 per column inch charge to agencies publishing material in the New Mexico register. All material shall be published in the New Mexico register shall use Word document Times New Roman, 10-point font.

[1.24.15.12 NMAC - Rp, 1 NMAC 3.3.15.10, 2/29/2000; A, 7/15/2003; A, 7/1/2009; A, 10/15/2014; 1.24.15.13 NMAC - Rn, 1.24.15.12 NMAC, 11/30/2015; A, 1/1/2017; A, 7/1/2017]

[Charges for publishing in the New Mexico register are also found in 1.13.2.18 NMAC.]

1.24.15.14 FEES FOR COPIES OF THE NEW MEXICO REGISTER:

A. Individual copies of the New Mexico register shall be \$12.00.

B. Annual paper subscription fees for the New Mexico register shall be \$270.00.

[1.24.15.13 NMAC - Rp, 1 NMAC 3.3.15.11 & 1 NMAC 3.3.15.12 & 1 NMAC 3.3.15.13 & 1 NMAC 3.3.14, 2/29/2000; A, 7/15/2003; A, 7/1/2009; 1.24.15.14 NMAC - Rn, 1.24.15.13 NMAC, 11/30/2015]

[Fees for copies of the New Mexico register are also found in 1.13.2.19 NMAC.]

PART 16-19: [RESERVED]

PART 20: EMERGENCY RULES [REPEALED]

[This part was repealed on November 14, 2017.]

PART 21-24: [RESERVED]

PART 25: DEFAULT PROCEDURAL RULE FOR RULEMAKING

1.24.25.1 ISSUING AGENCY:

New Mexico Office of the Attorney General, 408 Galisteo Street, Santa Fe, NM 87501.

[1.24.25.1 NMAC - N, 04/10/2018]

1.24.25.2 SCOPE:

State agencies that have not adopted their own procedural rules consistent with the State Rules Act, Sections 14-4-1 to -11 NMSA 1978 (1967, as amended through 2017).

[1.24.25.2 NMAC - N, 04/10/2018]

1.24.25.3 STATUTORY AUTHORITY:

Section 14-4-5.8 NMSA 1978.

[1.24.25.3 NMAC - N, 04/10/2018]

1.24.25.4 DURATION:

Permanent.

[1.24.25.4 NMAC - N, 04/10/2018]

1.24.25.5 EFFECTIVE DATE:

April 10, 2018, unless a later date is cited at the end of a section.

[1.24.25.5 NMAC - N, 04/10/2018]

1.24.25.6 OBJECTIVE:

To provide default procedural rules for public rule hearings for use by agencies that have not adopted their own procedural rules consistent with the State Rules Act and to facilitate public engagement with the administrative rulemaking process in a transparent, organized, and fair manner.

[1.24.25.6 NMAC - N, 04/10/2018]

1.24.25.7 DEFINITIONS:

This rule adopts the definitions found in Section 14-4-2 NMSA 1978.

[1.24.25.7 NMAC - N, 04/10/2018]

1.24.25.8 AGENCY ADOPTION OF PROCEDURAL RULES:

A. Agencies that have not adopted their own procedural rules consistent with the State Rules Act shall apply these default rules, until such time as they have adopted their own rules.

B. Agencies may adopt these default rules, in whole or in part as their own, or continue to use their existing rules, so long as those rules satisfy the requirements of

the State Rules Act and provide as much opportunity for public participation as provided by these rules.

C. Agencies that adopt their own rules must submit a copy to the office of the attorney general within 30 calendar days of adoption, and post a copy of those rules on the agency's website, if one exists.

[1.24.25.8 NMAC - N, 04/10/2018]

1.24.25.9 INITIATION OF THE RULEMAKING PROCESS BY AN AGENCY:

A. The rulemaking process may be initiated by an agency when a notice for a rule hearing is publicly posted pursuant to this rule.

B. The agency shall proceed with the rulemaking process by posting public notice, publishing the proposed rule for comment, and setting a public rule hearing in accordance with the State Rules Act and any other applicable law.

C. If the agency is a public body subject to the Open Meetings Act, the decision to initiate the rulemaking process must be an action taken by vote of the public body in open session.

D. Once the agency initiates the rulemaking process, the agency must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[1.24.25.9 NMAC - N, 04/10/2018]

1.24.25.10 INITIATION OF THE RULEMAKING PROCESS BY THE PUBLIC:

A. Any person may file a petition for rulemaking with an agency.

B. A petition for rulemaking shall be made in writing and include an explanation of the purpose or statement of reasons for the proposed rule. A petition shall include a citation to the legal authority authorizing the agency to adopt the rule and a copy of or citation to technical information, if any, that serves as the basis for the proposed rule. A petition should be as clear as possible and may include the proposed rule in underline and strikethrough format, consistent with requirements of the state records administrator.

C. The agency to which a petition is made shall, if required by law, consider the petition and make a determination whether to grant or deny the petition. If the agency denies the petition, it shall issue a concise written statement explaining its reason for denial. No affirmative duty to respond to a public petition is created by these rules. If a public right to petition an agency exists in law, the agency must follow all timelines or responses governed by law of the agency.

D. If the agency is a public body subject to the Open Meetings Act, the decision to grant a petition must be an action taken by vote of the public body in open session.

E. Once the agency initiates the rulemaking process, the agency must maintain a record as prescribed in Section 14-4-5.4 NMSA 1978.

[1.24.25.10 NMAC - N, 04/10/2018]

1.24.25.11 RULEMAKING NOTICE:

The agency shall provide to the public, as defined in Section 14-4-2 NMSA 1978, notice of the proposed rulemaking a minimum of 30 calendar days prior to the public rule hearing and in accordance with requirements of Section 14-4-5.2 NMSA 1978.

[1.24.25.11 NMAC - N, 04/10/2018]

1.24.25.12 WRITTEN COMMENT PERIOD:

A. The public comment period must be at least 30 calendar days, beginning after publication of the notice in the New Mexico register and issuance of the rulemaking notice. The agency shall not adopt a proposed rule before the end of the public comment period.

B. A person may submit, by mail or electronic form, written comments on a proposed rule, and those comments shall be made part of the record. Written comments may be submitted through the end of the public comment period.

C. The agency may decide to amend the comment period if it provides to the public, as defined in Section 14-4-2 NMSA 1978, notice of the changes.

D. The agency shall post all written comments on its website, if one exists, as soon as practicable, and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency.

[1.24.25.12 NMAC - N, 04/10/2018]

1.24.25.13 PUBLIC HEARING:

A. Prior to adopting a proposed rule, the agency must hold a public rule hearing. The purpose of the hearing is to provide all interested persons a reasonable opportunity to submit data, views or arguments orally or in writing on the proposed rule. The agency, at its sole discretion, may determine whether to hold more than one hearing.

B. The agency may act as the hearing officer or designate an individual hearing officer to preside over the hearing. The hearing officer may ask questions and provide

comments for clarification purposes only, but should refrain from providing opinions or engaging in discussion regarding the merits of the proposed rule or any public comment presented. The hearing officer shall identify and mark all written comments submitted during the public comment period, as well as any written comments submitted during the hearing. The public comment should be labeled as exhibits for reference, but do not require formal admission into the hearing record.

D. Individuals wishing to provide public comment or submit information at the hearing must state their name and any relevant affiliation for the record and be recognized before presenting. Public comment shall not be taken under oath unless required by law or separate rule of the agency. Any individual who provides public comment at the hearing may be questioned by the agency or hearing officer or, at the discretion of the agency or hearing officer, or as otherwise provided by law, by other persons at the hearing.

E. The hearing shall be conducted in a fair and equitable manner. The agency or hearing officer may determine the format in which the hearing is conducted (e.g. introduction of each part or section one at a time for comment), but the hearing should be conducted in a simple and organized manner that facilitates public comment and a clear rulemaking record.

F. The rules of evidence do not apply to public rule hearings and the agency or hearing officer may, in the interest of efficiency, exclude or limit comment or questions deemed irrelevant, redundant, or unduly repetitious.

G. The agency must hold the hearing in a venue that reasonably accommodates all persons who wish to participate or observe, and appropriate audio equipment should be secured to ensure all in attendance can hear the proceeding and be heard when presenting comment. Reasonable efforts shall be made to accommodate the use of audio and video recording devices. Hearings shall be open to the public, but are not subject to the New Mexico Open Meetings Act, unless conducted by a quorum of a public body.

H. The hearing shall be recorded by any stenographic method in use in the district court or by audio recording.

[1.24.25.13 NMAC - N, 04/10/2018]

1.24.25.14 RULEMAKING RECORD AND ADOPTION OF RULE:

A. The agency shall maintain a record of the rulemaking proceeding as required in Section 14-4-5.4 NMSA 1978, and any written comment, document, or other exhibit entered into the record during the rule hearing shall be labeled clearly. Pre-filed written comments are part of the rulemaking record without the need for formal admission. Pre-filed comments include, but are not limited to: the petition; public notices of the rulemaking, including any lists of individuals to whom notice was mailed or sent

electronically; the proposed rule in underline and strikethrough format; and any written comment submitted during the comment period prior to the rule hearing. Written comments or other documents introduced during the hearing should be admitted into the record after being marked as an exhibit.

B. If the rule hearing is conducted by a designated hearing officer, the complete rulemaking record, including any memoranda summarizing the contents of the hearing, if written, shall be compiled and forwarded to the agency head or members of the board or commission with sufficient time to review. The agency head or members of the board or commission shall familiarize themselves with the rulemaking record before rendering a decision on the proposed rule.

C. The agency may adopt, amend or reject the proposed rule. Any amendments to the proposed rule must fall within the scope of the current rulemaking proceeding. Amendments that exceed the scope of the noticed rulemaking may require a new rulemaking proceeding. Amendments to a proposed rule may fall outside of the scope of the rulemaking based on the following factors:

(1) any person affected by the adoption of the rule, if amended, could not have reasonably expected that the change from the published proposed rule would affect the person's interest;

(2) subject matter of the amended rule or the issues determined by that rule are different from those in the published proposed rule; or

(3) effect of the adopted rule differs from the effect of the published proposed rule.

D. In instances where the agency is a board or commission, consideration and approval of adoption of the proposed rule shall occur during a public meeting.

E. The date of adoption of the proposed rule shall be the date the concise explanatory statement is signed by the agency, unless otherwise specified in the concise explanatory statement.

F. The concise explanatory statement shall include, but not limited to, the following:

(1) citation to specific statutory or other authority authorizing the rule;

(2) effective date of the rule;

(3) date of adoption of the rule, if different than the date of the concise explanatory statement;

(4) if the agency is a board or commission, the date of the meeting at which the agency voted to approve the adoption of the rule;

(5) reasons for adopting the rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;

(6) reasons for any change between the published proposed rule and the final rule; and

(7) reasons for not accepting substantive arguments made through public comment.

[1.24.25.14 NMAC - N, 04/10/2018]

1.24.25.15 FILING AND PUBLICATION; EFFECTIVE DATE:

A. Within 15 calendar days after the date of adoption of a rule, the agency shall file the adopted rule with the state records administrator and shall provide to the public the adopted rule and concise explanatory statement in accordance with the State Rules Act.

B. Unless another date is stated in the agency's concise explanatory statement, or otherwise provided by law, the effective date of the rule shall be the date of publication in the New Mexico register.

[1.24.25.15 NMAC - N, 04/10/2018]

1.24.25.16 EMERGENCY RULES:

The agency shall comply with the rulemaking procedures in Section 14-4-5.6 NMSA 1978, regarding the promulgation of emergency rules.

[1.24.25.16 NMAC - N, 04/10/2018]

CHAPTER 25: PUBLICATIONS AND MANUALS OF PROCEDURES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-4: [RESERVED]

PART 5: MANUALS OF PROCEDURE, STYLE AND FORMAT [RESERVED]

PART 6-9: [RESERVED]

PART 10: PUBLICATIONS: FILING, DISTRIBUTING, FORMAT AND STYLE

1.25.10.1 ISSUING AGENCY:

State Commission of Public Records - State Records Center and Archives and the State Library Division of the Cultural Affairs Department

[1.25.10.1 NMAC - Rp, 1 NMAC 3.4.10.1, 7/15/2010]

1.25.10.2 SCOPE:

All state agencies

[1.25.10.2 NMAC - Rp, 1 NMAC 3.4.10.2, 7/15/2010]

1.25.10.3 STATUTORY AUTHORITY:

A. Section 14-3-21 NMSA 1978 directs the state commission of public records to adopt and promulgate uniform standards of style and format for official reports of state agencies required by law.

B. Section 14-3-22 NMSA 1978 directs agencies to follow the uniform standards of style and format for certain publications prescribed by the state commission of public records.

C. Section 14-4-4 NMSA 1978 directs agencies to file five copies of any publication issued by that agency with the state records center and archives.

D. Section 18-2-4 NMSA 1978 directs the state librarian to establish and administer a library depository system for state documents and publications.

E. Section 18-2-4.1 NMSA 1978 directs agencies to deposit at least 25 copies of all publications issued by that agency with the state documents depository clearinghouse at the state library.

[1.25.10.3 NMAC - Rp, 1 NMAC 3.4.10.3, 7/15/2010]

1.25.10.4 DURATION:

Permanent

[1.25.10.4 NMAC - Rp, 1 NMAC 3.4.10.4, 7/15/2010]

1.25.10.5 EFFECTIVE DATE:

July 15, 2010, unless a later date is cited at the end of a section.

[1.25.10.5 NMAC - Rp, 1 NMAC 3.4.10.5, 7/15/2010]

1.25.10.6 OBJECTIVE:

To establish standards and procedures for filing, preserving and providing access to state publications and to reduce unnecessary expense to the taxpayers in connection with publications designed primarily for the purpose of reporting to, or informing, the governor, the legislature, other state agencies or the political subdivisions of this state.

[1.25.10.6 NMAC - Rp, 1 NMAC 3.4.10.6, 7/15/2010]

1.25.10.7 DEFINITIONS:

A. "Agency" means any agency, authority, board, bureau, commission, committee, department, institution or officer of state government except the judicial and legislative branches of state government.

B. "Depositories" means those libraries designated by the state library division to receive publications.

C. "Digital preservation" means policies, strategies and actions taken to ensure access to digitized and born digital content and the accurate rendering of authenticated content over time.

D. "Firewall" means computer hardware or software that prevents unauthorized access to private data by outside computer users.

E. "List of optional items" means that list generated by the state library division to identify those publications which have no retention requirements for depositories.

F. "Memorandum of agreement" means the official agreement between the state library and the library selected to be a depository.

G. "Memorandum of understanding" means an official agreement between the state library and any state agency.

H. "Metadata" means "data about data"; it is information that describes another set of data. Metadata is descriptive information that facilitates the management of and access to other information. Metadata may be generated automatically or created manually and it may be internal or external to the digital object itself. Regardless of how it is created or stored, maintaining accurate and reliable metadata is essential to the long-term preservation of electronic state publications.

I. "Publication" means any information published as an individual document at government expense or as required by law that is intended for public distribution. Such publications include but are not limited to pamphlets, reports, directories, catalogs, bibliographies, brochures or periodicals.

J. "Publications officer" means the person(s) designated to be responsible for distributing the publications of that agency to the state library division.

K. "Robots.txt file" means a text file that stops search engines from crawling the website, selected pages in the site, or selected file types in the site.

L. "URL" means "uniform resource locator" or the address that servers connect to through the internet.

[1.25.10.7 NMAC - Rp, 1 NMAC 3.4.10.7, 7/15/2010]

1.25.10.8 FILING PUBLICATIONS:

State agencies are required to deposit copies of all state publications intended for public distribution with the state library division within 30 days of publication. Publications may be deposited in any one of three formats: paper (Subsection A), electronic (Subsection B) or through an agency's website (Subsection C).

A. Paper publications shall meet the minimum style and format requirements outlined in Subsection A of 1.25.10.9 NMAC. State agencies shall deposit 30 copies of each publication.

B. Electronic publications shall meet the minimum style and format requirements outlined in Subsections A and B of 1.25.10.9 NMAC. State agencies shall deposit an electronic copy in an approved format. The electronic copy shall be submitted to the state library division via one of the following approved delivery mechanisms:

- (1) e-mail;
- (2) optical storage media; or
- (3) file transfer protocol (FTP).

C. Internet publications shall meet the minimum style and format requirements outlined in Subsections A and B of 1.25.10.9 NMAC. State agencies that elect to publish through the internet shall:

(1) enter into a memorandum of understanding with the state library specifying the terms and conditions in which state publications will be retrieved from the internet for digital preservation and to ensure the minimum standards for internet publications are met;

(2) designate an appropriate contact person to be responsible for electronic state publications and to act as liaison with the state library;

(3) provide the state library with guaranteed access, at no charge, to the agency's internet publications; if a "robots.txt" file or similar device is used to prevent harvesting of a state agency site then that file shall include an exception for harvesting by state library's designated harvesting system;

(4) meet the metadata standards specified in Subsection E of 1.25.10.9 NMAC;

(5) provide access to publications by providing a link or series of links from the agency's primary URL; for publications accessible only by database searching or similar means, an alternative path such as a hidden link to a comprehensive site map shall be provided;

(6) meet the internet publishing requirements of the *Americans with Disabilities Act of 1990* as amended; and

(7) leave the publication in its original format at a location on the agency's website for six months after its initial release to ensure that the publication has been collected by the state library.

D. State agencies digitizing older publications previously issued in paper shall provide a digitized copy in an approved format to the state library; the state library shall deliver a copy to the state records center and archives via an approved delivery mechanism.

[1.25.10.8 NMAC - Rp, 1 NMAC 3.4.10.9, 7/15/2010]

1.25.10.9 STYLE AND FORMAT:

A. State publications in all formats shall display at the beginning of the publication the title of the publication, name of the agency, publication date, physical address, email address and website URL.

B. Pages shall be numbered for identification.

C. Paper publications shall be printed on both sides of pages, back to back, head to head, and of a method which shall be at a minimum cost that is verifiable.

D. For publications available in electronic format, the approved electronic formats and their preferred order are:

(1) portable document format (PDF);

(2) PDF/A;

(3) hypertext markup language (HTML); and

- (4) extensible markup language (XML).

E. State publications made available by internet connection shall include the following descriptive metadata:

- (1) name of the agency;
- (2) publication date;
- (3) title of the publication;
- (4) a narrative description of the publication, and
- (5) keyword, subject or selected terms from within the publication.

[1.25.10.9 NMAC - Rp, 1 NMAC 3.4.10.8, 7/15/2010]

1.25.10.10 DESIGNATION OF PUBLICATIONS OFFICER:

Section 18-2-4.1 NMSA 1978 directs agencies to deposit copies of all publications issued by that agency with the state documents depository clearinghouse at the state library.

A. State agencies must have an approved publications officer on file with the state library. A publications officer shall be designated by the statutory head of the agency to distribute the publications of that agency to the state library division. If a memorandum of understanding exists between the state library division and a state agency, the publications officer(s) is responsible for complying with all terms of the memorandum of understanding.

B. The publications officer shall be re-appointed annually by the statutory head of the agency, using a form approved by the state librarian.

C. The form shall include but is not limited to the following: name and signature of the statutory head (agency head or cabinet secretary); name and signature of the publications officer; division or bureau (if acceptable); agency code; agency name and mailing address; fiscal year of designation; phone number; fax number and e-mail address.

D. If a publications officer leaves the employment of an agency or is released from these duties, the agency shall immediately notify the state library division regarding the change, and the agency head shall appoint a new publications officer.

[1.25.10.10 NMAC - Rp, 1 NMAC 3.4.10.9, 7/15/2010]

1.25.10.11 DEPOSITORY LIBRARIES:

Subsection J of Section 18-2-4 NMSA 1978 directs the state librarian to establish and administer a library depository system for state documents and publications.

A. Depositories shall provide sufficient space in a public area to adequately house the state publications.

B. Depositories shall provide training to their staff to enable patrons to find and use publications.

C. Depositories shall provide access to the publications by author/agency, title, and subject.

D. Depositories shall provide appropriate technology to use publications regardless of physical format or characteristics.

E. Retention of publications by depositories shall be for at least five years from date of receipt, except as noted on the list of optional items. Disposal of optional items is up to the discretion of each depository.

F. Depositories shall accept all state publications entered into the depository system and sent to them.

G. Six months written notice is required for either the state library division or the depository library to terminate the memorandum or agreement.

H. Upon termination of depository status, depositories shall return all publications no longer desired to the state library division or to another depository, as specified by the state library division.

I. Failure to comply with Subsections A through G of 1.25.10.11 NMAC shall result in cancellation of depository status.

[1.25.10.11 NMAC - Rp, 1 NMAC 3.4.10.10, 7/15/2010]

PART 11-35: [RESERVED]

PART 36: MANUALS OF PROCEDURE [RESERVED]

CHAPTER 26-34: [RESERVED]

CHAPTER 35: LOCAL GOVERNMENT ADMINISTRATION [RESERVED]