

TITLE 10: PUBLIC SAFETY AND LAW ENFORCEMENT

CHAPTER 1: PUBLIC SAFETY GENERAL PROVISIONS

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: GOVERNOR'S ORGANIZED CRIME PREVENTION COMMISSION

10.1.2.1 ISSUING AGENCY:

The Governors Organized Crime Prevention Commission

[Recompiled 11/30/01]

10.1.2.2 SCOPE:

[RESERVED]

[Recompiled 11/30/01]

10.1.2.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 11/30/01]

10.1.2.4 DURATION:

Permanent.

[Recompiled 11/30/01]

10.1.2.5 EFFECTIVE DATE:

Filed June 21, 1977.

[Recompiled 11/30/01]

10.1.2.6 OBJECTIVE:

[RESERVED]

[Recompiled 11/30/01]

10.1.2 .7 DEFINITIONS:

[RESERVED]

[Recompiled 11/30/01]

10.1.2.8 ISSUANCE OF SUBPOENAS:

The commission will follow the procedures described below in the issuance of subpoenas.

A. Before any subpoena is sought in aid of an investigation being conducted by the commission, the investigation itself must be approved by the members of the commission. Such approval will be by at least four commissioners. In general, the approval will be made at a meeting of the commission and all absent members will be consulted; however, if prompt action is required, approval may be sought by telephone communication with all available commissioners. If approval is obtained, a written resolution stating the purpose of the investigation and the vote of the commissioners will be prepared and presented to all commissioners for their examination at the next regular meeting of the commission.

B. Once an investigation is approved, the commission may adopt and acknowledge individual subpoenas to be issued in aid of the investigation by resolution of five members of the commission. Such resolutions need not be adopted or acknowledged at a regular meeting of the commission; and adoption or acknowledgment by any member of the commission need not be witnessed by other commission members.

C. The commission may adopt and acknowledge subpoenas so long as the proposed subpoenas contain the name of the witness and the documents or other evidence (if any) to be subpoenaed) however, the date, time and location of the hearing need not be contained in the subpoena, nor otherwise fixed, at the time a subpoena is adopted and acknowledged by the commission. The commission may authorize the executive director to fix the date, time and location of the commission hearing prior to service of the subpoena.

D. Witnesses receiving subpoenas shall appear at a hearing of the commission at the time and place stated on the subpoena served upon the witness, and shall bring all items designated by the subpoena. The executive director, however, may excuse a witness from appearing at the hearing if the witness makes satisfactory arrangements to provide the commission with the items designated by the subpoena. If the witness is so excused, his or her appearance for the purpose of giving testimony pursuant to the subpoena may be postponed to a date and place to be set by the executive director, upon adequate notice to the witness.

(1) The commissioner(s) present at a hearing of the commission may excuse a witness from production of all or some of the items designated by the subpoena directed to the witness upon conditions which they deem reasonable. Also, they may continue the hearing and excuse the witness until a future date and location to be set by the executive director, upon adequate notice to the witness.

(2) The executive director may change the time and location of a hearing to which witnesses have been subpoenaed to attend, but only if at least one commissioner agrees to attend the hearing at the altered time and/or location; provided that the time for a hearing shall not be advanced without adequate notice to the witness.

(3) "Adequate notice" shall consist of notification given to the witness or his/her attorney personally prior to the altered time, or mailed to the last known address of the witness or his/her attorney at least three days prior to the altered time.

Chairman

[Recompiled 11/30/01]

PART 3: ADMINISTRATION OF OATHS AND AFFIRMATIONS AND EXAMINATION OF WITNESSES

10.1.3.1 ISSUING AGENCY:

The Governors Organized Crime Prevention Commission

[Recompiled 11/30/01]

10.1.3.2 SCOPE:

[RESERVED]

[Recompiled 11/30/01]

10.1.3.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 11/30/01]

10.1.3.4 DURATION:

Permanent.

[Recompiled 11/30/01]

10.1.3.5 EFFECTIVE DATE:

Filed June 21, 1977.

[Recompiled 11/30/01]

10.1.3.6 OBJECTIVE:

[RESERVED]

[Recompiled 11/30/01]

10.1.3.7 DEFINITIONS:

[RESERVED]

[Recompiled 11/30/01]

**10.1.3.8 ADMINISTRATION OF OATHS AND AFFIRMATIONS AND
EXAMINATION OF WITNESSES:**

At hearings of the commission, the member of the commission who is presiding may permit any member of the commission or its staff to administer oaths and affirmations and examine witnesses.

Chairman

[Recompiled 11/30/01]

**PART 4: ELECTRONIC OR MECHANICAL RECORDING OF PRIVATE
COMMISSION HEARINGS**

10.1.4.1 ISSUING AGENCY:

The Governors Organized Crime Prevention Commission

[Recompiled 11/30/01]

10.1.4.2 SCOPE:

[RESERVED]

[Recompiled 11/30/01]

10.1.4.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 11/30/01]

10.1.4.4 DURATION:

Permanent.

[Recompiled 11/30/01]

10.1.4.5 EFFECTIVE DATE:

Filed November 2, 1979.

[Recompiled 11/30/01]

10.1.4.6 OBJECTIVE:

[RESERVED]

[Recompiled 11/30/01]

10.1.4.7 DEFINITIONS:

[RESERVED]

[Recompiled 11/30/01]

10.1.4.8 ELECTRONIC OR MECHANICAL RECORDING OF PRIVATE COMMISSION HEARINGS:

No electronic or mechanical recording of private commission hearings shall be permitted unless the express consent of the executive director is obtained prior to the scheduled date of the hearing.

Chairman

[Recompiled 11/30/01]

PART 5: SIGNING OF SUBPOENAS REGULATION 84-1

10.1.5.1 ISSUING AGENCY:

The Governors Organized Crime Prevention Commission.

[Recompiled 11/30/01]

10.1.5.2 SCOPE:

[RESERVED]

[Recompiled 11/30/01]

10.1.5.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 11/30/01]

10.1.5.4 DURATION:

Permanent.

[Recompiled 11/30/01]

10.1.5.5 EFFECTIVE DATE:

Filed July 24, 1984.

[Recompiled 11/30/01]

10.1.5.6 OBJECTIVE:

[RESERVED]

[Recompiled 11/30/01]

10.1.5.7 DEFINITIONS:

[RESERVED]

[Recompiled 11/30/01]

10.1.5.8 SIGNING OF SUBPOENAS:

Subpoenas issued by the commission shall be signed by five (5) or more commissioners. A commissioner may sign a subpoena at a duly convened meeting of the commission, or, in his discretion, at any other time or place;

[Recompiled 11/30/01]

10.1.5.9 SIGNATURE:

A. In the event that a subpoena needs to be issued immediately, any commissioner, in his discretion, may authorize the director or deputy director to sign his name to such subpoena, provided:

(1) The director or deputy director shall inform the commissioner of the circumstances requiring immediate issuance and the anticipated testimony and/or exhibits to be received by the subpoena, and

(2) It is impractical or unduly burdensome for the commissioner to personally sign the subpoena.

B. Subpoenas issued pursuant to this regulation are in accordance with Section 29-9-5 C (4) NMSA 1978, which provides, in pertinent part, that " The commission may designate any of its members or members of its staff to exercise any such powers, pursuant to regulations adopted by the commission."

Chairman

Governor's Organized Crime Prevention Commission

[Recompiled 11/30/01]

PART 6: DISQUALIFICATION OF COMMISSIONERS

10.1.6.1 ISSUING AGENCY:

The Governor's Organized Crime Prevention Commission

[Recompiled 11/30/01]

10.1.6.2 SCOPE:

[RESERVED]

[Recompiled 11/30/01]

10.1.6.3 STATUTORY AUTHORITY:

[RESERVED]

[Recompiled 11/30/01]

10.1.6.4 DURATION:

Permanent.

[Recompiled 11/30/01]

10.1.6.5 EFFECTIVE DATE:

Filed June 19, 1985.

[Recompiled 11/30/01]

10.1.6.6 OBJECTIVE:

[RESERVED]

[Recompiled 11/30/01]

10.1.6.7 DEFINITIONS:

[RESERVED]

[Recompiled 11/30/01]

10.1.6.8 DISQUALIFICATION OF COMMISSIONERS:

Any commissioner, legislative oversight committee member or commission staff member may disqualify himself from participating in any commission business or proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

A. he has a personal bias or prejudice concerning any person or matter being investigated by the commission, or personal knowledge of the subject matter of such investigation;

B. he served as lawyer in the matter that is subject of an investigation, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the commissioner, legislative oversight committee member, commission staff member or such lawyer has been a material witness concerning it.

[Recompiled 11/30/01]

CHAPTER 2: DEPARTMENT OF PUBLIC SAFETY

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: EXPUNGEMENT OF ARREST RECORDS AND RELATED PUBLIC RECORDS

10.2.2.1 ISSUING AGENCY:

Department of Public Safety.

[10.2.2.1 NMAC - N, 1/1/2020]

10.2.2.2 SCOPE:

All persons who seek to expunge arrest and public records in accordance with the Criminal Records Expungement Act.

[10.2.2.2 NMAC - N, 1/1/2020]

10.2.2.3 STATUTORY AUTHORITY:

Sections 29-3A-1 through 29-3A-7 NMSA 1978 of the Criminal Records Expungement Act require the Department to develop rules and procedures to implement the Criminal Record Expungement Act.

[10.2.2.3 NMAC - N, 1/1/2020]

10.2.2.4 DURATION:

Permanent.

[10.2.2.4 NMAC - N, 1/1/2020]

10.2.2.5 EFFECTIVE DATE:

January 1, 2020.

[10.2.2.5 NMAC - N, 1/1/2020]

10.2.2.6 OBJECTIVE:

The objective of the rule is to provide a procedure whereby persons who seek to expunge arrest records and public records related thereto, may request a DPS RAP

sheet, and be informed of the need to obtain the Petitioner's United States Department of Justice Federal Bureau of Investigations FBI RAP sheet.

[10.2.2.6 NMAC - N, 1/1/2020]

10.2.2.7 DEFINITIONS:

For purposes of this rule, the following terms have the following meaning:

A. Arrest records are records of identification of a person under arrest or under investigation for a crime taken or gathered by an official, including information gathered from the national crime information center or another criminal record database, photographs, fingerprints and booking sheets. Arrest records do not include: 1) citations for driving while intoxicated maintained by the New Mexico Department of Taxation and Revenue; 2) computer-aided dispatch information; or 3) log books relating to breath alcohol testing equipment.

B. Department is the Department of Public Safety.

C. DPS RAP sheet is the record of a Petitioner's arrests and prosecutions throughout the State of New Mexico, which is maintained by the Department.

D. Expungement is the removal from access to the general public of a notation of an arrest, complaint, indictment, information, plea of guilty, conviction, acquittal, dismissal or discharge record, including a record posted on a publicly accessible court, corrections, or law enforcement internet website.

E. FBI RAP sheet is the record of a person's fingerprint-based arrests maintained by the United States Department of Justice Federal Bureau of Investigation. The FBI RAP sheet includes the name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known. The FBI Rap sheet is also known as a person's Identity History Summary.

F. Petition to Expunge Arrest Records and Public Records or **Petition** officially begins the expungement of records process in state district court.

G. Petitioner is the person seeking to have his or her personal records expunged in the Petition to Expunge Arrest Records and Public Records.

H. Public records are documents relating to a person's arrest, indictment, proceeding, finding or plea of guilty, conviction, acquittal, dismissal or discharge, including information posted on a court or law enforcement website, except those records excluded from the definition of public records in Section 29-3A-2C NMSA 1978.

[10.2.2.7 NMAC - N, 1/1/2020]

10.2.2.8 NEED FOR STATE AND FEDERAL RECORD OF ARRESTS AND PROSECUTIONS:

A. If in order to complete the Petition, or otherwise to obtain the expungement of records, a Petitioner is required by a court to obtain Petitioner's DPS RAP sheet or Petitioner's FBI RAP sheet, Petitioner may follow the procedure set forth herein.

B. The DPS RAP sheet may be obtained by completing the Authorization for Release of Information and signing it before a notary public, then submitting the completed and notarized original Authorization for Release of Information, together with the required fee, to the Department. The Authorization for Release of Information form and information regarding the appropriate fee are available on the Department's website at <https://www.dps.nm.gov/top-links-for-nm-residents/fingerprinting-and-background-checks> or by calling the Department Law Enforcement Records Bureau at (505) 827-9181.

C. The FBI RAP sheet must be obtained directly from the FBI. Instructions on how to obtain the FBI RAP Sheet may be found at <https://www.fbi.gov/services/cjis/identity-history-summary-checks> and <https://www.edo.cjis.gov/#/>.

[10.2.2.8 NMAC - N, 1/1/2020]

10.2.2.9 SERVICE ON DEPARTMENT:

A. Service of the Petition may be made on the Department by any method permitted by Rule 1-004 H of the New Mexico Rules of Civil Procedure.

B. Service by mail or commercial courier service shall be made by certified mail, return receipt requested or commercial courier service which requires delivery signature by a Department employee. Service is complete on the date of the required signature.

C. Service by mail or commercial courier service shall be addressed to "LERB, New Mexico Department of Public Safety" at either P.O. Box 1628 Santa Fe, N.M., 87504-1628 or 4491 Cerrillos Rd., Santa Fe, N.M., 87507.

[10.2.2.9 NMAC - N, 1/1/2020]

PART 3 PROCEDURE TO CONTEST SORNA EQUIVALENCY DETERMINATION

10.2.3.1 ISSUING AGENCY:

Department of Public Safety.

[10.2.3.1 NMAC - N, 7/1/2021]

10.2.3.2 SCOPE:

All individuals convicted in another jurisdiction pursuant to state, federal, tribal or martial law, of the equivalent of a "sex offense", as defined in Section 29-11A-3 NMSA 1978, who seek to contest a determination that registration as a sex offender in New Mexico is required.

[10.2.3.2 NMAC - N, 7/1/2021]

10.2.3.3 STATUTORY AUTHORITY:

Subsection G of Section 29-11A-5 NMSA 1978, requires the department to adopt rules necessary to carry out the provisions of the act.

[10.2.3.3 NMAC - N, 7/1/2021]

10.2.3.4 DURATION:

Permanent.

[10.2.3.4 NMAC - N, 7/1/2021]

10.2.3.5 EFFECTIVE DATE:

July 1, 2021.

[10.2.3.5 NMAC - N, 7/1/2021]

10.2.3.6 OBJECTIVE:

The objective of this rule is to provide a procedure whereby an out-of-state registrant may contest a determination by the New Mexico department of public safety that the out-of-state registrant must register as a sex offender in New Mexico which procedure includes notice, an opportunity to be heard, and judicial review.

[10.2.3.6 NMAC - N, 7/1/2021]

10.2.3.7 DEFINITIONS:

For purposes of this rule, the following terms have the following meaning:

A. "Department" means the New Mexico department of public safety.

B. "Out-of-state registrant" means any person who establishes a residence in New Mexico while the person is required to register as a sex offender in another state or territory.

C. "Translation" means the comparison of a conviction rendered under state (other than New Mexico), international, federal, tribal, or military law with the sex offenses enumerated in Subsection I of Section 29-11A-3 NMSA, 1978, for the purpose of determining whether that conviction is the equivalent of a sex offense enumerated in Subsection I of Section 29-11A-3 NMSA 1978.

[10.2.3.7 NMAC - N, 7/1/2021]

10.2.3.8 NOTIFICATION TO COUNTY SHERIFF OF OUT-OF-STATE REGISTRANT:

A. Within 10 business days of receipt by the department of a letter or other notification from an out-of-state law enforcement or other agency that an individual required by that state to register as a sex offender intends to relocate to New Mexico, the department shall notify the county sheriff in the county in which the out-of-state registrant intends to reside and shall provide to the county sheriff copies of any and all documents that may accompany that notification. The initial notification by the department to the county sheriff will remind the county sheriff not to place the out-of-state registrant on any public facing local registry until notified by the department that it may do so.

B. When an out-of-state registrant presents himself or herself to the sheriff and prior to the translation, the sheriff shall make an entry into the investigative notes section of Offender Watch, noting that the out-of-state registrant presented himself or herself for registration and that the translation by the department is pending. The sheriff shall also notify the department of the need for the department to enter the same information into the miscellaneous notes in the National Crime Information Center ["NCIC"].

[10.2.3.8 NMAC - N, 7/1/2021]

10.2.3.9 DOCUMENTS PROVIDED BY OUT-OF-STATE REGISTRANT TO COUNTY SHERIFF:

In addition to the information set forth in Subsection B of Section 29-11A-4 NMSA 1978, an out-of-state registrant shall, at the time of the registrant's initial registration with the county sheriff in the county in which the registrant resides, provide copies of the following documents to the sheriff:

A. the judgment and sentence entered by the court in the jurisdiction in which the out-of-state registrant is required to register as a sex offender; and

B. the plea and disposition agreement entered by the court in the jurisdiction in which the out-of-state registrant is required to register as a sex offender.

[10.2.3.9 NMAC - N, 7/1/2021]

10.2.3.10 DETERMINATION BY DEPARTMENT OF NEED TO REGISTER:

A. Within 45 calendar days after the department receives the initial registration information the out-of-state registrant is required under Section 29-11A-4 NMSA 1978 and Section 10.2.3.9 NMAC to provide to the sheriff, the department shall complete a translation and advise the out-of-state registrant and the sheriff whether the out-of-state registrant was convicted in another jurisdiction of a sex offense equivalent to one or more of those sex offenses identified in Subsection I of Section 29-11A-3 NMSA 1978 and is required to register as a sex offender in New Mexico.

B. The standard to be used by the department in determining whether the out-of-state conviction is equivalent to a sex offense listed in Section 29-11A-4 NMSA 1978 is one of clear and convincing evidence.

C. If the department does not receive the statutorily required information and the documents the out-of-state registrant is required by this rule to provide to the sheriff, or if the statutorily required information and documents provided to the sheriff and forwarded to the department are insufficient to enable the department to complete the translation and render a decision on the equivalency of the non-New Mexico conviction based on clear and convincing evidence, the department shall advise the out-of-state registrant and the sheriff that additional time not to exceed forty-five days will be needed to complete the translation.

D. While the translation is pending, no information regarding the out-of-state registrant shall be entered in the public facing portion of the local or state central registry.

E. If the department determines that the non-New Mexico conviction of the out-of-state registrant is not the equivalent of a sex offense identified in Subsection I of Section 29-11A-3 NMSA 1978, the department shall notify the out-of-state registrant and sheriff in writing, of that decision and no information regarding the out-of-state registrant shall be placed on the public facing portion of either the local or central registry. In the event additional information is later brought to the department's attention, the department may revisit its original decision.

F. If the department determines that the non-New Mexico conviction of the out-of-state registrant is the equivalent of a sex offense identified in Section 29-11A-3 NMSA 1978, the department shall notify the out-of-state registrant, in writing, of that initial decision and shall serve the notification on the out-of-state registrant by certified mail, return receipt requested, and provide a copy to the sheriff. The initial determination shall include a list of all documents reviewed by the department in conducting the translation. The initial determination shall advise the out-of-state registrant that the registrant may request reconsideration of the department's decision, by requesting the same, in writing, within 14 calendar days of receipt of the initial determination. If no timely request for reconsideration is received, the department shall issue its final determination and post the statutorily required information regarding the out-of-state

registrant on the public facing portion of the central registry of sex offenders maintained by the department and shall notify the sheriff that the statutorily required information regarding the out-of-state registrant may also be posted on the local directory, in accordance with Section 29-11A-5 NMSA 1978.

G. Upon receipt of a timely request for reconsideration of the department's initial determination, the department shall schedule a meeting with the out-of-state registrant, on a mutually agreeable date and time, at which meeting the out-of-state registrant may present any additional information, documents or argument that the out-of-state registrant believes supports the registrant's contention that the out-of-state conviction is not the equivalent of a sex offense identified in Subsection I of Section 29-11A-3 NMSA 1978 and that the registrant is not legally required to register in New Mexico. At the meeting, the out-of-state registrant may be represented by counsel, hired at the out-of-state registrant's expense.

H. Within 21 calendar days of the meeting described in Subsection G of Section 10.2.3.10 NMAC, the department shall issue its written final determination regarding the translation. This notice shall be served on the out-of-state registrant by certified mail, return receipt requested. The department shall send a copy of the final determination to the sheriff.

I. An out-of-state registrant who is aggrieved by the final determination of the department that the out-of-state conviction is the equivalent of a sex offense identified in Section 29-11A-3 NMSA 1978 and that the out-of-state registrant must register in New Mexico, may seek judicial review of the decision by filing a petition for writ of certiorari, in accordance with New Mexico Rule of Civil Procedure Rule 1-075 NMRA, in the district court in which the department is located, within 30 days of the date of the department's final determination.

J. Neither the sheriff nor the department shall post any information regarding the out-of-state registrant on the public facing portion of the local or central registry until the time for filing a petition for writ of certiorari has expired. If a petition is filed, neither the sheriff nor the department shall post any information regarding the out-of-state registrant on the public facing portion of the local or central registry until served with a court order advising that the out-of-state registrant must register in New Mexico.

K. If the department learns that information regarding an out-of-state registrant has been published on a public facing portion of a local or the central registry, prior to the department's final determination and the expiration of the period to seek judicial review, or, if judicial review has been sought, prior to the final resolution of those proceedings, the department shall remove any information on the public facing portion of the registry, pertaining to the out-of-state registrant, pending resolution of the equivalency determination.

PART 4: LAW ENFORCEMENT RETENTION FUND REPORTING, MONITORING AND ADMINISTRATION

10.2.4.1 ISSUING AGENCY:

Department of Public Safety.

[10.2.4.1 NMAC – N, 4/25/2023]

10.2.4.2 SCOPE:

All law enforcement agencies eligible to receive funding from the law enforcement retention fund for the purpose of providing a retention differential disbursement to full-time certified law enforcement officers employed by that law enforcement agency.

[10.2.4.2 NMAC - N, 4/25/2023; A/E 5/10/2024; A, 11/19/2024]

10.2.4.3 STATUTORY AUTHORITY:

This rule is promulgated pursuant to Sections 9-19-6 E. and 9-19-14 NMSA 1978 of the Department of Public Safety Act, as amended by 2024 HB 193. Section 9-19-14, as amended creates a law enforcement retention fund in the state treasury and requires the Department to develop rules, forms, standards, procedures and related training for law enforcement agencies to report retention information when seeking monies to provide retention differential disbursements to eligible full-time certified law enforcement officers within the law enforcement agency's employ.

[10.2.4.3 NMAC - N, 4/25/2023; A/E 5/10/2024; A, 11/19/2024]

10.2.4.4 DURATION:

Permanent.

[10.2.300.4 NMAC - N, 4/25/2023]

10.2.4.5 EFFECTIVE DATE:

April 25, 2023, unless a later date is specified at the end of a section.

[10.2.4.5 NMAC - N, 4/25/2023]

10.2.4.6 OBJECTIVE:

The objective of this rule is to provide forms, standards and procedures for law enforcement agencies to report retention information when seeking monies from the law enforcement retention fund, for the purpose of providing retention differential

disbursements to eligible law enforcement officers within the law enforcement agency's employ.

[10.2.4.6 NMAC - N, 4/25/2023]

10.2.4.7 DEFINITIONS:

This rule adopts the definitions found in Section 9-19-2 NMSA 1978, Subsection M of Section 9-19-14 NMSA 1978 and 2024 HB 193, as if fully set forth herein. In addition to the definitions adopted, the following terms have the following meaning:

A. "Certified" means an individual certified as a peace officer pursuant to the Law Enforcement Training Act, Section 29-7-1 to 29-7-16 NMSA 1978.

B. "Date of hire" means the month, date and year the individual was hired by a law enforcement agency for the purpose of serving as a full-time certified law enforcement officer with that agency.

C. "DPS" means the department of public safety.

D. "Eligible law enforcement agency" means an agency eligible to receive monies from the LERF because the agency:

(1) has, prior to June 1 of the reporting fiscal year, made a request for monies from the DPS and included in that request the information on which the agency is required to report under Section 9-19-14 H NMSA 1978 and this rule;

(2) is, at the time of submitting the request for monies to DPS in compliance with that portion of the Law Enforcement Training Act that requires every law enforcement agency to submit a quarterly report to the director of the law enforcement academy and the New Mexico law enforcement standards and training council; and

(3) has, at the time of submitting the request for monies to DPS, submitted the agency's most current roster of full-time certified law enforcement officers, including commission dates, to the New Mexico law enforcement academy.

E. "Eligible officer" means a full-time certified law enforcement officer employed by any law enforcement agency, who after completing four, nine, 14, 19, or 20 or more years of service since the law enforcement officer's initial date of hire, remains employed for one additional year with the law enforcement agency by whom the officer was employed at the time the officer completed four, nine, 14, 19 or 20 or more years of service and who is in compliance with the in-service training and reporting requirements of the Law Enforcement Training Act.

F. "Employer tax liability" means the employer contribution for payroll taxes outlined in the Federal Insurance Contribution Act for Social Security and/or Medicare. This does not include any employer contributions for retirement or other benefit plans.

G. "Law enforcement academy" means the New Mexico law enforcement academy created by Section 29-7-2 NMSA 1978 or any of the satellite academies certified by the New Mexico law enforcement standards and training council, its predecessors, or successors.

H. "Law enforcement retention fund" means a fund in the state treasury, consisting of money appropriated by the legislature, federal money granted to the state for the purposes of the fund, income from investment of the fund and money otherwise accruing to the fund. Money in the fund does not revert to any other fund at the end of the fiscal year. The fund is administered by DPS to provide monies to law enforcement agencies who request the funds for the purpose of providing retention differential disbursements to full-time certified law enforcement officers within the agency's employ who meet requirements prescribed by statute and by this rule.

I. "LERF" means law enforcement retention fund.

J. "Portal" means the electronic system through which law enforcement agencies annually report to the DPS the data required by this rule in order to receive funding from the law enforcement retention fund for the purpose of providing retention differential disbursements to eligible officers employed by that agency.

K. "PRDD" means the amount of the projected retention differential disbursement stated in dollars and cents to be paid to the eligible officer.

L. "Reporting fiscal year" means the fiscal year in which the law enforcement agency is reporting to DPS the information set forth in Subsection A of 10.2.4.9 NMAC.

M. "Salary" means the base hourly rate of pay of the full-time certified law enforcement officer for two thousand eighty hours, excluding overtime, any percentage pay increases or multiple components of pay.

N. "Years of service" means the number of years, months and days, beginning with the date of hire, a full-time certified law enforcement officer is employed by a law enforcement agency for the purpose of serving as a full-time certified law enforcement officer with a law enforcement agency.

[10.2.4.7 NMAC - N, 4/25/2023 ; A/E 5/10/2024; A, 11/19/2024]

10.2.4.8 CALCULATION OF THE PROJECTED FIVE PERCENT RETENTION DIFFERENTIAL DISBURSEMENT BY THE REPORTING LAW ENFORCEMENT AGENCY:

The salary used by the law enforcement agency to calculate the five percent retention differential disbursement for those officers projected to be eligible officers in the upcoming fiscal year, shall be the salary of the officer on the date the officer reached four, nine, 14, 19 or 20 or more years of service with the law enforcement agency requesting the retention differential disbursement.

[10.2.4.8 NMAC - N, 4/25/2023; A/E 5/10/2024; A, 11/19/2024]

10.2.4.9 REPORTING REQUIREMENTS FOR AGENCIES SEEKING RETENTION DIFFERENTIAL DISBURSEMENTS:

A. Every law enforcement agency seeking monies from the LERF for retention differential disbursements for full-time certified law enforcement officers within its employ, who are projected to be eligible officers in the upcoming fiscal year, shall annually report to DPS the following information:

(1) The full legal name and date of hire of the full-time certified law enforcement officer projected to be an eligible officer in the upcoming fiscal year, the PRDD for each officer, the amount of the annual salary on which the PRDD was calculated and the amount of the employer tax liability attributable to the PRDD. The amount of the employer tax liability shall specify the amount attributable to Social Security and the amount attributable to Medicare.

(2) The aggregate number of full-time certified law enforcement officers employed by the law enforcement agency during each of the five fiscal years immediately preceding the reporting fiscal year. For any officer employed less than a full fiscal year, the law enforcement agency shall report the number of months and days the officer was employed, identifying the officer without personally identifying information (e.g. Officer # 1, Officer # 2, etc.).

(3) For each officer included in Paragraph (2) of Subsection A above, the number of years (or partial years) of service of each full-time certified law enforcement officer with the reporting agency.

(4) The number of full-time certified law enforcement officers that left the employ of the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year. The number of years of service with the reporting law enforcement agency of each departing officer, the agency's reason for each involuntary departure and the officer's stated reason, if any, for each voluntary departure.

(5) The number of applicants to the full-time certified law enforcement agency for a position as a law enforcement officer during the fiscal year immediately preceding the reporting fiscal year.

(6) The number of applicants to the law enforcement agency for a position as a full-time certified law enforcement officer in the fiscal year immediately preceding the reporting fiscal year, who attended a law enforcement academy.

(7) The number of full-time certified law enforcement officers within the reporting agency's employ who received one or more certifications during the fiscal year immediately preceding the reporting fiscal year.

(8) The number of full-time certified law enforcement officers added to the law enforcement agency by way of lateral transfer during the fiscal year immediately preceding the reporting fiscal year and the years of service of each added officer at each previous law enforcement agency if known to the reporting agency.

(9) Any changes to compensation, recruiting, retention or benefits of full-time certified law enforcement officers implemented by the law enforcement agency during the fiscal year immediately preceding the reporting fiscal year.

(10) The number of full-time certified law enforcement officers that are projected to become eligible for a retention differential disbursement in the upcoming fiscal year, and the projected amount of the retention differential disbursement including any employer tax liabilities for each eligible officer.

(11) Any other information requested by DPS that is used for determining retention rates, unless disclosure of such information is otherwise prohibited by law.

B. The information in Subsection A above shall be reported to the DPS for the upcoming fiscal year no later than May 31.

C. The information in Subsection A above shall be reported to the DPS through the electronic portal, unless DPS advises the applying law enforcement agencies that a different reporting method should be used.

D. In order to receive funding for retention differential disbursements, the law enforcement agency must, at the time of the request, be in compliance with the in-service officer training and reporting requirements of the New Mexico Law Enforcement Training Act set forth in Section 29-7-7.1 NMSA 1978 and 29-7-7.2 NMSA 1978.

E. In order to receive funding for retention differential disbursements, the law enforcement agency must have submitted the agency's most current roster of full-time certified law enforcement officers, including commission dates, to the New Mexico law enforcement academy no later than April 1 of the reporting fiscal year.

[10.2.4.9 NMAC - N, 4/25/2023; A/E 5/10/2024; A, 11/19/2024]

10.2.4.10 PROCEDURE FOR CALCULATION OF DISBURSEMENTS FROM THE LERF, SUBMISSION OF OBJECTIONS TO THE DISBURSEMENT AND REVERSION OF UNDISBURSED FUNDS:

A. Following receipt of the information required to be reported in 10.2.4.9 NMAC, DPS shall calculate the total amount necessary to be disbursed to each requesting law enforcement agency to provide a retention differential disbursement to all eligible officers employed by that law enforcement agency in the fiscal year for which the funds are requested, plus the employer tax liability for each PRDD.

B. Following calculation of the PRDD and employer tax liability for each officer projected to be an eligible officer in each requesting agency, the DPS shall determine whether the balance in the LERF is sufficient to permit the total disbursements calculated. If the balance in the LERF is insufficient to pay the total amount of the disbursement to each requesting agency, DPS shall reduce the amount to be disbursed to each law enforcement agency on a pro rata basis to an amount permitted by the monies available in the LERF.

C. Once the calculation of the PRDD, employer tax liability and any necessary pro rata deduction is complete, DPS shall issue a Notice of Intent to Disburse letter to each agency that requested monies from the LERF. This notice shall advise the agency of the amount DPS intends to distribute from the LERF to the agency for the PRDD and related employer tax liability, including an explanation of the pro rata deduction, if any. If the agency disagrees with the amount set forth in the Notice of Intent to Disburse letter, the agency shall have 30 days from its receipt of the letter to notify DPS of its objection and the reasons therefor.

D. The written Objections to the Notice of Intent to Disburse shall be sent to: DPS.LERF@dps.nm.gov.

E. DPS will respond to all objecting agencies in writing, within 30 days of the date on which all objections by all agencies are due. DPS will either affirm its original Notice of Intent to Disburse letter or issue an Amended Notice of Intent to Disburse letter. If the agency requesting monies from the LERF remains aggrieved, the agency may proceed as provided in 10.2.4.12 NMAC.

F. DPS shall disburse the monies to the requesting law enforcement agencies in accordance with the Notice of Intent to Disburse letter and any amendment thereto in accordance with the choice selected by the law enforcement agency in SHARE Financials as State of New Mexico vendors. Some law enforcement agencies may be set up for manual warrants.

G. DPS shall disburse the monies to all requesting law enforcement agencies in accordance with their respective Notice of Intent to Disburse letters and any amendments thereto, on December 15 of the fiscal year in which the monies are projected to be disbursed by the law enforcement agencies to the eligible officers.

H. Upon receipt of the disbursement, the law enforcement agency shall place the monies in an interest bearing account. Interest earned will revert to DPS as set forth in this rule.

I. The law enforcement agency shall disburse the PRDD to the eligible officer no sooner than the date the officer attains eligibility and no later than 30 days following the date of eligibility, or the law enforcement agency's receipt of the disbursement from DPS, whichever occurs last.

J. The law enforcement agency shall disburse the monies attributable to the employer's tax liability to the appropriate taxing authority as required by law.

K. The law enforcement agency shall report the date of disbursement of the PRDD and the employer taxes on the same to the DPS through the portal within 30 days of disbursement.

L. Within 60 days after the end of the fiscal year in which PRDDs and the accompanying employer tax liability are disbursed and paid and no later than August 31, the law enforcement agency shall return to the DPS any monies disbursed for projected PRDDs and employer tax liability, which were not disbursed and paid as projected, together with any interest earned thereon, in the form of a check. The law enforcement agency returning the monies shall include with the check, a statement of all PRDDs made and employer tax liability paid for each officer, identified by the officer's full legal name, date of the disbursement and date of payment of the employer tax liability. The law enforcement agency shall also provide a statement of the full legal names of the officers projected to receive a retention differential disbursement, who did not receive a disbursement, the amount of the returned PRDD, the amount of the returned employer tax liability and the reason the disbursement was not made. The law enforcement agency shall also include a statement of the interest that accrued on the funds while in the agency's custody, that is being returned to DPS.

[10.2.4.10 NMAC - N, 4/25/2023]

10.2.4.11 WAIVER OF REPORTING REQUIREMENT:

A. Any agency requesting a waiver of all or a portion of the information that the law enforcement agency is required to report under Subsection A of 10.2.4.9 NMAC, shall file a written request for waiver no later than May 31 of the fiscal year the report is due. The request for waiver shall specify the section or sections of the rule for which waiver is sought and the reason therefor.

B. DPS will respond in writing to a request for waiver of the required reporting information within 30 days of its receipt of the request.

C. The agency's decision on a request for waiver is final.

[10.2.4.11 NMAC - N, 4/25/2023]

10.2.4.12 APPEAL PROCESS:

A. There is no statutory right of appeal from DPS's decision on a Notice of Intent to Disburse letter or its denial of a request to waive the required reporting information.

B. A law enforcement agency aggrieved by a DPS decision may proceed by requesting an applicable writ as provided by law.

[10.2.4.12 NMAC - N, 4/25/2023]

CHAPTER 3: ATTORNEY GENERAL [RESERVED]

CHAPTER 4: DISTRICT ATTORNEYS

PART 1: GENERAL PROVISIONS

10.4.1.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.1.1 NMAC - N, 06/30/2010]

10.4.1.2 SCOPE:

This part sets forth general provisions for implementation of the District Attorney Personnel and Compensation Act and rules as they apply to all employees in the offices of the district attorneys and the administrative office of the district attorneys, except where noted.

[10.4.1.2 NMAC - N, 06/30/2010]

10.4.1.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration; and

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.

[10.4.1.3 NMAC - N, 06/30/2010]

10.4.1.4 DURATION:

Permanent

[10.4.1.4 NMAC - N, 06/30/2010]

10.4.1.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.1.5 NMAC - N, 06/30/2010]

10.4.1.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.1.6 NMAC - N, 06/30/2010]

10.4.1.7 DEFINITIONS:

A. "Anniversary date" means the date (month/day) which begins and ends an appraisal cycle. It is determined by the date of appointment or re-employment into an employee's current position and shall change with a lateral transfer between two (2) district attorneys' offices or a change in class due to a promotion, demotion, position reclassification or any other personnel action which affects an employee's job class. When employees are placed on leave without pay, their anniversary dates may be extended by that same amount of time.

B. "Break in employment" means a period of separation of one (1) work day or more in which an employee is not officially on an agency's payroll.

C. "Bereavement leave" is leave that is approved by the district attorney for the purpose of attending events surrounding the death of an immediate family member. Sick leave, annual leave, or administrative leave may be authorized for bereavement leave.

D. "Dismissal" means the involuntary separation from employment for disciplinary reasons.

E. "Immediate family" means an incumbent's spouse, children, step children, parent, step parent, brother, sister, step brother, step sister, aunt, uncle, niece, nephew, grandparent, grandchild, great grandparent, great grandchild, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law.

F. "Involuntary demotion" means the involuntary placement of an incumbent in a position with a lower salary range than their current position. It involves a reduction in pay, and it must be the result of employee misconduct, unsatisfactory performance, or other disciplinary reasons.

G. "Job evaluation" means the comprehensive review of the duties, responsibilities and qualifications of a position. It is not a review or evaluation of any person holding the position being reviewed. As a result of a job evaluation, a position may be reclassified to a different job class. The reclassification may result in a reduction, an increase, or no change in pay grade at all.

H. "Local public body" means an entity which is under the auspices of a county or city government, public schools, and public institutions of higher learning.

I. "Suspension" means an enforced leave of absence, with or without pay, for a period not to exceed thirty (30) work days for disciplinary reasons or pending investigation of charges made against a covered employee.

J. "Voluntary demotion" means the voluntary acceptance by an employee of placement in a position with a lower salary range. It may or may not entail a reduction in pay; and it may or may not be the result of a disciplinary reasons.

K. "Written reprimand" means a letter, memo or other written form of communication which serves to advise an employee of poor performance, inappropriate behavior, or other personnel rule violations, and it shall serve as a warning of more severe disciplinary action if the employee fails to take the appropriate action.

L. "Years of service" means the total years of employment within either the executive, judicial, or legislative branches of New Mexico state government or any local public body within New Mexico.

10.4.1.8 COVERAGE OF SERVICE:

A. Covered employees.

(1) Employees holding covered positions affected by the District Attorney Personnel and Compensation Act shall be recognized as covered employees if they have successfully completed the probationary period.

(2) Once an employee in a covered position attains covered status, they shall retain that status as long as they remain in, transfer to, or are promoted into a covered position without a break in employment. Nothing in the District Attorney Personnel and Compensation Act shall preclude the reclassification or reallocation of any position held by an employee.

B. At will employees.

(1) The positions of attorney, district office manager and special program director are at will positions that serve at the pleasure of the district attorney.

(2) Such at will employees shall have no property interest in the continued position and may be dismissed with or without cause.

C. Probationary employees.

(1) A probationary appointment is the placement of an applicant into a position designated as covered.

(2) A probationary period of one (1) year from the date of hire is required of all employees in covered positions. If leave without pay is taken during the probationary period, the probationary period may be extended by the number of days of leave taken within the applicable one (1) year period.

(3) Probationary employees may be terminated at any time by the district attorney.

(4) Probationary employees have no rights to utilize grievance procedures and the appeals provisions in this rule.

(5) The covered status of a probationer begins the day following the end of the probationary period.

(6) All probationary employees shall be evaluated prior to the end of their probationary period utilizing the approved performance appraisal form.

(7) The district attorney is responsible for taking action on the status of probationary employees prior to the end of the probationary period.

(8) An employee transfer to another district attorney's office will result in a new probationary period as defined in this subsection.

[10.4.1.8 NMAC - Rp, NMDAA 91-1.5.03, 06/30/2010]

10.4.1.9 ADMINISTRATION OF THE PLAN:

The responsibility for administration of the classification plan rests with the district attorneys and with the district attorney personnel review board.

A. District attorney personnel review board.

(1) The district attorney personnel review board ("board") shall consist of five (5) district attorneys including the president, vice-president and secretary-treasurer of the New Mexico district attorney's association and two (2) additional voting members, all elected annually by the district attorneys.

(2) Each board member shall be reimbursed as provided in the Per Diem and Mileage Act when traveling on board business directly related to the District Attorney Personnel and Compensation Act.

(3) As found in Section 7 of the District Attorney Personnel and Compensation Act (36-1A-7et seq. NMSA 1978), the board's responsibilities for the administration of the classification plan are as follows:

(a) The board shall recommend to the district attorneys, as a group, regulations necessary or appropriate to implement and administer the District Attorney Personnel and Compensation Act.

(b) The board shall determine the qualifications for each class specification or classification series; including required levels of education, experience, special skills and legal knowledge.

(c) The board shall recommend salary grades and pay ranges to which class specifications and job classifications are assigned, subject to legislative appropriations.

(d) The board shall hear appeals solely involving suspension, demotion or termination of a covered employee and render its final decision, unless the covered employee elects, under Section 10 of the District Attorney Personnel and Compensation Act, to have the appeal heard by the state personnel office-designated hearing officer.

(e) The board shall make periodic reviews of the personnel regulations, classification plan and compensation ranges that govern employees to ensure that all

federal action, legislative mandates and other substantive changes are incorporated into the regulations in a timely fashion and make recommendations thereon to the district attorneys.

(f) The board shall consider other personnel matters as designated by the district attorneys and they shall have the authority to override all actions based on a justification provided on a case by case basis. A quorum of the board shall consist of at least three (3) members.

B. District attorneys as a group: The responsibilities of the district attorneys as a group shall be:

(1) the adoption and promulgation of regulations to effectuate the provisions of the compensation plan for all employees;

(2) the conducting of periodic reviews of the regulations, classifications series and compensation ranges to ensure that applicable federal action, legislative mandates and other substantive changes are incorporated in the compensation plan in a timely fashion;

(3) the contracting of consultant services to reevaluate the classification and compensation plans to ensure their compatibility, subject to legislative appropriation, with classes covered by the Personnel Act and the judicial pay plan; and

(4) the preparation of an annual fiscal report specifying proposed changes, if any, to the compensation plan prior to each regular legislative session; before any proposed changes are implemented, they shall be reviewed by the legislative finance committee and approved by the department of finance and administration; competitive market compensation levels shall be reviewed at least every five (5) years and incorporated into the report; subsequent budget requests shall include this information.

C. Each district attorney.

(1) Primary responsibility for the day-to-day administration of the classification plan rests with each district attorney or their designee.

(2) Each district attorney shall submit position change requests and personnel action requests to the administrative office of the district attorneys for review. The administrative office of the district attorneys will forward reviewed requests to the department of finance and administration. These actions shall then be incorporated into a monthly personnel and classification report to be administered by the administrative office of the district attorneys and distributed to the district attorneys, the department of finance and administration and the legislative finance committee.

D. Administrative office of the district attorneys: The administrative office of the district attorneys shall ensure that the department of finance and administration and the

legislative finance committee receive a table of organizational listing (TOOL) for all district attorney positions and employees. This monthly report shall include each employee's position number, name, title of authorized job, status, pay grade and salary and shall reflect any department of finance and administration-approved position changes or administrative office of the district attorneys-approved personnel actions.

[10.4.1.9 NMAC - Rp, NMDAA 91-1.1.03, 06/30/2010]

10.4.1.10 PERSONAL CONDUCT:

A. Employees of the district attorneys' offices and the administrative office of the district attorneys shall conduct themselves in a manner which reflects the highest professional ethics. Employees shall be loyal and devote their full working days to their duties and the business of the district attorneys. Under no circumstances shall employees give rise to a conflict of interest or the appearance of a conflict of interest or act in such a way as to adversely affect any district attorneys' office or adversely affect the employee's ability to perform his/her duties.

B. Consumption of alcoholic beverages on the premises of any office is expressly prohibited. The use or possession of illegal drugs or other illegal substances at any time or place is expressly prohibited. This policy will be strictly enforced and employees found in violation will be subject to disciplinary action.

C. Any personal conduct which violates the civil or criminal law which adversely affects the interests of any district attorney's office or the person's ability to perform their duties is prohibited.

[10.4.1.10 NMAC - N, 06/30/2010]

10.4.1.11 BUSINESS CONDUCT:

A. Employees will respect and protect the civil and legal rights of all persons. Employees having contact with victims or witnesses will serve each case with appropriate concern for the individual's welfare and with no goal of personal gain. Relationships with the public and colleagues will be of a professional nature and promote improvement of the respective office's quality of service. Statements critical of others or their agencies will be made only if these are verifiable and constructive in purpose, and made in a personal capacity. Employees will respect the importance of all elements of the criminal justice system and cultivate professional cooperation with each segment of that system. In any public statement, employees will clearly distinguish between those statements which are personal views and those which are authorized statements and positions taken on behalf of each respective office.

B. Employees will not discriminate against any prospective employee or other persons having business with the district attorneys on the basis of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical

condition, spousal affiliation, sexual orientation, or gender identity, national origin, religion, age or disability.

C. Undue familiarity or any sort of financial or business transactions with victims, witnesses, etc., or their immediate families, agents or close friends is strictly forbidden. Employees will conduct themselves in compliance with all laws and regulations so as to not subject their profession, colleagues or office to criticism. No employees shall give or accept any gifts or gratuities or engage in any personal business with victims, witnesses, etc. or their immediate families, agents or close friends.

D. The actions of employees are to be in accordance with prescribed rules and regulations. Employees are expected to perform their assignments in a manner that reflects professional judgment, prudence and sincere interest in the business of the office. Employees shall maintain an attitude of courtesy and service to the public and colleagues.

E. Employees shall protect and conserve government property, including equipment, supplies and other property entrusted or issued to them. They shall not willfully damage or otherwise misuse government property, including vehicles, equipment, tools and instruments.

[10.4.1.11 NMAC - N, 06/30/2010]

10.4.1.12 PERSONNEL INVESTIGATIONS:

A. Applicants may be subject to a background investigation prior to being hired by any district attorney's office or the administrative office of the district attorneys. Employees may be subject to an investigation or may be required to provide a statement or submit to a polygraph examination in any investigation concerning the provisions of this code or any other suspected misconduct. If an employee refuses to comply, they shall be subject to disciplinary action up to and including dismissal from employment or termination of their contract.

B. Employees may be required to submit to a drug or alcohol test. If the employee refuses to comply with the test requirements or examiner, or requirements necessary to conduct the test, they shall be subject to disciplinary action up to and including dismissal from employment.

[10.4.1.12 NMAC - N, 06/30/2010]

10.4.1.13 OUTSIDE EMPLOYMENT - CONFLICT OF INTEREST:

A. Every employee who has a financial interest which they know, or have reason to know, may be affected by actions of their respective office shall disclose the precise nature and value of such interest. The disclosures shall be made in writing to the district

attorney before entering employment and during the month of January every year thereafter.

B. Under no circumstances shall employees have a conflict of interest or the appearance of a conflict of interest. Such conflicts of interest include, but are not limited to, the following.

(1) No employee shall directly or indirectly acquire a financial interest in a business which may be directly affected by any official act of the employee.

(2) An employee shall not engage directly or indirectly in a financial transaction as a result of, or primarily relying on information obtained through, their employment with a district attorney's office.

(3) No employee may directly or indirectly accept or give any compensation, gift, ban, entertainment, favor or service which would tend to give an appearance of impropriety or which might interfere in the discharge of official duties.

[10.4.1.13 NMAC - Rp, NMDAA 91-1.10.04, 06/30/2010]

10.4.1.14 DISCLOSURE OR MISUSE OF INFORMATION:

A. Employees shall not directly or indirectly use official information which is not available to the general public or contract with the state for the purpose of furthering a private interest or allow such use of official information obtained through or in connection with his or her employment.

B. Except as specifically authorized, employees shall not disclose official information which represents a matter of confidence or trust or any other official information of such character that its disclosure or use would be contrary to the best interest of the office. Information concerning another person's personal life, social history and private affairs is confidential information and shall not be the subject of casual conversation or gossip.

C. Official records of every district attorney's office are the property of that office and will be filed according to the existing rules. Employees shall not remove records or copies thereof from any district attorney's office without lawful authority.

[10.4.1.14 NMAC - N, 06/30/2010]

10.4.1.15 GRATUITY:

A. Employees shall not give or accept any favor or gratuity to or from any person, firm, corporation or other entity which would affect or appear to affect the person's judgment in the performance of their duties in an impartial manner, except in the case of

an occasional non-pecuniary gift that is insignificant in value, a public award or a loan made in the ordinary course of business.

B. Supervisors shall not place themselves in positions of potential indebtedness to their subordinates. Supervisors will not permit persons subordinate to them to provide them with representation in grievance matters or lawsuits.

[10.4.1.15 NMAC - N, 06/30/2010]

10.4.1.16 POLITICAL ACTIVITIES:

A. Employees may engage in the following activities as long as it is while they are on approved leave or not on duty:

- (1) serve as convention delegates;
- (2) attend political rallies;
- (3) sign nominating petitions and make voluntary contributions to political organizations; and
- (4) serve as election officials or officers in political organizations.

B. Employees are prohibited from:

- (1) engaging in political activity while on duty;
- (2) distributing or displaying campaign materials (including buttons) and soliciting contributions for a political candidate or party while on duty;
- (3) using official authority for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;
- (4) using office supplies, equipment or facilities in connection with any political activities;
- (5) directly or indirectly coercing, attempting to coerce, commanding or ordering any employee to pay, lend or contribute anything of value to a party, committee, organization or person for a political purpose; and
- (6) threatening to deny promotions to any employee who does not vote for certain candidates or requiring employees to contribute a percentage of their pay to a political fund or ordering employees to buy tickets to political fund-raising events.

[10.4.1.16 NMAC - Rp, NMDAA 91-1.10.01 - 10.02, 06/30/2010]

10.4.1.17 PUBLIC OFFICE:

A. Employees shall not hold any other public office during the employee's duty hours in the service. An employee may accept appointment to a state or local board or commission provided such participation does not create a conflict of interest, is consistent with existing statutes and court rules and does not interfere with an employee's assigned duties.

B. An employee may seek a full-time public office if the employee's absence does not interfere with the function of the office and the district attorney authorizes such absence. Otherwise, the employee shall resign to seek such public office.

C. The act of filing nomination papers or, where appropriate, the payment of a filing fee or the accepting of the nomination shall constitute the seeking of public office.

D. Being a local school board member or an elected or appointed member of any post-secondary educational institution shall not be construed to be holding political office.

[10.4.1.17 NMAC - Rp, NMDAA 91-1.12.03, 06/30/2010]

10.4.1.18 SEXUAL HARASSMENT:

Employees shall refrain from sexual harassment of any other employee or any other person having business with the office. Examples of sexual harassment include, but are not limited to:

- A. sexual innuendo or sexually oriented verbal abuse;
- B. sexual jokes, sexist jokes, vulgar jokes or abusive sexual "teasing";
- C. unwanted physical contact such as hugging, patting, stroking or grabbing body parts;
- D. statements or acts of a sexual nature about a person's physical attributes or sexual activity;
- E. displaying sexually suggestive pictures, objects or materials;
- F. using disparaging, demeaning or sexist terms to refer to any person;
- G. making obscene gestures or suggestive/insulting sounds;
- H. indecent exposure; and

I. suggesting or demanding sexual favors or activity in relation to any condition of employment.

[10.4.1.18 NMAC - Rp, NMDAA 91-1.11.01 - 11.04, 06/30/2010]

10.4.1.19 ENFORCEMENT:

All employees of a district attorneys' office and of the administrative office of the district attorneys will familiarize themselves, as a part of their orientation training, with rules contained in Title 10, Chapter 4 of the New Mexico administrative code pertaining to district attorneys and with the specific internal policies and procedures set forth by each district attorney's office.

[10.4.1.19 NMAC - N, 06/30/2010]

PART 2: CLASSIFICATION PLAN

10.4.2.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.2.1 NMAC - N, 06/30/2010]

10.4.2.2 SCOPE:

This part sets forth the rules for the establishment, maintenance and administration of the uniform classification plan applicable to all positions in the offices of the district attorneys.

[10.4.2.2 NMAC - Rp, NMDAA 91-1.1.01, 06/30/2010]

10.4.2.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among

other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (1) NMSA 1978 which requires the promulgation of district attorney personnel rules governing a classification plan for all positions.

[10.4.2.3 NMAC - N, 06/30/2010]

10.4.2.4 DURATION:

Permanent

[10.4.2.4 NMAC - N, 06/30/2010]

10.4.2.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.2.5 NMAC - N, 06/30/2010]

10.4.2.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.2.6 NMAC - N, 06/30/2010]

10.4.2.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.2.8 CLASS SPECIFICATIONS:

A. The district attorneys as a group shall be responsible for the overall coordination, review and maintenance of the classification plan pursuant to the provisions of the

District Attorney Personnel and Compensation Act. The plan shall consist of, but not be limited to:

- (1) all approved classes of positions;
- (2) detailed class specifications; and
- (3) the rules governing the administration of the plan.

B. Each approved class shall be defined by a class specification, assigned to an appropriate pay grade and class title as recommended by the board and adopted by the district attorneys as a group. No action shall be taken to fill any position until it has been classified in accordance with this classification plan.

C. Each class specification shall contain the duties and responsibilities characteristic of a class of positions. Each class shall also include the class title, supervision exercised and received, guidelines available, examples of work performed, working conditions and minimum qualifications or substitutions thereof that specify education, training, experience, knowledge, abilities and skills required for a position.

D. While the exact duties and responsibilities of positions may differ, all positions allocated to a class series shall be comparable as to kind of work, level of difficulty or responsibility and qualification requirements.

E. Each class specification shall include, but is not limited to, specific examples of work performed by employees in the classification as a whole.

F. Any changes in the classification plan shall be effective in the first full pay period following implementation by the district attorneys. The decision of the district attorneys regarding such changes is final.

G. Notification of new or revised specifications or notification of abolished classes shall be furnished by the board to each district attorney's office, the department of finance and administration and the legislative finance committee.

[10.4.2.8 NMAC - Rp, NMDAA 91-1.1.02, 06/30/2010]

10.4.2.9 EXERCISE OF CLASSIFICATION AUTHORITY AND PROCEDURES:

A. Position classification assignment: Each position shall be assigned the classification that best represents the duties performed. Official classifications shall be used on all personnel payroll records and in the preparation of legislative and operating budgets.

B. Position classification requests: All requests for position reclassifications shall require the completion of a job analysis questionnaire form, available from the

administrative office of the district attorneys, to be completed by the affected incumbent. Additional forms or correspondence may also be submitted as further written justification.

C. Position classification actions: Reclassification actions shall be approved by the board. All reclassification actions shall be reviewed by the legislative finance committee and approved for budgetary purposes by the department of finance and administration.

D. New class or class revision:

(1) If the board determines that a new class or class revision is necessary, the recommendation of the board shall be presented to the district attorneys as a group. Upon approval by the district attorneys as a group, the board will establish this class provided it has been reviewed by the legislative finance committee and approved for budgetary purposes by the department of finance and administration.

(2) When a position is new or reclassified, the pay shall be determined in accordance with the provisions of the pay plan established in these rules.

(3) The board, subject to the approval by the district attorneys as a group, may recommend deletion of unused classifications and revisions to class specifications, if the revision or deletion does not necessitate a classification study. Such a deletion or revision shall be reviewed by the legislative finance committee and approved for budgetary purposes by the department of finance and administration.

(4) A respective district attorney may appeal a position classification decision by the board by stating the reasons for the appeal in writing to the board. The district attorneys as a group shall review the matter and issue a decision which is final and binding.

(5) When the district attorneys request a job analysis of one or more positions, the incumbent employee(s) shall be required to fill out the job analysis questionnaire form, available from the administrative office of the district attorneys, signed and reviewed by their supervisor and the respective district attorney.

(6) When the information on the job analysis questionnaire form, available from the administrative office of the district attorneys, appears to be insufficient, a job analysis shall be performed by the district attorney or their designee.

[10.4.2.9 NMAC - Rp, NMDAA 91-1.1.05, 06/30/2010]

PART 3: COMPENSATION PLAN

10.4.3.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.3.1 NMAC - N, 06/30/2010]

10.4.3.2 SCOPE:

This part sets forth the rules for the establishment, maintenance and administration of an equitable, uniform compensation plan which shall be applicable to all positions in the offices of the district attorneys and the administrative office of the district attorneys.

[10.4.3.2 NMAC - Rp, NMDAA 91-1.2.01, 06/30/2010]

10.4.3.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (2) NMSA 1978 which requires the promulgation of district attorney personnel rules governing a compensation plan for all positions.

[10.4.3.3 NMAC - N, 06/30/2010]

10.4.3.4 DURATION:

Permanent

[10.4.3.4 NMAC - N, 06/30/2010]

10.4.3.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.3.5 NMAC - N, 06/30/2010]

10.4.3.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.3.6 NMAC - N, 06/30/2010]

10.4.3.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.3.8 ESTABLISHMENT OF COMPENSATION PLAN:

A. The compensation plan shall consist of the approved classification and salary schedule, the rules governing the administration of the personnel and compensation plan, approved job specifications and an employee performance appraisal form.

B. Based on an approved methodology of job measurement, each classification shall be assigned a salary range that reflects the job content, accountability, job context and salary comparability. All employees shall be paid in accordance with the rates shown in the official salary schedule.

C. The classification and salary schedule shall consist of, but not be limited to, classifications or class titles, salary ranges and the minimum, midpoint and maximum rates of pay for all classes.

[10.4.3.8 NMAC - Rp, NMDAA 91-1.2.03, 06/30/2010]

10.4.3.9 NEW EMPLOYEE'S ENTRANCE SALARY:

A. A district attorney may pay a newly hired employee from the minimum rate to the midpoint of the salary range of the appointed class. The salary placement above the minimum rate must be based on the following documented assessments:

(1) the employee possesses training or experience substantially above the minimum qualifications required for the class and the district attorney determines that the employee is exceptionally well qualified for the position; and

(2) other factors may include the availability of suitable applicants, geographic location and special circumstances affecting the applicant or the district attorney.

B. The district attorney must base salary placement above the midpoint on documented assessment of the new employee's relevant education, experience, salary history, review of salaries of current employees performing the same job, qualifications and other relevant factors. In such cases, the district attorney, subject to fund availability, may pay the new employee at any rate up to fifteen percent (15%) above the midpoint compensation rate with the prior approval of the board.

[10.4.3.9 NMAC - Rp, NMDAA 91-1.2.05, 06/30/2010]

10.4.3.10 REINSTATED EMPLOYEE ENTRANCE SALARY:

An employee who has been granted an authorized leave of absence without pay upon returning to the same position or equivalent position shall be paid at the same rate paid at the time leave was granted. If a pay range adjustment has occurred during such an absence, the employee's pay rate shall be adjusted to the minimum entry level salary if the minimum of the new range is higher than the rate paid at the time leave was granted.

[10.4.3.10 NMAC - Rp, NMDAA 91-1.2.06, 06/30/2010]

10.4.3.11 SALARY ADMINISTRATION:

A. Promotion/reclassification. A promotion is a reassignment of an employee to a position with a higher salary range. Upon promotion, an employee's salary may be increased up to the mid-point of the new job class. Any increases beyond mid-point of the new job class must be justified in writing based on qualifications, years of experience, expertise, etc. with prior approval of the board. No salary upon promotion may exceed the maximum rate of the new range.

B. Reduction in class. An employee may elect to or be placed in a job at a lower salary due to pending layoff or reduction-in-force or other reasons, if such position exists, with the approval of the district attorney. When a reduction in class occurs, the employee's salary shall in no event be increased and shall be no greater than the maximum salary of that class.

C. Demotion. At the discretion of the district attorney, an employee may be demoted to a position at a lower salary range, due to unsatisfactory job performance, misconduct or other disciplinary considerations. When an employee is demoted, his/her present

salary must be reduced by at least 5%, to a rate within the salary range of the class to which demoted and shall not exceed the maximum of the new salary range.

D. Range changes. Subject to legislative approval, the salaries of all employees affected by range changes due to market pricing reviews, job measurement studies, and classification studies shall be adjusted to at least the minimum rate of the new salary range.

E. Merit based salary increases. Subject to legislative appropriations, employee performance appraisals may be the basis for merit-based salary increases. A merit-based salary increase, however, may not exceed the maximum salary level for an employee's job class according to the approved salary schedule.

F. Temporary salary adjustment. A district attorney may grant a temporary salary adjustment, for up to six (6) months, to an employee who temporarily accepts the duties of a higher classification. The temporary salary adjustment shall not exceed ten percent (10%) of the employee's current salary. The district attorney shall, at the end of the temporary job assignment, revert the employee to his/her previous salary, plus any pay increases for which the employee may have been eligible.

G. Budgetary limitations. All provisions of this part relating to payment of salaries are contingent upon funds being available.

H. Effective date of salary changes. The effective date of all salary changes provided for in this part shall be the first day of a pay period following approval by the district attorney.

I. Out-of-cycle salary increase:

(1) An employee may be awarded an out-of-cycle salary increase. Documentation must exist that justifies the increase. Employees will be limited to one (1) out-of-cycle salary increase per fiscal year, not including adjustments or other increases as approved and appropriated by the legislature. The increase shall not exceed fifteen percent (15%) of an incumbent's current hourly rate.

(2) The following requirements must be met when requesting out-of-cycle salary increases.

(a) An out-of-cycle salary increase shall not be granted to a new employee unless the employee has completed a period of at least six (6) months in the same position.

(b) An out-of-cycle salary increase shall not affect the date on which an employee is eligible for any other increase in salary.

(c) An out-of-cycle salary increase shall not be requested unless adequate funds exist in the current budget. It may only be funded through vacancy savings or other approved revenues as long as the increase does not result in a request for a deficiency or supplemental appropriation from the legislature nor for emergency funding from the state board of finance.

(d) An out-of-cycle salary increase may be in the form of either a lump sum payment or an increase to an employee's base hourly rate.

(e) An out-of-cycle salary increase shall not be requested if an employee's last performance appraisal did not reflect a rating of "meets expectations" or higher.

(f) All out-of-cycle salary increases shall be justified in writing to the personnel review board utilizing the request for out-of-cycle salary increase form and based on at least one of the following criteria:

(i) An employee's assigned duties have significantly exceeded the expected and established job requirements of the employee's job class, and their performance remains at a fully effective level or higher.

(ii) An employee's performance of duties has involved overcoming unusual prolonged difficulties.

(iii) An employee's performance has involved special effort or special innovations resulting in significant economic savings or improvements.

(iv) An employee's salary is not comparable to their level of performance or job responsibility when compared with employees in similar positions with similar work experience.

(v) An employee has been offered a job, in writing, by an employer outside of this personnel compensation plan and an incentive for emergency retention purposes is warranted.

(g) The administrative office of the district attorneys must submit an approved request form (request for out-of-cycle salary increase) which shall be sent to both the department of finance and administration and the legislative finance committee analysts assigned to the district attorneys.

(h) All out-of-cycle salary increases shall be approved by the district attorney personnel review board.

(i) The total number of out-of-cycle salary increases shall not exceed 20% of all eligible employees per office during the fiscal year.

10.4.3.12 DISTRICT ATTORNEYS REQUEST FOR OUT-OF-CYCLE SALARY INCREASE FORM:

With regard to out-of-cycle salary increases, a form entitled "request for out-of-cycle salary increase" shall be completed and submitted. The form may be created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the form shall be maintained by, and is available upon request from, the administrative office of the district attorneys and may contain the following information:

- A. date submitted;
- B. indication of whether the position is a non-general fund, term or contract position;
- C. employee name;
- D. job class;
- E. current hourly salary;
- F. proposed hourly salary;
- G. date of last salary increase;
- H. percentage increase over current salary;
- I. lump sum amount;
- J. date of appointment to current class;
- K. date and rating of last performance evaluation;
- L. source of available funds;
- M. if the increase was to the base hourly rate, an indication of:
 - (1) the amount required from the effective date to the end of the current fiscal year; and
 - (2) the amount required for a full fiscal year;
- N. reasons for a salary increase;
- O. a certification by the district attorney and the chief financial officer for the district attorney that based on the agency's most recent budget projections, the out-of-cycle salary increase will not result in the agency having to request either a deficiency or a

supplemental appropriation from the legislature or emergency funding from the state board of finance, and it will not result in an increase to the base operating budget; and

P. a dated certification from a representative of the district attorney personnel review board that the out-of-cycle salary increase request was reviewed and approved by the district attorney personnel review board.

[10.4.3.12 NMAC - N, 06/30/2010]

PART 4: APPOINTMENT OF EMPLOYEES

10.4.4.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.4.1 NMAC - N, 06/30/2010]

10.4.4.2 SCOPE:

This part sets forth the framework for the appointment of employees to certain positions in the office of the district attorney.

[10.4.4.2 NMAC - Rp, NMDAA 91-1.3.01, 06/30/2010]

10.4.4.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration; and

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section

36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.

[10.4.4.3 NMAC - N, 06/30/2010]

10.4.4.4 DURATION:

Permanent

[10.4.4.4 NMAC - N, 06/30/2010]

10.4.4.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.4.5 NMAC - N, 06/30/2010]

10.4.4.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.4.6 NMAC - N, 06/30/2010]

10.4.4.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.4.8 APPOINTMENT TO PERMANENT POSITIONS:

A. Permanent positions have no expiration date and have been funded by the legislature. Permanent positions may be filled by either covered or at will employees.

B. Employees appointed to permanent positions designated as covered shall serve a probationary period. Upon satisfactory completion of the probationary period they shall have all of the privileges of covered employees.

[10.4.4.8 NMAC - N, 06/30/2010]

10.4.4.9 APPOINTMENT TO TERM POSITIONS:

A. Term positions have an expiration date and may be funded by the legislature, a federal grant or some other revenue source. Term positions may be filled by either covered or at will employees.

B. Employees appointed to term positions designated as covered shall serve a probationary period. Upon satisfactory completion of the probationary period they shall have all of the privileges of covered employees, except the right to appeal the expiration of appointment.

C. The duration of term appointments and compensation and salary increases for term appointments are dependent upon the funding for the position.

D. Employees accepting a term appointment shall sign a statement indicating that they understand and accept the conditions of the term appointment.

E. The expiration of term appointments shall not be considered a layoff or a disciplinary action within the meaning of these rules.

[10.4.4.9 NMAC - Rp, NMDAA 91-1.3.05, 06/30/2010]

10.4.4.10 APPOINTMENT TO TEMPORARY POSITIONS:

A. Temporary positions have a duration of less than one (1) year.

B. Employees appointed to temporary positions shall be required to sign a statement of willingness to accept a temporary appointment in the office of the district attorney.

C. Employees appointed to temporary positions may be terminated at will by the district attorney. Temporary employees have no rights to utilize grievance procedures and the appeals provisions in these rules.

D. The expiration of a temporary appointment shall not be considered a layoff or disciplinary action within the meaning of these rules.

[10.4.4.10 NMAC - Rp, NMDAA 91-1.3.06, 06/30/2010]

10.4.4.11 APPOINTMENT TO PART-TIME POSITIONS:

Employees appointed to part-time positions must be scheduled to work less than eighty (80) hours each pay period. The appointment may be temporary, term or covered. Employees appointed to part-time positions, with the exception of temporary employees, shall receive prorated compensation and leave accruals and are entitled to all the rights pursuant to the District Attorney Personnel and Compensation Act and these rules.

[10.4.4.11 NMAC - Rp, NMDAA 91-1.3.07, 06/30/2010]

PART 5: REDUCTION IN FORCE

10.4.5.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.5.1 NMAC - N, 06/30/2010]

10.4.5.2 SCOPE:

This part sets forth the layoff procedure affecting covered employees in the event of a reduction in force.

[10.4.5.2 NMAC - Rp, NMDAA 91-1.4.01, 06/30/2010]

10.4.5.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (6) NMSA 1978 which requires the promulgation of district attorney personnel rules governing reduction in force.

[10.4.5.3 NMAC - N, 06/30/2010]

10.4.5.4 DURATION:

Permanent

[10.4.5.4 NMAC - N, 06/30/2010]

10.4.5.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.5.5 NMAC - N, 06/30/2010]

10.4.5.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.5.6 NMAC - N, 06/30/2010]

10.4.5.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.5.8 LAYOFF PROCEDURE:

A. When a covered position cannot be continued due to the lack of work, lack of legislatively appropriated funds or other reasons that do not reflect discredit on the services of employees, the district attorney may order a reduction in personnel.

B. A district attorney may propose to divide their office into organizational units based on the needs of the office for purposes of layoff. Such organizational units may be recognized on the basis of geographic area, function or classification and may be different for different classifications.

C. The order of layoff due to reduction in force shall be based upon type of appointment, classification and length of uninterrupted service with the district attorney's office where employed.

D. Employees in that classification series to be affected by a layoff shall be given two (2) weeks written notice of such action.

E. For layoff purposes, employees in the various organizational units shall be laid off in the following order:

- (1) temporary employees;
- (2) probationary employees in term positions;
- (3) probationary employees in permanent positions;
- (4) covered employees in term positions; and
- (5) covered employees in permanent positions.

[10.4.5.8 NMAC - Rp, NMDAA 91-1.4.03, 06/30/2010]

10.4.5.9 RECALL RIGHTS:

A. For a period of six (6) months following a layoff, affected employees shall be given priority for reinstatement to their former positions at the same pay or to a similar position for which they qualify at a lower, equivalent or higher rate of pay in the reverse order in which they were laid off (see Subsections C and E of 10.4.5.8 NMAC).

B. The district attorney shall advise the employee to be recalled by certified or registered United States mail. Laid off employees have the responsibility of keeping the district attorney informed as to their current mailing address.

C. Recall rights shall cease:

- (1) six (6) months after the effective date of layoff;
- (2) when an employee refuses to accept employment with the district attorney in a position for which they are qualified and for which the pay is the same or comparable to that of the position from which they were laid off;
- (3) when an employee unconditionally accepts another position with the district attorney;
- (4) when a former employee fails to respond to an offer of re-employment; or
- (5) when a former employee who accepts re-employment after layoff fails to occupy the position within the allotted time.

[10.4.5.9 NMAC - Rp, NMDAA 91-1.4.04, 06/30/2010]

PART 6: [RESERVED]

PART 7: ATTENDANCE AND LEAVE

10.4.7.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.7.1 NMAC - N, 06/30/2010]

10.4.7.2 SCOPE:

This part sets forth the rules governing the attendance and leave of employees in the office of the district attorneys.

[10.4.7.2 NMAC - Rp, NMDAA 91-1.6.01, 06/30/2010]

10.4.7.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (4) NMSA 1978 which requires the promulgation of district attorney personnel rules governing hours of work requirements and holiday, overtime and leave policies.

[10.4.7.3 NMAC - N, 06/30/2010]

10.4.7.4 DURATION:

Permanent

[10.4.7.4 NMAC - N, 06/30/2010]

10.4.7.5 EFFECTIVE DATE:

June 30, 2010, unless a later date cited at the end of a section.

[10.4.7.5 NMAC - N, 06/30/2010]

10.4.7.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.7.6 NMAC - N, 06/30/2010]

10.4.7.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.7.8 HOURS OF WORK:

A. The standard work week for full-time, covered employees shall be forty (40) hours. All full-time and part-time employees shall be required to be present on their assigned job for the total hours in the established work week, unless absent with authorization.

B. Required attendance at training courses shall be considered as hours worked.

C. When an employee is in official travel status under the law, time spent in travel beyond the normal work day shall be considered as hours worked.

D. The standard lunch period for all employees shall be one (1) hour each day and any deviations shall be approved by the district attorney.

E. All employees may be permitted one work break during the first half of their work day and one work break during the second half. No single work break shall exceed fifteen (15) minutes. Employees are not permitted to accumulate unused work breaks.

[10.4.7.8 NMAC - Rp, NMDAA 91-1.6.03, 06/30/2010]

10.4.7.9 RECORD KEEPING:

A. Each district attorney's office is required to keep an accurate record of all hours worked by each employee. A record of all authorized leaves of absence taken by employees, pursuant to these rules, shall be kept.

B. Falsification of any attendance or leave records shall be cause for dismissal of the employee or employees involved.

[10.4.7.9 NMAC - Rp, NMDAA 91-1.6.04, 06/30/2010]

10.4.7.10 OVERTIME:

A. Overtime is calculated in terms of a work week beginning on Saturday and ending on Friday which is a fixed and regularly recurring period of one hundred sixty-eight (168) hours of seven (7) consecutive twenty-four (24) hour periods. If an employee is required to work beyond forty (40) hours in a work week, overtime shall be compensated at time and a half. All overtime work must be authorized in advance by the district attorneys or their designees.

B. Failure of an employee to work scheduled overtime may result in disciplinary action against that employee.

C. Law enforcement personnel are subject to overtime after more than eighty-six (86) hours per pay period or fourteen consecutive days. However, public safety employees who work for public agencies with fewer than five (5) public safety employees engaged in law enforcement are totally exempt from overtime compensation. Therefore, law enforcement personnel in district attorneys' offices where this provision applies will not be paid overtime.

D. For purposes of overtime compensation, all leave, with the exception of state designated holidays, will not count as time worked.

E. Supervisors, subject to the approval of the district attorney, may grant employees compensatory time in lieu of overtime pay at the rate of one and one-half (1-1/2) hours off for every one (1) hour of overtime worked. This arrangement must be agreed upon by all parties before the overtime work is performed.

F. The employee must use any accumulated compensatory time within ninety (90) days after its accrual unless otherwise authorized by the district attorneys or their designees and agreed upon by all parties. Accrued compensatory leave time shall be taken at a mutually agreeable time.

G. Upon separation of employment, unused compensatory time shall be paid at the employee's average rate per hour over the last three (3) years of employment or their present salary, whichever is greater.

H. If an employee accrues more than two hundred forty (240) hours of compensatory time, they may receive cash compensation at the rate of time and one-half for any additional overtime worked.

I. Some positions, as determined by the personnel review board, may not be eligible for overtime compensation.

[10.4.7.10 NMAC - Rp, NMDAA 91-1.6.05, 06/30/2010]

10.4.7.11 ANNUAL LEAVE:

A. Annual leave shall be accrued by all eligible employees from the first day of employment. Eligible employees include all employees, except those in temporary positions. In the case of part-time employees, leave shall be accrued in proration to hours worked. For any service less than one (1) month, annual leave will be prorated.

B. All full-time employees who are eligible shall accrue annual leave as follows:

(1) if less than four (4) years of service, then the rate of annual accrual shall be four and sixty-two hundredths (4.62) hours per pay period, ten (10) hours per month, and one hundred twenty (12) hours per year;

(2) if four (4) or more but less than eight (8) years of service, then the rate of annual leave accrual shall be five and eight hundredths (5.08) hours per pay period, eleven (11) hours per month, or one hundred thirty-two (132) hours per year;

(3) if eight (8) or more but less than twelve (12) years of service, then the rate of annual leave accrual shall be five and fifty-four hundredths (5.54) hours per pay period, twelve (12) hours per month, or one hundred forty-four (144) hours per year;

(4) if twelve (12) or more but less than sixteen (16) years of service, then the rate of annual leave accrual shall be six (6) hours per pay period, thirteen (13) hours per month, or one hundred fifty-six (156) hours per year; and

(5) if sixteen (16) or more years of service, then the rate of annual leave accrual shall be six and forty-six hundredths (6.46) hours per pay period, fourteen (14) hours per month, or one hundred sixty-eight (168) hours per year.

C. Annual leave shall be accrued at the end of each pay period or on the last working day of the month depending on which alternative the district attorney chooses. In the case of separation, annual leave shall be accrued on the last day the employee is on the payroll.

D. During leaves of absence with pay, an employee shall accrue annual leave.

E. During leaves of absence without pay or leave without pay, an employee shall not accrue annual leave.

F. The maximum carryover of accrued annual leave from one calendar year to the next is no more than two hundred forty (240) hours. Any excess must be used before the end of each calendar year or it shall be forfeited. Each district attorney shall make every reasonable effort to advise employees of their annual leave status to avoid the loss of accrued leave by employees. The accrued annual leave of each employee shall be adjusted so that no employee begins a calendar year with more accrued annual leave than the maximum permitted.

G. Annual leave shall not be authorized prior to the time it is earned.

H. All annual leave shall be requested by the employee and approved in advance by the district attorney or their designee.

I. An employee transferring into a district attorney's office from either the executive, judicial or legislative branches of New Mexico state government or from another New Mexico district attorney's office shall be credited with the employee's unused annual leave.

J. Forfeiture of accrued annual leave as a disciplinary action shall not be authorized. No employee shall lose accrued annual leave because of promotion, demotion or transfer within a district attorney's office including a change of classification.

K. An employee who separates from the service of a district attorney's office shall be paid for the employee's total accrued annual leave not to exceed two hundred forty (240) hours.

L. An employee subpoenaed as an expert witness in a court or administrative hearing, not involving personal litigation or service with a district attorney's office shall use annual leave, and any expert witness fees shall be retained by the employee. The district attorney shall not reimburse the employee for per diem or travel expenses incurred while serving as an expert witness.

[10.4.7.11 NMAC - Rp, NMDAA 91-1.6.06, 06/30/2010]

10.4.7.12 SICK LEAVE:

A. Sick leave shall be accrued by all eligible employees from the first day of employment. Eligible employees include all employees, except those in temporary positions. In the case of part-time employees, leave shall be accrued in proration to hours worked. For any service less than one month, sick leave will be prorated.

B. All full-time employees who are eligible shall accrue eight (8) hours of sick leave per month as follows:

- (1) three and sixty-nine hundredths (3.69) hours per period;
- (2) eight (8) hours per month; or
- (3) ninety-six (96) hours per year.

C. Sick leave shall be accrued at the end of each pay period or on the last working day of the month depending on which alternative the district attorney chooses. In the case of separation, sick leave shall be accrued on the last day the employee is on the payroll.

D. Sick leave shall be used only for an illness, injury or medical treatment of an employee or bereavement for or medical care of a relation by blood or marriage within the third degree or person residing within the employee's household. Abuse of sick leave shall be grounds for dismissal.

E. It is the responsibility of an employee to notify their supervisor within the first (1st) hour of their scheduled workday of an absence from work necessitating sick leave.

F. If the employee has hours available in annual leave or compensatory time, then these hours may be used in lieu of sick leave. When all types of leave are exhausted, the employee may be placed on leave without pay.

G. During leaves of absence with pay, an employee shall accrue sick leave.

H. During leaves of absence without pay or leave without pay, an employee shall not accrue sick leave.

I. Sick leave shall not be authorized prior to the time it is earned.

J. There shall be no limit on the number of sick leave hours an employee may accrue.

K. An employee transferring into a district attorney's office from either the executive, judicial or legislative branches of New Mexico state government or from another New Mexico district attorney's office shall be credited with the employee's unused sick leave.

L. An employee who makes a false claim or who fails to cooperate in an investigation regarding their claim for sick leave shall not be paid for sick leave and shall be subject to disciplinary action including dismissal.

M. Forfeiture of accrued sick leave as a disciplinary action shall not be authorized. No employee shall lose accrued sick leave because of promotion, demotion or transfer within a district attorney's office, including a change of classification.

N. A certificate from a physician verifying the continued or recurring illness, injury or medical treatment may be required by the district attorney. If the requested certificate is not provided, sick leave may be terminated and the employee ordered to return to work by a specific date or be subject to dismissal.

O. Employees affected by pregnancy, childbirth or related medical conditions must be treated the same as persons affected by other medical conditions.

P. In accordance with Section 10-7-10, NMSA 1978, employees who have accumulated six hundred (600) hours of unused sick leave are entitled to be paid for additional unused sick leave at a rate equal to fifty percent (50%) of their hourly rate of pay for up to one hundred twenty (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.

Q. In accordance with Section 10-7-11, NMSA 1978, immediately prior to retirement from the service, employees who have accumulated more than six hundred (600) hours of unused sick leave are entitled to be paid up to four hundred (400) hours of unused sick leave over and above the accumulated six hundred (600) hours of unused sick leave, at a rate equal to fifty percent (50%) of their hourly rate.

R. Upon separation of employment, accrued sick leave shall be forfeited except as provided in Subsection Q.

[10.4.7.12 NMAC - Rp, NMDAA 91-1.6.07, 06/30/2010]

10.4.7.13 WORKERS' COMPENSATION LEAVE:

A. An employee who is entitled to workers' compensation shall be compensated and treated in accordance with the Workers' Compensation Act, Chapter 52, Article 1, NMSA 1978, as amended.

B. An employee who sustains a job-related disability and is temporarily unable to perform his/her regular duties shall, after the first seven days of disability, be eligible to receive workers' compensation benefits as provided by New Mexico law.

C. In order to preclude loss of pay during the first seven days, the employee may use sick leave, annual leave, compensatory time or any combination thereof. If there are no paid leave accruals, the employee shall be placed on leave without pay for the initial seven-day period plus the subsequent duration of disability.

D. The employee may elect to use accrued sick, compensatory or annual leave in an amount necessary to receive salary payment that will increase the workers' compensation payments to the total salary being received prior to the occurrence of the disability. In no case shall the employee's salary and workers' compensation benefits exceed the amount of the employee's regular salary payments.

[10.4.7.13 NMAC - Rp, NMDAA 91-1.6.08, 06/30/2010]

10.4.7.14 FAMILY MEDICAL LEAVE:

A. Eligible employees are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. 2601 et seq.). Eligible employees are those who have been employed in either the executive, judicial, or legislative branches of New Mexico state government or any local public body within New Mexico for at least one thousand two hundred fifty (1,250) hours during the consecutive twelve (12) month period immediately preceding the start of FMLA leave.

B. Eligible employees are entitled to a total of twelve (12) weeks of FMLA leave in a twelve (12) month period for the following reasons: birth of a child, placement of an adopted child, an employee's serious health condition or the serious health condition of a family member, as defined in the FMLA. The twelve (12) week period shall be calculated forward from the date an employee's first FMLA leave begins.

C. FMLA leave may be comprised of any combination of sick leave, annual leave, or leave without pay and must be requested and pre-approved at least thirty (30) days in advance, except in the case of emergencies.

D. No part of FMLA leave shall be considered a break in employment and shall not change an employee's anniversary date.

E. Employees shall not accrue sick or annual leave nor be paid for "observed" holidays while on unpaid FMLA leave. Employees may be paid for "observed" holidays and accrued annual and sick leave on a prorated basis based on whether FMLA leave is paid or unpaid.

F. The required FMLA notices shall be posted in all district attorneys' offices, and all offices are required to maintain employee FMLA leave records. All medical records and correspondence relating to employees or their families shall be considered confidential.

[10.4.7.14 NMAC - N, 06/30/2010]

10.4.7.15 LEAVE WITHOUT PAY:

A. An employee may, upon request, be granted leave without pay for a period not exceeding twelve (12) months, provided the district attorney deems such leave to be justified and not detrimental to the operations of the office.

B. The district attorney may place an employee on involuntary leave without pay for up to twelve (12) months for the purpose of investigation of a violation of law or pending the disposition of criminal charges.

C. Employees do not accrue sick or annual leave or any benefits while on leave without pay.

D. Leave without pay may be granted only when the district attorney can assure a position of like status and pay at the same geographic location upon the return of the employee from leave without pay. However, if the district attorney cannot make such assurances, the employee may waive in writing those assurances and be granted the leave without pay.

[10.4.7.15 NMAC - Rp, NMDAA 91-1.6.09, 06/30/2010]

10.4.7.16 ABSENCE WITHOUT LEAVE:

A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of office 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 sick or annual leave.

[10.4.7.16 NMAC - Rp, NMDAA 91-1.6.10, 06/30/2010]

10.4.7.17 ADMINISTRATIVE LEAVE:

A. The district attorney may authorize an employee administrative leave when it is in the best interest of the district attorney's office to do so.

B. An employee who has been duly appointed as a member of a public board or commission shall be entitled to administrative leave, with the consent of the district attorney, to attend meetings provided such attendance does not adversely affect the performance of the employee's required duties.

C. Employees who are registered and eligible 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 district attorneys or their designees may specify the hours during which the voter (employee) may be absent. This leave is not available to employees whose work day 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.

D. Employees shall be entitled to administrative leave when appearing in obedience to a subpoena. Fees received as a witness during normal working hours, excluding

reimbursement for meals, travel and overtime, shall be remitted to the district attorney's office.

E. Employees shall be entitled to administrative leave for serving on a federal, state, grand or petit jury. Fees received as a juror during normal working hours, excluding reimbursement for meals, travel and overtime, shall be remitted to the district attorney's office.

F. In no case shall administrative leave be granted for court attendance when an employee is engaged in personal litigation or service as a paid expert witness. However, an employee may be granted annual leave in such cases with the approval of the district attorney.

[10.4.7.17 NMAC - Rp, NMDAA 91-1.6.11, 06/30/2010]

10.4.7.18 EDUCATIONAL LEAVE:

Educational leave permits employees to pursue special training related to their employment. A district attorney may grant an employee educational leave with or without pay.

[10.4.7.18 NMAC - Rp, NMDAA 91-1.6.12, 06/30/2010]

10.4.7.19 MILITARY LEAVE - ACTIVE DUTY:

A. An employee who is ordered to active duty (not active duty training) and presents a copy of the official orders or appropriate military certificate to the district attorney shall be granted military leave with pay for the first fifteen (15) calendar days. After the paid military leave has been exhausted, the remainder of time they are on active duty must be taken as leave without pay, unless they elect to use their annual or compensatory leave.

B. Employees who enter active military duty are entitled to return to their former positions or to similar positions with the same pay provided they are still qualified to perform the duties of the position. Employees must notify the respective district attorney's office that they are eligible for re-employment within thirty (30) days of release from military service.

C. Upon re-employment, employees are entitled to be treated as though they never left for purposes of rights and benefits based upon length of service. The time spent in the military shall count for seniority, general pay increases and annual accrual rate purposes. Part-time employees shall receive prorated benefits.

D. Employees in the reserves and the national guard who are called to active duty shall first be granted any remaining military leave from the fiscal year normally used for

training purposes and then be granted an additional fifteen (15) days of military leave, as authorized by the governor.

[10.4.7.19 NMAC - Rp, NMDAA 91-1.6.13, 06/30/2010]

10.4.7.20 MILITARY LEAVE - ACTIVE DUTY: TRAINING:

A. Members of organized reserve units or the national guard ordered to active duty training shall be given up to fifteen (15) working days of paid military leave per federal fiscal year. These fifteen (15) days are in addition to other authorized leave.

B. The governor may grant members of the national guard paid military leave for active duty training, in addition to that already given by law. Such additional leave must not exceed fifteen (15) working days 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 fifteen (15) working days per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed fifteen (15) working days per calendar year for search and rescue missions.

E. 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 according to the provisions of 38 U.S.C. Section 2024. The employee may choose to utilize their annual leave for this purpose.

[10.4.7.20 NMAC - Rp, NMDAA 91-1.6.14, 06/30/2010]

10.4.7.21 PERSONAL LEAVE:

A. Employees in full-time positions who have completed at least one year of service are entitled to one (1) personal leave day each calendar year. Employees in part-time positions who have completed at least one (1) year of service are entitled to a personal leave prorated to the hours worked.

B. The personal leave must be taken during eight (8) consecutive hours or, in the case of part-time employees, consecutive prorated hours.

C. The personal leave must be used within the calendar year that it was accrued, or it shall be forfeited.

D. Employees who do not take the personal leave shall not be paid for it upon separation from the service.

E. The personal leave may be used for any purpose the employee chooses. Such leave must be requested and approved in advance.

[10.4.7.21 NMAC - Rp, NMDAA 91-1.6.15, 06/30/2010]

10.4.7.22 HOLIDAYS:

A. The district attorneys' offices shall observe the dates published by the New Mexico supreme court as legal public holidays.

B. Covered employees required to work on the day a holiday is observed shall be paid at two (2) times the usual hourly rate of pay for all hours actually worked on the holiday.

C. When a full-time employee's scheduled non-work day falls on a day observed as a holiday, the employee shall be entitled to one other day off.

D. Employees must not be in a leave without pay status the normal work day immediately before and work day immediately after the holiday in order to be paid for the holiday.

E. Holidays which occur during an employee's vacation or sick leave will be charged to holiday time and not vacation or sick leave.

[10.4.7.22 NMAC - Rp, NMDAA 91-1.6.18, 06/30/2010]

10.4.7.23 UNAUTHORIZED LEAVE:

If an employee's request for leave of absence with or without pay is disapproved and the employee takes unauthorized leave, the district attorney may place the employee on leave without pay and after an unauthorized leave of absence for three (3) consecutive workdays may consider the employee to have abandoned the position and resigned from the office of the district attorney. Employees who are deemed absent without leave shall not accrue annual or sick leave.

[10.4.7.23 NMAC - N, 06/30/2010]

10.4.7.24 DONATION OF ANNUAL LEAVE:

A. Employees may donate annual leave to other employees in the same district attorney's office for a serious health condition or the serious health condition of a family member as defined in the FMLA, with the approval of the district attorney.

B. Each district attorney's office is required to maintain records of all donations which shall include but are not limited to the following information: name of donor; amount of annual leave donated; name of recipient; amount of annual leave used; a

health care provider's description of the nature, severity and anticipated duration of the health condition provided by the employee or legally authorized representative; and any other pertinent information or documents requested by the district attorney.

C. Supporting documentation for the request to either donate or receive annual leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

D. The method used for donation of annual leave shall be determined by the district attorney.

E. The recipient of donated annual leave may not use such leave until first exhausting all accrued annual leave, sick leave, compensatory time and personal leave.

F. The form "request for donation of annual leave" shall be used by employees requesting donated annual leave, and the form "annual leave donation disclosure," shall be used by employees donating annual leave. As authorized by the district attorneys as a group, the "request for donation of annual leave" forms and the "annual leave donation disclosure" forms are created by the administrative office of the district attorneys, and such forms are revised from time to time as authorized or ratified by the district attorneys as a group. Current copies of the forms are maintained by, and are available from, the administrative office of the district attorneys.

[10.4.7.24 NMAC - N, 06/30/2010]

10.4.7.25 DISTRICT ATTORNEYS ANNUAL LEAVE DONATION FORMS:

A. With regard to a request for donation of annual leave, a form entitled "request for donation of annual leave" shall be completed and submitted. The form may be created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the form shall be maintained by, and is available upon request from, the administrative office of the district attorneys and may contain the following information:

- (1) date submitted;
- (2) name of the district attorney or their designee;
- (3) name of the employee requesting the donation of annual leave;
- (4) if the annual leave donation request is sought for the employee's needs, a description of the reason why the donation is sought;
- (5) if the annual leave donation request is sought to address the needs of a family member, or another person (with a description of the relationship between the employee and the other person);

(a) a description of the reasons the family member's or other person's needs necessitate the employee to request an annual leave donation; and

(b) written documentary details from a health care provider about the nature, severity and duration of a serious health condition; and

(6) the signature of the employee or their authorized representative requesting the donation of annual leave.

B. With regard to a donation of annual leave, a form entitled "annual leave donation disclosure" shall be completed and submitted. The form may be created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the form shall be maintained by, and is available upon request from, the administrative office of the district attorneys and may contain the following information:

(1) the typed or printed name of the employee who is donating their annual leave;

(2) the number of hours of accrued annual leave that the employee is donating;

(3) a statement that the donating employee understands that any annual leave remaining at the end of the emergency shall be forfeited;

(4) the date the form is signed;

(5) the address of the donating employee, including street, city, state and zip code;

(6) the social security number of the donating employee; and

(7) the signature of the donating employee.

[10.4.7.25 NMAC - N, 06/30/2010]

PART 8: EMPLOYEE PERFORMANCE EVALUATIONS

10.4.8.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.8.1 NMAC - N, 06/30/2010]

10.4.8.2 SCOPE:

This part sets forth the performance appraisal and development of employees in the offices of the district attorneys and the administrative office of the district attorneys.

[10.4.8.2 NMAC - Rp, NMDAA 91-1.7.01, 06/30/2010]

10.4.8.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (5) NMSA 1978 which requires the promulgation of district attorney personnel rules governing the evaluation of performance of employees for the purpose of improving staff effectiveness.

[10.4.8.3 NMAC - N, 06/30/2010]

10.4.8.4 DURATION:

Permanent

[10.4.8.4 NMAC - N, 06/30/2010]

10.4.8.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.8.5 NMAC - N, 06/30/2010]

10.4.8.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.8.6 NMAC - N, 06/30/2010]

10.4.8.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.8.8 PURPOSE:

The purpose of completing an employee performance appraisal and development form may be in order to achieve any of the following:

- A. to evaluate and assess an employee's performance, conduct, and ability in relation to the job requirements for their position;
- B. to inform an employee of strong and weak points as well as training needs and expected improvements;
- C. to compare an employee's performance to previously set goals;
- D. to establish performance goals for the coming year and to determine the steps necessary to achieve them;
- E. to make fair, equitable, and legally defensible compensation decisions;
- F. to recognize an employee's potential for promotion;
- G. to assist in determining the order of layoff and reinstatement; and
- H. as a basis for taking disciplinary action against an employee.

[10.4.8.8 NMAC - N, 06/30/2010]

10.4.8.9 RESPONSIBILITY:

A. It is the responsibility of an employee's immediate supervisor to rate each incumbent's performance at least once a year. This individual shall be referred to as the "rater".

B. It is the responsibility of upper level management to review all employee performance appraisal and development forms once they have been completed by the immediate supervisor. These individuals shall be referred to as the "reviewers". A reviewer is typically the rater's immediate supervisor.

C. It is incumbent upon all individuals designated as either a rater or a reviewer to attend training on the use of the district attorney employee performance and appraisal form within one year of being assigned to supervise an employee, or within one year of any changes to the existing employee performance appraisal and development form or process.

[10.4.8.9 NMAC - N, 06/30/2010]

10.4.8.10 PROCESS AND PROCEDURES:

The district attorney employee performance appraisal and development forms and an accompanying manual of detailed instructions are created and revised from time to time by the administrative office of the district attorneys, subject to the approval or ratification by the district attorneys as a group. The current version of the employee performance appraisal and development forms and an accompanying manual of detailed instructions shall be maintained by the administrative office of the district attorneys.

A. The current version of the employee performance appraisal and development forms shall be maintained by, and are available upon request from, the administrative office of the district attorneys and may contain the following sections:

- (1) a general information section;
- (2) an overall performance appraisal section;
- (3) an acknowledgments section;
- (4) a job assignment activities and performance standards section;
- (5) a performance indicators section;
- (6) an appraisal results section; and
- (7) an employee development plan.

B. The current version of the employee performance appraisal and development manual shall be maintained by, and is available upon request from, the administrative office of the district attorneys.

[10.4.8.10 NMAC - N, 06/30/2010]

PART 9: DISCIPLINARY ACTIONS

10.4.9.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.9.1 NMAC - N, 06/30/2010]

10.4.9.2 SCOPE:

This part sets forth the rules for the establishment, maintenance and administration of an equitable, disciplinary process which shall be applicable to all positions in the offices of the district attorneys and the administrative office of the district attorneys.

[10.4.9.2 NMAC - Rp, NMDAA 91-1.8.01, 06/30/2010]

10.4.9.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance

of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (8) NMSA 1978 which requires the promulgation of district attorney personnel rules governing a disciplinary procedure, which shall provide for an equitable response to infractions of rules or work performance standards.

[10.4.9.3 NMAC - N, 06/30/2010]

10.4.9.4 DURATION:

Permanent

[10.4.9.4 NMAC - N, 06/30/2010]

10.4.9.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.9.5 NMAC - N, 06/30/2010]

10.4.9.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.9.6 NMAC - N, 06/30/2010]

10.4.9.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.9.8 JUST CAUSE FOR DISCIPLINARY ACTION:

A. A covered employee may be suspended, demoted or dismissed only for just cause which is any behavior that is inconsistent with the employee's obligation to the agency, even though no previous disciplinary actions have been taken.

B. Just cause includes, but is not limited to: inefficiency; incompetence; misconduct; negligence; insubordination; continued unsatisfactory performance; unauthorized leave; failure to comply with any provisions of these rules or to meet a condition of employment as required by law; violation of the obligation of confidentiality imposed upon district attorney employees; falsifying official records or documents; or violation of

a felony or misdemeanor when the provisions of the Criminal Offender Employment Act of NMSA 1978 apply.

[10.4.9.8 NMAC - N, 06/30/2010]

10.4.9.9 TYPES OF DISCIPLINARY ACTIONS:

A. Formal disciplinary actions include dismissal, demotion, suspension or written reprimand.

B. Informal disciplinary actions include a written or verbal warning, or a written or verbal reprimand.

C. The written reprimand must be signed by the district attorney or the designee and the employee. The signature of the employee does not necessarily indicate concurrence with the written reprimand. Signature of the employee at least will indicate that they acknowledged receipt of the written reprimand.

D. An employee may submit a written response or rebuttal to his/her supervisor's written reprimand which shall be included in the employee's personnel file.

[10.4.9.9 NMAC - Rp, NMDAA 91-1.8.04, 06/30/2010]

10.4.9.10 FORMAL DISCIPLINARY PROCEDURE:

A. The dismissal, demotion or suspension of a covered employee shall be accomplished according to the following procedure.

(1) The employee will be served by the district attorney, or their designee, with a written notice of the proposed disciplinary action which shall:

(a) cite the specific action or acts allegedly constituting just cause;

(b) provide an explanation of the evidence that the district attorney or their designee has;

(c) specify what the proposed disciplinary action is; and

(d) state that the employee, or a representative of the employee's choosing, has five (5) working days from service of the notice to respond to the district attorney or their designee in writing to the notice or to request an opportunity to be heard.

(2) If service of the notice is by certified mail, with return receipt requested, three (3) working days shall be added to the time for an answer.

(3) If the employee requests a pre-disciplinary review, the district attorney or designee shall conduct such review within five (5) working days of the district attorney's or designee's receipt of the request, unless the employee and the employer agree, in writing, to an extension of time. The review is not a formal evidentiary proceeding.

B. The district attorney or their designee shall consider the employee's response, if any, and determine what action is appropriate within five (5) working days of the response. If the employee does not respond to the notice of proposed disciplinary action, the district attorney or designee may proceed to determine the appropriate action and serve a notice of final decision no later than ten (10) working days after the employee receives the written notice of proposed action. The district attorney or their designee may proceed with a notice of final decision before the end of the five (5) day period for response if the employee's response is received or the review is concluded prior to the expiration of this period.

C. The written notice of final decision must:

- (1) specify the date of service of the notice of proposed disciplinary action;
- (2) identify the specific acts constituting just cause, which may not include acts not specified in the notice of proposed disciplinary action;
- (3) specify the disciplinary action, if any, to be taken;
- (4) specify the effective date of the dismissal, demotion or suspension which must be at least twenty-four (24) hours from the date of service; and
- (5) inform the covered employee that the disciplinary action may be appealed to either the district attorneys personnel review board or to the state personnel office within thirty (30) days of the effective date of the disciplinary action.

D. The disciplinary action will not be stayed, pending the completion of the appeal process.

[10.4.9.10 NMAC - N, 06/30/2010]

PART 10: APPEALS AND ADJUDICATION

10.4.10.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.10.1 NMAC - N, 06/30/2010]

10.4.10.2 SCOPE:

This rule sets for the rules for the establishment, maintenance and administration of an equitable appeals and adjudication process which is applicable to covered positions in the offices of the district attorneys and the administrative office of the district attorneys.

[10.4.10.2 NMAC - N, 06/30/2010]

10.4.10.3 STATUTORY AUTHORITY:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration;

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys; and

E. Section 36-1A-8 (B) (9) NMSA 1978 which requires the promulgation of district attorney personnel rules governing an appeal process to review a disciplinary action solely involving suspension, demotion or termination.

[10.4.10.3 NMAC - N, 06/30/2010]

10.4.10.4 DURATION:

Permanent

[10.4.10.4 NMAC - N, 06/30/2010]

10.4.10.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.10.5 NMAC - N, 06/30/2010]

10.4.10.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.10.6 NMAC - N, 06/30/2010]

10.4.10.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.10.8 APPEALS PROCEDURE:

A. Covered employees who have been demoted, dismissed or suspended have the right to appeal to the board for a public hearing before the board or before a state-personnel- office designated hearing officer within thirty (30) calendar days of the effective date of the disciplinary action.

B. The appeal notice and supporting documents shall be directed to the president of the New Mexico district attorneys personnel review board. Upon receipt of the appeal, the president shall forward a copy to the members of the personnel review board.

C. In the event the appellant elects a state-personnel-designated hearing officer, the board shall promptly make that request to the state personnel office and promptly execute any and all documents necessary to implement this election. The state personnel office shall promptly arrange for the hearing officer without charge. This officer shall have all of the rights, duties and responsibilities provided to the board by the District Attorney Personnel and Compensation Act. This hearing officer's decision shall be binding and of the same force and effect as if the board itself had rendered the final decision.

D. In the event the appellant elects a hearing before the board, the president of the personnel review board shall inform the other board members and the affected parties of the time and place of the hearing; and the president or their designee shall preside over all proceedings pertaining to each appeal. A sitting board member who is the employer of the appellant must excuse themselves from hearing the appeal. The president of the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing pursuant to such appeal. This hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of act. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law. If a hearing is continued, the same three (3) members who started to hear the appeal shall serve until

the conclusion of the appeal process. The president of the personnel review board shall inform the other board members and the affected parties of the time and place of the hearing; and the president or their designee shall preside over all proceedings pertaining to each appeal. A sitting board member who is the employer of the appellant must excuse himself/herself from hearing the appeal. The president of the board may designate a hearing officer who may be a member of the board to preside over and take evidence at any hearing pursuant to such appeal. This hearing officer shall prepare and submit to the board a summary of the evidence taken at the hearing and proposed findings of fact. The board shall render a final decision on the appeal, which shall include findings of fact and conclusions of law. If a hearing is continued, the same three (3) members who started to hear the appeal shall serve until the conclusion of the appeal process.

[10.4.10.8 NMAC - N, 06/30/2010]

10.4.10.9 ADJUDICATION PROCEDURE:

All adjudication procedures apply similarly to all presiding hearing officers.

A. Consolidation or joinder of cases:

(1) The board or the state personnel office designated hearing officer may consolidate cases in which two or more appealing employees have cases containing identical or similar issues.

(2) The board or the state personnel office designated hearing officer may join the appeals of an appellant who has two or more appeals pending.

(3) The board or the state personnel office designated 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.

B. Motions:

(1) 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 board or by the state personnel office designated hearing officer, unless good cause is shown for the delay.

(2) Responses to any motions shall be filed according to a schedule set by the board or by the state personnel office designated hearing officer.

(3) During the course of a hearing, motions may be renewed or made for the first time, if such a motion then becomes appropriate.

(4) The board or the state personnel office designated hearing officer may rule on all non-dispositive motions.

C. Sanctions: The board or the state personnel office designated 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 board or the state personnel office designated 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; and

(d) strike any part of the pleadings or other submissions of the party failing to comply with such request.

(2) The board or the state personnel office designated hearing officer may refuse to consider any motion or other action which is not filed in a timely fashion.

(3) The board or the state personnel office designated hearing officer may dismiss an appeal with prejudice or rule for the appellant if a party fails to defend or prosecute an appeal.

[10.4.10.9 NMAC - Rp, NMDAA 91-1.9.01, 9.02, 9.03, 06/30/2010]

10.4.10.10 PRE-HEARING CONFERENCE:

A. At the pre-hearing conference, the parties shall submit to the board or the state personnel office designated hearing officer a proposed pre-hearing order which shall contain at least:

(1) a statement of any contested facts and issues;

(2) stipulation of those matters not in dispute;

(3) identity of all witnesses to be called and a brief summary of their testimony;

- (4) a list of exhibits;
- (5) requests for subpoenas; and
- (6) a tentative hearing date.

B. The board or the state personnel office designated hearing officer, in cooperation with the parties, may further revise the pre-hearing order.

C. Any discussion concerning possible settlement of the appeal shall not be a part of the pre-hearing order nor may it be introduced at the hearing.

[10.4.10.10 NMAC - Rp, NMDAA 91-1.9.04, 06/30/2010]

10.4.10.11 ADDITIONAL WITNESSES:

Witnesses who were not identified at the prehearing conference must be identified to the opposing party and the board or the state personnel office designated hearing officer at least three (3) working days prior to the hearing. The board or the state personnel office designated hearing officer may waive this rule for good cause.

[10.4.10.11 NMAC - Rp, NMDAA 91-1.9.05, 06/30/2010]

10.4.10.12 SUBPOENAS:

A. The board and the state personnel office designated hearing officer have the power to subpoena witnesses and compel the production of books, papers, and any other materials pertinent to any investigation or hearing.

B. Subpoenas must be hand delivered.

C. In order to compel attendance at a hearing, the subpoena shall be received by the witness at least seventy-two (72) hours prior to the time the witness is to appear. The board or the state personnel office designated hearing officer may waive this rule for good cause shown.

D. Employees under subpoena shall be granted administrative leave.

[10.4.10.12 NMAC - Rp, NMDAA 91-1.9.06, 06/30/2010]

10.4.10.13 HEARINGS:

A. Notice of hearing shall be made by certified mail with return receipt requested at least fourteen (14) calendar days prior to the hearing, unless otherwise agreed to by the parties and the board or the state personnel office designated hearing officer.

B. The hearing shall be open to the public, unless the parties agree that it shall be closed.

C. A party may appear at the hearing through a representative, provided such representative has made a written entry of appearance prior to the hearing date.

D. The board or the state personnel office designated hearing officer may clear the room of witnesses not under examination, if either party so requests, and any person who is disruptive. The district attorney is entitled to have a person in the hearing room during the course of the hearing, even if the person will testify in the hearing.

E. The district attorney or his representative may make an opening statement. The appellant may then make an opening statement or wait until the district attorney is through presenting his/her case.

F. The district attorney shall present his/her evidence first.

G. Oral evidence shall be taken only under oath or affirmation.

H. Each party shall have the right to:

- (1) call and examine witnesses and introduce exhibits;
- (2) cross-examine witnesses;
- (3) impeach any witness; and
- (4) rebut any relevant evidence.

I. The hearing shall be conducted in an orderly and informal manner without adherence to the rules of evidence required in judicial proceedings. However, at least some non-hearsay evidence must support the decision reached.

J. The board or the state personnel office designated hearing officer may admit all evidence, including affidavits, if it is the type of evidence upon which responsible persons are accustomed to rely in the conduct of business. The board or the state personnel office designated hearing officer shall exclude immaterial, irrelevant or unduly cumulative testimony.

K. The board or the state personnel office designated hearing officer may take administrative notice of those matters of which courts of this state may take judicial notice.

L. 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.

M. The board or the state personnel office designated hearing officer shall consider only those allegations against the appellant included in the notice of final action.

N. The hearing shall be recorded by a sound-recording device under the supervision of the board or the state personnel office designated hearing officer.

O. The board or the state personnel office designated hearing officer may require post-hearing briefs and proposed findings of fact and conclusions of law.

P. Upon hearing the evidence and statements of the parties and after the necessary deliberation, the board shall issue a written decision within twenty (20) working days after the close of the record and send copies to the parties and their representatives. The decision, which shall be based upon the preponderance of the evidence, shall order either corrective action or dismissal of the appeal. The decision of the board or the state personnel office designated hearing officer shall be final. No further administrative appeal is authorized.

[10.4.10.13 NMAC - Rp, NMDAA 91-1.9.07, 06/30/2010]

10.4.10.14 REINSTATEMENT:

A. If the board or the state personnel office designated hearing officer finds that the action taken was without just cause, the board or the state personnel office designated hearing officer may modify the disciplinary action or order the reinstatement of the appellant to his or her former position or to a position of like status and pay.

B. When the board or state personnel office designated hearing officer orders reinstatement of an appellant, the reinstatement shall be effective within thirty (30) calendar days after service of a written copy of the decision on the affected party. The board or the state personnel office designated hearing officer may award back pay as of the date of the dismissal, demotion or suspension or as of such later date as the reinstatement order may specify.

[10.4.10.14 NMAC - Rp, NMDAA 91-1.9.08, 06/30/2010]

10.4.10.15 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 fourteen (14) calendar days of the pre-hearing 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 fourteen (14) calendar days of the hearing officer's ruling.

B. Appeals from employees of the district attorney's office shall be heard by the board, a member of the board designated as hearing officer or a state personnel office designated hearing officer.

C. 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 before the deadline for the completion of discovery.

D. 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, up to and including the assessment of costs.

E. Persons shall not discuss the merits of any pending hearing or proceeding with the designated hearing officer or member of the board unless both parties, or their representatives, are present.

[10.4.10.15 NMAC - N, 06/30/2010]

10.4.10.16 APPEAL TO DISTRICT COURT:

A. Any party aggrieved by the decision of the board or the state personnel office designated hearing officer made pursuant to this part may appeal the decision to the district court in the district in which they reside, is employed or maintains a principal office or to the district court for the district of Santa Fe county. The appeal shall be initiated by filing a notice of appeal with the clerk of the appropriate district court within thirty (30) days after the service on that party of a written copy of the final decision of the board or the state personnel office designated hearing officer. Upon appeal the district court shall affirm the decision of the board or the state personnel office designated hearing officer unless the decision is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence; or
- (3) otherwise not in accordance with law.

B. An appeal from the decision of the district court may be taken to the court of appeals in accordance with the rules of civil procedure.

[10.4.10.16 NMAC - N, 06/30/2010]

PART 11-13: [RESERVED]

PART 14: JOB SPECIFICATIONS

10.4.14.1 ISSUING AGENCY:

Administrative Office of the District Attorneys

[10.4.14.1 NMAC - N, 06/30/2010]

10.4.14.2 SCOPE:

Applicable to all employees in a district attorney's office and in the administrative office of the district attorneys, except where noted.

[10.4.14.2 NMAC - N, 06/30/2010]

10.4.14.3 STATUTORY AUTHORITY:

This rule is adopted pursuant to:

A. Section 36-1-25 NMSA 1978 which, among other things, authorizes the duly appointed director of the administrative office of the district attorneys to appoint necessary personnel and assign their duties within the administrative office of the district attorneys;

B. Section 36-1-26 NMSA 1978 which, among other things, requires the director of the administrative office of the district attorneys to develop uniform systems for use by district attorney offices with respect to personnel matters;

C. Section 36-1A-2 NMSA 1978 of the District Attorney Personnel and Compensation Act, Sections 36-1A-1 through 36-1A-15 NMSA 1978, which, among other things, created the District Attorney Personnel and Compensation Act to establish for all district attorneys a uniform, equitable and binding system of personnel administration; and

D. Section 36-1A-8 NMSA 1978 which, among other things, requires the district attorneys to promulgate personnel rules, with the assistance of the director of the administrative office of the district attorneys as authorized by Subsection I of Section 36-1-26 NMSA 1978, which among other things requires the director of the administrative office of the district attorneys to perform such other duties in furtherance of the administration of the business of the district attorneys as directed by the elected or appointed district attorneys.

[10.4.14.3 NMAC - N, 06/30/2010]

10.4.14.4 DURATION:

Permanent

[10.4.14.4 NMAC - N, 06/30/2010]

10.4.14.5 EFFECTIVE DATE:

June 30, 2010, unless a later date is cited at the end of a section.

[10.4.14.5 NMAC - N, 06/30/2010]

10.4.14.6 OBJECTIVE:

To establish for all district attorneys a uniform, equitable and binding system of personnel administration.

[10.4.14.6 NMAC - N, 06/30/2010]

10.4.14.7 DEFINITIONS:

[RESERVED]

[See 10.4.1.7 NMAC]

10.4.14.8 JOB SPECIFICATIONS:

A. Administrative office of the district attorneys director:

(1) Purpose: This position performs a variety of administrative and managerial duties as the agency director for the administrative office of the district attorneys.

(2) Supervision: Incumbent receives administrative direction from the elected district attorneys. Incumbent supervises the administrative office of the district attorneys staff.

(3) Examples of work performed: Incumbent plans, develops and executes administrative policy governing agency operations; implements, oversees, and evaluates agency management decisions and is responsible for multiple programs/projects; establishes agency accountability measures; participates in the preparation of documents for the office such as budgets, information technology plans, agency annual report; drafts legislation and testifies regarding legislative initiatives; oversees budgets involving multiple funding sources; and supervises agency staff.

(4) Distinguishing characteristics: This is a management level position which involves the administration of a single agency. The incumbent acts on behalf of the New Mexico district attorneys' association, when so directed, and serves at the pleasure of the district attorneys.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to work extended hours at certain intervals during the year.

(6) Knowledge, skills, and abilities: This position requires knowledge of the criminal justice system, public administration principles, office management practices, federal and state laws and regulations; effective writing and verbal communication skills, supervisory skills, analytical and decision-making skills; ability to plan and coordinate large scale projects involving numerous programs and individuals; ability to organize and prioritize workloads and manage multiple projects.

(7) Requirements: Bachelor's degree in public administration, criminal justice administration, or related field plus seven (7) years of work experience in administration, management, or related field, which must include two years supervision/administration experience.

(8) Preferred qualifications: Law degree, which must include two years supervision/administration experience.

B. District office manager:

(1) Purpose: This position provides management and oversight of district attorney office operations, functions, and programs.

(2) Supervision: Incumbent receives administrative direction from the district attorney. Incumbent supervises office support staff as directed by the district attorney. Incumbent also takes direction and is accountable to the assigned budget analysts at the department of finance and administration and the legislative finance committee. Incumbent is also accountable to the designated auditing firm for their respective agency.

(3) Examples of work performed: Incumbent manages the day-to-day operations of an office which may include, but is not limited to: managing and performing the duties related to fiscal and human resource activities; overseeing the processing of financial documents, the procurement process, administration of employee benefits, payroll processing, asset management, budget preparation and administration, and federal/state/local grant administration; communicating with other agencies, vendors, etc.; acting as the liaison with both the legislative finance committee and department of finance and administration for their respective agency; overseeing the maintenance of all necessary files and records; managing prosecution support functions and case management; overseeing office security and maintenance; and coordinating staff development and supervision. Incumbent may manage certain programs within a district attorney's office which may include but are not limited to: pre-prosecution diversion, worthless check program, victim/witness assistance; domestic violence programs, etc. The incumbent insures compliance with federal regulations, state statutes, policies and directives; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position which serves at the pleasure of the district attorney.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to work extended hours at certain intervals during the year.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system and considerable knowledge of office management practices, fiscal and human resource administration; effective public relations and communication skills, supervisory skills, analytical and decision-making skills; ability to organize, prioritize and manage multiple projects and workloads.

(7) Requirements: Bachelor's degree in public administration, criminal justice administration, political science or related field plus five (5) years of related work experience and education; or any combination of experience and education in a related field totaling at least nine (9) years, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Master's degree in public administration, criminal justice administration, political science or related field plus five (5) years of related work experience and education; or any combination of experience and education in a related field totaling at least eleven (11) years, which must include two (2) years supervision/administration experience.

C. Law clerk:

(1) Purpose: This position provides technical legal research, and document preparation within a district attorney's office.

(2) Supervision: Incumbent receives immediate supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent conducts legal research, prepares legal documents, files pleadings, and assists attorneys in case preparation as instructed; and performs other related job duties.

(4) Distinguishing characteristics: This position functions primarily to provide legal research, writing and support for attorneys.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires basic knowledge in the areas of criminal prosecution, rules of evidence, rules of criminal procedure, legal research and writing; organizational skills, basic computer skills; ability to effectively

communicate verbally and in writing, ability to research and analyze information and situations.

(7) Requirements: Completion of a minimum of one year in an accredited law school.

(8) Preferred qualifications: Law degree from an accredited law school.

D. Human resource coordinator:

(1) Purpose: This position assists district attorney offices in the administration of the New Mexico district attorneys' personnel and compensation plan, and with a variety of human resource management issues.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent reviews personnel and position documents for plan compliance and accuracy; processes documents through the automated payroll and personnel system; may act as liaison to the district attorneys' personnel review board; assists with salary calculations, studies, human resource reports; provides information and administrative support; may assist with the coordination of training and general staff development activities; handles issues pertaining to loss control, fair labor standards act, Americans with disabilities act, workers compensation, employee liability and mediation, and employee orientation; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position within the human resource series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the district attorneys' personnel and compensation plan, state personnel and payroll system, federal regulations, general office procedures and equipment; good public relations and communications skills, good organizational skills, good computer skills, good math skills, ability to follow directions and policies.

(7) Requirements: Associates degree, or two (2) years related work experience and education.

(8) Preferred qualifications: Associates degree, and at least two (2) years related work experience or four (4) years related work experience and education.

E. Human resource administrator:

(1) Purpose: This position assists district attorney offices in the administration of the New Mexico district attorneys' personnel and compensation plan.

(2) Supervision: Incumbent receives general supervision from the administrative office of the district attorneys director, district attorneys or their designees.

(3) Examples of work performed: Incumbent reviews personnel and position documents for plan compliance and accuracy; processes documents through the automated payroll and personnel system; may act as liaison to the district attorneys' personnel review board; assists with salary calculations, studies, human resource reports; provides information and administrative support; may assist with the coordination of training; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position within the human resource series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the district attorneys' personnel and compensation plan, state personnel and payroll system, federal regulations, general office procedures and equipment; good public relations and communications skills, good organizational skills, good computer skills, good math skills, ability to follow directions and policies.

(7) Requirements: Associates degree, and at least two (2) years related work experience or four (4) years related work experience and education.

(8) Preferred qualifications: Bachelor's degree and at least two (2) years related work experience or any combination of experience and education in a related field totaling at least six (6) years.

F. Special program director:

(1) Purpose: This position provides management and oversight of special operations, functions, and programs within a district attorney's office.

(2) Supervision: Incumbent receives administrative direction from the district attorney. Incumbent supervises staff as directed by the district attorney.

(3) Examples of work performed: Incumbent manages specific programs within a district attorney's office which may include but are not limited to: investigations; budget and finance; pre-prosecution diversion; worthless checks; victim/witness assistance; domestic violence; etc. Duties may include, but are not limited to: initiating and overseeing criminal investigations; program budget preparation and administration;

administration of federal funds; policy development and implementation; networking with community and law enforcement agencies; conducting training; managing and performing the duties related to fiscal and human resource activities; over-seeing the maintenance of all necessary files and records; managing prosecution support functions and case management; overseeing office security and maintenance; and coordinating staff development and supervision. The incumbent insures compliance with federal regulations, state statutes, policies and directives; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position which serves at the pleasure of the district attorney.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system, court proceedings and procedures within a district attorney's office, considerable knowledge of applicable state statutes, and knowledge of office management practices, and fiscal and human resource administration; effective public relations and communication skills, supervisory skills, good writing skills, analytical and decision-making skills, and a high level of organizational skills; and ability to organize and prioritize workloads and to manage multiple projects.

(7) Requirements: Bachelor's degree in criminal justice, public administration, business administration, social sciences or related fields plus four (4) years of related work experience; or any combination of experience and education in a related field totaling at least eight (8) years; which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Master's degree in criminal justice, public administration, business administration, social sciences or related field plus two (2) years of related work experience; or any combination of experience and education totaling eight (8) years; which must include two (2) years supervision/administration experience.

G. Associate trial attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in misdemeanor cases and cases involving adjudication of juveniles; performs

felony work under supervision; assists in trial teams; performs non-criminal statutory duties as assigned; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires some knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations skills, organizational skills, basic computer skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research and analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar.

(8) Preferred qualifications: legal experience totaling at least one year.

H. Assistant trial attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in misdemeanor cases and cases involving adjudication of juveniles; performs felony work under minimal supervision; assists in trial teams; performs non-criminal statutory duties as assigned; supervises or mentors entry level attorneys and staff; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations skills, organizational skills, basic computer skills, effective trial skills; ability to draft legal documents, ability to work effectively with other criminal

justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of two years as a practicing attorney.

(8) Preferred qualifications: Two years as a practicing attorney in criminal law.

I. Senior trial attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in misdemeanor cases and cases involving adjudication of juveniles; performs routine and complex felony work; leads or assists in trial teams; performs other non-criminal statutory duties as assigned; supervises or mentors subordinate attorneys and staff; performs training for staff and law enforcement; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires substantial knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure; public relations skills, organizational skills, supervisory skills, basic computer skills, fully-effective trial skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of four years as a practicing attorney.

(8) Preferred qualifications: Four years as a practicing attorney in criminal law.

J. Deputy district attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases and may manage an office division or bureau.

(2) Supervision: Incumbent receives supervision from the chief deputy district attorney and district attorney. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals in routine and complex felony cases; leads or assists in trial teams; performs other non-criminal statutory duties as assigned; performs training for staff and law enforcement; may manage caseloads for a division/bureau in addition to their own caseload; assists or leads in special prosecutions assigned by the district attorney; supervises or mentors subordinate attorneys and staff; may assist in establishing and enforcing office policies; may represent the district attorney's office at official functions; and may be a division/bureau head in a main or satellite office; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the attorney series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure, office policies and procedures; public relations skills, organizational skills, supervisory skills, basic computer skills, fully-effective trial skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of six years as a practicing attorney in criminal law, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Six years as a prosecuting attorney, which must include two (2) years supervision/administration experience.

K. Chief deputy district attorney:

(1) Purpose: This position provides for the prosecution of criminal and non-criminal cases and acts on behalf the district attorney in their absence. This position may exercise administrative and management authority.

(2) Supervision: Incumbent receives administrative supervision from the district attorney. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent charges and prosecutes criminals; leads or assists in trial teams; performs non-criminal statutory duties as assigned; supervises or mentors subordinate attorneys and staff; prosecutes routine and complex felony cases; performs the duties of a division/bureau head; represents the district attorney's office at official functions; may interact with the media; acts in the capacity of the district attorney in their absence; ensures compliance with policies and directives; and performs other related job duties.

(4) Distinguishing characteristics: This position is the administrative level of the attorney series and is characterized by the high level of trust, discretion and judgment vested in the incumbent by the district attorney.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required. Incumbent may be required to work under stressful situations and conditions.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge in the areas of criminal prosecution, rules of evidence and rules of criminal procedure, public administration; public relations skills, organizational skills, supervisory skills, basic computer skills, fully-effective trial skills; ability to draft legal documents, ability to work effectively with other criminal justice agencies, ability to communicate effectively, ability to research/analyze information and situations.

(7) Requirements: Admission to the New Mexico state bar plus a minimum of six years as a practicing attorney in criminal law, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Six years as a prosecuting attorney, which must include two (2) years supervision/administration experience.

L. Clerk apprentice:

(1) Purpose: This position provides general office support in a limited clerical capacity.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent answers, screens and routes telephone calls, records messages; performs other clerical duties such as typing, filing, copying, etc., and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the clerk series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires basic knowledge of math and grammar, reading comprehension, basic office skills, basic typing/computer skills, and the ability to follow directions and policies.

(7) Requirements: Must be at least sixteen (16) years old or have a valid state work permit.

(8) Preferred qualifications: Some work experience in an office setting.

M. Clerk:

(1) Purpose: This position provides general office support in a clerical capacity.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent answers, screens and routes telephone calls; records messages; performs other clerical duties such as typing, filing, copying, etc.; greets and provides assistance to office visitors; receives and distributes incoming mail; prepares outgoing mail; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the clerk series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires knowledge of proper telephone and customer service etiquette, math and grammar, reading comprehension, good grammar skills, office skills, typing/computer skills, ability to communicate effectively, and ability to follow direction and policies.

(7) Requirements: High school diploma or GED.

(8) Preferred qualifications: Any combination of education and work experience totaling at least one (1) year.

N. Clerk specialist:

(1) Purpose: This position provides general office support in a specialized clerical capacity.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent performs specialized clerical duties which may include but are not limited to data entry, records/file maintenance and storage, data retrieval; answers, screens and routes telephone calls; records messages; performs other clerical duties such as typing, filing, copying, etc.; greets and provides assistance to office visitors; receives and distributes incoming mail; prepares outgoing mail; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the clerk series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of manual and automated records maintenance and retrieval, proper telephone and customer service etiquette, math and grammar, reading comprehension, considerable typing/computer skills, ability to be accurate and efficient, and the ability to follow direction and policies.

(7) Requirements: High school diploma or GED and one (1) year related work experience.

(8) Preferred qualifications: Any combination of education and work experience totaling at least two (2) years.

O. Financial assistant:

(1) Purpose: This position provides support and assistance to fiscal and human resource operations.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares and processes financial documents; assists in the procurement process, administration of employee benefits, payroll processing, maintenance of leave records; assists in budget preparation and administration, grant administration, communicates with other agencies, vendors etc., maintains all necessary files and records; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position within the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge in the areas of general accounting practices, human resource administration, general office procedures and equipment; public relations and communications skills, good organizational skills, and the ability to follow directions and policies.

(7) Requirements: High school diploma or GED, and at least one year related work experience and education.

(8) Preferred qualifications: Any combination of experience and education in a related field totaling at least two (2) years.

P. Financial specialist:

(1) Purpose: This position provides support and expertise to fiscal and human resource operations.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise office staff.

(3) Examples of work performed: Incumbent prepares and processes financial documents; assists in the procurement process, administration of employee benefits, payroll processing, asset management, and maintenance of leave records; assists in budget preparation and administration, grant administration; communicates with other agencies, vendors etc.; maintains all necessary files and records; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge in the areas of general accounting practices, human resource administration, general office procedures and equipment; public relations and communications skills, good organizational skills; ability to analyze and interpret financial information, and the ability to follow directions and policies.

(7) Requirements: High school diploma or GED, and at least three (3) years related work experience and education.

(8) Preferred qualifications: Any combination of experience and education in a related field totaling at least four (4) years.

Q. Financial specialist supervisor:

(1) Purpose: This position provides support and expertise to fiscal and human resource operations.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent supervises office staff.

(3) Examples of work performed: Incumbent performs and supervises the activities related to the preparation and processing of financial documents; assists in the procurement process, administration of employee benefits, payroll processing; asset management, assists in budget preparation and administration, grant administration; communicates with other agencies, vendors, etc.; maintains all necessary files and records; and performs other related job duties.

(4) Distinguishing characteristics: This is a supervisory level position within the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge in the areas of general accounting practices, human resource administration, general office procedures and equipment; public relations and communications skills, effective supervisory skills, good organizational skills; ability to analyze and interpret financial information, and the ability to follow directions and policies.

(7) Requirements: Bachelor's degree in accounting, business administration or other related financial field, or four (4) years related work experience and education, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Bachelor's degree in accounting, business administration or other related financial field, plus two (2) years of related work experience and education; or six (6) years related work experience and education, which must include two (2) years supervision/administration experience.

R. Chief financial officer:

(1) Purpose: This position provides office management functions which include management of fiscal and human resource operations and prosecution programs.

(2) Supervision: Incumbent receives administrative supervision from the assigned supervisor, usually a district attorney, the administrative office of the district attorneys director, or their designee. Incumbent supervises office staff. Incumbent also takes direction and is accountable to the assigned budget analysts at the department of

finance and administration and the legislative finance committee. Incumbent is also accountable to the designated auditing firm for their respective agency.

(3) Examples of work performed: Incumbent manages the day-to-day operations of an office which may include, but is not limited to: managing and performing the duties related to fiscal and human resource activities; overseeing the processing of financial documents, the procurement process, administration of employee benefits, payroll processing, asset management, budget preparation and administration, and federal/state/local grant administration; preparing audit statements and pre-audit reports; communicating with other agencies, vendors, etc.; acting as the liaison with both the legislative finance committee and the department of finance and administration for their respective agency; overseeing the maintenance of all necessary files and records; managing prosecution support functions and case management; overseeing office security and maintenance; and coordinating staff development and supervision. The incumbent insures compliance with federal regulations, state statutes, policies and directives; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position within the financial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge in the areas of general and governmental accounting practices, human resource practices, general office procedures and equipment; considerable knowledge of the criminal justice system; effective public relations and communications skills, effective management and supervisory skills; a high level of organizational skills; ability to analyze and interpret financial information, ability to manage multiple projects and deadlines; and ability to follow directions and policies.

(7) Requirements: Bachelor's degree in accounting, business administration or other related financial field, plus two (2) years of related work experience and education; or six (6) years related work experience and education, which must include two (2) years supervision/administration experience.

(8) Preferred qualifications: Bachelor's degree in accounting, business administration or other related financial field, plus four (4) years of related work experience and education; or eight (8) years related work experience and education, which must include two (2) years supervision/administration experience.

S. Information systems assistant:

(1) Purpose: This position performs a variety of information systems support duties in a district attorney's office or for a statewide system.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent trains users in various software applications and case management; assists with basic hardware problems; installs hardware and sets up applications for users; develops and maintains various data and statistical reports; performs liaison duties between users and higher level information systems staff; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position which primarily involves the technical support to users of an information system.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. Consistent exposure to VDT's, CRT's, and other electrical devices.

(6) Knowledge, skills, and abilities: This position requires some knowledge of information systems technology, systems applications; software applications; data base principals; effective communication skills; ability to analyze and recommend solutions to basic systems situations, ability to organize and prioritize workloads; ability to manage multiple projects simultaneously; ability to effectively complete work projects to ensure user satisfaction.

(7) Requirements: Associate's degree or certification from a technical/vocational school in computer science or related technical field; or two (2) years of related work experience and education in a related field.

(8) Preferred qualifications: Associate's degree in computer science or related technical field plus one (1) year of work experience in related field.

T. Information systems administrator:

(1) Purpose: This position performs a variety of highly complex duties in support of an information system for a district attorney's office or statewide network.

(2) Supervision: Incumbent receives general guidance and direction from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent controls, monitors and maintains servers and telecommunications for an information system; researches and evaluates the integration of software systems within a multiprocessor information systems environment; investigates and analyzes new data processing techniques and technologies; performs complex systems development, planning, and maintenance, assists in the coordination and maintenance of a local or wide area network; provides and directs client support and specialized curriculum development; evaluates disaster

recovery resource requirements and make recommendations to produce disaster recovery plans; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position which primarily involves the technical support of information systems resources in an open-platform environment.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. Consistent exposure to VDT's, CRT's, and other electrical devices. May be required to work beyond normal work hours.

(6) Knowledge, skills, and abilities: This position requires substantial knowledge of information systems technology, operating systems, network and systems applications and development, systems engineering, effective writing and verbal communication skills, effective systems analytical skills, effective supervisory skills; ability to analyze and recommend solutions to complex systems situations, ability to organize and prioritize workloads; ability to manage multiple projects simultaneously; ability to effectively complete work projects to ensure user satisfaction.

(7) Requirements: Associate's degree in computer science or related technical field plus two (2) years of work experience and education information systems, and systems design and analysis; or four (4) years of related work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in computer science or related field plus two (2) years of work experience in information systems, and systems design and analysis.

U. Data base administrator:

(1) Purpose: This position performs a variety of highly complex duties in support of an information system for a district attorney's office or statewide network.

(2) Supervision: Incumbent receives general guidance and direction from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent controls, monitors and maintains a multi-data base system in a statewide client-server environment; designs and maintains databases and resolves associated problems; implements and maintains database security; controls and executes system utilities affecting database structures; provides training on data base concepts and functions; analyzes and recommends database software needs for budget submission; documents systems design; develops, modifies and maintains application systems in a data base; maintains data dictionary; investigates and analyzes new data processing techniques and technologies; performs

complex systems development, planning, and maintenance; provides and directs user support and specialized curriculum development; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position which primarily involves the technical support of a multi-data base system.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. Consistent exposure to VDT's, CRT's, and other electrical devices. May be required to work beyond normal work hours.

(6) Knowledge, skills, and abilities: This position requires substantial knowledge of information systems technology, operating systems, systems applications and development, systems engineering; data base analysis, design and administration; effective writing and verbal communication skills, effective systems analytical skills, effective supervisory skills; ability to analyze and recommend solutions to complex systems situations, ability to organize and prioritize workloads; ability to manage multiple projects simultaneously; ability to effectively complete work projects to ensure user satisfaction.

(7) Requirements: Associate's degree in computer science or related technical field plus two (2) years of work experience and education in data base design and management; or four (4) years of related work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in computer science or related field plus two (2) years of work experience in data base design and management.

V. Information systems manager:

(1) Purpose: This position manages and directs the overall information systems activities for a district attorney's office and its associated satellite offices, a statewide network, or a large scale systems project.

(2) Supervision: Incumbent receives administrative direction from the district attorney or the administrative office of the district attorneys director. Incumbent supervises other staff.

(3) Examples of work performed: Incumbent manages and directs the overall information systems activities and services in support of a multiple-site, statewide network; designs and manages the maintenance of the local area and wide area networks; develops and monitors information systems goals and objectives; establishes, implements, and monitors information systems policies, procedures and standards; assists in the development of the information systems budget and information technology plan; monitors information systems budget and expenditures; manages

information systems contracts; recommends and implements information systems training for the organization; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position which primarily involves the management of information systems resources in an open-platform environment.

(5) Working conditions: Work is performed in an office environment. Physical effort and frequent travel may be required. Incumbent may be required to work beyond normal working hours. Consistent exposure to VDT's, CRT's and other electrical devices can be expected.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of information systems technology, operating systems, systems applications and development, systems engineering, data base administration, knowledge of design, implementation, and maintenance of network systems; effective writing and verbal communication skills, effective systems analytical skills, effective management skills; ability to analyze and recommend solutions to complex systems situations, ability to evaluate and allocate staff resources to accomplish goals and objectives.

(7) Requirements: Bachelor's degree in computer science or related field plus four (4) years of work experience in information systems, data base administration, and systems design and analysis; or eight (8) years of related work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in computer science or related field plus six (6) years of work experience in information systems, data base administration, and systems design and analysis.

W. Investigator:

(1) Purpose: This position provides investigative functions as required by a district attorney's office.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Example of work performed: Incumbent locates witnesses; serves subpoenas and other process documents; executes warrants; interviews witnesses; researches investigative leads; provides logistical assistance with witnesses and evidence; testifies in court; coordinates efforts with other law enforcement agencies; provides internal security within a district attorney's office; executes all powers and duties established by statute pertaining to peace officers' and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the investigator series.

(5) Working conditions: Considerable amount of work is performed in field investigations outside the office that may require the prevention and detection of crime; some work is performed in an office environment; considerable physical effort may be required. May be required to be on-call during non-working hours. May encounter dangerous situations.

(6) Knowledge, skills, and abilities: This position requires knowledge of criminal law and procedures, and equipment; knowledge of surveillance techniques; interview and interrogation skills; investigatory skills; writing skills; communication skills; ability to establish and maintain effective working relationships with other law enforcement agencies; ability to interact effectively with the public; and the ability to follow directions and policies.

(7) Requirements: High school diploma or GED, plus New Mexico peace officer certification, within the first year of employment.

(8) Preferred qualifications: New Mexico peace officer certification, plus one (1) year work experience, education and training in law enforcement; investigations or related field.

X. Senior investigator:

(1) Purpose: This position provides advanced investigative functions required by a district attorney's office.

(2) Supervision: Incumbent receives supervision from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent locates witnesses; serves subpoenas and other process documents; executes warrants; interviews witnesses; researches investigative leads; provides logistical assistance with witnesses and evidence; testifies in court; coordinates efforts with other law enforcement agencies; provides internal security within a district attorney's office; executes all powers and duties established by statute pertaining to peace officers; provides training to other investigators; may supervise other staff in the absence of the chief investigator; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the investigator series.

(5) Working conditions: Considerable amount of work performed in field investigations outside the office that may require the prevention and detection of crime; some work is performed in an office environment; considerable physical effort may be

required. May be required to be on-call during non-working hours. May encounter dangerous situations.

(6) Knowledge, skills, and abilities: This position requires knowledge of criminal law and procedures, and equipment; knowledge of surveillance techniques; interview and interrogation skills; investigatory skills; supervisory skills; writing skills; communication skills; ability to conduct training, establish and maintain effective working relationships with other law enforcement agencies; ability to interact effectively with the public; and the ability to follow directions and policies.

(7) Requirements: Associates degree in criminology, criminal justice, police science or a related field, or two (2) years work experience in related field, plus New Mexico peace officer certification

(8) Preferred qualifications: New Mexico peace officer certification, plus three (3) years work experience, education and training in law enforcement; investigations or related field.

Y. Lead investigator:

(1) Purpose: This position provides advanced and complex investigative functions required by a district attorney's office, and manages the investigations unit within a district attorney's office.

(2) Supervision: Incumbent receives administrative direction from the district attorney.

(3) Examples of work performed: Incumbent manages a criminal investigations unit. Incumbent initiates and oversees criminal investigations which might include, but is not limited to: locating witnesses; serving subpoenas and other process documents; executing search warrants; interviewing witnesses; developing, researching, and following up on investigative leads; providing logistical assistance with witnesses and evidence; testifying in court; coordinating efforts with other law enforcement agencies; providing internal security within a district attorney's office as well as courtroom security; executing all powers and duties established by statute pertaining to peace officers; providing training to other investigators and law enforcement agencies; and supervising other staff; and performs other related job duties.

(4) Distinguishing characteristics: This is a management level position of the investigator series.

(5) Working conditions: Considerable amount of work is performed in field investigations outside the office that may require the prevention and detection of crime; some work is performed in an office environment; considerable physical effort may be

required. May be required to be on-call during non-working hours in order to respond to crime scenes. May encounter dangerous situations.

(6) Knowledge, skills, and abilities: This position requires significant knowledge of criminal law and procedures, and equipment; knowledge of surveillance techniques; interview and interrogation skills; investigatory skills; supervisory and management skills; writing skills; communication skills; ability to conduct training, establish and maintain effective working relationships with other law enforcement agencies; ability to interact effectively with the public; and the ability to follow directions and policies.

(7) Requirements: Bachelor's degree in criminology, criminal justice, police science or a related field, or four (4) years work experience in related field; which must include two (2) years supervision/ administration experience, plus New Mexico peace officer certification. Certification as a law enforcement instructor within one (1) year of entry into this position.

(8) Preferred qualifications: New Mexico peace officer certification, plus five (5) years work experience, education and training in law enforcement; investigations or related field.

Z. Program assistant:

(1) Purpose: This position provides support and assistance to special programs within a district attorney's office.

(2) Supervision: Incumbent receives supervision and guidance from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares, disburses, and maintains files and documents; arranges for services to be provided to clientele; maintains contact with clientele and other outside agencies as required; receives and monitors client payments; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the program series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system; knowledge of general office procedures and equipment; public relations and communication skills; basic math skills; good organizational skills; and the ability to follow direction and policies.

(7) Requirements: High school diploma or G.E.D, plus two (2) years of related work experience and education.

(8) Preferred qualifications: Any combination of related work experience and education totaling at least four (4) years.

AA. Program specialist:

(1) Purpose: This position provides support and assistance to special programs within a district attorney's office.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares disburses and maintains files and documents; assesses services to be provided to clientele; interviews and maintains contact with clientele; collaborates with other outside agencies as required; monitor program compliance and receives and monitors client payments; may be required to testify in court and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the program series, which primarily involves the provision of direct services to clients.

(5) Working conditions: Work is performed in an office environment, but requires periodic site visits. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system; knowledge of general office procedures and equipment; public relations and communication skills; basic math skills; good organizational skills; ability to supervise and counsel clients, and the ability to follow directions and policies.

(7) Requirements: Bachelor's degree in criminal justice, social science or related field, or at least four (4) years work experience and education in the criminal justice system, criminal law, human services or other related field.

(8) Preferred qualifications: Bachelor's degree plus two (2) years related work experience and education in the criminal justice system, criminal law, human services or other related field.

BB. Program administrator:

(1) Purpose: This position provides implementation and administration of special programs within a district attorney's office.

(2) Supervision: Incumbent receives administrative supervision from the assigned supervisor. The incumbent may supervise other office staff.

(3) Examples of work performed: Incumbent assesses and provides services to clientele; maintains contact and interviews clientele; collaborates with other outside agencies as required; monitors program compliance and follows up with community service providers; may be required to testify in court; may assist with audit reports and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the program series, which primarily involves the provision of direct services to clients and may or may not be a supervisory position.

(5) Working conditions: Work is performed primarily in an office environment, but does require periodic site visits. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system; effective public relation and communication skills; good organizational skills; may require management and supervisory skills; ability to supervise and counsel clients; and the ability to follow policies and procedures.

(7) Requirements: Bachelor's degree plus two (2) years related work experience and education in, criminal justice, criminal law, human services, social sciences or related field.

(8) Preferred qualifications: Bachelor's Degree plus four (4) years related work experience in criminal justice, criminal law, human services, social sciences or other related field.

CC. Prosecution assistant:

(1) Purpose: This position provides support to prosecutors by facilitating the development and preparation of cases.

(2) Supervision: Incumbent receives supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent performs limited legal research and case preparation duties to include location of witnesses; screen incoming cases for necessary reports and other correspondence; serves subpoenas and other process documents; organizes investigative files; prepares exhibits; drafts and prepares legal correspondence; provides logistical assistance related to witnesses and evidence; interacts with law enforcement and court personnel; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the prosecution support series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system, knowledge of general office procedures and equipment; some analytical research and writing skills, organizational skills, basic computer skills; effective public relations and communication skills; and the ability to follow directions and policies.

(7) Requirements: High school diploma or G.E.D. plus at least two years work experience and education in a related field.

(8) Preferred qualifications: Associate degree in criminal justice or paralegal studies, plus two years work experience and education in a related field.

DD. Prosecution specialist:

(1) Purpose: This position provides support to prosecutors by facilitating the development and preparation of cases.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent performs advanced legal research and case preparation duties to include location of, and interview witnesses; screen incoming cases for necessary reports and other correspondence; serves subpoenas and other process documents; organizes investigative files; prepares exhibits; drafts and prepares court documents and legal correspondence; provides logistical assistance related to witnesses and evidence; coordinates prosecution efforts with law enforcement personnel; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the prosecution support series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system, knowledge of general office procedures and equipment; substantial analytical research and writing skills, organizational skills, supervisory skills, effective computer skills; effective public relations and communication skills; and the ability to follow directions and policies.

(7) Requirements: Associates degree in criminal justice, paralegal studies or other related field and two years work experience and education in a related field; or at least four years of work experience and education in a related field.

(8) Preferred qualifications: Bachelor's degree in criminal justice or paralegal studies, plus two years work experience or education in a related field.

EE. Secretary:

(1) Purpose: This position provides basic secretarial assistance to office staff.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent types documents and correspondence; maintains calendars; files; answers telephones; prepares and maintains case files; contacts witnesses; performs data entry; transcribes tapes; assists office visitors; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the secretarial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of general office equipment, math, grammar and reading comprehension; effective word processing skills, telephone etiquette skills, filing skills; ability to communicate effectively, and follow directions and policies.

(7) Requirements: High school diploma or GED and one (1) year work experience in related field.

(8) Preferred qualifications: Two (2) years work experience and education in related field.

FF.Senior secretary:

(1) Purpose: This position provides secretarial assistance to office staff.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares legal documents and correspondence; assists in trial preparation; performs data entry; transcribes tapes; maintains calendars; prepares and maintains case files; responds to telephone

inquiries; contacts witnesses; assists office visitors; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the secretarial series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires knowledge of the criminal justice system and general office equipment; good typing and word processing skills, filing skills, and organizational skills; ability to communicate effectively and follow directions and policies.

(7) Requirements: High school diploma or GED, plus two (2) years work experience in a related field.

(8) Preferred qualifications: Three (3) years work experience and education in a related field.

GG. Administrative secretary:

(1) Purpose: This position provides advanced secretarial assistance to office staff.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor, and may supervise other staff.

(3) Examples of work performed: Incumbent prepares legal documents and correspondence; performs data entry; assists in trial preparation; attends court hearings; transcribes tapes; maintains calendars; assists in office administrative functions; prepares and maintains case files; interacts with external agencies; responds to telephone inquiries; contacts witnesses; assists office visitors; assists, trains and supervises other secretaries; and performs other related job duties.

(4) Distinguishing characteristics: This is an advanced level position of the secretarial series, and may include supervisory duties.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system and general office equipment; effective typing and word processing skills, filing skills, supervisory skills, and organizational skills; ability to communicate effectively and to follow directions and policies.

(7) Requirements: High school diploma or GED, plus three (3) years work experience in a related field.

(8) Preferred qualifications: Four (4) years work experience and education in a related field.

HH. Supervising secretary:

(1) Purpose: This position provides supervision and coordination of all secretarial functions within an office or division.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor, and is required to supervise other staff.

(3) Examples of work performed: Incumbent prepares legal documents and correspondence; performs data entry; assists with trial preparation; transcribes tapes; maintains calendars; prepares and maintains case files; interacts with external agencies; responds to telephone inquiries; contacts witnesses; assists office visitors; supervises and trains secretarial/ clerical staff; conducts performance evaluations; assists in office administrative functions; makes recommendations concerning personnel matters and staff assignments; delegates tasks to secretarial/clerical staff; and performs other related job duties.

(4) Distinguishing characteristics: This is a supervisory level position of the secretary series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and travel may be required.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system, general office equipment and the day-to-day operations of a district attorney's office; effective supervisory skills, organizational skills, typing and word processing skills, filing skills; ability to communicate effectively and to follow directions and policies.

(7) Requirements: High school diploma or GED, plus four (4) years work experience in a related field.

(8) Preferred qualifications: Six (6) years work experience and education in a related field, with at least three (3) years being within a criminal justice or related agency.

II. Victim advocate:

(1) Purpose: This position provides services to victims and witnesses of crimes.

(2) Supervision: Incumbent receives close supervision from the assigned supervisor.

(3) Examples of work performed: Incumbent prepares victim and witness notification of court and non-court events; creates, organizes and maintains case files to include duties related to the maintenance of electronic files in the office case management system; assists victims with the completion of various documents related to restitution, compensation, and the return of property to victims; educates victims and witnesses regarding the criminal justice process; may accompany victims and witnesses to court proceedings; may provide direction to program volunteers; networks with community resources; and performs other related job duties.

(4) Distinguishing characteristics: This is an entry level position of the victim advocate series.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required.

(6) Knowledge, skills, and abilities: This position requires some knowledge of the criminal justice system, court proceedings, and procedures within the district attorney's office; communication and organizational skills; ability to prepare reports and correspondence; ability to work with diverse individuals and agencies.

(7) Requirements: Associates degree in criminal justice, social sciences, or related field or at least two (2) years work experience in the criminal justice system, criminal law, human services, or other related field.

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field; or four (4) years work experience in a related field.

JJ. Senior victim advocate:

(1) Purpose: This position provides services to victims and witnesses of crimes.

(2) Supervision: Incumbent receives general supervision from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent prepares victim and witness notification of court and non-court events; creates, organizes and maintains case files to include duties related to the maintenance of electronic files in the office case management system; assists victims with the completion of various documents related to restitution, compensation, and the return of property to victims; educates victims and witnesses regarding the criminal justice process; accompany victims and witnesses to court proceedings; assists with the organization of volunteer training; networks with

community resources and law enforcement agencies; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the victim advocate series which may be designated to provide services to specialized groups of victims.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to be on-call during non-working hours.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system, court proceedings, and procedures within the district attorney's office; effective communication and organizational skills; supervisory skills; ability to prepare statistical and routine reports and correspondence; and the ability to work with diverse individuals and agencies.

(7) Requirements: Bachelor's degree in criminal justice, social sciences, or related field or at least four (4) years work experience in the criminal justice system, criminal law, human services, or other related field.

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field plus two (2) years work experience in criminal justice, criminal law, human services, or other related field.

KK. Victim advocate coordinator:

(1) Purpose: This position provides services to victims and witnesses of crimes and may provide management and oversight of a victim advocate unit.

(2) Supervision: Incumbent receives administrative and general direction from the assigned supervisor. Incumbent may supervise other staff.

(3) Examples of work performed: Incumbent prepares victim and witness notification of court and non-court events; creates, organizes and maintains case files to include duties related to the maintenance of electronic files in the office case management system; assists victims with the completion of various documents related to restitution, compensation, and the return of property to victims; educates victims and witnesses regarding the criminal justice process; accompany victims and witnesses to court proceedings; assists with the organization of volunteer training; networks with community resources and law enforcement agencies; may supervise and manage other staff; may be required to handle more complex cases; may be required to author grant proposals; and performs other related job duties.

(4) Distinguishing characteristics: This is a mid-level position of the victim advocate series, which may be designated to provide services to specialized groups of victims and may manage a victim advocate unit.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to be on-call during non-working hours.

(6) Knowledge, skills, and abilities: This position requires considerable knowledge of the criminal justice system, court proceedings, and procedures within the district attorney's office; effective written and verbal communication skills, organizational skills, supervisory skills; ability to prepare statistical and routine reports and correspondence; ability to work with diverse individuals and agencies; grant writing and administration abilities.

(7) Requirements: Bachelor's degree in criminal justice, social sciences, or related field plus two (2) years work experience in the criminal justice system, criminal law, human services; or at least six (6) years work experience in related fields .

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field plus four (4) years work experience in the criminal justice system, criminal law, human services, or other related field.

LL. Victim advocate administrator:

(1) Purpose: This position provides services to victims and witnesses of crimes and manages the victim advocate program of a district attorney's office.

(2) Supervision: Incumbent receives administrative direction from the district attorney or their designee. Incumbent shall supervise other staff.

(3) Examples of work performed: Incumbent manages the victim advocate program including program budget preparation and administration, employee supervision and development, administration of federally funded programs, development of program policies and procedures, coordination of volunteer program, acts as liaison with other community organizations; educates victims and witnesses regarding the criminal justice process; accompany victims and witnesses to court proceedings; organizes volunteer/intern training; networks with community resources and law enforcement agencies; may be required to handle more complex cases; authors grant proposals; and performs other related job duties.

(4) Distinguishing characteristics: This is a management position of the victim advocate series which may be designated to provide services to specialized groups of victims and manages a victim advocate program.

(5) Working conditions: Work is performed in an office environment. Some physical effort and frequent travel may be required. May be required to be on-call during non-working hours.

(6) Knowledge, skills, and abilities: This position requires extensive knowledge of the criminal justice system, court proceedings, and procedures within the district attorney's office; effective writing and verbal communication skills, organizational skills, effective management skills; ability to prepare statistical and routine reports and correspondence; ability to work with diverse individuals and agencies; and grant writing and administration abilities.

(7) Requirements: Bachelor's degree in criminal justice, social sciences, or related field plus four (4) years work experience in the criminal justice system, criminal law, human services, or other related field which must include direct services to victims; or at least eight (8) years work experience in related fields, which must include two (2) years supervision/ administration experience.

(8) Preferred qualifications: Bachelor's degree in criminal justice, social sciences, or related field plus six (6) years work experience in the criminal justice system, criminal law, human services, or other related field which must include at least one (1) year direct service to victims, and which must include two (2) years supervision/administration experience.

[10.4.14.8 NMAC - Rp, NMDAA 91-1.13, 06/30/2010]

CHAPTER 5: STATE POLICE

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2-99: [RESERVED]

PART 100: STANDARD OF CONDUCT

10.5.100.1 ISSUING AGENCY:

Department of Public Safety, State Police Division

[5-15-98; 10.5.100.1 NMAC - Rn & A, 10 NMAC 5.100.1, 6-30-04]

10.5.100.2 SCOPE:

All commissioned officers of the state police division of the New Mexico department of public safety.

[5-15-98; 10.5.100.2 NMAC - Rn, 10 NMAC 5.100.2, 6-30-04]

10.5.100.3 STATUTORY AUTHORITY:

Section 29-2-1.1-G NMSA 1978 defines the New Mexico state police board as meaning the secretary of the department of public safety. Section 29-2-4-1 NMSA 1978 directs the New Mexico state police board to promulgate rules and regulations governing the employment and operating practices for employees of the state police division. Section 29-2-22 NMSA 1978 assigns authority to the New Mexico state police board to promulgate rules and regulations as standards of conduct for members of the New Mexico state police; it also directs a copy of these rules to be given to each member and to be displayed at each station of the department.

[5-15-98; 10.5.100.3 NMAC - Rn, 10 NMAC 5.100.3, 6-30-04]

10.5.100.4 DURATION:

Permanent

[5-15-98; 10.5.100.4 NMAC - Rn, 10 NMAC 5.100.4, 6-30-04]

10.5.100.5 EFFECTIVE DATE:

December 22, 1993, unless a later date is cited at the end of a section.

[12-23-93, 5-15-98; 10.5.100.5 NMAC - Rn & A, 10 NMAC 5.100.5, 6-30-04]

10.5.100.6 OBJECTIVE:

The objective of Part 100 of Chapter 5 is to provide standards of conduct for commissioned officers of the state police division, as authorized by the provisions of Section 29-2-22 NMSA 1978.

[5-15-98; 10.5.100.6 NMAC - Rn, 10 NMAC 5.100.6, 6-30-04]

10.5.100.7 DEFINITIONS:

A. "Authorized leave" means any type of leave approved by the employee's supervisor.

B. "Days" means, unless otherwise stated, that days will be considered to be working days, or days which are regularly scheduled to be worked. For suspension purposes, a holiday is considered to be a working day.

C. "Dismissal" means the act of permanently terminating the service of a member; a discharge or removal from office, for cause.

D. "Employee" means a commissioned officer with the department of public safety.

E. "Firearm" means one of the following:

(1) revolver or semi-automatic handgun, issued or personal; must be a .38, .357 Magnum, .380, 9mm, 45 ACP issued caliber, or another caliber which is approved by the appropriate division director and the deputy secretary of enforcement/chief;

(2) shotgun, issue, 12 gauge;

(3) rifle, issue caliber .223/5.56mm, 308/7.62mm, or other caliber authorized by the appropriate division director and the deputy secretary/chief.

(4) special team weapon.

F. "Gratuity" means something voluntarily given in return for a favor, or especially for a **service**.

G. "Order" means an authoritative command, a mandate, either verbal or written.

H. "Policy" means a mandatory guide designated to meet a situation and circumstance.

I. "Procedures" means a written method which delineates the implementation of a policy.

J. "Reprimands" means authoritative reproof, censure or rebuke.

K. "Suspension" means the act of temporarily denying any employee the privilege of performing his duties; a forced leave of absence without any pay.

[5-15-98; 10.5.100.7 NMAC - Rn, 10 NMAC 5.100.7, 6-30-04]

10.5.100.8 STANDARD OF CONDUCT:

All employees are expected to adhere to the provisions of this rule and are subject to such disciplinary action for violation of any of these rules as deemed appropriate by the secretary of the department of public safety.

A. Employees shall:

(1) obey all laws of the United States, or any state and local jurisdiction in which the employees are present;

(2) obey all rules and regulations, policies, procedures, directives and lawful orders issued by supervisors; and

B. Employees shall satisfactorily perform their duties and assume the responsibilities of their positions. Unsatisfactory performance may be demonstrated by violating any one of the following provisions

- (1) a lack of knowledge of the application of laws required to be enforced;
- (2) an unwillingness or inability to perform assigned tasks;
- (3) the failure to conform to work standards established to the employees rank, grade or position as set forth in the job specifications.

C. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Conduct unbecoming an employee shall include that which brings the department into disrepute or reflects discredit upon the employee as a member of the department, or that which impairs the operation or efficiency of the department or employee. These shall include but not be limited to the following:

(1) Employees shall not consort with or, in any way, fraternize with persons of known bad character or ill repute in a manner which clearly conflicts with the duties of the employees or functions of the department unless such association is a necessary part of the employees official duties.

(2) Employees shall not feign illness or injury, falsely report themselves ill or injured, or otherwise deceive or attempt to deceive any official of the department as to the condition of their health.

(3) Employees shall carry out all proper orders given them by supervisors in the line of duty without hesitation or criticism. Employees will take up matters affecting themselves, their position and departmental business with their immediate supervisor only, or through proper channels.

(4) Employees shall promptly obey any lawful orders of any supervisor. This will include orders relayed from a supervisor by an employee of the same or lesser rank, or transmitted via the police radio, telephone, or teletype or other form of communication. The failure or refusal to obey any lawful order shall be deemed insubordination.

(5) Employees who are given an otherwise proper order which is in conflict with a previous order, rule, regulation or directive shall respectfully inform the supervisor issuing the conflicting order. If the supervisor issuing the order does not alter or retract the conflicting order, the new order shall stand. Under these circumstances, the responsibility for the conflict shall be upon the supervisor. Employees shall obey the conflicting order and shall not be held responsible for disobedience of the order, rule, regulation or directive previously issued.

(6) Employees shall not obey any order which they know or should know would require them to commit any illegal act. If in doubt as to the legality of an order, employees shall request the issuing supervisor to either clarify the order or to confer with higher authority.

(7) All employees shall be courteous to the public, supervisors and all other employees, as well as any person the employee has contact with during the performance of his/her duties and responsibilities. Employees shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, sex, lifestyle or similar characteristics. When any person requests assistance or advice, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon.

(8) Employees shall maintain a level of good moral character in their personal and business affairs, which is in keeping with the highest standards of the law enforcement profession. Employees shall not participate in any incident which impairs their ability to perform their duties or impedes the operation of the department or causes the department to be brought into disrepute.

(9) Employees will not set or accept appearance bonds regardless of any delegation of presumed authority by a magistrate or judge permitting the officer to accept appearance bonds.

D. Employees will properly care for and maintain all state equipment issued to or used by the employee.

E. An employee will not represent himself/herself as speaking on behalf of the department of public safety, in any court proceeding, civil or criminal, for purpose of being a character witness.

F. All employees are expected to conduct themselves accordingly as specified.

G. Employees will concern themselves strictly with tasks assigned.

(1) Sleeping on duty is not permitted.

(2) Forms of entertainment which distract the employees from the performance of their duty are not allowed.

(3) Unless otherwise authorized, employees will not leave assigned locations during a tour of duty.

(4) Employees will speak the truth at all times and in cases where they would not be allowed to divulge facts, they will so state.

(5) Employees will not engage in any form of gambling while on duty except as required in the performance of duty or will not engage in any form of illegal gambling while off duty.

(6) Employees will not use chewing gum or tobacco by any method when in direct contact with the public in an official capacity.

H. Employees will be punctual in reporting for duty at the time designated by their supervisor and not be absent from duty without authorized leave.

(1) An employee shall not leave this state for official business without permission from the chief. If the out-of-state trip is in response to subpoena, a copy of the subpoena should be sent to the chief's office. If the trip was to testify and no subpoena was served, a copy of a subpoena should be brought back and forwarded to the chief's office.

(2) An employee shall not leave his/her district or station, while on duty, until notification has been given to his/her immediate supervisor. The employee shall furnish his/her supervisor with an itinerary and places where he/she can be contacted in case of emergency calls. In cases of fresh pursuit of a fugitive, it is not necessary to secure permission to leave the district or station.

I. Employees shall carry their badges and commissions on their person at all times, while on duty or while carrying a loaded concealed firearm off duty as provided by DPS policy and procedures.

(1) They shall furnish their name to any person requesting that information when they are on duty or while representing themselves in an official capacity.

(2) Exception: When the withholding of such information is necessary for the performance of police duties.

J. Employees shall submit all necessary reports and official documents on time and in accordance with established documents on time and in accordance with established departmental or other procedures. Reports and documents submitted by employees shall be truthful and complete, and no employees shall knowingly enter or cause to be entered any inaccurate, false, or improper information. All DPS law enforcement reports, records and evidence are privileged and confidential and may be released only upon written authority of the secretary, or his verbal authority, if written authority cannot reasonably be obtained except as required by court order.

K. [RESERVED]

L. All employees are expected to meet their financial obligations in a timely manner and live within their financial means. This does not preclude any employee from properly proceeding in bankruptcy.

M. Any employee wishing to secure any type of supplemental employment must secure written permission from the secretary. This supplemental employment includes any tasks performed for which the employee is compensated.

(1) Such supplemental employment will not interfere in any way with the employees primary duties and responsibilities as a department of public safety employee.

(2) When requesting permission from the secretary, the employee must specify hours expected to be worked, type of business, location and duration of employment.

(3) If permission is granted, the secretary may impose conditions on the supplemental employment.

(4) This regulation applies to all employees including those on any type of leave or suspension.

N. All employees will be physically and mentally fit at all times. The secretary may order a physical or psychological examination to assure compliance with this rule.

O. Financial gain by employees. Employees will not accept gifts, gratuities, bribes, loans or rewards which are intended to influence the employee in the performance of their duties and responsibilities or for tasks performed as part of their duties. The employee cannot retain rewards for personal use, but rather will forward the reward to the secretary's office for appropriate disposition.

P. Employees will not make any statements in any form which adversely impacts or impairs the efficient operations of the department.

Q. The following regulations are for the purpose of providing direction and guidance to all employees as concerns political activity.

(1) While off duty and out of uniform, employees shall be permitted to:

(a) express opinion as individuals on political issues and candidates;

(b) attend political conventions, rallies, fund raising functions and similar political gatherings in an unofficial capacity;

(c) actively engage in any non-partisan political function, partisan meaning an adherent to a party, faction, cause or person; actively engaging in activities of private,

fraternal and/or social organizations which do not conflict with the mission of the department of public safety and associated responsibilities is permissible;

(d) sign political petitions as individuals;

(e) make financial contributions to political organization;

(f) perform non-partisan duties as prescribed by state or local laws;

(g) hold membership in a political party and participate in its functions to the extent consistent with the law and consistent with this regulation;

(h) otherwise participate fully in public affairs, except as provided by law, to the extent that such endeavors do not impair the neutral and efficient performance of official duties, or create real or apparent conflicts of interest.

(2) Employees are prohibited at all times from:

(a) using their official capacity to influence, interfere with, or affect the results of an election;

(b) assuming active roles in management, organization or financial activities of partisan political clubs, campaigns or parties;

(c) serving as officers of partisan political parties and clubs;

(d) becoming candidates for, seeking election to, or running for, or campaigning for, a partisan elective public or political office;

(e) soliciting votes in support of, or in opposition to, any partisan candidates;

(f) serving as delegates to a political party convention;

(g) endorsing or opposing a partisan candidate for public office in a political advertisement, broadcast or campaign literature;

(h) initiating or circulating a partisan nominating petition;

(i) organizing, selling tickets to, or actively participating in a fund-raising function for a partisan political party or candidate;

(j) addressing political gatherings in support of, or in opposition to, a partisan candidate;

(k) otherwise engaging in prohibited partisan activities on the federal, state, county or municipal level.

R. Employees will not seek self-publicity through the news media or furnish information for the primary purpose of personal publicity.

S. Every employee who has a financial interest which he believes, or reasonably should have known, may be affected by actions of the department shall disclose the precise nature and value of such interest. The disclosure shall be made in writing to the secretary of state before entering employment, and during the month of January every year thereafter.

T. Employees will not use their position or permit use of their position for personal or financial gain whether directly or indirectly for themselves or any other individual or group.

U. The following apply to regulate the authorized use of a firearm:

(1) to kill a critically wounded or dangerous animal, when other disposition is impractical; or

(2) to give an alarm or call for assistance for an important purpose when no other means can be used; or

(3) for practice, preferably on an approved range under the auspices of an approved rangemaster; however, should an approved rangemaster not be available, the employee may, at his discretion, still utilize the approved range for target practice;

(4) an employee shall draw or display his firearm only for a legal use or for inspection (including cleaning, oiling and storing);

(5) as authorized by department use of force and carrying of firearms policies or any other departmental policy and procedure.

V. All employees will use the utmost care and caution in handling firearms at all times in an effort to prevent the accidental discharge of their weapons or any weapons.

W. In every instance in which an employee discharges a firearm while on duty, other than provided in Paragraph (3) of Subsection U of 10.5.100.8 NMAC, whether the discharge is accidental or not, the employee will, without delay, make a written report through channels to the chief. The office of professional standards and internal affairs will be apprised of all incidents of discharged firearms other than target practice.

X. The duty issued weapon will not be used off-duty except for duty related matters.

Y. Employees will maintain a neat appearance in groom and dress.

Z. Employees will maintain their hair style so as not to interfere with the proper wearing of all standard head gear, and hair will be kept neat, clean and trim.

(1) Male employees will keep hair cut assuring that the back of the hair does not touch the shirt collar, the sides do not bulk at or extend over the ear, and front is combed to the side or back and will not protrude below the headband.

(a) Sideburns will be squared and will not extend below the lowest part of the exterior ear opening or tragus and will end with a clean shaven horizontal line.

(b) All male employees will be clean shaven. Goatees, beards or mustaches are not permitted.

(c) Exceptions are permitted if required in the performance of the employee's duty.

(2) Female employees will keep hair cut assuring that the back and sides do not touch the shirt collar and the front and back (e.g., ponytails, braids, etc.) will not protrude below the headband.

(3) Hairpieces or wigs are not permitted unless necessary to cover an uncommon baldness or to accommodate a medical condition. If worn, wig or hairpiece will be properly secured so as not to handicap the proper wearing of the headgear and must keep the standards stated in Paragraphs (1) and (2) of Subsection Z of 10.5.100.8 NMAC above.

(4) Cosmetics for female employees are permitted if in good taste using conservative natural looking cosmetics.

AA. All employees will dress in appropriate civilian clothes when appearing in court for purposes of any trial, except when appearing for trial or any proceeding in magistrate, metropolitan or municipal courts, unless permission is obtained from the chief to appear in uniform.

(1) Male employees will dress in conservative sport coat or suit with tie and will appear with shoes shined and clothes cleaned and neatly pressed.

(2) Female employees will dress in conservative pantsuit, skirt and blouse, or dress, each of which must be properly coordinated as well as clean and neatly pressed.

(3) Employees may dress in the uniform when appearing at any proceedings in magistrate, metropolitan or municipal court, subject to the reasonable approval of the employee's immediate supervisor as to whether it is appropriate to appear in uniform in a specific proceeding.

(4) For purposes of appearing at proceedings other than trial (e.g., grand jury, arraignment, hearings or motions, preliminary hearing, etc.), the employee may dress in uniform subject to the approval of the employee's immediate supervisor based on the supervisors reasonable discretion.

(5) In any case, employees will not appear in court in uniform unless need for appearance is relative to their duties and responsibilities.

BB. Military courtesy will be adhered to by employees.

CC. The hand salute will be used in the following circumstances:

(1) Employees in uniform will salute the governor of this state (or other states, where applicable), the chief of the New Mexico state police, deputy chiefs, majors, captains and lieutenants; except when the ranking officers are in civilian clothing, the salute is not required. It will be mandatory to salute these officials only the first time seen each day.

(2) As a gesture of common courtesy, uniformed employees will salute high-ranking military officers.

(3) Uniformed employees, upon approach of the national colors, will stand at attention and execute the hand salute. The time of the salute is when the colors approach within six paces of ones position, holding the salute until the colors have been carried six paces beyond. For the purpose of interpretation, the national colors will be any American flag. Flags other than the national colors will not be saluted.

(4) Uniformed employees will stand at attention and give the hand salute at the first note of the national anthem and hold the salute until the last note of the music. During formal raising and lowering of the national colors, the same procedure will be followed as in the playing of the national anthem. When the national anthem is played and national colors are not flown, uniformed employees will stand at attention, facing the music, saluting at the first note and holding the salute until the last note.

(5) General procedures for salutes are as follows:

(a) Normally, the hand salute shall be rendered only from a standing position of attention, except that a ranking employee being saluted need not rise from a seated position to return a salute.

(b) A uniformed employee, upon reporting to the chief, will remove his headdress before entering the chief's office. The employee will then assume the position of attention in front of the chief and salute. The employee will remain at attention unless otherwise ordered by the chief. If the employee is given permission to stand at ease or to be seated, the employee will, at the conclusion of the business, again salute the chief from the position of attention, and depart.

(c) The driver of a motor vehicle will not salute if the vehicle is in motion. If it is stopped, he will salute without arising from his seat. Drivers of moving vehicles will not be saluted. Passengers in moving or stationary vehicles will salute on the same

occasions as when standing or walking, but they need not rise or alight from the vehicle, except as later provided in these rules.

(d) Uniformed employees in a standing vehicle, upon the approach of the national colors, or upon the first note of the national anthem, will alight from the vehicle and salute from the position of attention. The driver of the vehicle will remain in the seat and salute.

(e) Uniformed employees in a moving vehicle, upon passing the national colors, shall salute the colors, except that the driver shall not salute.

DD. Employees in civilian clothing will adhere to the following procedures for salutes: Employees in civilian clothing will salute the national colors and the national anthem by standing at attention, if uncovered. If covered, they will stand at attention and uncover, holding the headdress over the heart with the right hand.

EE. The hand salute will not be required if it would interfere with duty, or in emergency situations.

FF. Employees will abide by the following procedures regarding the removal of headdresses:

(1) Employees will remove their headdress in churches, formal or informal gatherings when seated, when in restaurants, funeral parlors, hospital rooms, when entering courts and while in private residences.

(2) When the headdress is removed, it shall be placed underneath the left arm at the elbow, with the badge foremost. (This shall not exclude the placing of the headdress on a hat rack or other proper place.)

(3) Uniformed employees will remove their headdress and bow their heads during prayer, except officers assigned to honor guard, standing at attention or in military formation.

GG. The preceding rules for saluting and courtesy are intended to direct a correct behavior of employees under normal conditions, and will not apply in any emergency when police duty is being performed which requires the undivided attention of the employee.

HH. Supervisors will instruct employees on special assignments as to military courtesy if it is likely to be required during any occasion.

II. Displaying of the flag:

(1) The flag will be displayed at half staff in accordance with Presidential Proclamation number 3044.

(2) The flag will also be displayed at half staff when any law enforcement officer in the state of New Mexico is killed in the line of duty. The flag will fly at half staff once the department is assured of the officers death and will be returned to full staff on the day after the funeral.

(3) The flag will not be displayed during inclement weather.

JJ. Disciplinary action.

KK. The chief or secretary will have the ultimate discretion to decide on penalties subject to mitigating or aggravating circumstances.

LL. At least one copy of each official written reprimand shall be placed in the offenders headquarters personnel file, one copy to the employees supervisor, one copy to the chief and other copies as needed. Reprimands shall be dated and signed by the offender and shall not be used for purposes of this section for more than one calendar year after being issued.

MM. Repeated violations of rules and regulations of this department, or any other course of action or conduct indicating an employee has little or no regard for the employees obligations as set forth in the employees job specifications or in these rules and regulations or any adverse and unreasonable course of conduct or action which impairs the operations or efficiency of the department may be cause for dismissal. Repeated violations must be supported by documented evidence. This shall apply regardless of the severity of the offenses, and regardless of whether these violations are of the same type.

NN. The following pertains to disciplinary proceedings: Disciplinary proceedings pertaining to members of the New Mexico state police holding a permanent commission shall be in accordance with Section 29-2-11, NMSA, 1978 and 10.5.500 NMAC.

OO. The following procedure shall be followed when a permanent employee is being considered for suspension for a period not to exceed thirty (30) days.

(1) The secretary and chief will advise the employee of their determination. If the employee accepts the decision, the penalty will be carried out.

(2) Should the employee wish to appeal the decision, he will request such appeal, in writing to the chief, within five days of receipt of the letter of suspension.

(3) There is created for these purposes a disciplinary hearing panel (DHP) which will timely schedule a hearing on the allegations contained in the chiefs letter of suspension. The DHP will consist of a person or persons appointed by the chief.

(4) The DHP will hear testimony regarding both sides of the issues and make its determination based on the evidence presented before it. The panel will dictate any other procedures to be followed. A record or tape recording shall be made of these proceedings. As concerns the applicability of the New Mexico Rules of Evidence to these proceedings, a lesser standard may be utilized by the DHP, although introduction of any evidence must be based on a reasonable prudent man standard, i.e. the type relied upon reasonably prudent men in the conduct of their affairs. Private counsel may not be present before the DHP. The DPS office of legal affairs may be present to advise the DHP only on questions of law.

(5) Within ten (10) days after the completion of the hearing, the DHP will make written findings of fact and conclusions of law which will then be presented to the chief. Should the DHP choose to recommend an amendment to this penalty, it may do so by stating in writing the justification for the recommendation.

(6) After the DHP report is made to the chief, the chief and the secretary will impose the final discipline. No further appeal shall be allowed.

PP. [RESERVED]

QQ. Pursuant to Section 29-2-9 NMSA 1978, all New Mexico state police officers on a probationary status may be removed or suspended at the discretion of the chief. The employee, within five days of receipt of notice of intended action by the chief to remove or suspend may request, in writing, an opportunity to be heard by the chief.

[5-15-98; 10.5.100.8 NMAC - Rn & A, 10 NMAC 5.100.8, 6-30-04]

PART 101-199: [RESERVED]

PART 200: PERSONNEL

10.5.200.1 ISSUING AGENCY:

Department of Public Safety, State Police Division.

[12/31/98; Recompiled 11/30/01]

10.5.200.2 SCOPE:

All commissioned officers of the state police division of the New Mexico department of public safety.

[12/31/98; Recompiled 11/30/01]

10.5.200.3 STATUTORY AUTHORITY:

Section 29-2-1.1(G) NMSA 1978 defines the New Mexico state police board as meaning the secretary of the department of public safety. Section 29-2-4.1 NMSA 1978 directs the New Mexico state police board to promulgate rules and regulations governing the employment and operating practices for employees of the state police division.

[12/31/98; Recompiled 11/30/01]

10.5.200.4 DURATION:

Permanent.

[12/31/98; Recompiled 11/30/01]

10.5.200.5 EFFECTIVE DATE:

June 1, 1987, unless a later date is cited at the end of a section or paragraph.
Repromulgated in NMAC format effective December 31, 1998.

[6/1/87, 12/31/98; 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.]

10.5.200.6 OBJECTIVE:

The objective of Part 200 of Chapter 5 is to provide standards for personnel practices within the state police division, as authorized by the provisions of Section 29-2-4.1 NMSA 1978.

[12/31/98; Recompiled 11/30/01]

10.5.200.7 DEFINITIONS:

[RESERVED]

[12/31/98; Recompiled 11/30/01]

10.5.200.8 PERSONNEL:

A. Appointments: All state police commissioned officers of the New Mexico state police shall be appointed by the chief and the appointments ratified by the secretary.

(1) The appointment of commissioned officer personnel may commence after satisfactory completion of all phases of recruit training, statutory requirements and other requirements of the department as determined by the chief.

(a) All recruits, while attending recruit school, serve at the pleasure of the chief.

(b) The physical requirements of recruits are established by the state police training bureau subject to approval of the office of the chief.

(2) Prior to assignment to attend recruit school, all applicants must have a satisfactory background investigation completed.

(3) No person shall be hired as the clerk, deputy or assistant to the current chief or deputy chiefs if they are related to the chief or deputy chiefs within the third degree of consanguinity or affinity, without prior approval of the secretary of the department of public safety. This provision does not apply where the compensation of such clerk, deputy or assistant shall be at the rate of \$600.00 per year or less.

B. Probationary status: All full-time personnel will be placed on probationary status at the time of their appointment or promotion.

(1) All personnel will serve a two-year probationary period upon appointment.

(2) Subject to the provisions of 8.2.4 [now Paragraph (4) of Subsection B of 10.5.200.8 NMAC], inclusive, any probationary period may be extended upon recommendation of the chief with the concurrence of the secretary.

(3) Commissioned personnel promoted to sergeant, lieutenant, or captain will serve a probationary period of not less than one year. Officers in exempt ranks (major, deputy chief, chief) do not serve on probation.

(4) If the employee fails to satisfactorily perform the duties and responsibilities of the promoted position during the probationary period, the probationary period may be extended or the employee returned to the former or like position, as determined by the chief, or other action pursuant to Part 100, the Standard of Conduct. Even if any prescribed probationary periods have expired, an employee shall remain on probation until the chief executes written confirmation that the employee has satisfactorily, as determined by the chief, completed the probationary period.

C. Exempt promotions: Promotions to major or deputy chief are exempt promotions and discretionary with the chief.

(1) The exempt rank is essentially a temporary rank for an administrative staff position granted to an officer.

(2) The incumbent, in the exempt rank, will retain his permanent rank status and, if removed from an exempt rank, will return to a rank no less than his permanent rank.

(3) An officer who holds an exempt rank shall enjoy all the privileges and prestige of the rank as though it were a permanent rank.

(4) The incumbent in the exempt rank holds the position and serves at the pleasure of the chief.

[12/31/98; Recompiled 11/30/01]

PART 201-399: [RESERVED]

PART 400: VEHICLES AND EQUIPMENT

10.5.400.1 ISSUING AGENCY:

Department of Public Safety, State Police Division

[12/31/98; 10.5.400.1 NMAC - Rn, 10 NMAC 5.400.1, 7/16/2008]

10.5.400.2 SCOPE:

All commissioned officers of the state police division of the New Mexico department of public safety.

[12/31/98; 10.5.400.2 NMAC - Rn, 10 NMAC 5.400.2, 7/16/2008]

10.5.400.3 STATUTORY AUTHORITY:

Section 29-2-1.1(G) NMSA 1978 defines the New Mexico state police board as meaning the secretary of the department of public safety. Section 29-2-4.1 NMSA 1978 directs the New Mexico state police board to promulgate rules and regulations governing the employment and operating practices for employees of the state police division.

[12/31/98; 10.5.400.3 NMAC - Rn, 10 NMAC 5.400.3, 7/16/2008]

10.5.400.4 DURATION:

Permanent

[12/31/98; 10.5.400.4 NMAC - Rn, 10 NMAC 5.400.4, 7/16/2008]

10.5.400.5 EFFECTIVE DATE:

June 1, 1987, unless a later date is cited at the end of a section.

[6/1/87, 12/31/98; 10.5.400.5 NMAC - Rn & A, 10 NMAC 5.400.5, 7/16/2008]

10.5.400.6 OBJECTIVE:

The objective of Part 400 of Chapter 5 is to provide standards for the operation and handling of vehicles and equipment within the state police division, as authorized by the provisions of Section 29-2-4.1 NMSA 1978.

[12/31/98; 10.5.400.6 NMAC - Rn, 10 NMAC 5.400.6, 7/16/2008]

10.5.400.7 DEFINITIONS:

Department/departmental: The New Mexico state police.

[12/31/98; 10.5.400.7 NMAC - Rn, 10 NMAC 5.400.7, 7/16/2008]

10.5.400.8 VEHICLES AND EQUIPMENT:

A. All personnel will properly care for and use any state vehicles issued for their use and will also be acquainted with, and will follow established procedures dealing with the proper operation and care of automobiles.

B. The vehicle and all equipment will be kept orderly, accessible and clean.

C. All department vehicles will be used strictly for official business, except as specified in Paragraph (2) of Subsection C of 10.5.400.8 NMAC below.

(1) Permission must be obtained from the district/bureau commander in each instance in which unauthorized, non-departmental or non-police personnel are riding in police cars.

(a) This applies to both marked and unmarked units.

(b) Authorized personnel include those who are in contact with department personnel and must ride in the vehicles due to the nature of the department business.

(2) Employees while on official business who are away from their assigned duty station for a 24 hour minimum period may use the department vehicle for personal purposes on a reasonable basis during off-duty hours. Consumption of alcohol to any degree in conjunction with use of departmental vehicle is prohibited.

(3) Vehicles will not be transported across international borders without permission from the district/section commander unless the officer is a captain in which case he must secure permission from his immediate supervisor. Those at rank above captain may use own discretion.

D. When vehicles are being used, the employee will maintain a legal speed. When required to exceed the speed limit, the officer will assure that the emergency lights and siren are on unless the existing circumstances would make this procedure inadvisable.

E. When any major or minor repairs are necessary, every effort will be made to have the repairs completed at the headquarters garage (for headquarters, district 1 and district 7 personnel) or district garage (for district personnel) or nearest state police garage. When it is necessary to complete repairs through a private garage as determined by an employee's immediate supervisor, an itemized invoice properly signed by the employee will be mailed to the financial management bureau at headquarters by the vendor at the end of the month.

(1) Supervisors may authorize repairs under \$150.00 and only fleet management may authorize repairs costing over \$150.00.

(2) All supervisors must be familiar with warranty provisions of the vehicle being repaired.

F. Equipment that is not state property may be affixed to departmental vehicles but only upon written authority of the chief. The equipment will be attached to the vehicle in such a manner so as not to leave damage to the vehicle upon removal of the equipment.

G. All departmental vehicles shall be equipped with the following items at all times:

(1) flashlight, axe, shovel, first aid kit, flares, jack, fuses and fire extinguisher;

(2) the fire extinguisher must be refilled within a reasonable time after each use and first aid kit kept complete at all times;

(3) the above items are optional with vehicles assigned to C.I.D. except for fire extinguisher.

H. Specific equipment in addition to those listed above are assigned to certain employees. The following lists some of that equipment and identifies the disposition of the equipment when certain instances arise.

(1) The operation of the radio must adhere to departmental procedures as well as federal communication commission (FCC) rules and regulations with those vehicles which are equipped with mobile radio equipment.

(2) The employee who is responsible for the vehicle equipped with a mobile radio, must assure that the trunk of the vehicle is kept clean and that other equipment is not on top of the radio set.

(3) The radio communications bureau of GSD is responsible for the proper maintenance and periodic inspections of all mobile and fixed radio equipment.

(4) All officers operating citizens band radios in state police vehicles must properly care for and maintain these radios and use according to FCC rules and regulations. Approval for installation must be secured from the chief if Subsection G of 10.5.400.8 NMAC applies.

I. Tactical, diving and explosive ordnance teams are issued equipment relative to the functions of those teams. The commander of each team is responsible for assuring proper maintenance and storage of equipment issued.

J. The baton is a defensive weapon that will be used at the discretion of the officer and method of use according to instruction received.

K. All broken or damaged equipment will be delivered or shipped to the general services bureau at headquarters.

L. When any employee loses any state equipment through either misplacement or theft that employee may be required to reimburse the department as determined in the following and must immediately report the loss to the office of the chief.

(1) The office of professional standards and internal affairs may conduct an investigation into all instances of reported lost or stolen property. If the employee is scheduled for release from employment, the investigation will be conducted by the last day of the employee's employment.

(2) If the loss is determined to have been a result of negligence on the part of the employee, the employee will reimburse the department at the replacement cost.

(a) If the employee is still employed with the department the employee must make reimbursement within 60 days after the employee has been notified of the determination of negligence.

(b) If the employee is scheduled for retirement or has resigned or has been terminated, the employee must make immediate reimbursement.

(3) If the property is subsequently recovered at any time, and the employee was required to make reimbursement, the employee's payment may be returned. The amount of reimbursement to the employee will be determined by the extent of damage, if any, and the operable condition of the equipment.

[12/31/98; 10.5.400.8 NMAC - Rn &A, 10 NMAC 5.400.8, 7/16/2008]

PART 401-499: [RESERVED]

PART 500: ADJUDICATORY PROCEEDINGS FOR COMMISSIONED NEW MEXICO STATE POLICE OFFICERS PURSUANT TO NMSA 1978, SECTION 29-2-11C

10.5.500.1 ISSUING AGENCY:

Department of Public Safety - State Police Division

[10.5.500.1 NMAC - N, 6-30-04]

10.5.500.2 SCOPE:

All officers of the state police division of the New Mexico department of public safety holding a permanent commission.

[10.5.500.2 NMAC - N, 6-30-04]

10.5.500.3 STATUTORY AUTHORITY:

Section 9-9-6 NMSA 1978 outlines the duties and general powers of the secretary of the department of public safety which include the power to make and adopt such reasonable procedural rules and regulations as may be necessary to carry out the duties of the department and its divisions. Section 29-2-1.1G defines the New Mexico state police board as meaning the secretary of the department of public safety. Section 29-2-22 NMSA 1978 assigns authority to the New Mexico state police board, i.e., the secretary of the department of public safety to promulgate rules and regulations for the purpose of carrying out the provisions of Section 29-2-1 NMSA 1978 through Section 29-2-29 NMSA 1978. Section 29-2-4 specifically requires the New Mexico state police board, i.e., the secretary of the department of public safety to promulgate rules and regulations governing employment and operating practices and related matters for the employees of the New Mexico state police. The New Mexico Administrative Procedures Act, Sections 12-8-1 through 12-8-25 provides for the adoption of an adjudicatory procedure as contemplated by Section 29-2-11C NMSA 1978.

[10.5.500.3 NMAC - N, 6-30-04]

10.5.500.4 DURATION:

Permanent

[10.5.500.4 NMAC - N, 6-30-04]

10.5.500.5 EFFECTIVE DATE:

June 30, 2004, unless a later date is cited at the end of a section.

[10.5.500.5 NMAC - N, 6-30-04]

10.5.500.6 OBJECTIVE:

The objective of this rule is to provide a procedure for a full and fair adjudicatory hearing for a New Mexico state police officer holding a permanent commission who is facing disciplinary action as contemplated by Section 29-2-11C NMSA 1978.

[10.5.500.6 NMAC - N, 6-30-04]

10.5.500.7 DEFINITIONS:

A. "Commission" means the public safety advisory commission.

B. "Officer" means a New Mexico state police officer holding a permanent commission facing disciplinary action involving removal from office, demotion, or suspension for more than thirty (30) days.

C. "Parties" means the department of public safety and the officer.

[10.5.500.7 NMAC - N, 6-30-04]

10.5.500.8 ADOPTION AND MODIFICATION OF SPECIFIC SECTIONS OF THE ADMINISTRATIVE PROCEDURES ACT, SECTIONS 12-8-1 THROUGH 12-8-25 NMSA 1978:

The secretary of the department of public safety adopts, as modified, to comport with the purposes of Sections 29-2-11C and 29-2-11D, the following sections of the Administrative Procedures Act: Sections 12-8-1B(1), (2) and (3); Sections 12-8-10C and 12-8-10D; Sections 12-8-11 through 12-8-16.

[10.5.500.8 NMAC - N, 6-30-04]

10.5.500.9 APPOINTMENT OF A HEARING OFFICER:

For the purpose of providing a New Mexico state police officer subject to discipline as contemplated by Section 29-2-11C NMSA 1978 with a timely hearing, the commission shall appoint an independent hearing officer who is an attorney licensed to practice law in the state of New Mexico to preside over the hearing pursuant to Section 29-2-11C and these rules. The hearing officer's powers shall include administering oaths or affirmations to witnesses called to testify, taking testimony, examining witnesses, admitting or excluding evidence.

[10.5.500.9 NMAC - N, 6-30-04]

10.5.500.10 DISCOVERY DEADLINES:

The parties will submit a list of proposed witnesses, together with the gist of testimony or the type of testimony expected to be elicited from each witness. The parties shall likewise be required to submit a list of exhibits it intends to introduce at the hearing. The parties shall produce for examination or copying any exhibits the parties anticipate using at the hearing. The witness and exhibit lists shall be made available to the parties and submitted to the hearing officer. Other discovery or pretrial conferences and procedures available in the district courts may be utilized upon demand by any party. The hearing officer shall issue a pre-trial order establishing discovery deadlines.

[10.5.500.10 NMAC - N, 6-30-04]

10.5.500.11 NOTICE:

In this proceeding, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall include:

- A.** a statement of the time place and nature of the hearing;
- B.** a statement of the legal authority and jurisdiction under which the hearing is to be held; and
- C.** a short and plain statement of the matters of fact and law asserted so that all have sufficient notice of the issues involved to afford them reasonable opportunity to prepare; if the issues cannot be fully stated in advance, they shall be fully stated as soon as practicable; in all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after full statement or amendment to afford all parties reasonable opportunity to prepare.

[10.5.500.11 NMAC - N, 6-30-04]

10.5.500.12 VENUE:

The hearings shall take place at the department of public safety headquarters in Santa Fe, New Mexico or at such other location in Santa Fe as the hearing officer may designate.

[10.5.500.12 NMAC - N, 6-30-04]

10.5.500.13 RECORD:

- A.** The record in a proceeding subject to this rule shall include:
 - (1)** all pleadings, motions and intermediate rulings;
 - (2)** evidence received or considered;

- (3) a statement of matters officially noticed;
- (4) questions, and offers of proof, objections and rulings thereon;
- (5) proposed findings and conclusions; and
- (6) any decision, opinion or report by the hearing officer conducting the hearing.

B. The hearing shall be recorded by a certified court monitor.

[10.5.500.13 NMAC - N, 6-30-04]

10.5.500.14 EVIDENCE:

A. In this proceeding the rules of evidence shall be followed.

B. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonable susceptible to proof under the rules of evidence, evidence thereunder may be admitted, except where precluded by statute, if it is of type commonly relied upon by reasonably prudent men in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers shall be made and noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

C. All evidence, including any records, investigation reports and documents in the possession of the department of public safety, which it relies upon as evidence in this hearing, shall be offered and made part of the record in the proceeding.

D. The parties may call and examine witnesses, introduce exhibits, cross-examine witnesses who testify and submit rebuttal evidence.

E. The officer subject to these proceedings has the right to be represented by counsel of his choice and at his own expense. Such counsel shall be an attorney licensed to practice law in the state of New Mexico.

F. If the officer who has requested a hearing does not appear and no continuance has been granted, the hearing officer may hear the evidence of the witnesses who appear, and then may proceed to consider the matter and dispose of it on the basis of the evidence before it and in the manner required by these rules. For good cause shown, the hearing officer may continue the hearing.

G. Where relief or procedure is not otherwise provided for in these rules, the rules of civil procedure and the rules of evidence may be utilized by the parties at any stage of

the proceeding, and if refused by the hearing officer, then upon application to the First Judicial District Court for the entry of an order providing for such relief or procedure.

H. Prior to each initial or tentative decision, the parties shall be allowed a reasonable opportunity to submit briefs for the consideration of the hearing officer.

I. The record shall include all briefs, proposed findings and exceptions and shall show the ruling upon each finding, exception or conclusion presented. All decisions at any stage of the proceeding become part of the record and shall include a statement of findings of fact and conclusions of law, as well as the reasons or basis therefore, upon all material issues of fact, law or discretion involved, together with the appropriate rule, order, sanction, relief or denial thereof.

[10.5.500.14 NMAC - N, 6-30-04]

10.5.500.15 DEPOSITIONS, INSPECTION OF DEPARTMENT FILES AND DISQUALIFICATIONS:

The hearing officer may, subject to the rules of privilege and confidentiality recognized by law, require the furnishing of information, the attendance of witnesses and the production of books, records, papers and other objects necessary and proper for the purposes of the proceeding.

A. The parties may take depositions of witnesses, including the parties, within or without the state, in the same manner as provided by law for taking depositions under the rules of civil procedure for the district courts, and they may be used in the same manner and to the same extent as permitted in the district court.

B. The hearing officer may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence or documents relating to any matter in question in the proceeding.

C. The form of the subpoena shall adhere, insofar as practicable, to the form used in civil actions in the district courts. Witnesses summoned, unless they are employees of the department, shall be paid the same fees for attendance and travel as in civil actions in the district courts unless otherwise provided by law. Service of subpoenas shall be in accordance with the rules of civil procedure for the district courts.

D. The parties are entitled as of right to the issue of subpoenas in the name of the commission. The parties shall present a written request to the hearing officer for the issuance of the subpoena and he shall issue the subpoenas requested. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued. The cost and fees for attendance of witnesses shall be born by the party that summoned the witness.

E. Any witness summoned may petition the hearing officer, or if the hearing officer denies the petitioner's requested relief, the first judicial district court to vacate or modify the subpoena served on the witness.

F. In the case of disobedience to any subpoena issued and served under this section or for refusal of any person to produce any thing or to testify to any matter regarding which he may be interrogated lawfully under the rules of evidence, the parties or the hearing officer may apply to the first judicial district court for an order to compel compliance with the subpoena. The district court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unlawful, the district court shall enter an order requiring compliance in full or as modified and order whatever relief justice may require. Disobedience of the court order shall be punished as contempt of the district court in the same manner and by the same procedure as provided for like conduct committed in the course of judicial proceedings.

G. Department files and records, including but not limited to investigation reports, statements, memoranda, correspondence, or other data pertaining to the proceeding shall be made available for inspection and copying by the parties prior to any hearing. If the department asserts that any such information contained in the department's files and records should not be made available for any reason of confidentiality or privilege recognized by law, the question shall be determined by the hearing officer, upon application by the party requesting the information and after a hearing on the matter following reasonable notice to the parties. The hearing officer's ruling, if it is one that requires disclosure, is immediately appealable to the first judicial district court which shall hear the matter as expeditiously as possible.

H. Any hearing officer or commissioner shall withdraw from any proceedings in which he cannot accord a fair and impartial hearing or consideration.

(1) Any party may request a disqualification of any hearing officer or commissioner on the grounds of the person's inability to be fair and impartial by filing an affidavit with the commission promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds which it is claimed that the person cannot be fair and impartial.

(2) The disqualification shall be mandatory if sufficient factual basis is set forth in the affidavit.

(3) The commission shall promptly appoint a fair and impartial replacement for the hearing officer disqualified. If a commission member is disqualified, that commissioner shall not take part in the proceedings. If the replacement hearing officer is disqualified, or in any other case not otherwise provided for, a replacement shall be appointed by a justice of the New Mexico supreme court.

10.5.500.16 EX PARTE COMMUNICATIONS:

No party or representative of a party or any other person shall communicate with any commission member or counsel for the commission or hearing officer who participates in making the decision in any proceeding under this part unless a copy of the communication is sent to all parties to the proceeding.

[10.5.500.16 NMAC - N, 6-30-04]

10.5.500.17 DECISION:

The hearing officer shall prepare and submit to the commission a summary of evidence taken at the hearing, proposed finding findings of fact and conclusions of law, separately stated. The sole issue to be decided by the commission conducted pursuant to these rules and Section 29-2-11C is whether, by a preponderance of the evidence, just cause exists to support the action proposed by the department.

A. If the commission finds the action proposed by the department is supported by just cause, the commission shall adopt and enter findings of fact and conclusions of law submitted by the hearing officer in its determination and these findings of fact and conclusions of law shall form the final decision.

B. If the commission finds the action proposed by the department is without just cause, the commission shall enter findings of fact and conclusions of law to support its determination in the form of a final decision. In the event that a final decision of the commission that just cause did not exist to support the action taken by the department the commission may also make recommendations to the secretary of the department of public safety as to what, if any, discipline would be supported by the evidence. If the secretary agrees with the recommendation of the commission he may so notify them and they shall enter such findings of fact and conclusions of law to support their recommended discipline and a final order imposing the discipline.

[10.5.500.17 NMAC - N, 6-30-04]

10.5.500.18 PETITION FOR JUDICIAL REVIEW:

An officer subject to discipline under this part and Section 29-2-11C may appeal the final decision to the first judicial district court pursuant to Section 39-3.1.1 NMSA 1978.

[10.5.500.18 NMAC - N, 6-30-04]

CHAPTER 6: LOCAL GOVERNMENT LAW ENFORCEMENT AGENCIES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: ENHANCED 911 REQUIREMENTS

10.6.2.1 ISSUING AGENCY:

Department of Finance and Administration, Local Government Division.

[10.6.2.1 NMAC - Rp, 10.6.2.1 NMAC, 05-15-2006]

10.6.2.2 SCOPE:

The state, counties and incorporated cities, towns and villages.

[10.6.2.2 NMAC - Rp, 10.6.2.2 NMAC, 05-15-2006]

10.6.2.3 STATUTORY AUTHORITY:

This rule is promulgated pursuant to the authority granted in Section 63-9D-8.1 NMSA 1978 and is deemed necessary to carry out the provisions of the Enhanced 911 Act, Sections 63-9D-1 etseq. NMSA 1978.

[10.6.2.3 NMAC - Rp, 10.6.2.3 NMAC, 05-15-2006]

10.6.2.4 DURATION:

Permanent.

[10.6.2.4 NMAC - Rp, 10.6.2.4 NMAC, 05-15-2006]

10.6.2.5 EFFECTIVE DATE:

May 15, 2006, unless a later date is cited at the end of a section.

[10.6.2.5 NMAC - Rp, 10.6.2.5 NMAC, 05-15-2006]

10.6.2.6 OBJECTIVE:

The objective of Part 2, Chapter 6 is to carry out the provisions of the Enhanced 911 Act. These rules and regulations are designed to assist in the development, operation and maintenance of a reliable, uniform E911 system. This act establishes a program to provide for the purchase, lease, installation and maintenance of E911 equipment, telecommunicator training, database preparation, database updates, compliance with federal communications commission (FCC) requirements for phase I and phase II wireless E911 service, and E911 network costs as necessary for an E911 system.

[10.6.2.6 NMAC - Rp, 10.6.2.6 NMAC, 05-15-2006]

10.6.2.7 DEFINITIONS:

A. "701/709 error report" means an error report provided by local exchange carriers serving a PSAP area which details the phone numbers that were not successfully loaded into the 911 ALI database due to an MSAG or other error. A "701" error indicates a house number not in MSAG range. A "709" error indicates a street not found in the MSAG.

B. "911 emergency surcharge" means the monthly uniform charge assessed on each access line in the state and on each active number for a commercial mobile radio service subscriber whose billing address is in New Mexico.

C. "911 line/trunk" means a line/trunk accessed by dialing 911 terminating at a PSAP. 911 lines on basic 911 systems are one-way incoming only. Outgoing calls can only be made while an incoming 911 call is on the trunk, to conference and/or transfer to another location.

D. "911 PSAP equipment" means the public safety answering point (PSAP) equipment directly related to the operation of an E911 system including, but not limited to, automatic number identification (ANI) displays, automatic location identification (ALI) displays, controllers, combined ANI\ALI displays, printers, generators, uninterruptible power supply (UPS), capability for the hearing impaired (TDD) 24/7 continuous logging recorders, work stations, wireless phase I and/or II mapping equipment, software associated with the system, telephones and other miscellaneous equipment necessary to dispatch emergency E911 calls.

E. "911 service area" means the area designated by the fiscal agent, local governing body or the division to receive enhanced 911 service.

F. "Access tandem" means the device that switches 911 calls to the proper PSAP.

G. "ADA" means Americans with Disabilities Act of Act of 1990.

H. "Alternate routing" means an optional feature that is capable of automatically rerouting 911 calls to a designated alternate location if all 911 trunks from a central office or a public safety answering point (PSAP) are out of service.

I. "Answering position" means a location within a PSAP equipped with an ANI and/or ALI display, printer or electronic storage media, telephone, and / or wireless call map display that is used to receive and display incoming E911 calls.

J. "Automatic location identification (ALI)" means a feature of E911, which displays the physical address of the telephone number that is being used to place the call. It requires a data storage and retrieval system, which matches a telephone number to its physical address. ALI information can include address (including room or floor), names of law enforcement, fire and medical agencies responsible for that address, type of

service (e.g., residence, PBX, Centrex, coin), and name associated with the telephone number.

K. "Automatic number identification (ANI)" means a feature of E911, and sometimes basic 911 that automatically displays the telephone number of the person placing the 911 call at the PSAP. This is normally the telephone number of the person placing the call, but not always. For example, on older PBX systems, the ANI telephone number is normally the main number of the system. Therefore, off-premises stations will be identified as if they had the main telephone number (ANI) and as if they were located at the primary address of these older PBXs.

L. "Basic 911 service" means a telephone service that automatically connects a person dialing the three-digit number 911 to an established public safety answering point through normal telephone service facilities.

M. "Board" means the state board of finance.

N. "Called party hold" means a feature of basic 911 service that enables a PSAP telecommunicator to retain control of an incoming 911 call even if the caller hangs up.

O. "Central office (CO)" means telephone company equipment that provides telephone service to the public. More than one CO may be located in the E911 service area.

P. "Continuous logging recorder" means a device, which records date, time, voice and TDD/TTY communications, and other transactions involved in the processing of calls to and from the PSAP on a 24/7 basis.

Q. "Cost recovery plan (plan)" means the plan submitted to the division by communication mobile radio service carriers to determine allowable costs.

R. "CMRS" means communication mobile radio service carriers.

S. "Database" means information that is collected, formatted and disseminated and that is necessary for the functioning of the E911 system, including geographic information system (GIS) addressing and digital mapping information.

T. "Default routing (default answering)" means a standard feature of E911 activated when an incoming 911 call cannot be selectively routed due to ANI failure, garbled digits, or other causes.

U. "Designated agents" means other partner (s) such as the county assessor, the city and/or county GIS personnel, pueblos and/or tribes within their geographic area, vendors and any person or entity doing addressing, mapping, GIS or MSAG tasks for a PSAP.

V. "Diverse routing" means (if available) the practice of routing calls through different circuit paths in order to prevent total loss of the 911 system in the event an individual circuit is disabled.

W. "Division" means the local government division of the department of finance and administration.

X. "E911 coordinator" means the person designated by the PSAP to serve as the coordinator to work with the division and telecommunication companies regarding 911 issues.

Y. "Emergency service number (ESN) / emergency service zone (ESZ)" means a number representing a unique combination of emergency service agencies (law enforcement, fire and emergency medical service) designated to service a specific range of addresses within a particular geographical area, or emergency service zone (ESZ).

Z. "Enhanced 911 equipment" means the public safety answering point equipment directly related to the operation of an enhanced 911 system, including automatic number identification or automatic location identification controllers and display units, printers, logging recorders and software associated with call detail recording, call center work stations, training, latitude and longitude base station or cell site location data and GIS equipment necessary to obtain and process locational map and emergency service zone data for landline and wireless callers.

AA. "Enhanced 911 service" means service which delivers ANI and ALI to the PSAP.

BB. "Enhanced 911 system (E911)" means a landline and wireless E911 system, with the aid of a database management system, mapping and electronic switching that provides rapid and reliable public service response to emergency calls. The system provides:

- (1)** tandem routing or selective routing of calls to the appropriate PSAP;
- (2)** automatic number identification (ANI) and automatic location identification (ALI);
- (3)** one or more access paths for communication between users in different geographic locations through a network system that may be designed for voice or data, or both and may feature limited or open access and may employ appropriate analog, digital, switching or transmission technologies; and
- (4)** the relay to the designated public safety answering point a wireless 911 caller's number and base station or cell site location and the longitude and latitude of

the wireless 911 caller's location in relationship to the designated public safety answering point.

CC. "Fiscal agent" means the local governing body that administers grants from the fund for a given locality or region by agreement.

DD. "Fund" means the enhanced 911 fund defined by Section 63-9D-8 NMSA 1978 created in the state treasury to be used for the purchase, lease, installation or maintenance of enhanced 911 equipment as defined by Section 63-9D-3 (K) NMSA 1978 necessary for an enhanced 911 system.

EE. "GIS" means geographic information system.

FF. "GIS providers" means any individual, entity or agency creating or managing data for GIS addressing and mapping within a PSAP service area.

GG. "Forced disconnect" means a basic 911 feature, which allows a PSAP attendant to disconnect a 911 call and prevents intentionally jamming of 911 lines by callers who refuse to hang up. E911 uses the "time-out" CO feature to "force disconnect".

HH. "Grantee" means the board of county commissioners of a county or the governing body of a municipality as defined in the Municipality Code that have received a grant pursuant to the E911 Act.

II. "Instant playback recorder" means a device that allows for the instant playback of the audio portion of a 911 call and a radio call at the E911 position.

JJ. "Local exchange access line" means a telephone line connecting a telephone to the telecommunications company's central office.

KK. "Local exchange area" means a geographic area encompassing one or more local communities served by a telecommunications company.

LL. "MSAG coordinator(s)" means the person, or in some cases, the persons responsible for assuring that the MSAG is correct and up-to-date.

MM. "Master street address guide (MSAG)" means the document or computer file that lists the physical street names (including the street prefix, suffix, and directional), address ranges, emergency service number and other routing codes used in the data management system (DMS) of an E911 system equipped with selective routing and/or automatic location identification.

NN. "Monthly recurring cost (MRC)" means costs incurred by CMRS carriers for monthly trunking (T-1's to the two 9-1-1 access tandems) and the monthly wireless systems service provider (3rd party vendor) cost.

OO. "National emergency number association (NENA)" means the national association of telecommunications professionals involved with 911 service. NENA recommends PSAP policies and guidance on wireless E911 call taking. Membership includes employees of federal, state and local government agencies, telecommunication companies, and other communications service and equipment vendors.

PP. "Network" means any system designed to provide one or more access paths for communications between users at different geographic locations; provided that a system may be designed for voice, data, or both, and may feature limited or open access and may employ appropriate analog, digital switching or transmission technologies.

QQ. "Non-recurring cost (NRC)" means one time costs incurred by CMRS carriers for initial connection fees to the two 911 access tandems and the wireless systems service provider (3rd party vendor non-recurring) cost.

RR. "Phase I cellular service" means the wireless carriers deliver a cellular 911 call to the PSAP nearest to the caller. At the PSAP the caller's phone number (ANI) will be available along with a map location of the carrier's tower receiving the wireless call with a probability factor, mapping an area from where the caller is located. This area may range from a square mile within a municipality, to several miles along a highway.

SS. "Phase II cellular service" means the wireless carriers will not only deliver a cellular 911 call to the PSAP nearest to the caller, but provide the caller's phone number (ANI) and the caller's approximate location (ALI) using the latitude and longitude of the caller with a probability factor.

TT. "Primary public safety answering point" means a PSAP equipped with automatic number identification and automatic location identification displays, wireless mapping equipment, and the first point of reception of an E911 call. It serves the 911 service area in which it is located, and other municipalities as may be determined by the service area committee.

UU. "PSAP consolidation" means the combining of one or more PSAPs within a county to form a single PSAP to serve the constituents previously served by the individual PSAPs.

VV. "PSAP serving area" means the geographic area containing a PSAP that is capable of answering all 911 calls and responding to them appropriately.

WW. "Public safety agency" means a public agency that provides law enforcement, fire, medical, and/or other emergency services.

XX. "Public safety answering point (PSAP)" means a twenty-four-hour local communications facility that receives 911 service calls and directly dispatches

emergency response services or that relays calls to the appropriate public or private safety agency.

YY. "SAU" means a specific address unknown which is a record in the ALI database (with corresponding records in the MSAG) that does not have a valid street address associated with it.

ZZ. "Secondary public safety answering point" means a facility equipped with automatic number identification, automatic location identification displays and all other features common to primary PSAPs. It receives 911 calls only when they are transferred from the primary PSAP or on an alternate routing basis when calls cannot be completed to the primary PSAP.

AAA. "Selective routing database" means the routing table that contains telephone number to ESN relationships which determines the routing of 911 calls.

BBB. "Selective transfer" means that on systems with selective transfer, calls are routed to the proper secondary PSAP(s).

CCC. "Service area" means the geographic area in which one or more entities participating in a 911 system are responsible for responding to all 911 calls and for ensuring that appropriate emergency assistance is dispatched.

DDD. "Speed calling" means abbreviated dialing which can be programmed in a central office to allow calling of seven or ten digit numbers by dialing only one or two digits. On E911, a separate 30 number (two digit) speed call list may be provided for each primary and secondary PSAP as a standard feature.

EEE. "Tandem routing or selective routing" means a feature that permits an E911 call to be routed to the designated primary PSAP based upon the telephone number of the calling party. This feature routes calls to the primary PSAP responsible for emergencies at the address of the telephone placing the call based on the ANI telephone number and associated emergency service number (ESN) in the tandem office.

FFF. "Telecommunications company" means an individual, corporation, partnership, joint venture, company, firm, association, proprietorship or other entity that provides public telecommunication services capable of originating an E911 call, to include any database management company contracted to create or maintain the PSAP's MSAG.

GGG. "Telephone devise for the hearing impaired/teletype (TDD/TTY)" means a telecommunication device consisting of modems that permit typed telephone conversations with or between hearing or speech-impaired people.

HHH. "Wireless / cellular" means a telephone linked to the public switched telephone network (PSTN) via a radio link through a company providing the radio link from various tower / antenna sites through which their switching equipment connects the wireless caller to the PSTN. Phase I wireless companies connect the wireless caller to the nearest PSAP by using the cell tower location being used by the cellular caller and selective routing.

III. "WE911" means wireless enhanced 911.

JJJ. "Wireless working group (WWG)" means an advisory committee consisting of members directly involved in the phase I and phase II implementation of a PSAP and may consist of personnel from the division, the PSAP, the local and/or Qwest telephone company, wireless call-routing vendor, NM department of public safety (DPS) and the applicable local staff that provides local geographic information services (GIS). This advisory committee serves at the discretion of the division and may be dissolved when no longer needed.

KKK. "Uninterruptible power supply (UPS)" means a system designed to provide power, during a period when the normal power supply is incapable of performing up to par.

LLL. "USPS Publication 28" means an extensive standards guide authored by the United States postal service (USPS) that governs acceptable road naming and addressing standards appropriate for E911 MSAG and addressing.

MMM. "Vendor" means a person that provides enhanced 911 equipment, system, service or network support.

[10.6.2.7 NMAC - Rp, 10.6.2.7 NMAC, 05-15-2006]

10.6.2.8 INTRODUCTION:

A. In New Mexico, the responsibility and authority for delivering emergency medical services, public fire protection, and law enforcement generally rests with the state, counties, and municipalities. This is true even when supplemental services are performed by others, such as private ambulance companies or independent public authorities and non-profit organizations with limited internal fire protection and security forces.

B. An E911 telephone emergency system provides:

- (1)** expansion of the capabilities of the basic 911 emergency telephone number;
- (2)** faster response time, which minimizes the loss of life and property;

- (3) automatic routing to the appropriate public safety answering point;
- (4) immediate visual display of the telephone number, name, and address or location of the calling party; and
- (5) identifies callers, curtailing abuse of the emergency system.

[10.6.2.8 NMAC - Rp, 10.6.2.8 NMAC, 05-15-2006]

10.6.2.9 GUIDELINES:

A. Guidelines for basic and E911 service, system, equipment and network design and maintenance shall be established by the division following the best nationally accepted concepts and operating practices.

B. E911 call information shall follow the national NENA standards.

[10.6.2.9 NMAC - Rp, 10.6.2.9 NMAC, 05-15-2006]

10.6.2.10 DATABASE DEVELOPMENT REQUIREMENTS:

A. Database:

(1) The grantee and its designated agents shall work with the telecommunication company(s) to verify street names, address number ranges, and emergency service zones (ESZ), postal community and other information needed to create MSAG. These same agents shall also work to assign and/or verify the 9-1-1 address associated with each landline telephone number within the PSAP's geographic boundary. All database information shall be provided to the telecommunication company(ies) in the format specified by the telecommunication company(ies) for the initial load of these databases. All road name and community database information shall be submitted and maintained in format and content compliant with the USPS Publication 28.

(2) The E911 coordinator, as defined by Subsection D of 10.6.2.11 NMAC, or his/her appointed MSAG coordinator(s), shall ensure that changes and additions to road network and the emergency service boundaries (ESZ) in the geographic boundary of the PSAP are communicated to the telecommunications company(ies) in the form of MSAG updates on a continuous and timely basis. The telecommunications company(ies) shall dictate the format and transmission method of these MSAG updates. The E911 coordinator or his/her appointed MSAG coordinator(s) and the telecommunications company shall ensure that all submitted changes, deletes and additions to the master street address guide (MSAG) are changed, deleted or added in the loaded MSAG maintained by the telecommunications company(ies). The E911 coordinator or his/her appointed MSAG coordinator(s) shall thoroughly review the loaded MSAG periodically, no less frequently than once a month, to ensure that

submitted changes, deletes and additions have been properly made and entered by the telecommunications company(ies).

(3) All PSAPs shall conduct a yearly review of the MSAG, ALI and GIS databases to ensure the data in these documents is accurate and synchronized. The review shall:

(a) include the following information requested by each PSAP from the serving telecommunications company(ies) and database provider(s):

(i) complete MSAG extract for entire PSAP boundary area;

(ii) complete ALI extract for entire PSAP boundary area, to include SAUs, if any;

(iii) complete 701/709 error reports from all serving local exchange providers (telecommunications company(ies));

(iv) number of landline phones within PSAP boundaries;

(v) road centerline layer(s); and

(vi) ESZ layer(s);

(b) include output that documents a 96% or higher MSAG accuracy rate:

(i) the process used shall determine the number of accurate ALI records, after adjustment for SAUs, by comparison of a new MSAG extract to a new ALI extract; the house number, road name and ESN for each ALI record must match a corresponding MSAG record; the accuracy formula is the number of accurate ALI records found in this comparison divided by the total number of landline access numbers; this rate must equal 96% or higher;

(ii) list of SAUs found in the MSAG and ALI extracts with a timeline for correction of SAUs;

(iii) list of roads/road segments that appear in the MSAG that do not appear in the GIS; and

(iv) list of roads/road segments that appear in the GIS but that do not appear in the MSAG;

(c) be submitted annually to the division and shall be shared with E911 coordinator and GIS providers; the E911 coordinator and/or his/her designated agents, together with the GIS providers, shall work to correct these errors and inconsistencies

and distribute the corrections to the appropriate telecommunications agencies, as indicated.

(4) The division requires that all municipal and county public safety answering points (PSAPs) maintain accurate MSAG, ALI and GIS databases. Except as provided for in Paragraph (5) of Subsection A of 10.6.2.10 NMAC, beginning on December 31, 2006 the MSAG and ALI must be maintained at 96% or higher accuracy. This means 96% of all landline telephone numbers in the PSAP area must be matched with MSAG-valid 9-1-1 addresses and these addresses must be loaded in the ALI database. PSAPs shall meet the required accuracy levels as a precondition to applying for and receiving funding for E911 equipment upgrades from the fund.

(5) Exceptions to Paragraph (4) of Subsection A of 10.6.2.10 NMAC may be requested in writing to the secretary of the department of finance and administration by submittal of a written plan detailing how the PSAP shall achieve the accuracy rate of 96%.

(a) The plan shall include the tasks to be completed, completion dates, individuals or entities involved and shall designate one person responsible for successful and timely execution of the plan.

(b) The secretary's decision on granting or denying an exception to Paragraph (4) of Subsection A of 10.6.2.10 NMAC is final and not appealable.

(c) The division shall continue to work with PSAPs that are denied an exception to Paragraph (4) of Subsection A of 10.6.2.10 NMAC to develop an acceptable plan.

(6) All telecommunication companies shall update the "selective routing database", MSAG and ALI within 48 hours of completion of a service order by the telecommunication company. Telecommunication companies shall ensure that all submitted changes, deletes and additions have been applied to the telecommunication databases in a timely manner. If required by telecommunication companies, the E911 coordinator or his/her appointed MSAG coordinator(s) will provide a yearly summary of changes submitted in the past year to the telecommunication company(ies).

B. ALI:

(1) Every telecommunication company providing ALI shall present uniform data, as defined by the NENA standards.

(2) The ALI shall be displayed and printed or archived immediately in the database when the 911 call is made.

(3) Each ALI data set shall include as a minimum:

- (a)** area code and telephone number;
- (b)** class of service;
- (c)** time in a 24-hour format (may be printed and not displayed);
- (d)** date (may be printed and not displayed);
- (e)** subscriber name or designation of non-published number;
- (f)** house (building) number;
- (g)** house number (building) suffix;
- (h)** directional prefix (NE, NW, SE, SW);
- (i)** street name including type;
- (j)** emergency service number location;
- (k)** community name;
- (l)** the state name;
- (m)** emergency service number;
- (n)** pilot number;
- (o)** emergency service number translation;
- (p)** any comments present;
- (q)** emergency response names of law enforcement, fire and EMS.

(4) ALI information shall use conventional English or NENA standard abbreviations where necessary and shall not use single letter or digit codes.

C. Database development of physical addresses: Addressing guidelines in addition to the requirements of this rule shall be established by the division. These guidelines must be followed by grantees that seek reimbursement for costs from the fund.

D. Other classes of service:

(1) The wireless working group shall advise the division on the development of procedures for:

(a) the delivery of cellular / wireless service to the 911 service area, and;

(b) the establishment of a statewide standard PSAP screen display format for the phase I and phase II information.

(2) Personal communications networks and any other future mobile and/or personal communications systems shall also be required to adhere to Subsection D of 10.6.2.10 NMAC above.

(3) Effective May 28, 2004, all new or upgraded customer owned or leased private branch exchanges (PBX) will incorporate a software package that when 911 is dialed from any extension, the extension number, name of the extension user, building address, room number and building floor, is passed through to the proper PSAP handling the call

(4) Effective May 28, 2004, the owner or lessee shall remit to the department of taxation and revenue the E911 surcharge for each activated telephone extension on the PBX.

[10.6.2.10 NMAC - Rp, 10.6.2.10 NMAC, 05-15-2006]

10.6.2.11 PSAP EQUIPMENT, ACQUISITION AND DISBURSEMENT OF FUNDS:

A. The PSAP equipment must be capable of handling emergency call volumes to meet the needs of the public. This equipment must be compatible with that of the telecommunication company providing the 911 network and database.

B. In order to qualify for a PSAP, an applicant shall have a 24 hour, 7 days per week (24/7) communication facility.

C. A public safety answering point, at a minimum shall be equipped with the following features:

- (1) ANI;
- (2) ALI;
- (3) call detail information;
- (4) default routing (default answering) until selective routing is approved by the division;
- (5) ability to print call detail information with either paper or electronic media;
- (6) ability to transfer voice or TDD/TTY and data;

- (7)** selective and fixed button transfer on E911 systems;
- (8)** a minimum of thirty (30) minutes uninterruptible power supply;
- (9)** TDD/TTY communications capability at each 911 answering position;
- (10)** switch hook status;
- (11)** for basic 911 be able to "ring back", i.e. phone back the 911 caller, put the caller on hold: disconnect the caller;
- (12)** 911 related calls, which pass through switching equipment, must provide transfer, conference, speed dialing and supervision of all calls until successfully transferred or terminated;
- (13)** each PSAP shall be equipped with at least one E911 answering position; when there is more than one answering position, they shall be similarly equipped with access to all incoming 911 lines, outgoing dedicated/switched lines, tie lines, and dial out lines;
- (14)** each PSAP shall be equipped with a continuous logging recorder; this logging recorder shall have:
 - (a)** the capacity to record both sides of a conversation on each incoming 911 call and all radio communications while dispatching the 911 call;
 - (b)** the ability to continuously document the year, date and time of each recorded event and the capability to record both voice and TDD/TTY;
- (15)** to maintain reliability, each PSAP shall be equipped with instant playback voice recorders at each call answering and radio position;
- (16)** each 911 trunk will have incoming emergency calls identified by both audible and visual and different indicators for landline and wireless trunks;
- (17)** each PSAP shall have sufficient 911 answering positions and staff to ensure that ninety percent (90%) of all 911 calls are answered in no more than ten (10) seconds and the balance of the calls within twenty (20) seconds during normal peak operating periods; staffing levels may vary during the working day to meet this requirement;
- (18)** for quality assurance and training purposes, PSAP answering equipment shall be provided for supervisors so they can monitor incoming emergency calls;
- (19)** each PSAP may be provided equipment furniture to adequately support the E911 and radio equipment, and the telecommunicators and dispatchers;

(20) each PSAP will have a back-up generator capable of keeping the PSAP operating until commercial power is restored; and

(21) each PSAP will have a written agreement with a fully equipped PSAP capable of taking the PSAP's calls and dispatching the appropriate emergency response; PSAP transfer is accomplished by use of the "make busy" circuit, or calling the E911 center to reroute their 911 calls to the agreed upon PSAP.

D. PSAP administration:

(1) Every grantee participating in the E911 system shall designate someone to serve as a coordinator to work with the division and the telecommunication company regarding 911 issues.

(2) All coordinators working with the division and the telecommunication company regarding 911 issues will have personal work email address for receiving information regarding training classes, consolidation efforts, and transmittal of information required by this office.

(3) Only incorporated municipalities, counties, state police or native American tribes or pueblos, public safety agencies or their authorized agents may receive 911 calls.

(4) The 911 number shall be used to receive incoming emergency calls transferred to the PSAP by other PSAPs for certain alternate and default routing arrangements.

(5) 911 trunks shall not be used to make outgoing calls, but may be used to make outgoing transfer 911 calls if there is an incoming 911 call on the line/trunk.

(6) 911 trunks shall be used solely to receive emergency 911 calls at primary PSAPs and the transfer of 911 calls to another PSAPs.

(7) There shall be at least one PSAP operating 24 hours a day within the 911 service area. Municipalities and counties shall participate and assist with the operational costs necessary to maintain the service.

(8) Each PSAP shall maintain an up-to-date detailed profile of the PSAP. This profile shall include at a minimum:

(a) exact address of the PSAP;

(b) number and type of positions;

(c) type of equipment to include E911 call answering equipment, telephone switching equipment, wireless mapping equipment; and CAD system, radio system, and make and model of UPS and back-up generator;

(d) number and type of dedicated/ switched voice/data circuits;

(e) routing central office and PSAP end office;

(f) maintenance control center to include name of company, physical address, telephone number, email address, and your point of contact for E911 equipment and voice logging recorder, if different from E911 equipment maintainer;

(g) PSAP coordinator and alternate contact name, address, phone number, and their PSAP email address;

(h) type and manufacturer of CAD system, if any, and type and manufacturer of voice logging recorder;

(i) GIS representative to include physical address, telephone number, and email address.

(9) Each PSAP shall maintain at least one unpublished seven-digit emergency number. This number shall also be used to receive incoming emergency calls transferred to the PSAP by other PSAPs for certain alternate and default routing arrangements.

(10) The PSAP shall be responsible for coordinating the "emergency service listing" on the inside front page(s) of their local telephone directories. Each PSAP will have a published seven-digit number for non-emergency calls

(11) Subscriber information provided in accordance with the 911 system shall be used only for the purpose of responding to emergency calls or for use in any ensuing investigation or prosecution directly resulting from a 911 call, including the investigation of false or intentionally misleading reports of incidents requiring emergency service.

(12) All voice and TDD/TTY recordings of incoming 911 calls shall be retained in accordance with state records center and archives regulations for municipal police and county sheriff records.

(13) Except for those devices, such as TDD/TTY, used by disabled persons requesting emergency assistance, no individual or company shall be allowed to send an automatic alarm or use an alerting device that causes 911 to be automatically dialed and to transmit a prerecorded signal or message to the PSAP on a 911 line.

(14) PSAP personnel shall program and maintain a list of the fixed and auto-dial transfer features. This feature will allow the PSAP to use the dedicated/switched

911 network to transfer 911 calls pertaining to emergencies outside its jurisdiction, to the appropriate PSAP. When a 911 caller is transferred, the transferring PSAP shall announce to the receiving PSAP that they are transferring a call for service. Will remain on the line and will inform the receiving PSAP that this is a transferred call for service.

(15) Call handling procedures and other related PSAP operations shall be implemented according to the training guidelines established by the division. Each PSAP shall have the ability to:

(a) transfer 911 calls to their back-up PSAP or another PSAP within or outside their 911 service area;

(b) directly dispatch public safety services or relay information to a public safety agency; all PSAPs that transfer 911 calls to a 7-digit administrative telephone line for the purpose of an outside the PSAP agency dispatching emergency services will obtain from, and have on file, a release of liability from the dispatch agency, and must forward a copy of the release to LGD for file; or,

(c) directly dispatch public safety services.

(16) Any emergency unit dispatched to a location outside its jurisdiction in response to a request shall render services to the requesting party until relieved by the public safety agency responsible for that geographical area.

(17) All PSAPs shall be staffed 24-hours-a-day, seven-days-a-week, and operated by personnel certified by the state department of public safety pursuant to Section 29-7A-4 NMSA 1978, as amended. Staffing levels may vary during the working day to meet this requirement.

(18) Special circumstances:

(a) In accordance with ADA each PSAP shall establish procedures to handle calls from speech and hearing impaired individuals via TDD/TTY including the use of TDD call detectors and diverters.

(b) PSAPs shall develop procedures for handling an unanswered or silent 911 call and are urged to dispatch a public safety response unit(s) if the PSAP receives no response to the call back.

(19) Every PSAP will prepare an annual report for the division to include the information in Paragraphs (8), (9), (14) and (18) of Subsection D of 10.6.2.11 NMAC, above. Send the report electronically (email), or if email is not available, by regular mail to arrive at the division not later than June 30th of each year.

(20) Callers to 911 may only be transferred once to another PSAP. If, after the transfer, the 911 caller is not connected to the appropriate PSAP, the receiving PSAP

shall take all of the necessary information to handle the call and then contact the appropriate PSAP for response.

(21) When a 911 caller is transferred, the transferring PSAP shall announce to the receiving PSAP that they are transferring a call for service. The transferring PSAP may stay on the line until such time as they are released.

(22) Each PSAP shall devise a contingency plan to provide continued emergency service when the PSAP is out of service.

E. Funding, eligible costs:

(1) The cost of enhanced 911 equipment necessary to provide E911 service may be recovered from the fund, including costs associated with the purchase, lease, installation of enhanced 911 equipment as well as enhanced 911 equipment furniture, training, and maintenance, with the exception of CAD, mobile and portable radio equipment and logging recorder maintenance.

(2) Money for other equipment indirectly related to the E911 system is the responsibility of the grantee, unless, the division approves of such equipment.

(3) The network capability costs and database and services necessary for an E911 system can be recovered from the fund.

(4) Costs for addressing including equipment and labor may be funded based upon demonstrated need and the availability of funds. Demonstrated need may include the maintenance on all software that the GIS / rural addressing departments use to create data for the PSAPs.

(5) Grantees that have received approval from the division may incur and recover course registration costs to train telecommunicators and GIS personnel from the fund.

(6) Upon prior approval of the division, travel mileage and / or per diem for telecommunicator and GIS personnel training may be reimbursed, while any request for travel mileage and / or per diem without prior approval will NOT be reimbursed.

(7) Mapping equipment and network for wireless phase I and phase II, and cost recovery for wireless service providers.

F. Funding, ineligible costs:

(1) basic termination charges incurred due to the disconnection of telephone equipment to be replaced with 911 equipment;

- (2) capital outlay expenditures, such as, buildings, remodeling, moveable chattels, communication towers and equipment not directly related to a 911 telecommunicator position;
- (3) mobile radios, pagers or cellular telephones;
- (4) seven-digit transfer-to-lines;
- (5) incoming emergency seven-digit line group;
- (6) costs associated with implementing or maintaining basic or E 911 systems or features not approved in writing by the division;
- (7) private line circuit costs unless approved by the division;
- (8) directory listings;
- (9) call volume indicators used after the initial twelve month implementation or when not otherwise justified;
- (10) maintenance costs for radio equipment and other miscellaneous equipment that is not determined to be 911 PSAP equipment;
- (11) direct or indirect overhead costs, such as contributions to retirement, health insurance, labor, departmental operation overhead, rent, utilities or building remodeling;
- (12) Reimbursement for equipment not previously approved by the division prior to purchase.

[10.6.2.11 NMAC - Rp, 10.6.2.11 NMAC, 05-15-2006]

10.6.2.12 REVIEW AND APPROVAL PROCESS:

A. After requesting enhanced 911 service from a telecommunications company or CMRS, a local governing body, acting as the fiscal agent for a PSAP, may by ordinance or resolution, recover from the fund an amount necessary to recover the approved costs of providing the enhanced 911 system in its designated 911 service area.

B. The PSAP and its fiscal agent make a formal written request to the E911 program manager at the division for funding assistance in upgrading their current equipment or adding new equipment to meet new PSAP responsibilities or other eligible costs.

C. If applicable, a project manager from the division will make a site visit to the PSAP to determine the need and funding eligibility for the requested equipment and its conformance with advancing short or long-term policy to consolidate PSAPs.

D. If after discussions with the PSAP manager and his/her clients, the division believes the request has merit, is eligible for funding, and is consistent with PSAP consolidation policy, the PSAP in conjunction with the division will request price proposals from appropriate state price agreement vendors. The division promotes the consolidation of PSAPs and discussions will be held with all participants to determine the feasibility of consolidation. Discussion items will consist of the following:

- (1) age and useful life remaining of existing equipment;
- (2) estimated maintenance costs of continued use of existing equipment;
- (3) equipment manufacturer's commitment to continued maintenance support of the existing equipment;
- (4) continued use of analog technology vs. updating to digital technology;
- (5) potential impact of wireless E911 implementation on PSAP and its continued use of existing equipment;
- (6) PSAP vendors and telephone companies' readiness to install equipment;
- (7) desire of PSAPs and their clients to consolidate all PSAP / dispatch functions at that time; and,
- (8) the municipal and county governments' ability to fund supporting infrastructure for a consolidated PSAP.

E. If the division determines the request does not have merit or there is inadequate funding available for the request, it will be returned to the PSAP as "not approved by the division".

F. Validated PSAP requests that have passed the above process, will be forwarded in writing by the PSAP and the PSAP's fiscal agent to the division director for approval to place the request(s) on the board of finance meeting agenda.

G. Any item(s) that the division director determines are inappropriate will not be approved for inclusion in the board's meeting agenda. Rejected requests will be returned to the PSAP as "not approved by the division".

H. The division will present the E911 funding project list to the board for approval.

I. Fully executed grant agreement(s) and subcontract(s) shall be provided to the division for the official file. If necessary, subcontracts shall be procured in accordance with the New Mexico Procurement Code and applicable regulations.

[10.6.2.12 NMAC - Rp, 10.6.2.12 NMAC, 05-15-2006]

10.6.2.13 GEOGRAPHIC INFORMATION SYSTEMS (GIS) STANDARDS:

In order to ensure that road centerline shapefiles can be effectively used and integrated at a statewide level, standards are needed for attribute data consistency and the development of spatial data by entities creating them with geographic information systems (GIS). Pursuant to 63-9D-4 NMSA 1978, a local governing body in an enhanced 911 service area shall provide GIS addressing and digital mapping to the PSAP that provides enhanced 911 service to the local governing body, as follows:

A. The attribution data content shall be derived from standards established by the national emergency number association (NENA). The attribution data format and structure is also based on, but not identical to, NENA standards.

B. The datum for geographic data shall be North American Datum 1983 (NAD 83) and the data shall be in a New Mexico state plane or universal transverse mercator (zone 12 or 13) projection. The geographic data shall be spatially complete for each GIS entity's defined area of responsibility, but must not extend past their geographic area of responsibility. Additionally, any road feature that extends beyond one entity's geographic area of responsibility shall align with the same feature maintained by the adjacent entity.

C. Spatial accuracy of geographic features is required to be such that they are representative of the actual feature at a scale of 1:5000. All geographic features shall have clean topology and shall be able to be utilized to form a statewide road network with connectivity. All attribution and geographic data shall be kept current through regular maintenance.

D. To ensure accurate dispatch call mapping, attribute data associated with GIS data shall be synchronized with MSAG and ALI data. This attribute data includes all components of road name and address ranges. Road name designations, including spelling, directional use, suffix types and abbreviations, shall match the road name values used in the MSAG. Road ranges in the GIS shall match or be included in road ranges in the MSAG.

E. The PSAP shall update the MSAG within 10 working days to reflect changes in addressing and mapping.

[10.6.2.13 NMAC - Rp, 10.6.2.13 NMAC, 05-15-2006]

10.6.2.14 PLANNING AND IMPLEMENTATION OF ENHANCED WIRELESS SERVICE:

A. E911 service to include phase I and phase II wireless shall be provided to the entire telecommunication company(s) service area(s) and should be implemented on a countywide or regional basis.

B. Where a telecommunication company's local exchange area extends into or encompasses two or more E911 service areas, the wireless working group (WWG) shall be responsible for initiating and establishing E911 wireless service areas.

C. The division shall have final approval authority after the PSAP and the telecommunication company identifies the need for selective routing and the associated network through which all calls for service are to be processed. The WWG through the division shall have final authority over the selective routing of the wireless vendor coverage areas.

D. If the grantee, the E911 coordinator or the MSAG coordinator(s) requests a MSAG and/or a copy of the telecommunication company's "old-to-new" records in either printed or electronic format the telecommunication company shall comply within 20 working days.

E. When the MSAG and ALI have been completed and loaded onto the database, they shall be jointly owned by the PSAP and the telecommunications company.

F. The telecommunications company shall provide an updated MSAG to the PSAP upon installation completion and thereafter as requested by the PSAP.

G. The data management system and selective routing database shall be updated by the telecommunication's company within 48 hours of completion of a service order by the telecommunications company.

H. The division shall have final approval authority of the addressing system, and GIS system used to develop the database adequate to support E911 and E911 wireless services.

[10.6.2.14 NMAC - Rp, 10.6.2.14 NMAC, 05-15-2006]

10.6.2.15 PSAP CONSOLIDATION:

A. The division requires that municipal and county public safety answering points (PSAPs) within their contiguous county boundaries consolidate their 911 call answering and radio dispatch functions within one consolidated PSAP in the county. Only the consolidated PSAP in the county may apply for and receive funding for E911 equipment, equipment maintenance, training reimbursement, trunk and ALI lines; and

E911 call taking and mapping equipment from the E911 fund for phase I and phase II enhanced wireless service.

B. Albuquerque police department PSAP and Bernalillo county's PSAP are excluded from 10.6.2.15 NMAC due to the large population served. The department of public safety district PSAPs; and native American pueblos and tribal police and also excluded from 10.6.2.15 NMAC.

C. Exceptions to 10.6.2.15 NMAC may be requested in writing with full justification to the division.

(1) Justification shall include cost considerations, population served, and proximity to the PSAP's back-up PSAP.

(2) The division's decision on granting an exception to 10.6.2.15 NMAC is final and not appealable.

D. Municipal and county PSAPs within one county's contiguous boundaries have one year from May 28, 2004 to develop a consolidation plan and enter into an approved joint powers agreement (JPA) for the consolidation of their E911 call answering and radio dispatch functions within one consolidated PSAP in the county.

(1) Consolidation plans will be approved / disapproved by the division.

(2) PSAPs shall consolidate in accordance with the plan, unless granted an exception, as a precondition to applying for and receiving funding for E911 equipment upgrades from the fund.

(3) If the consolidation plan and JPA requirements are not met, the applicable 911 grant agreement with the PSAPs governing bodies may be terminated in accordance with the terms and conditions of the grant agreement.

E. The division will work with municipal and county governments to prepare their consolidation plan in order to meet the requirements identified in this section.

[10.6.2.15 NMAC - Rp, 10.6.2.15 NMAC, 05-15-2006]

10.6.2.16 TELECOMMUNICATOR / DISPATCHER TRAINING:

Pursuant to Section 63-9D-4A NMSA 1978, the local governing body shall require the PSAP to employ properly trained staff pursuant to the Public Safety Telecommunication Training Act. Telecommunicators and dispatchers will be certified for two years and recertified for two-year intervals after that. In order to maintain certification, 20 hours of specified training will be required in each two-year interval. Course requirements needed for recertification are listed in 10.29.7 NMAC. Each PSAP manager or supervisor will appoint in writing a training officer. The training officer's name, duty

phone number, and email address will be forward to the division, and resubmitted whenever the training officer is replaced. The training officer will be responsible for the following:

- A.** development of PSAP policies and procedures for ensuring every telecommunicator and dispatcher receives the required training;
- B.** keeping accurate written records on each individual's training; and
- C.** submitting, through the PSAP manager or supervisor, semi-annual reports in June and January to the division on the PSAP's training progress to include; number of telecommunicators and dispatchers trained, and the courses completed by each individual; and type and amount of training yet to be completed, and any problems encountered in meeting the training requirements of 10.29.7 NMAC; for information on training reimbursement see Subsection E of 10.6.2.11 NMAC.

[10.6.2.16 NMAC - Rp, 10.6.2.16 NMAC, 05-15-2006]

10.6.2.17 WIRELESS COST RECOVERY GUIDELINES:

After requesting WE911 (wireless enhanced E911) from a CMRS, local governing bodies may, by ordinance or resolution in a form specified by the division, recover from the fund pursuant to Subsection G of Section 63-9D-8 NMSA 1978, the CMRS wireless enhanced 911 service carrier costs that meet the requirements in 10.6.2.17 NMAC. Pursuant to Subsection G of Section 63-9D-8 NMSA 1978, the division, on behalf of local governing bodies, shall directly pay or reimburse CMRS for their costs of providing WE911 service. In order to maintain adequate funding in the fund to provide enhanced 911 service and equipment to local governing bodies pursuant to Section 63-9D-8 NMSA 1978, the division shall reimburse only costs incurred by CMRS to provide enhanced wireless 911 service to municipal and county public safety answering points that are in accordance with the following:

A. All CMRS carriers shall submit a detailed cost recovery plan (plan), invoices and status reports to the division that meet the following criteria.

(1) The plan and invoices shall include the one time, non-recurring cost (NRC) incurred by the CMRS carrier for the connection fee to the two 911 access tandems and the NRC for the wireless systems service provider (3rd party vendor).

(2) The plan and invoices shall include the CMRS carrier's monthly recurring (MRC) for trunking (T-1's to the two 911 access tandems) and the MRC for the wireless systems service provider (3rd party vendor).

(3) All other CMRS carrier costs are not currently eligible for cost recovery.

B. A plan or invoice submitted on behalf of a CMRS carrier by a third party shall include a letter of agency between the third party and the carrier, or have the letter on file. No plan or invoice submitted by a third party agent will be reviewed until the division receives notice of agency from the CMRS carrier.

C. The plan shall be submitted yearly by March 31st as a comprehensive statewide plan based on current circumstances. The plan shall detail the number of cell sites and the number of subscribers in each county, and the projected NRC and MRC for each county based on the current guidelines for cost recovery, including the type of wireless services you are providing; the jurisdictions (cities and counties) in which you provide wireless services, the wireless network service provider with which you have a reseller relationship, the number of customers or subscribers you have in New Mexico, the legal entity name, remittance name and tax number that you use to make tax remittances to the state of New Mexico; and the appropriate person within your organization and their contact information to discuss related tax items, remittances and which to address any additional questions.

D. The plan shall contain a detailed explanation of each cost item included.

E. The plan shall include a map designating the licensed area and the actual coverage area.

F. The plan shall include a sample monthly invoice from the CMRS carrier. The invoice must clearly separate MRC and NRC charges, by county. The division shall pay only the carrier. No third party agents shall be paid.

G. The plan shall be signed by an authorized official of the CMRS carrier or the third party agency and must be dated.

H. Once a CMRS carrier's plan is approved, invoices may be submitted per the guidelines.

I. Quarterly, the FCC wireless telecommunications bureau requires submission of a wireless carrier E911 deployment report. CMRS carriers shall provide an electronic copy of the New Mexico portion of the excel spreadsheet (appendix portion) to the division within 5 days of submission to the FCC.

J. Periodically, the division may request CMRS carriers to furnish additional information for the planning, coordination and implementation of wireless enhanced 9-1-1.

K. To be considered and approved by the division, each CMRS carrier shall follow these procedures:

(1) CMRS carrier cost recovery shall initially be allowed a one-time \$0.50 per subscriber NRC and a monthly \$0.05 per subscriber MRC, based on actual

deployments. In addition, one-time access costs of approximately \$450 per T-1 NRC and \$900 per T-1 MRC for trunking to connect to each access tandem shall be allowed.

(2) CMRS carriers shall submit a valid department of treasury internal revenue department form W-9 to establish vendor status and allow cost recovery remittances to be processed when invoices are received. Refer to the IRS website at <http://www.irs.gov/pub/irs-pdf/fw9.pdf> for the form.

(3) CMRS carrier invoices shall not exceed trunking cost allowances, the one-time \$0.50 NRC per subscriber, the monthly \$0.05 per subscriber MRC, based on actual deployments, and the allowed trunking NRC and MRC. Partial payment against an invoice is not allowed.

(4) CMRS carrier invoices will be processed, approved and disbursed on a monthly basis.

(5) Requests from new CMRS carriers shall be reviewed on a case-by-case basis.

[10.6.2.17 NMAC - N, 05-15-2006]

CHAPTER 7: MOUNTED PATROL [RESERVED]

CHAPTER 8: WEAPONS AND EXPLOSIVES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: CARRYING CONCEALED HANDGUNS

10.8.2.1 ISSUING AGENCY:

Department of Public Safety.

[10.8.2.1 NMAC - Rp, 10.8.2.1 NMAC, 11-30-16]

10.8.2.2 SCOPE:

This rule applies to all persons who wish to carry a concealed handgun or to be an approved instructor in New Mexico.

[10.8.2.2 NMAC - Rp, 10.8.2.2 NMAC, 11-30-16]

10.8.2.3 STATUTORY AUTHORITY:

Section 29-19-1 through Section 29-19-15 NMSA 1978; Section 30-7-2 NMSA 1978; Section 30-7-2.1 NMSA 1978; and Section 30-7-2.4 NMSA 1978.

[10.8.2.3 NMAC - RP, 10.8.2.3 NMAC, 11-30-16]

10.8.2.4 DURATION:

Permanent.

[10.8.2.4 NMAC – Rp, 10.8.2.4 NMAC, 11-30-16]

10.8.2.5 EFFECTIVE DATE:

November 30, 2016, unless a later date is cited at the end of a section.

[10.8.2.5 NMAC - Rp, 10.8.2.5 NMAC, 11-30-16]

10.8.2.6 OBJECTIVE:

The purpose of this rule is to implement the Concealed Handgun Carry Act by establishing requirements and procedures governing licenses to carry concealed handguns and approval of instructors and firearms training courses.

[10.8.2.6 NMAC - Rp, 10.8.2.6 NMAC, 11-30-16]

10.8.2.7 DEFINITIONS:

In addition to the definitions in Section 29-19-2 NMSA 1978, unless the context clearly indicates otherwise, as used in this rule:

A. act means the Concealed Handgun Carry Act, Sections 29-19-1 through 29-19-15 NMSA 1978;

B. approved instructor means a person to whom the department has issued a permit to provide all or any part of classroom and firing range instruction;

C. controlled substance means controlled substance as defined in the New Mexico Controlled Substances Act, Sections 30-31-4 et seq. NMSA 1978, or a similar act of any other jurisdiction;

D. conviction means an adjudication of guilt, and includes a guilty plea, judgment, or verdict, no contest, nolo contendere, conditional plea of guilty, or any other plea that would result in an adjudication of guilt in any court of competent jurisdiction. A conviction includes a deferred sentence and a conditional discharge prior to satisfaction of the conditions and after satisfaction of conditions where required by the act;

E. court means any federal, state, county, municipal, or tribal court;

F. days means business days when the period referenced is 10 days or less, and calendar days when the period referenced is 11 days or more;

G. department means the New Mexico department of public safety;

H. instructor applicant means a person seeking a permit as an approved instructor;

I. mounted patrol means a current member of the New Mexico mounted patrol who has successfully completed a law enforcement academy basic law enforcement training program for New Mexico mounted patrol members pursuant to Section 29-6-4.1 NMSA 1978;

J. military service person means a person who:

(1) is on active duty with the United States armed forces;

(2) is on reserve or guard duty with the United States armed forces;

(3) is a veteran or a retiree who received an honorable discharge as indicated on a United States department of defense form 214; or

(4) is his or her dependent.

K. peace officer means any public official or public officer vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

L. permit means the authorization granted by the department to teach firearms qualification courses as an approved instructor;

M. range qualification means the performance requirements that must be met by an applicant or licensee for his or her approved caliber of handgun;

N. reciprocity means permission granted for an out of state licenses issued to a person who is not a New Mexico resident to be used in the state of New Mexico by a licensee visiting or passing through the state;

O. resident means:

(1) a person who, for a period of not less than 90 days immediately preceding the date of application for the license, has been domiciled in New Mexico, does not claim residence elsewhere for any purpose, and is not otherwise entitled to claim residence in another state; or

(2) a person who is a member of the armed forces of the United States and permanently assigned to a military installation located within this state. A military person's dependent may be considered a resident for the purposes of this rule.

P. respondent means, in the context of 10.8.2.27 NMAC, an applicant, instructor applicant, approved instructor, or licensee;

Q. retired peace officer means a New Mexico resident who has retired in good standing from any law enforcement agency with at least 15 years as a certified police officer or by work related disability;

R. revocation means the involuntary termination of a license or permit by the department for cause for an indefinite period of time;

S. secretary means the secretary of the department of public safety or his designee;

T. suspension means the involuntary termination of a license or permit by the department for cause for a specified period of time;

U. transfer means issuance of a permit in New Mexico under the act when the applicant holds a valid concealed carry permit or license issued by another state with which New Mexico has reciprocity, and the other conditions prescribed in this rule have been satisfied.

[10.8.2.7 NMAC - Rp, 10.8.2.7 NMAC, 11-30-16]

10.8.2.8 FILINGS AND CORRESPONDENCE:

A. To the department.

(1) A person shall address all filings and correspondence relating to hearings held pursuant to this rule to the New Mexico Department of Public Safety, Post Office Box 1628, Santa Fe, New Mexico 87504-1628, Attention: Office of Legal Affairs-Concealed Handgun Section.

(2) A person shall address all filings and correspondence relating to licenses, instructor approval, meetings, and all other matters to the New Mexico Department of Public Safety, Concealed Handgun Licensing Unit, 6301 Indian School Road NE, Suite 310, Albuquerque, New Mexico 87110.

B. From the department. The department shall send all legal notices and orders required by the act and this rule by certified mail to the last address reported to the department by an applicant, instructor applicant, licensee, or approved instructor. The department shall send all other correspondence by regular mail.

[10.8.2.8 NMAC - Rp, 10.8.2.8 NMAC, 11-30-16]

10.8.2.9 INCOMPLETE FILINGS:

The department may deny or reject an incomplete filing. A filing will be considered incomplete if:

- A.** it is unsigned;
- B.** documents that are required to be certified or notarized are not certified or notarized;
- C.** it omits any information required by law or department rule, form, or order;
- D.** it is not filed on a department-prescribed form and a form exists for that purpose;
or
- E.** the required fee is not paid with the application.

[10.8.2.9 NMAC - Rp, 10.8.2.9 NMAC, 11-30-16]

10.8.2.10 DEPARTMENT-PRESCRIBED FORMS:

A. Use required. The department has prescribed forms to carry out certain requirements of this rule. The most current version of a department form must be used when a form exists for that purpose, unless the department waives this requirement.

B. How to obtain. Department-prescribed forms may be obtained:

- (1) at New Mexico state police offices throughout the state; or
- (2) from the department's website at www.dps.state.nm.org

[10.8.2.10 NMAC - Rp, 10.8.2.10 NMAC, 11-30-16]

10.8.2.11 APPLICATION REQUIREMENTS FOR A LICENSE:

A. Filing. An applicant must file an application for a license with the department in person or by mail.

B. Fees. All fees are non-refundable, and are required by the act or this rule to be paid to the department and shall be in the form of cash, credit card, a personal check, cashier's check, certified check, or money order made payable to the New Mexico department of public safety.

C. Completeness. All applications must be complete and legible.

(1) If an application is incomplete, the department will return the application and a letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 45 days from the date the letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 45 days from the date the letter was postmarked, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(2) If the applicant returns the application to the department within 45 days from the date the initial letter was postmarked but the application is still deficient, the department will return the application and a second letter outlining the deficiencies in the application to the applicant by regular mail. The applicant will have 30 days from the date the second letter is postmarked to cure the deficiencies. If the applicant fails to return the application to the department within 30 days from the date the second letter was postmarked, or returns the application but it is still deficient, the application will be deemed abandoned, the application file will be closed, and all fees paid will be forfeited to the state. The department will send a letter notifying the applicant that the application has been deemed abandoned, the file has been closed, and all fees paid have been forfeited to the state.

(3) An applicant may contact the concealed carry unit to inquire about the status of his or her application. Agents may provide the information to the applicant after the applicant has supplied sufficient identifiers such as address, social security number, date of birth, etc.

[10.8.2.11 NMAC - Rp, 10.8.2.11 NMAC, 11-30-16]

10.8.2.12 OTHER REQUIRED DOCUMENTS FOR A LICENSE:

In addition to the application form, each applicant shall submit copies of other documents required by the act or this rule to the department as set forth below. The copies must clearly show the name of the applicant and all signatures and pertinent information. The department will not accept copies that are too dark, too light, blurry, or otherwise unreadable. An applicant may request the return of original documents by so stating and enclosing a self-addressed stamped envelope.

A. Proof of residency.

(1) An applicant may prove residency in New Mexico by submitting a copy of a valid New Mexico driver's license or personal identification card issued by the motor vehicle division of the taxation and revenue department and one of the following:

(a) proof that the applicant is registered to vote in New Mexico;

(b) a state or government issued license with name and address;

(c) a United States armed forces identification card and orders of permanent duty station in New Mexico or a U.S. armed forces dependent ID card and orders of the individual claiming the applicant as a dependent; or

(d) other proof acceptable to the department.

(2) Possession by an applicant of a driver's license issued by another state shall create a rebuttable presumption of residency in such other state.

B. Proof of age. An applicant may prove that he or she is 21 or more years of age by filing:

(1) a copy of a valid government-issued identification card stating the person's age;

(2) a copy of a passport; or

(3) a certified copy of his or her birth certificate.

C. Proof of handgun competency. An applicant must submit a certified copy of a certificate of completion for a firearms training course which is approved by the department and issued by an approved instructor. It must be submitted not more than 90 days prior to the date the application is submitted, as required by 10.8.2.15 NMAC.

D. Proof of disposition of charges. The burden of proof is on the applicant or licensee to show that the applicant or licensee has a pending or successful completion of any conditional discharge, or that the conviction of any charge has been overturned on appeal. Documentation sufficient to prove the applicant's or licensee's contention related to a conviction or discharge must be provided by the applicant or licensee to the department.

E. Photographs. To streamline the application process, the department may obtain digital color photographs of an applicant from the motor vehicle division of the taxation and revenue department or another government agency. If the department requests an applicant to provide photographs pursuant to Paragraph (5) of Subsection (B) of Section 29-19-5 NMSA 1978, the photographs shall be in color, be a minimum of three inches by three inches, and be a full frontal view of the applicant without hat, sunglasses, or any other item that would obstruct or alter the features of the applicant. The department will not accept photographs that are too dark, too bright, fuzzy, or out of focus, or unclear.

F. Fingerprints. All new applicants shall submit electronic fingerprints via the department standards that comply with the requirements of Section 29-19-5 NMSA

1978 and 10.8.2.14 NMAC. Applicants who have electronic fingerprints on file shall not be required to resubmit fingerprints.

G. Application fee. An applicant shall submit a non-refundable application fee of \$100 and \$75 for renewal applications. Current and retired law enforcement officers, military and mounted patrol officers are exempt from this fee.

[10.8.2.12 NMAC - Rp, 10.8.2.12 NMAC, 11-30-16]

10.8.2.13 LICENSE APPLICATION REVIEW AND ISSUANCE:

A. Time period for review. In accordance with Subsection (A) of Section 29-19-6 NMSA 1978, the department shall review the application, conduct a national criminal background check of each applicant, and make a determination within thirty (30) days of the date the department receives a complete application and background check.

B. Determination by department.

(1) Approval. If the department finds that the applicant meets the requirements in the act and this rule for issuance of a license, the department shall issue a license.

(2) Denial. If the department finds that the applicant does not meet the requirements for issuance of a license, the department shall issue a notification of denial in accordance with 10.8.2.21 NMAC. The notification of denial shall cite requirement(s) of the act or this rule that the applicant has failed to meet.

C. Information on license. In addition to the information required by Subsection (C) of Section 29-19-6 NMSA 1978, a license to carry a concealed handgun may include:

(1) a physical description of the licensee, including the licensee's sex, hair color, eye color, height, and weight;

(2) the state seal;

(3) instructions to the licensee; and

(4) other information as determined by the department.

D. Term of license. Original and renewed licenses are effective for four years from the date of issuance by the department. Replacement licenses and licenses that have been endorsed to add another category or highest caliber of handgun shall expire on the date the replaced license would have expired.

E. Dual licenses prohibited. A licensee may not own or possess more than one New Mexico license to carry a concealed handgun. A license to carry a concealed handgun shall indicate all categories and highest calibers of handguns the licensee is authorized to carry concealed in New Mexico.

[10.8.2.13 NMAC - Rp, 10.8.2.13 NMAC, 11-30-16]

10.8.2.14 FINGERPRINTING OF APPLICANTS:

All applicants shall submit electronic fingerprints. The department may refuse to accept fingerprints it determines are not legible and classifiable.

A. Responsibilities of applicant. The applicant must present a valid government-issued photographic identification card.

B. Responsibilities of person recording the fingerprints. The person who records the applicant's fingerprints shall verify that the government-issued photographic identification card is of the person being fingerprinted.

[10.8.2.14 NMAC - Rp, 10.8.2.14 NMAC, 11-30-16]

10.8.2.15 FIREARMS TRAINING FOR APPLICANTS AND LICENSEES:

A. All New Mexico residents must attend a department approved firearms training course taught by a department approved instructor unless he or she received the license by transfer of an out of state license.

(1) An applicant seeking a license shall satisfactorily complete an initial firearms training course approved by the department that includes at least 15 hours of classroom and firing range instruction as specified in Subsection (A) of Section 29-19-7 NMSA 1978 except:

(a) a department approved instructor;

(b) a current law enforcement officer;

(c) a retired law enforcement officer who has been retired 10 years or less at time of application;

(d) active military personnel;

(e) military service persons who have been discharged within 20 years prior to the time of application; or

(f) mounted patrol members who have successfully completed a law enforcement training program for New Mexico mounted patrol.

(2) Two years after the issuance of an initial license, a licensee shall complete a refresher course which consists of either range qualification of his or her approved caliber of handgun or an online training course of instruction approved by the department.

(3) Four years after the issuance of an initial license, a licensee seeking renewal of a license shall satisfactorily complete a refresher firearms training course approved by the department that includes at least four (4) hours of classroom and firing range instruction as specified in Subsection (A) of Section 29-19-7 NMSA 1978.

(4) The department may suspend a license if the licensee does not comply with the refresher course requirements. Upon compliance, the licensee shall submit a \$5 reinstatement fee.

B. Competency demonstration.

(1) An applicant or licensee shall demonstrate competency in the safe use of each category and highest caliber of handgun for which he or she seeks certification by firing the handgun with live ammunition at a target no larger than 12 inches wide and 18 inches high.

(2) An applicant or licensee shall fire 15 rounds from three yards and 10 rounds from seven yards.

(3) An applicant or licensee shall score four points for each shot that hits within the scoring line and zero points for each shot that hits outside the scoring line. An applicant must obtain a score of seventy-two percent of the total score to pass the competency demonstration.

C. Determination of competency. An approved instructor shall determine whether or not an applicant is to be issued a certificate of completion based on the applicant's or licensee's score on the competency demonstration and the applicant's or licensee's knowledge and understanding of the subjects specified in the act.

D. Certificates of completion. An approved instructor shall issue a certificate of completion to each applicant who demonstrates competency in the safe use of the categories and calibers of handguns for which he or she seeks licensure as prescribed in Subsections B and C of this section. The certificate of completion shall include the name and date of birth of the applicant, the printed name and signature of the approved instructor who scored the competency demonstration, the date the applicant completed the firearms training course, all categories and calibers of handguns for which the applicant demonstrated competency, and a unique number consisting of the instructor number assigned by the department and a sequential number that corresponds with the order in which the instructor has issued certificates.

10.8.2.16 TERMS AND CONDITIONS OF LICENSE:

A. Carrying only handguns listed on license. No person shall carry a concealed handgun of a different category or higher caliber than is indicated on the license issued to that person by the department. A licensee shall only carry one concealed handgun at any given time.

B. Consumption of alcohol prohibited. No person shall consume alcohol while carrying a concealed handgun.

C. Carrying while impaired. No person shall carry a concealed handgun while impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications.

D. Display of license on demand. A licensee carrying a concealed handgun on or about his person in public shall, upon demand by a peace officer, display his license to carry a concealed handgun.

E. Prohibited acts. A licensee shall not deface, alter, mutilate, reproduce, lend, transfer, or sell a license. A licensee shall adhere to Section 30-7-4 NMSA 1978 as it pertains to negligent use of a deadly weapon.

F. Carrying prohibited on private property. In addition to other limitations stated in the act, a licensee may not carry a concealed handgun on or about his person on private property that has signs posted prohibiting the carrying of concealed weapons or when verbally told so by a person lawfully in possession of the property.

G. Carrying prohibited in preschools. No licensee shall carry a concealed handgun on the premises of a preschool that provides care to infants, toddlers, and children aged five and younger, which includes child care facilities, home-based or center-based, and whether or not the facility is licensed, registered, or regulated.

H. Schools. Carrying of a deadly weapon on school premises is prohibited except as allowed by the law.

I. University. Carrying of a firearm on university premises is prohibited except as allowed by the law.

J. Liquor establishments. Carrying of a firearm in an establishment licensed to dispense alcoholic beverages is prohibited except as allowed by the law.

K. Indicia of licensure. Only a law enforcement officer may carry a badge, patch, card, or any other indication of authority to carry a concealed handgun in New Mexico other than the license issued by the department or a license issued by a state that has been accepted by reciprocity by New Mexico pursuant to the act.

L. Notice of change in circumstances. A licensee shall, within 10 days, both notify the department in writing and return the license to it within 10 days upon the occurrence of any of the following:

- (1) adjudication of mental incompetence has been entered or issued against the licensee;
- (2) the licensee has been committed to a facility for the treatment of mental illness;
- (3) the licensee has been committed to a facility for treatment of addiction to alcohol, controlled substances, or other drugs;
- (4) an order of protection has been issued by a court against the licensee;
- (5) an indictment for or charge with a felony or a disqualifying misdemeanor offense described in Subsection (B) of Section 29-19-4 NMSA 1978 has been issued against the licensee;
- (6) is no longer a full time salaried law enforcement officer; or
- (7) the licensee is other than honorably discharged from the military.

[10.8.2.16 NMAC - Rp, 10.8.2.16 NMAC, 11-30-16]

10.8.2.17 LICENSE RENEWAL AND TRANSFER:

A. To renew a New Mexico license. A licensee may submit an application for a renewed license on the form prescribed by the department.

- (1) The licensee may submit the application anytime from 60 days before, and until 60 days after the license expires. If the license has expired, a licensee shall not carry a concealed handgun until he or she receives a renewed license.
- (2) The licensee shall complete a refresher firearms training course prior to filing the application.
- (3) The licensee shall submit to the department:
 - (a) electronic fingerprints as required by Section 29-19-5 NMSA 1978 and 10.8.2.14 NMAC, unless electronic fingerprints are already on file with the department;
 - (b) a certified copy of a certificate of completion for a refresher firearms training course approved by the department issued by an approved instructor not more than 90 days prior to the date the application is filed;

(c) a nonrefundable \$75 renewal fee; and

(d) a copy of New Mexico driver's license or other government issued identification which contains a picture.

B. To transfer a license from another state. A person establishing New Mexico residency must transfer his or her license from another state. The license holder has 90 days from establishing New Mexico residency to file an application for a New Mexico renewed license on the form prescribed by the department. An applicant for transfer shall not carry a concealed handgun in New Mexico until the applicant receives a New Mexico license unless he or she has a license from a state that has been accepted by reciprocity by New Mexico.

(1) In addition to the items required by Paragraph 3 of Subsection A of this section, the applicant for license transfer shall file:

(a) proof of residency as provided in Subsection A of 10.8.2.12 NMAC;

(b) proof of age as provided in Subsection B of 10.8.2.12 NMAC; and

(c) a photocopy of the license being transferred.

(2) The applicant for transfer shall complete:

(a) a refresher firearms training course if the firearms training required by the other state meets or exceeds New Mexico firearms training requirements and the licensee completed firearms training not more than one year prior to filing the application; or

(b) an initial firearms training course if the firearms training required by the other state does not meet New Mexico firearms training requirements or the licensee completed firearms training more than one year prior to filing the application.

(3) The applicant for transfer must meet all other requirements for obtaining a license in New Mexico by showing either that:

(a) the requirements for licensure in the other state meet or exceed the requirements for issuance of a license in New Mexico; or

(b) the applicant has satisfactorily completed the requirements for issuance of a license in New Mexico that were not applicable in the other state.

C. Time period for review. The department shall review the application for a renewed license, conduct a national criminal background check for each applicant for a renewed license or transfer of a license from another state, and make a determination

within 30 days of the date the department receives a complete application and background check.

D. Determination by department.

(1) **Approval.** If the department finds that the applicant for a renewed license or transfer of a license from another state meets the requirements in the act and this rule for a renewed license, the department shall issue a license.

(2) **Denial.** If the department finds that the applicant does not meet the requirements for a renewed license or transfer of a license from another state, the department shall issue a notification of denial in accordance with 10.8.2.21 NMAC. The notification of denial shall cite the particular requirements of the act or this rule that the applicant has failed to meet.

[10.8.2.17 NMAC - Rp, 10.8.2.17 NMAC, 11-30-16]

10.8.2.18 ADDITIONAL HANDGUN ENDORSEMENT:

If a licensee wishes to add another category or additional higher calibers of handguns to his or her license, the licensee shall file with the department an endorsement application. The licensee shall also submit a certified copy of a certificate of completion from an approved instructor stating that the licensee has demonstrated competency on a firing range for each additional category and caliber of handgun, his or her current license, and a \$10 processing fee. The licensee need not retake the classroom portion of the firearms training course. The department shall issue an updated license within 10 days of receipt of the application. The updated license shall expire on the same date as the original license would have expired. In accordance with Section 29-19-9 NMSA 1978, a licensee shall not carry the higher caliber concealed handgun until he or she receives the updated license

[10.8.2.18 NMAC - Rp, 10.8.2.18 NMAC, 11-30-16]

10.8.2.19 REPLACEMENT LICENSE:

A. Change of name address, or status: A licensee who changes his or her name, address or law enforcement status shall file within 30 days:

(1) an application for a replacement license on the form prescribed by the department;

(2) if applicable, a certified copy of a legal document proving the change of name;

(3) a nonrefundable \$10 processing fee; and

- (4) if applicable, proof of reemployment with a law enforcement agency.

B. Loss, theft, or destruction of license: A licensee who loses his or her license or whose license is stolen or destroyed shall file a police report within 10 days of the date the licensee discovers the loss, theft, or destruction of the license. The licensee shall not carry a concealed handgun until he or she obtains a replacement license. A licensee who seeks to replace a license that is lost, stolen, or destroyed shall file with the department:

- (1) an application for a replacement license on the form prescribed by the department;
- (2) the case number of the police report;
- (3) a notarized statement made under oath that the license was lost, stolen or destroyed; and
- (4) a nonrefundable \$10 processing fee.

The department shall issue a replacement license within 10 days of receipt of the application.

[10.8.2.19 NMAC - Rp, 10.8.2.19 NMAC, 11-30-16]

10.8.2.20 ENFORCEMENT:

A. Authority to disarm. A peace officer acting in the lawful discharge of his or her official duties is authorized to disarm a licensee at any time the peace officer reasonably believes it is necessary for the protection of the licensee, peace officer or another individual. The peace officer shall return the handgun to the licensee before dismissing the licensee from the scene if the peace officer has determined that the licensee is not a threat to himself or herself, the peace officer, or other individuals, provided that the licensee has not violated any provision of the act or this rule, or committed any other violation which could result in arrest of the licensee. If the peace officer has probable cause to believe that the handgun is stolen, has an altered serial number, or has been used in the commission of a crime, the peace officer shall hold the handgun in evidence and shall submit a copy of his or her agency report to the department within 10 days.

B. Authority to confiscate license. A peace officer may confiscate a license if the licensee has violated any provision of the act or this rule, or committed any other violation that could result in arrest of the licensee. If the licensee has committed a violation of the act or rule warranting suspension or revocation of the license, the officer shall file an affidavit of violation as provided in Subsection B of 10.8.2.21 NMAC. A police report may be submitted in lieu of an affidavit.

[10.8.2.20 NMAC - Rp, 10.8.2.20 NMAC, 11-30-16]

10.8.2.21 DENIAL, SUSPENSION AND REVOCATION OF A LICENSE:

A. Grounds. The department may deny, suspend or revoke a license if the licensee:

- (1)** is found to have violated any provision of the act or this rule;
- (2)** is a fugitive from justice, in accordance with Paragraph (4) of Subsection (A) of Section 29-19-4NMSA 1978;
- (3)** is convicted of a felony, in accordance with Paragraph (5) of Subsection (A) of Section 29-19-4 NMSA 1978, including a conditional discharge until discharged, a diversion until its terms are completed, a deferment, a guilty plea, a plea of nolo contendere, or Alford plea;
- (4)** is under indictment, cited, or summoned to Court to answer for a felony criminal offense, in accordance with Paragraph (6) of Subsection (A) of Section 29-19-4 NMSA 1978;
- (5)** is prohibited by law from purchasing or possessing a firearm, in accordance with Paragraph (7) of Subsection (A) of Section 29-19-4 NMSA 1978 or any federal database or law;
- (6)** is adjudicated mentally incompetent or committed to a mental institution, in accordance with Paragraph (8) of Subsection (A) of Section 29-19-4 NMSA 1978;
- (7)** is addicted to alcohol or controlled substances, in accordance with Paragraph (9) of Subsection (A) of Section 29-19-4 NMSA1978;
- (8)** receives a conditional discharge, a diversion or a deferment or is convicted of, pleads guilty to or enters a plea of nolo contendere to a misdemeanor offense involving a crime of violence within 10 years immediately preceding the application, in accordance with Paragraph (1) of Subsection (B) of Section 29-19-4 NMSA 1978;
- (9)** is convicted of a misdemeanor offense of driving while under the influence of intoxicating liquor or drugs within five years immediately preceding the application, in accordance with Paragraph (2) of Subsection (B) of Section 29-19-4 NMSA 1978;
- (10)** is convicted of a misdemeanor offense of the possession or abuse of a controlled substance within 10 years immediately preceding the application, in accordance with Paragraph (3) of Subsection (B) of Section 29-19-4 NMSA 1978;
- (11)** is convicted of a misdemeanor offense of assault or assault against a household member, battery or battery against a household member, in accordance with Paragraph (4) of Subsection (B) of Section 29-19-4 NMSA 1978; or

(12) is subject to a valid protective order issued by a court.

B. Affidavit of violation by a licensee. If a peace officer believes there is probable cause to suspend or revoke a license, the peace officer shall prepare an affidavit on a form prescribed by the department. The affidavit shall cite the provision of law that was violated. The peace officer shall file the affidavit and any other reports or information relating to the licensee available to the officer with the department within 10 days of the date the peace officer learns of the violation. A police report may be submitted in lieu of the affidavit.

C. Notice of suspension or revocation and surrender of license. The department shall review the affidavit and attachments, and, if the department finds probable cause to suspend or revoke the license, may issue a notification of the suspension or revocation to the licensee advising the licensee of his or her right to a hearing in accordance with 10.8.2.27 NMAC. If the licensee elects not to request a hearing, the licensee shall surrender his or her license to the department within 15 days of the expiration of the period allowed to request a hearing.

D. Term of suspension or revocation and reapplication.

(1) The department may suspend a license when the outcome of a disqualifying matter is pending. The licensee may file an application to renew the license upon expiration of the term of suspension.

(2) The department may revoke a license for a period required by the law up to and including a lifetime revocation. The person will not be eligible for a new license until the revocation period required by law has passed, if ever.

(3) The license of a current law enforcement officer shall expire on the date the officer leaves employment unless the officer provides the department with written proof of hiring by another law enforcement agency in New Mexico.

[10.8.2.21 NMAC - Rp, 10.8.2.21 NMAC, 11-30-16]

10.8.2.22 DEPARTMENT APPROVAL OF INSTRUCTORS AND FIREARMS TRAINING COURSES:

A. Application required. Any person seeking to instruct firearms training courses pursuant to this rule shall file an application with the department to become an approved instructor. Application shall be made on the form prescribed by the department, and shall be typewritten or legibly handwritten in ink. A person who is not an approved instructor may not instruct a firearms training course pursuant to this rule.

B. Requirements for approval. In order to be approved as an instructor, an instructor applicant must:

(1) agree to be subject to New Mexico jurisdiction for the purpose of enforcing the act and this rule;

(2) submit a resume of experience instructing firearms training courses, handgun experience, or both;

(3) submit electronic fingerprints that comply with the requirements in Section 29-19-5 NMSA 1978 and 10.8.2.14 NMAC for positive identification purposes;

(4) submit an authorization for release of information form provided by the department;

(5) submit an affidavit or cover page of an acceptable firearms instruction insurance policy;

(6) submit to the department the curriculum and course materials, meeting the department's core requirements, for a firearms training course that has been certified or sponsored by a federal or state law enforcement agency, an accredited college or university, a firearms training school or a nationally recognized organization approved by the department that customarily offers firearms training, and a copy of the letter or other document approving the course from the certifying or sponsoring entity. An instructor applicant may develop his own curriculum and materials but must have them certified or sponsored by one of the entities identified in Subsection (A) of Section 29-19-7 NMSA 1978;

(7) The instructor applicant must submit to the department a list of all persons the instructor applicant proposes to engage in any aspect of the concealed carry weapons class at least 10 days prior to the first class, including the individual's name, date of birth, social security number, and concealed carry license number;

(8) provide a description of the instructor applicant's experience in offering firearms training; if any. An instructor-applicant who wishes to conduct firing range instruction must possess a certificate of completion of a firearms instructor-training program approved by the department that was issued or renewed not more than three years prior to the date the application is filed;

(9) be a currently certified law enforcement instructor employed by a law enforcement agency; or

(10) be 21 years of age and agree to be responsible for the actions and omissions of all persons engaged by the approved instructor for the purpose of conducting firearms training courses pursuant to this rule.

C. Time period for review. As prescribed in Subsection (A) of Section 29-19-6 NMSA 1978, the department shall review the application of each instructor applicant

and make a determination within 30 days of the date the department receives a complete application and background check.

D. Determination by the department.

(1) Approval.

(a) Instructor. If the department finds that the instructor applicant meets the requirements specified in Subsection B of this section, the department shall issue a concealed carry weapon instructor permit that shall be valid for four years. The concealed carry weapon instructor permit shall include the approved instructor's name, business address, and date of birth, the expiration date of the permit, and the instructor number assigned by the department.

(b) Curriculum. If the department finds that the proposed curriculum and course materials for the firearms training course meet the requirements of Section 29-19-7 NMSA 1978 and this rule, the department shall approve the proposed firearms training course in writing. The department's approval shall remain in effect for the shortest of:

- (i)** one year;
- (ii)** until the approved instructor substantially changes the curriculum or course materials; or
- (iii)** the requirements in the act or this rule are changed.

(2) Denial. If the department finds either that the instructor applicant or the proposed firearms training course does not meet the requirements of Section 29-19-7 NMSA 1978 or this rule, the department shall issue a notification of denial. The notification of denial shall cite the particular requirements of the act or this rule that the instructor applicant or proposed firearm training course has failed to meet.

E. Renewal. An approved instructor seeking to renew his or her permit shall file with the department at least 60 days before the date his or her permit expires:

- (1)** an application for renewal on the form prescribed by the department;
- (2)** the curriculum and course materials for a firearms training course that is certified or sponsored by a federal or state law enforcement agency, an accredited college or university, a firearms training school, or a nationally recognized organization approved by the department that customarily offers firearms training and a copy of the letter or other document approving the course from the certifying or sponsoring entity; and

(3) a list of all persons the instructor applicant intends to engage in any aspect of conducting a concealed carry weapons class.

F. No authority to carry. An approved instructor is not authorized to carry a concealed handgun unless the approved instructor obtains a license from the department pursuant to Section 29-19-4 NMSA 1978 of the act and this rule. If an instructor applicant wishes to apply for a concealed carry license at the same time he or she applies for an instructor's permit, he or she may do so by checking the appropriate boxes on the instructor application form, complying with all requirements for a license in the act and this rule, and enclosing the license application fee and all documents required by this rule with the application for an instructor's certificate.

G. List of approved instructors. The department shall maintain and make available to the public a list of approved instructors. An approved instructor may request to be removed from the list, but shall remain subject to a request for inspection of public records pursuant to, Chapter 14, Article, 2 NMSA 1978.

[10.8.2.22 NMAC - Rp, 10.8.2.23 NMAC, 11-30-16]

10.8.2.23 BACKGROUND INVESTIGATIONS OF APPLICANTS AND INSTRUCTOR APPLICANTS:

The department shall conduct a state and national criminal background check, and a court records check for protective orders, of each applicant for an original, transferred or renewed license. The department shall conduct a state criminal background check, and a court records check for protective orders, for each instructor applicant for an original or renewed instructor's permit. The department may require certain applicants to provide information or execute documents to enable the department to obtain criminal history records of disposition of charges. The department may conduct such other investigation of an applicant as the department deems necessary to determine an applicant's suitability for a license or instructor's permit.

[10.8.2.23 NMAC - Rp, 10.8.2.23 NMAC, 11-30-16]

10.8.2.24 RESPONSIBILITIES OF APPROVED INSTRUCTORS:

A. Minimum standards for instruction. An approved instructor shall:

(1) engage as instructors only those persons who have been issued a permit by the department, except as provided in Subsection C of this section;

(2) have no more students in the classroom or on an indoor firing range than the maximum occupancy allowed by the state or local fire code;

(3) use classroom facilities that comply with all federal, state, and local laws relating to persons with disabilities, public health, safety, and sanitation, including restroom facilities;

(4) use only the curriculum, course materials, handouts, and videos approved by the department;

(5) display the permit issued by the department in an appropriate and visible location;

(6) not permit a student to begin a firearms training course until the student has received written information stating all fees, including incidental costs, charged for the course, policies for passing and failing, refund and reschedule policies, and attendance requirements.

B. Minimum standards for firing range instruction. An approved instructor shall:

(1) not allow a student to participate in firing range instruction until the student has completed the classroom portion of the firearms training that covers safe handgun shooting fundamentals;

(2) conduct firing range instruction under various light conditions when possible;

(3) have no more students firing a handgun on the firing range than the instructor can effectively and safely instruct and monitor, including no more than five students per instructor during daylight training, no more than three students per instructor for lowlight training, and no more than one student per instructor for dynamic training such as shooting on the move.

C. Guest instructors.

(1) An approved instructor may use guest instructors who are on the department approved instructor list to teach various parts of a firearms training course, but only with written approval of the department. An approved instructor must file a request for approval to use a guest instructor at least 10 days prior to the date the guest instructor will teach for the first time. The department will conduct background investigations of guest instructors.

(2) no guest instructor shall teach the approved instructor's entire firearms training course.

(3) An approved instructor shall maintain a file on each guest instructor who teaches any portion of the firearms training course. The file shall include a list of the dates and portions of the course each guest instructor has taught, and appropriate

documents showing the education, experience, licenses or certifications that qualify the guest instructor to teach the portions of the course he or she has taught.

D. Monitoring by the department. The department may monitor all aspects of firearms training courses. Approved instructors shall cooperate with department employees in its efforts to monitor the training of applicants.

(1) Should a department employee determine that an instructor is not compliant with these rules or is placing his or her students in danger; the employee shall have the authority to end the class. The employee shall obtain the approved instructor's permit, make a written report and submit both to the secretary. The approved instructor may then file an appeal pursuant to the act and these rules.

(2) Failure to adhere to any provisions of Subsection D, these rules, or the act shall be grounds for temporary or permanent loss of an instructor's permit.

E. After action reports (AAR). An approved instructor shall file the following information with the department within 10 days after the end of each firearms training course on the form prescribed by the department:

(1) the name, address, and date of birth of each applicant who attended the course;

(2) the score each applicant achieved in the handgun competency demonstration;

(3) the category and highest caliber of each handgun for which the applicant demonstrated competency; and

(4) whether or not the approved instructor issued a certificate of completion and each category and caliber for which each applicant's certificate was issued.

F. Records. An approved instructor shall maintain the records required by this subsection for a period of five years from the date of completion of each firearms training course. The records shall be stored in a safe and secure place and shall be available for inspection by the department promptly upon request. An approved instructor shall maintain:

(1) a record of each handgun competency certificate issued;

(2) a record of the following information for each course:

(a) name, address, and date of birth of each applicant who attended the course;

(b) the score the applicant achieved in the handgun competency demonstration;

(c) the category and caliber, of each handgun for which the applicant demonstrated competency; and

(d) an indication of whether or not the approved instructor issued a certificate of completion to that person;

(3) a record of the dates and number of hours of each firearms training course;

(4) a record of the curriculum and course materials used in each course; and

(5) copies of documents and correspondence filed with the department.

[10.8.2.24 NMAC – Rp, 10.8.2.24 NMAC, 11-30-16]

10.8.2.25 IN-SERVICE TRAINING CYCLE FOR CONCEALED CARRY INSTRUCTORS:

A. All New Mexico approved instructors shall receive a minimum of eight hours of training biennially.

B. Required training may be conducted by the department's concealed carry program at regional locations and, where scheduling will allow, the concealed carry program will assign staff to instruct the course.

[10.8.2.25 NMAC - N, 11-30-16]

10.8.2.26 SUSPENSION AND REVOCATION OF AN INSTRUCTOR PERMIT:

A. Grounds. The department may suspend or revoke a permit if the approved instructor:

(1) is the subject of valid complaints from applicants, licensees, or other approved instructors;

(2) violates any of the grounds stated in Subsection A of 10.8.2.21 NMAC with respect to a license;

(3) violates any provision of the act or these rules; or

(4) fails to improve after having been sanctioned.

B. Notice of suspension or revocation and surrender of permit. The department shall investigate all allegations concerning grounds for suspension or revocations of permits. If the department finds there is a preponderance of evidence supporting the complaint, and there exists cause to suspend or revoke the permit, the department may issue a notification of suspension or revocation of the permit to the approved instructor, and advising the approved instructor of his or her right to a hearing in accordance with 10.8.2.26 NMAC. If the approved instructor elects not to request a hearing, the approved instructor shall surrender his or her permit to the department within 15 days of the expiration of the period for requesting a hearing and shall cease offering firearms training courses pursuant to this rule.

C. Immediate suspension of firearms training course and refund of tuition.

(1) The department may immediately suspend, without notice or a prior hearing, a firearms training course whenever the department finds that the person teaching the course:

(a) is not an approved instructor;

(b) is impaired by the use of alcohol, controlled substances, or over-the-counter or prescribed medications;

(c) has committed a misdemeanor or felony under the New Mexico criminal code or law of another jurisdiction; or

(d) is teaching something that is contrary to law or accepted safety practices.

(2) The approved instructor shall be given the opportunity to request a hearing before the department pursuant to 10.8.2.26 NMAC.

(3) If the department finds, after notice and a hearing, that the person teaching the course was not an approved instructor, was impaired, has committed a misdemeanor or felony under the criminal code, or was teaching something contrary to law or accepted safety practices, the department may order the person to refund to every student in the class the person was teaching any fees paid by the student to take the class. If the department finds that all or any portion of the firearms training course was deficient because the instructor was not an approved instructor, was impaired, has committed a misdemeanor or felony under the criminal code, or was teaching something contrary to law or safety, the department may require the students in that class to retake the portions that were deficient. The department may also initiate proceedings to suspend or revoke the approved instructor's permit.

D. Term of suspension or revocation and reapplication.

(1) The department may suspend a permit for up to one year while the outcome of a disqualifying matter is pending. The approved instructor may file an application to renew the permit upon expiration of the term of suspension.

(2) The department may revoke a permit for a period required by law up to and including a lifetime revocation. The instructor whose permit is revoked will not be eligible for a new permit until the revocation period required by law has passed, if ever.

[10.8.2.26 NMAC - Rp, 10.8.2.25 NMAC, 11-30-16]

10.8.2.27 HEARING PROCEDURES:

A. Written notice required. The department shall mail a notification of the decision to deny, suspend, or revoke a permit and instructions for requesting a hearing to the respondent in accordance with Subsection B of 10.8.2.8 NMAC. The notice shall become final on the 30th day after the date the notice was postmarked unless the department receives a request for a hearing, or the notice is returned to the department as undeliverable, before that date, in which case it is immediately final.

B. Request for hearing. A respondent who seeks reconsideration of a notification of denial, suspension, or revocation shall file a request for hearing. The request for hearing shall:

- (1) be in writing;
- (2) be received by the department within 30 days from the date on the notification;
- (3) state with specificity the basis for challenging the notification; and
- (4) provide any additional documentation to support the challenge.

C. Hearing date. Within 30 days of receipt of a timely request for hearing, the department shall mail a notice of hearing to the respondent. The hearing shall be held within a reasonable period of time, but within 180 days from the date the department receives request for the hearing. The department may extend the time for a hearing one time for up to an additional 60 days upon its own discretion. The department shall not unreasonably deny a request for postponement of the hearing made by a respondent when good cause exists for the request.

D. Contents of notice. The notice shall include:

- (1) the date, time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction pursuant to which the hearing is being held;

(3) reference to the section(s) of the act or this rule that were cited as the basis for the denial, suspension, or revocation;

(4) a general statement of the matters or issues involved; and

(5) a statement of the rights specified in Subsection I of this section.

E. Nature of hearing. The hearing shall be conducted in an informal manner. The hearing may be conducted in person or by telephone conference call, video conferencing, or other appropriate technology.

F. Hearing examiner. The department shall designate a hearing examiner who shall conduct the proceedings and perform all acts and take all measures necessary or proper for the efficient conduct of the hearing. The hearing examiner may:

(1) administer oaths;

(2) issue subpoenas for the attendance of witnesses and the production of relevant books, documents, and records;

(3) exclude any irrelevant, immaterial, or unduly repetitious evidence;

(4) take notice of facts and of recognized technical or scientific facts within the department's specialized knowledge;

(5) hear evidence and admit documentary evidence from the parties. The department may introduce into evidence copies of government records needed to establish the existence of certain facts which could result in denial, suspension, or revocation of a license or permit, including but not limited to records regarding convictions, judgments regarding mental competency or chemical dependency, or other matters that may be established by government records;

(6) call and examine the respondent or other witnesses; and

(7) utilize the department's experience, technical competence, and specialized knowledge in evaluating the evidence.

G. Testimony. Testimony at the hearing shall be taken under oath.

H. Record of hearing. The hearing shall be recorded at the department's expense. No recording devices other than the official hearing recording device shall be allowed. In addition, the department shall make a written record of:

(1) the nature of the proceedings including copies of the affidavit or other documents of grounds for the notification of denial, suspension, or revocation, and the notice of hearing;

(2) the place, date, and time of the hearing and all continuances or recesses of the hearing;

(3) the appearance or nonappearance of the respondent;

(4) if the respondent appears with an attorney, the name and address of the attorney;

(5) all evidence and testimony and a copy of all exhibits introduced into evidence;

(6) the findings of fact, conclusions of law, and recommended decision of the hearing examiner; and

(7) the decision of the secretary.

I. Rights of applicant, instructor applicant, approved instructor, or licensee.

The respondent has the right to:

(1) attend the hearing;

(2) enter evidence into the record, but only in open hearing;

(3) recuse a hearing examiner for cause;

(4) be assisted or represented by an attorney at his or her own expense; and

(5) call, examine and cross-examine witnesses.

J. Stipulation. The respondent, or respondent's attorney in respondent's absence, shall stipulate in writing on a form prescribed by the department that the hearing examiner shall be released from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the hearing. Failure to so stipulate shall result in termination of the hearing and continuation of the notification issued by the department.

K. Deliberation. At the close of the hearing, the hearing examiner shall review and consider the entire record, prepare findings of fact, conclusions of law, and a recommended decision, and submit them to the secretary within 20 days after the close of the hearing. The hearing examiner shall make a finding on each ground for denial, suspension, or revocation alleged. The recommended decision shall be based upon substantial, competent, and relevant evidence and testimony appearing in the record of hearing.

L. Final order. Within 20 days of receipt of the recommended decision, the secretary shall review the record of the hearing and issue a final order affirming the

denial of an application for, or suspension or revocation of, a license or permit or reversing the denial, suspension, or revocation and authorizing issuance or reinstatement of a license or permit. The department shall mail a copy of the final order to the respondent. The final order shall be based upon substantial, competent, and relevant evidence and testimony appearing in the record of hearing.

M. Appeals. A respondent adversely affected by a final order of the department may file a petition for a writ of certiorari, pursuant to Rule 1-075 NMRA, in the district court in the county where the respondent resides within 30 days of the date the final order was postmarked. The appellant shall bear the costs of the appeal.

[10.8.2.27 NMAC - Rp, 10.8.2.26 NMAC, 11-30-16]

10.8.2.28 DEPARTMENTAL IMMUNITY:

The department, or any employee of the department, shall not be criminally or civilly liable for acts:

A. performed by the department or employee in good faith based on information available to the department or employee at the time the act was performed;

B. committed by a licensee; or

C. committed by a person approved by the department or employee to offer a firearms training course.

D. occurring during and through the course of any proceeding pertaining to a concealed carry license.

[10.8.2.28 NMAC - Rp, 10.8.2.28 NMAC, 11-30-16]

10.8.2.29 RECIPROCITY:

The secretary or his designee shall have discretionary authority to afford transfer or reciprocity to a concealed handgun license issued by another state. Transfer or reciprocity may be granted if the other state:

A. issues a license or permit with an expiration date printed on the license or permit;

B. is available to verify the license or permit status for law enforcement purposes within three days of request;

C. has disqualification, suspension and revocation requirements for a concealed handgun license or permit;

D. requires that an applicant for a concealed handgun license or permit submit to a national criminal history background check;

E. requires that an applicant not be prohibited from possessing firearms pursuant to federal or state law; and

F. requires that an applicant satisfactorily complete a firearms safety program that covers deadly force issues, weapons care and maintenance, safe handling and storage of firearms and marksmanship.

G. Each state which the department has afforded transfer or reciprocity shall be listed on the department's web page.

H. No reciprocity shall be afforded to a license issued by another state to a New Mexico resident.

[10.8.2.29 NMAC - Rp, 10.8.2.29 NMAC, 11-30-16]

10.8.2.30 CURRENT LAW ENFORCEMENT OFFICERS OR MOUNTED PATROL OFFICERS:

A. Any current law enforcement officer residing in New Mexico shall be allowed to obtain a five-year concealed handgun carry license by submitting:

- (1)** all forms as required in 10.8.2.11 NMAC;
- (2)** a letter from his or her agency head verifying that the applicant is employed in good standing and is qualified under Section 29-19-4 NMSA 1978;
- (3)** a copy of his or her law enforcement certification and number; and
- (4)** a copy of his or her latest firearms qualification score with category and caliber designated, signed and dated by the authorized firearms instructor conducting the course.

B. An application may be denied if:

- (1)** the head of the law enforcement agency employing the officer requests in writing that a license not be issued and supplies sufficient information to enable the department to determine if the denial should be granted; or
- (2)** if the applicant has pending criminal charges or serious administrative allegations involving his or her conduct as a law enforcement officer.

C. The agency and applicant will be notified in writing of the department's decision. If denied, the applicant may follow the process contained in 10.8.2.27 NMAC.

D. The applicant's agency will be notified of any disqualifying information that may become known during the background check.

E. A license issued under this section may not be used, and must be turned in to the department's concealed carry unit, when the officer is no longer employed by a law enforcement agency.

[10.8.2.30 NMAC - Rp, 10.8.2.30 NMAC, 11-30-16]

10.8.2.31 RETIRED LAW ENFORCEMENT OFFICERS:

Any retired law enforcement officer shall be allowed to obtain a five-year concealed handgun carry license if the retired law enforcement officer:

- A.** has submitted all forms as required in these rules, including 10.6.2.12 NMAC;
- B.** is a resident of the state of New Mexico;
- C.** has retired from a law enforcement agency after a minimum of 15 years employment, unless the retirement was due to a job related disability;
- D.** has submitted a letter from the agency verifying employment if the 15 years is with more than one agency;
- E.** has submitted a letter from the agency verifying employment he or she retired from which indicates he or she retired in good standing with the effective date of retirement;
- F.** has submitted a copy of his or her last firearms qualification scores indicating category and caliber designation, dated and signed by the department's firearms instructor;
- G.** has taken a firearms course in accordance with the act if the officer has been retired longer than ten years at the time of application;
- H.** has submitted a copy of his or her law enforcement certification and number; and
- I.** has qualified and adheres to the provisions of the act and these rules.

[10.8.2.31 NMAC - Rp, 10.8.2.31 NMAC, 11-30-16]

10.8.2.32 MILITARY SERVICE PERSONS:

Any military service persons shall be allowed to obtain a five-year concealed handgun carry license under the following requirements:

- A.** by submitting all forms as required in these rules, including 10.8.2.12 NMAC; and
- B.** documentation satisfactory to the department that the applicant is a military service person; or
- C.** documentation satisfactory to the department that the applicant was a prior military service person honorably discharged.

[10.8.2.31 NMAC - N, 11-30-16]

CHAPTER 9: [RESERVED]

CHAPTER 10: DRUG CONTROL PROGRAMS

PART 1: GENERAL PROVISIONS [RESERVED]

CHAPTER 11: [RESERVED]

CHAPTER 12: PUBLIC DEFENDER COMMISSION

PART 1: GENERAL PROVISIONS

10.12.1.1 ISSUING AGENCY:

Public Defender Commission

[10.12.1.1 NMAC - N, 7/1/2015]

10.12.1.2 SCOPE:

Applies to all employees.

[10.12.1.2 NMAC - N, 7/1/2015]

10.12.1.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978; 42 U.S.C Section 12101 et seq.; Section 14: NMSA 1978, Section 14-2-1 NMSA 1978 and 42 U.S.C Section 101 et seq; Chapter 173, laws of 1997.

[10.12.1.3 NMAC - N, 7/1/2015]

10.12.1.4 DURATION:

Permanent.

[10.12.1.4 NMAC - N, 7/1/2015]

10.12.1.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.1.5 NMAC - N, 7/1/2015]

10.12.1.6 OBJECTIVE:

The objective of Part 1 of Chapter 12 is: to define words and phrases used throughout Chapter 12, to cite provisions pertaining to different parts of Chapter 12, to require maintenance of employment records, and to detail provisions that do not warrant a separate part.

[10.12.1.6 NMAC - N, 7/1/2015]

10.12.1.7 DEFINITIONS:

A. "Agency" means any state department, unit, bureau, division, branch or administrative group which is under the same employer.

B. "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different classification in the same pay band. The human resource director shall resolve disputes over how an anniversary date is derived.

C. "Applicant" means any person, who has applied for a position.

D. "Board" means the disciplinary review board.

E. "Break in employment" means any period of separation of at least one workday of not being in the public defender department.

F. "Candidate" means any person who is on the employment list for a position.

G. "Chief" means the chief public defender.

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 range.

J. "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a position in one pay band to a position in a lower pay band with a reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.

K. "Department" means the public defender department.

L. "Dismissal" means the involuntary separation from employment for disciplinary reasons.

M. "Employee" means a person in a position in the department. [Note: For purposes of brevity and consistency, this definition differs from Section 10-9-3-(I) NMSA 1978 but in no way confers a greater right on certain persons than contemplated by Section 10-9-3(I).

N. "Employer" means any authority having power to fill positions in the department.

O. "Employment list" means the list of names, certified by the human resource director, from which a candidate may be selected for appointment.

P. "Established requirements" means a position's individual job related qualification standards established by the department in accordance with the specific requirements and/or needs of the position and are subject to review by the human resource director.

Q. "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including oral or written tests.

R. "Exempt service" means at will positions in the department.

S. "Filed" means received by the office.

T. "First line supervisor" means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of other employees and may have the authority in the interest of the department 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 human resource 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.

U. "Involuntary separation" means involuntary removal of an employee from the department without prejudice as provided for in 10.12.10.13 NMAC.

V. "Manager" means an employee in a position that manages internal staff and/or external staff, and who plans, organizes, integrates, coordinates, and controls the

activities of others or directs a specific program or project. A manager also is held accountable for the performance of people, services, systems, programs 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 range that represents the competitive market rate for jobs of the same relative worth in the relevant labor market(s). Midpoint represents a compa-ratio value of 1.00 or 100%.

X. "Minimum qualifications" means statutory requirements as required by law, which shall be used to reject applicants.

Y. "Office" means the human resources bureau.

Z. "Pay range" means the range of pay rates, from minimum to maximum.

AA. "Probationer" means an employee in the department who has not completed the one-year probationary period.

BB. "Promotion" means the change of an employee from a position in one pay range to a position in a higher pay range.

CC. "Reduction" means a voluntary change without prejudice, within an employee's pay range, or from a position in one pay range to a position in a lower pay range, or voluntary removal of supervisory or leadworker responsibilities and pay.

DD. "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.

EE. "Resignation" means the voluntary separation of an employee from the department.

FF. "Rules" means the rules and regulations of the public defender department.

GG. "Status" means all of the rights and privileges of an appointment.

HH. "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

II. "Transfer" means the movement of an employee from one position to another in the same pay range without a break in employment.

JJ. "Without prejudice" means a declaration that no rights or privileges of the employee concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.

KK. "Writing or written" means in the written form and/or an alternative format, where deemed appropriate, and when requested.

[10.12.1.7 NMAC - N, 7/1/2015]

10.12.1.8 APPROVAL AUTHORITY:

A. Pursuant to the provision of Section 31-15-7 NMSA 1978 the chief public defender shall supervise all administrative and technical personnel activities of the department. The chief public defender may designate duties as needed.

(1) The human resource director, pursuant to direction from the chief, will establish a quality assurance review program. The chief will review the quality assurance review program.

(2) The human resource director shall ensure that all programs are reviewed, as outlined in the quality assurance review program, which will enable the chief to supervise all administrative and technical personnel activities of the state and ensure compliance with the rules. The human resource director shall submit the findings to the chief.

[10.12.1.8 NMAC - N, 7/1/2015]

10.12.1.9 INTERPRETATIONS:

The chief shall establish a procedure for the issuance of interpretations of these rules.

[10.12.1.9 NMAC - N, 7/1/2015]

10.12.1.10 METHOD OF SERVING NOTICE:

Any notice required of the department by these rules, shall be delivered by a method that provides proof of service or attempted service.

[10.12.1.10 NMAC - N, 7/1/2015]

10.12.1.11 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 a notice or paper upon the employee and the notice or paper is served by mail or courier service, 3 calendar days shall be added to the prescribed period.

[10.12.1.11 NMAC - N, 7/1/2015]

10.12.1.12 EMPLOYMENT RECORDS:

A. The office 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 their own file. Employment-related confidential records shall be available for inspection by prospective employers 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 a written rebuttal to any material placed in their employment history. The department 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.

C. For the purpose of inspection of public records under Section 14-2-1 NMSA 1978 et seq., 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 12101 et seq.]; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; 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 10.12.8 NMAC; and as otherwise provided by state or federal law.

[10.12.1.12 NMAC - N, 7/1/2015]

10.12.1.13 SETTLEMENT AGREEMENTS:

Any settlement agreement reached by the department and an employee to resolve a matter in dispute between them, that incorporates provisions covered by these rules, must conform to the provisions of these rules and have the prior approval of the chief. The chief may approve a settlement agreement, which does not conform to the provisions of these rules if, in the judgment of the chief, the settlement is in the best interest of the public defender department.

[10.12.1.13 NMAC - N, 7/1/2015]

10.12.1.14 HUMAN RESOURCE POLICIES:

The department shall make human resource policies available to employees and insure that policies conform to requirements of law.

[10.12.1.14 NMAC - N, 7/1/2015]

10.12.1.15 TRAINING AND DEVELOPMENT:

The human resource director in conjunction with the training director shall establish, pursuant to direction from the chief, maintain a training and development work plan. The chief will review the training and development work plan on an annual basis.

[10.12.1.15 NMAC - N, 7/1/2015]

10.12.1.16 SEVERABILITY:

A determination by a court of competent jurisdiction that any provision of these rules is unconstitutional or invalid shall not adversely affect the constitutionality, validity or enforceability of the remaining provisions.

[10.12.1.16 NMAC - N, 7/1/2015]

PART 2: APPOINTMENTS

10.12.2.1 ISSUING AGENCY:

Public Defender Commission

[10.12.2.1 NMAC - N, 7/1/2015]

10.12.2.2 SCOPE:

Applies to all employees.

[10.12.2.2 NMAC - N, 7/1/2015]

10.12.2.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978; 42 U.S.C Section 12101 et seq.; Section 14: NMSA 1978, Section 14-2-1 NMSA 1978 and 42 U.S.C Section 101 et seq.; Chapter 173, laws of 1997.

[10.12.2.3 NMAC - N, 7/1/2015]

10.12.2.4 DURATION:

Permanent.

[10.12.2.4 NMAC - N, 7/1/2015]

10.12.2.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.2.5 NMAC - N, 7/1/2015]

10.12.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 12 is to describe various types of appointments in the department and to describe employees' rights

[10.12.2.6 NMAC - N, 7/1/2015]

10.12.2.7 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 program with a designated duration.

C. "Temporary appointment" is the employment of a candidate in a position created for duration of less than one year.

D. "Emergency appointment" is the employment of an apparently qualified applicant when an emergency condition exists as determined by the chief and the appropriate employment list contains no available candidates or when there may be insufficient time for the normal recruitment process to proceed and in order to address the emergency, but only as long as the emergency exists. All qualified candidates will be considered for the position including the subject of the emergency appointment when the employment list is certified by the office.

E. "Convert(ed)" means the changing of an employee to a different type of status.

[10.12.2.7 NMAC - N, 7/1/2015]

10.12.2.8 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 department 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 department with the exception of those employees returned to work under 10.12.10.10 NMAC or 10.12.10.14 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. Such employees shall be advised in writing of the reason(s) for the expiration of appointment.

[10.12.2.8 NMAC - N, 7/1/2015]

10.12.2.9 CAREER STATUS:

An employee in a career appointment attains career status beginning the day following the end of the probationary period required by 10.12.2.8 NMAC unless otherwise provided for by these rules.

[10.12.2.9 NMAC - N, 7/1/2015]

10.12.2.10 TERM STATUS:

Employees in term status who complete the one year probationary period required by 10.12.2.8 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.

[10.12.2.10 NMAC - N, 7/1/2015]

10.12.2.11 TEMPORARY STATUS:

Temporary appointments may be expired with at least 24 hours written notice to the employee without right of appeal.

[10.12.2.11 NMAC - N, 7/1/2015]

10.12.2.12 EMERGENCY APPOINTMENTS:

A. An emergency appointment is the employment of an apparently qualified applicant when an emergency condition exists as determined by the chief and there are no applicants available on an appropriate employment list or when there may be insufficient time for the normal recruitment process to proceed and in order to address the emergency, but only as long as the emergency exists. All qualified candidates will be considered for the position including the subject of the emergency appointment when the employment list is certified by the office.

B. No employee may hold an emergency appointment longer than 90 calendar days in any 12-month period. The chief may make a second emergency appointment if the conditions continue to exist or additional conditions arise as set forth in Subsection A. of this Section.

C. Emergency appointments may be expired with at least 24 hours written notice to the employee without right of appeal.

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 department certifies that the employee holds qualifications and abilities necessary for successful job performance and is performing to the department's satisfaction; and there are no better qualified candidates for the position after appropriate recruitment.

[10.12.2.12 NMAC - N, 7/1/2015]

10.12.2.13 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 10.12.10.9 NMAC or a dismissal within the meaning of Subsection L of 10.12.1.7 NMAC.

[10.12.2.13 NMAC - N, 7/1/2015]

10.12.2.14 ACKNOWLEDGMENT OF CONDITIONS OF APPOINTMENT:

The department shall require that a form be signed by all employees at the time of appointment acknowledging the terms and conditions of the appointment.

[10.12.2.14 NMAC - N, 7/1/2015]

PART 3: CLASSIFICATION

10.12.3.1 ISSUING AGENCY:

Public Defender Commission

[10.12.3.1 NMAC - N, 7/1/2015]

10.12.3.2 SCOPE:

Applies to all employees

[10.12.3.2 NMAC - N, 7/1/2015]

10.12.3.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978.

[10.12.3.3 NMAC - N, 7/1/2015]

10.12.3.4 DURATION:

Permanent.

[10.12.3.4 NMAC - N, 7/1/2015]

10.12.3.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.3.5 NMAC - N, 7/1/2015]

10.12.3.6 OBJECTIVE:

The objective of Part 3 of Chapter 12 is to provide for a uniform and flexible system for the classification of department positions that supports the mission of the department, is adaptable to change, ensures that all positions are assigned to their appropriate classification, and sets forth a process for implementing classification studies.

[10.12.3.6 NMAC - N, 7/1/2015]

10.12.3.7 DEFINITIONS:

"Classification plan" means a document developed by the human resource director and approved by the chief that describes the chief's classification philosophy and is the foundation for ensuring consistent application of the philosophy.

[10.12.3.7 NMAC - N, 7/1/2015]

10.12.3.8 CLASSIFICATION PLAN:

A. The human resource director, pursuant to direction from the chief, shall establish, maintain and, administer a classification plan for all positions throughout the department.

B. The chief establishes a classification through the review, approval and adoption of new or revised classification descriptions.

C. The human resource director may recommend the deletion of unused classification descriptions and revisions to classification descriptions if the revision does not necessitate a study.

D. The human resource director shall provide affected parties an opportunity to comment on the creation, revision, and deletion of classification descriptions prior to implementation.

E. Classification reviews, classification studies and/or classification re-evaluations may be requested by department management.

[10.12.3.8 NMAC - N, 7/1/2015]

10.12.3.9 POSITION ASSIGNMENT:

A. The human resource director shall ensure that each position in the department 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 10.12.3.9 NMAC, the employee may elect to take a reduction in accordance with Subsection DD of 10.12.1.7 NMAC, or overfill the position in their current classification.

C. A position assignment decision may be appealed to the chief through the department's chain-of-command. Appeals to the chief must be in writing and include the employee's analysis of the reasons for the appeal as well as the human resource director's analysis for the reasons for reclassification of the position. The chief's decision is final and binding.

[10.12.3.9 NMAC - N, 7/1/2015]

10.12.3.10 IMPLEMENTATION OF CLASSIFICATION STUDY RESULTS:

On a date determined by the human resource 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.

[10.12.3.10 NMAC - N, 7/1/2015]

PART 4: PAY

10.12.4.1 ISSUING AGENCY:

Public Defender Commission

[10.12.4.1 NMAC - N, 7/1/2015]

10.12.4.2 SCOPE:

Applies to all employees.

[10.12.4.2 NMAC - N, 7/1/2015]

10.12.4.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978; and 29 U.S.C. Sections 201 to 262.

[10.12.4.3 NMAC - N, 7/1/2015]

10.12.4.4 DURATION:

Permanent.

[10.12.4.4 NMAC - N, 7/1/2015]

10.12.4.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.4.5 NMAC - N, 7/1/2015]

10.12.4.6 OBJECTIVE:

The objective of Part 4 of Chapter 12 is to provide a uniform system of pay administration for employees that is externally competitive and internally equitable.

[10.12.4.6 NMAC - N, 7/1/2015]

10.12.4.7 DEFINITIONS:

A. "Alternative pay range" means the range of pay rates, from the minimum to the maximum for a classification based on the 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. "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.

E. "Contributor proficiency zones" means subdivisions of the pay range that designate the employee's contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

F. "In pay range adjustment" means movement within a pay range for demonstrated performance, skill or competency development, and/or internal alignment, which allows department management to provide salary growth within a pay range.

G. "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 classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

H. "Normal work schedule" means a schedule established by the department, defining a start and end time for the employee.

I. "Pay plan" means a document developed by the human resource director and approved annually by the chief, that describes the chief's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy

J. "Total compensation" means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

[10.12.4.7 NMAC - N, 7/1/2015]

10.12.4.8 PAY PLAN:

A. The human resource director, pursuant to direction from the chief, shall establish, maintain and, administer a pay plan for all positions throughout the department, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay range.

B. The chief shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.

C. The human resource 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, and regional state government employers. The chief or human resource director may authorize or include additional comparison markets when deemed necessary and appropriate.

D. Prior to the end of each calendar year, the human resource director shall submit to the chief a compensation report that includes a summary of the status of the department pay system and the results of the annual compensation survey that includes total compensation. The chief shall review, adopt and submit this report to the public defender commission.

[10.12.4.8 NMAC - N, 7/1/2015]

10.12.4.9 ASSIGNMENT OF PAY RANGES:

The human resource director shall appoint a job evaluation committee composed of no less than three members including the human resource director and the deputy chief for administration. The human resource 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 human resource director. The human resource director shall review the results and convert the total job evaluation points to the appropriate pay range. The human resource director shall submit the pay range assignment results to the chief for adoption.

B. A re-evaluation of a classification may be requested by management 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 human resource director or the chief.

[10.12.4.9 NMAC - N, 7/1/2015]

10.12.4.10 ASSIGNMENT OF ALTERNATIVE PAY RANGES:

A. The human resource director may recommend to the chief the assignment of an alternative pay range(s)

(1) Alternative pay range(s) will be utilized to address compensation related to recruitment and retention issues.

(2) All jobs in an alternative pay range have the same range of pay: minimum, maximum and midpoint pay.

B. Requests for alternative pay ranges must meet criteria established in the pay plan.

C. The chief may assign alternative pay ranges based on the human resource director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.

D. The assignments to alternative pay ranges shall be reviewed annually to determine their appropriateness. The human resource director shall recommend to the chief the continuation or removal of the alternative pay range assignments. The salary of affected employees shall be governed by Subsection H. of 10.12.4.12 NMAC.

[10.12.4.10 NMAC - N, 7/1/2015]

10.12.4.11 SALARY SCHEDULES:

A. Based on the pay plan, the human resource director shall develop and maintain salary schedules for the department that shall consist of pay ranges.

B. No employee in the department shall be paid a salary less than neither the minimum nor greater than the maximum of their designated pay range unless otherwise authorized by the human resource director or chief, or provided for in these rules, or the employee has been transferred into the department by statute or order of a court of competent jurisdiction.

C. The human resource director, pursuant to the direction of the chief, shall adjust the salary schedules to address the external competitiveness of the department and/or other concerns. Employees whose pay range 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 range upon implementation.

(1) The pay of employees who would be above the maximum of the pay range shall not be reduced.

(2) The pay of employees who fall below the minimum of their pay range shall be raised to the minimum unless the human resource director confirms that the agency

does not have budget availability. In these instances, department shall raise the pay of employees to the minimum of their pay range within six months of the effective date of the salary schedule adjustment. The chief may grant an extension to the six month time period upon submission and approval of a plan to raise the pay of employees to the minimum of their pay range.

D. An employee's placement in the pay range will be identified by a compa-ratio value.

[10.12.4.11 NMAC - N, 7/1/2015]

10.12.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance salary: Upon entrance to a department position, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay range. Any entrance salary in the principal contributor zone must receive approval from the human resource 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 range.

(2) Employees with a salary at or above the maximum of the position's pay range shall not be eligible for an increase unless authorized by statute.

C. Salary upon in pay range adjustment: Upon in pay range adjustment, subject to chief approval, budget availability and reflective of appropriate placement, the department may increase an employee's salary up to 10% during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than 10% and the employee's base salary does not exceed the maximum of the assigned pay range. When reviewing requests for in pay range adjustments the chief will take into consideration those instances where the requesting manager has employees with a current rate of pay that falls below the minimum of their pay range.

D. Salary upon promotion: Upon promotion, an employee's salary, subject to budget availability, should reflect appropriate placement within the pay range. A salary increase of less than 5% or greater than 15% shall require approval of the chief. A salary increase greater than 15% to bring an employee's salary to the minimum of the pay range or less than 5% to prevent an employee's salary from exceeding the maximum of the pay range does not require the approval of the chief. The salary of a promoted employee shall be in accordance with Subsection B. of 1.12.4.11 NMAC.

E. Salary upon demotion: Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a 15% decrease

from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay range or the decrease is being made in accordance with Paragraph (2) of Subsection F. of 10.12.4.12 NMAC.

F. Pay allowance for performing first line supervisor duties:

(1) The department may 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 may be between 0% and 20% above the employee's base pay rate.

(2) When the supervisor duties are no longer being performed, the department shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

(3) The department shall require that a form, established by the human resource 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 intra- agency transfer:

(1) Upon intra-agency transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased up to 10%. The chief may approve a salary increase greater than 10% due to special circumstances that are justified in writing.

(2) Employees shall be compensated, for compensatory time accumulated in accordance with the overtime provisions of the Fair Labor Standards Act (FLSA) prior to intra-agency transfer.

(3) Employees shall not be compensated, for compensatory time accumulated while exempt from the overtime provisions of the FLSA, prior to intra-agency transfer.

H. Salary upon pay range change: When a change of pay range is authorized in accordance with the provisions of 10.12.4.9 NMAC, 10.12.4.10 NMAC or 10.12.4.11 NMAC the salaries of affected employees shall be determined in accordance with Subsection C. of 10.12.4.11 NMAC. Employees whose pay range is adjusted upward or downward shall retain their current salary in the new pay range. Employees' salaries may be addressed through in pay range adjustment unless otherwise allowed by statute.

I. Salary upon reduction: The salary of employees who take a reduction may be reduced by up to 15% unless the reduction is made in accordance with Paragraph (2) of

Subsection F. of 10.12.4.12 NMAC. An employee's salary should reflect appropriate placement within the pay range. The chief may approve a salary reduction greater than 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 10.12.10 NMAC, 10.12.11 NMAC, 10.12.12 NMAC, or 10.12.14 NMAC shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay range.

K. Salary upon temporary promotion: Pay for a temporary promotion shall be treated the same as a regular promotion. The department 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: The chief may grant a temporary salary increase of up to 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 and/or a higher valued job. The chief may approve temporary salary increases above the maximum of the employee's current pay range. The department 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 range will be adjusted in accordance with Paragraph (2) of Subsection C of 10.12.4.11 NMAC.

[10.12.4.12 NMAC - N, 7/1/2015]

10.12.4.13 PAY DIFFERENTIALS:

A. Temporary recruitment differential: The chief may authorize, in writing, a pay differential of up to 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 department and has been demonstrated and documented to be a severe recruitment problem for the department.

(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.

(2) A temporary recruitment differential of more than 15% of an employee's base pay or a total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.

B. Temporary retention differential: The chief may authorize, in writing, a pay differential of up to 15% of an employee's base pay to an employee in a position which the department has documented and has been designated as critical to the effective operation of the department 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 manager must provide a detailed plan to the chief 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 15% of an employee's base pay or a total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.

C. The temporary recruitment differential and the temporary retention differential are separate and distinct pay differentials that are administered separately.

D. Out-of-state differential: The chief may authorize an out-of-state differential to an employee up to the maximum of the pay range if the department is able to substantiate that the employee's current salary is insufficient to adequately pay an employee while working or residing out of state. Payment of this differential should be separate from the employee's base salary. A total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.

[10.12.4.13 NMAC - N, 7/1/2015]

10.12.4.14 OVERTIME:

A. The office is 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. The office 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 in accordance with the internal complaint process to the human resource director. The human resource director shall notify employees in writing of the appeal decision within 30 calendar days. The employee may file an appeal of the human resource director's decision to the chief within 30 calendar days of the human resource director's decision. The office shall notify employees that their appeal to the chief 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 department.

D. The office shall maintain a record on each employee containing information required by the provisions of the FLSA.

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 chief 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 29 U.S.C. Sections 201 to 262 for covered, non-exempt employees.

G. The department 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. The department 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 10.12.4.17 NMAC, annual leave taken in accordance with the provisions of Subsection F. of 10.12.7.8 NMAC, and administrative leave for voting taken in accordance with the provisions of Subsection C. of 10.12.7.14 NMAC shall also count as time worked in the consideration of overtime for FLSA covered, non-exempt employees.

J. The department shall pay FLSA covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Non-exempt 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 FLSA may be compensated for overtime at the discretion of the chief and subject to budget availability.

L. Any additional regular hours worked shall not be substituted for approved paid leave time during the same week additional regular hours were worked.

[10.12.4.14 NMAC - N, 7/1/2015]

10.12.4.15 HOLIDAY PAY:

A. When an authorized holiday falls on an employee's regularly scheduled work day 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 chief'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.

[10.12.4.15 NMAC - N, 7/1/2015]

10.12.4.16 GOVERNMENT COST SAVINGS INCENTIVE AWARDS:

The department may provide cash awards to employees with the approval of the chief in accordance with the provisions of Section 10-7-12 NMSA 1978.

[10.12.16 NMAC - N, 7/1/2015]

PART 5: RECRUITMENT, ASSESSMENT AND SELECTION

10.12.5.1 ISSUING AGENCY:

Public Defender Commission

[10.12.5.1 NMAC - N, 7/1/2015]

10.12.5.2 SCOPE:

Applies to all employees and candidates for vacant positions.

[10.12.5.2 NMAC - N, 7/1/2015]

10.12.5.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978.

[10.12.5.3 NMAC - N, 7/1/2015]

10.12.5.4 DURATION:

Permanent.

[10.12.5.4 NMAC - N, 7/1/2015]

10.12.5.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.5.5 NMAC - N, 7/1/2015]

10.12.5.6 OBJECTIVE:

The objective of Part 5 of Chapter 12 is: to provide a system for the recruitment, examination and selection of applicants for employment in the department.

[10.12.5.6 NMAC - N, 7/1/2015]

10.12.5.7 DEFINITIONS:

"Open for recruitment" means soliciting applications from the general public and state employees for vacant positions and may include internal recruitment only.

[10.12.5.7 NMAC - N, 7/1/2015]

10.12.5.8 VACANT POSITIONS:

A. All vacant positions to be filled shall be open for recruitment unless otherwise authorized by the chief or provided for in these rules.

B. Positions in the department shall be filled at the assigned classification. An underfill may be approved by the chief. An authorized underfill may not exceed one year unless extended by the chief.

C. The chief may approve a position to be doublefilled for up to one year.

D. The department may allow part-time employees to share the same position.

[10.12.5.8 NMAC - N, 7/1/2015]

10.12.5.9 RECRUITMENT:

A. The human resource director shall establish a means to effectively advertise and recruit for vacant positions within the department.

B. 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.

C. Applications shall be filed in accordance with the human resource director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment. Where applications are received within the time limits although not completed may be allowed to be completed with the permission of the chief.

[10.12.5.9 NMAC - N, 7/1/2015]

10.12.5.10 APPLICATIONS:

A. The human resource 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 human resource director may 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 department.

C. An applicant whose application has been rejected may appeal to the chief in accordance with the procedures established by the human resource director. Where applications are received within the time limits although not completed may be allowed to be completed with the permission of the chief.

[10.12.5.10 NMAC - N, 7/1/2015]

10.12.5.11 EXAMINATION:

A. Security:

(1) The human resource director or hiring manager shall maintain the security of all examinations.

(2) Examinations shall be developed in conjunction with the office in accordance with established professional techniques and relevant federal laws, regulations, and guidelines. Examinations shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

(3) Except as provided below no hiring manager shall administer any examination to an applicant or employee without the examination and the examination administration having been approved by the human resource director unless otherwise authorized by statute.

(4) A hiring manager 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 12-101 Note 29C.F.R. Part 1630.14(a) **Pre-employment inquiry**).

B. Exemptions from Examinations:

(1) The human resource director or hiring manager shall exempt from examinations those applicants who possess recognized licensure, registration, or certification by the state of New Mexico and who are applying for positions in the department that require such licensure, registration, or certification.

(2) The human resource director shall exempt from examinations applicants who, in the course of their duties:

(a) develop, administer, or otherwise have access to such examinations; or

(b) formerly developed or administered such examinations within a period of one year from performance of those duties.

C. Administration of Examinations: The human resource director shall advise hiring managers regarding the development and administrative procedures of all examinations.

D. Preference Points:

(1) 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 examinations. Veterans honorably discharged from the United States armed forces with a service-connected disability shall have 10 points added to their numerical scores on examinations. 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) Applicants who pass the examination shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.

[10.12.5.11 NMAC - N, 7/1/2015]

10.12.5.12 SELECTION:

A. Selection shall be based solely on qualification and ability. Selection for any appointment other than an emergency appointment to positions in the department shall be justified in writing and made from employment lists.

B. The department is subject to the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978 and may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtaining public employment. The department may only take into consideration a conviction after the applicant has been selected as a finalist for the position.

C. The department shall develop policies governing their use of the employment lists.

D. 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) The human resource director 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 10.12.5.10 NMAC.

(2) The human resource director shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per 10.12.10 NMAC.

F. Temporary promotions: Employees may be temporarily promoted for a period not to exceed the department months to a temporarily or effectively vacant position for which the department certifies that the employee holds 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, which is 35 miles from the boundaries of the community in which the employee is employed or if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

H. Exempt to career appointments: Employment in the exempt service shall not count towards the probationary period required by Subsection A of 10.12.2.8 NMAC.

I. Emergency appointments: Emergency appointments shall be made in accordance with 10.12.2.NMAC.

J. Reduction: Employees may receive a classification reduction to a position for which the chief or human resource director certifies that the employee holds qualifications and abilities necessary for successful job performance.

K. Physical examinations: The department may require physical examinations of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the department.

L. Human immunodeficiency virus-related (AIDS) test: The department shall not require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. The department must adhere to the provisions of the Human Immunodeficiency Virus Test Act, Sections 24-2B-1 to 24-2B-8 NMSA 1978 Cum. Supp. 1993.

[10.12.5.12 NMAC - N, 7/1/2015]

PART 6: GENERAL WORKING CONDITIONS

10.12.6.1 ISSUING AGENCY:

Public Defender Commission

[10.12.6.1 NMAC - N, 7/1/2015]

10.12.6.2 SCOPE:

Applies to employees

[10.12.6.2 NMAC - N, 7/1/2015]

10.12.6.3 STATUTORY AUTHORITY:

Paragraph (6) of Subsection B of Section 31-15-2.4 NMSA 1978, Section 31-15-7 NMSA 1978, Section 12-5-2 NMSA 1978 and Sections 24-2B-1 to 24-2B-9 NMSA 1978, 5 U.S.C. Sections 1501 to 1508.

[10.12.6.3 NMAC - N, 7/1/2015; A, 5/19/2020]

10.12.6.4 DURATION:

Permanent.

[10.12.6.4 NMAC - N, 7/1/2015]

10.12.6.5 EFFECTIVE DATE

July 1, 2015, unless a later date is cited at the end of a section.

[10.12.6.5 NMAC - N, 7/1/2015]

10.12.6.6 OBJECTIVE:

The objective of Part 6 of Chapter 12 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 including employee complaint processes and readiness for work policy.

[10.12.6.6 NMAC - N, 7/1/2015]

10.12.6.7 DEFINITIONS:

"Nonpartisan election" is any election for public office when the candidate's party affiliations are neither indicated nor required.

[10.12.6.7 NMAC - N, 7/1/2015]

10.12.6.8 NEPOTISM:

The department shall not 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.

[10.12.6.8 NMAC - N, 7/1/2015]

10.12.6.9 LEGAL HOLIDAYS:

Each year, prior to December 1, the chief shall publish the dates on which legal public holidays as designated in Section 12-5-2 NMSA 1978 (Repl. Pamp. 1988) shall be observed for the next calendar year.

[10.12.6.9 NMAC - N, 7/1/2015]

10.12.6.10 PROHIBITED POLITICAL ACTIVITIES:

Employees are prohibited from:

- A.** allowing political or personal considerations to conflict with the interests of a department client's case;
- B.** 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;
- C.** directly or indirectly coercing, attempting to coerce, commanding, soliciting or advising a client, 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;
- D.** 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;
- E.** using any state, department or client equipment, facilities, property or time resources for political purposes;
- F.** engaging in political activity while on duty; or
- G.** being an officer of a political organization.

[10.12.6.10 NMAC - N, 7/1/2015; A, 5/19/2020]

10.12.6.11 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 but the employee shall use annual leave or leave without pay, subject to approval pursuant to department policy, if campaigning requires that the employee be absent from assigned duties.
- C.** Employees may be candidates for nonpartisan political office, subject to the restriction set forth in 10.12.6.11 NMAC, but the employee shall use annual leave or leave without pay, subject to approval pursuant to department policy, if campaigning requires that the employee be absent from assigned duties.
- D.** Employees may hold only a nonpartisan county or municipal political office during employment in the department. If elected to a partisan political office, the employee shall resign from the department prior to taking the oath of office.
- 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 10.12.11 NMAC and the criminal penalties set forth in Section 10-9-23 NMSA 1978.

G. At a minimum of 30 days prior to any entry as a candidate into a political contest, employees shall notify the department's human resource division so the department can monitor compliance with the Hatch Act and any other law.

[10.12.6.11 NMAC - N, 7/1/2015; A, 5/19/2020]

10.12.6.12 RESCISSION OF RESIGNATION:

An employee may rescind a letter of resignation within three workdays of its submission and the department must honor the rescission if it is submitted within the prescribed time limit.

[10.12.6.12 NMAC - N, 7/1/2015]

10.12.6.13 EMPLOYEE COMPLAINTS:

A. Employees are provided with an in-house method for resolving complaints. All employees are encouraged to resolve complaints at the lowest level and informally if possible. Employees are encouraged to contact the human resource director before filing a formal written complaint. A complaint may be withdrawn at any time by the initiating party. Employees who utilize the formal complaint procedure or participate in the investigation of any complaint will not be subject to retaliation for participation. The employee filing the complaint is responsible for ensuring all the time limits are followed. Time limits may be waived by the complainant at any time.

B. Complaints pursuant to these sections must be submitted in writing and must include the following information:

(1) Employee name, job title, work location, date the complaint is filed and work phone number.

(2) A description and the date of the alleged incident for which the complaint is filed.

(3) The relief requested.

(4) The employee signature.

C. The complaint procedure has three levels:

(1) Level One.

(a) The employee shall present the complaint in writing to the immediate supervisor or to the district defender if the complaint is against the immediate supervisor, within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint.

(b) The supervisor or district defender notifies the human resource director to coordinate investigation of the complaint and the response to the employee. The response is due ten calendar days from the date that the supervisor is made aware of the complaint. This response will be made in writing after review by the human resource director.

(c) If the complainant determines that the supervisor or district defender's decision is unsatisfactory, the employee may appeal directly to the deputy chief. The appeal is due within ten calendar days of the level one response.

(d) If the level one complaint does not receive a response within ten calendar days, the complaint shall be deemed denied and the employee may submit the complaint to the next level.

(2) Level Two.

(a) If the complaint is against the district defender or seeks to appeal the response in level one the employee may submit the complaint to the deputy chief within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint or after the response, if any, is provided in level one.

(b) The complaint should include the response received in level one, if any, and the reasons that the response was unsatisfactory.

(c) The employee or the deputy chief sends a copy of the complaint to the human resources human resource director.

(d) Where appropriate the deputy chief reviews the level one complaint and response.

(e) The deputy chief determines if additional information is necessary or if an informal meeting is appropriate and attempts to resolve the matter.

(f) The deputy chief's decision will be returned within 14 calendar days.

(g) A copy of the response will be send to the human resources human resource director.

(h) If the complainant determines that the deputy chief's decision is unsatisfactory, the employee may appeal directly to the chief. The appeal is due within 14 calendar days of the level two response.

(i) If the level two complaint does not receive a response within 14 calendar days, the complaint shall be deemed denied and the employee may submit the complaint to the next level.

(3) Level Three.

(a) If the complaint is against the deputy chief or seeks to appeal the response in level two the employee may submit the complaint to the chief within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint or after the response, if any, is provided in level two.

(b) The complaint should include the previous response(s), if any, and the reason that the previous responses were unsatisfactory.

(c) A copy of the appeal is sent to the human resources human resource director.

(d) The chief determines if additional information or informal meetings are needed prior to making a final decision and responds to the complaint in writing within 21 days.

(e) A copy of the response is sent to the human resource director.

D. After exhausting internal procedures, a complainant may appeal to outside agencies.

(1) Complaints alleging discrimination may be appealed to the department of workforce solutions, human rights division within 180 calendar days of the alleged act; or

(2) to the equal employment opportunity commission within 300 calendar days of the alleged act.

[10.12.6.13 NMAC - N, 7/1/2015]

10.12.6.14 READINESS FOR WORK:

A. In accordance with Subsection A of 10.12.7.13 NMAC, employees who fail to appear for work without authorized leave or who appear for work in a condition that interferes with their ability their assignments in violation of this policy are considered absent without leave.

B. Employees are expected to be properly attired to meet the demands of the workday. District defenders or designee may establish reasonable dress standards as approved by the chief public defender that are set forth clearly in a memorandum. An employee who arrives at work in inappropriate attire is not ready to work and may be sent home on annual leave or leave without pay to change into appropriate clothing.

C. Department employees are expected to be fully engaged in the performance of their duties during their working hours. Conducting personal business on work time should be brief, not interfere with the duties to be performed and not disruptive to co-workers or clients. Personal business may include but is not limited to phone calls, text messaging, personal emails, reading magazines or newspapers, browsing the internet, visiting with co-workers or any other personal business not related to job duties.

[10.12.6.14 NMAC - N, 7/1/2015]

10.12.6.15 DUTY TO COOPERATE WITH INVESTIGATIONS:

Allegations of violations of policies and procedures set forth by the department and state or federal law may require employees to participate as witnesses or potential witnesses in a variety of investigations.

A. Employees have a duty to cooperate in an investigation and are required to do so in good faith.

B. During the investigative process, witnesses or potential witnesses who are interviewed are responsible to maintain confidentiality about the content of their interviews.

C. Employees cannot be subjected to retaliation for cooperating with the department in investigations. Any employee who feels subjected to retaliation because of cooperating in an investigation should contact the human resource director immediately.

[10.12.6.15 NMAC - N, 7/1/2015; A, 5/19/2020]

PART 7: ABSENCE AND LEAVE

10.12.7.1 ISSUING AGENCY:

Public Defender Commission

[10.12.7.1 NMAC - N, 7/1/2015]

10.12.7.2 SCOPE:

Applies to all employees.

[10.12.7.2 NMAC - N, 7/1/2015]

10.12.7.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978, Section 10-7-10 NMSA 1978; Section 13: 29 U.S.C. Sections 201 and 2601 et seq.: Section 15: Section 1-12-42 NMSA 1978, Section 17 NMSA 1978, Sections 20-4-7, 20-5-14 and 20-7-5 NMSA 1978.

[10.12.7.3 NMAC - N, 7/1/2015]

10.12.7.4 DURATION:

Permanent.

[10.12.7.4 NMAC - N, 7/1/2015]

10.12.7.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.7.5 NMAC - N, 7/1/2015]

10.12.7.6 OBJECTIVE:

The objective of Part 7 of Chapter 12: is to provide for the accrual and administration of leave available to employees.

[10.12.7.6 NMAC - N, 7/1/2015]

10.12.7.7 DEFINITIONS:

[RESERVED]

[10.12.7.7 NMAC - N, 7/1/2015]

10.12.7.8 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 annual leave accrual rate, any employment in the exempt service and judicial, executive or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment.

C. For purposes of annual leave accrual rate, employment in programs transferred into the department by legislation or other lawful 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.

F. Annual leave shall not be used before it is accrued and must be authorized before it is taken in accordance with department policy.

G. Employees separating from the department, 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 their current hourly rate. Employees separating from the department 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.

H. The estate of an employee who dies while employed by the department shall be paid for the employee's total accrued annual leave.

[10.12.7.8 NMAC - N, 7/1/2015]

10.12.7.9 DONATION OF ANNUAL OR SICK LEAVE:

A. Employees may donate leave to another employee in the department for a medical emergency with approval of the office.

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 600 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 50% 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. The department shall maintain the following documentation:

(1) the name, position title, and hourly rate of 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 department 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 office 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 pay to hours of leave based on the recipient's hourly rate of 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 department.

10.12.7.10 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 3.69 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 department policy.

D. An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a relation by blood or marriage within the third degree, 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 department except as provided by law.

G. Former employees who were laid off and are returned to work in accordance with the provisions of 10.12.10 NMAC shall have restored the sick leave they had accrued as of the date of layoff.

H. The department may authorize an employee to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree, or of a person residing in the employee's household.

I. Payment for accumulated sick leave:

(1) In accordance with the provisions of Section 10-7-10 NMSA 1978, 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 50% of their hourly rate of 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 department, 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 50% of their hourly rate for up to 400 hours of sick leave.

[10.12.7.10 NMAC - N, 7/1/2015]

10.12.7.11 LEAVE WITHOUT PAY:

A. Leave without pay may be approved when:

(1) the department can assure a position of like status and 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 office. 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 office.

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 chief.

[10.12.7.11 NMAC - N, 7/1/2015]

10.12.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in 10.12.7 NMAC eligible employees are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.]. Employees who have been employed by the department 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 [29 U.S.C. Section 201 et seq.], 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, and classified service shall count as department employment for purposes of this rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth or placement of a child or at the time of a serious health condition for the employee, or family members, or any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active

duty, or has been notified of an impending call to active duty status, in support of a contingency operation as defined in the FMLA. 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, son, daughter, parent, or next of kin of a covered service member who is recovering from 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 service member. 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. The department requires 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 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. The department 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 Subsection C of 10.12.1.12 NMAC.

H. Disputes over the administration of this rule shall be forwarded to the human resource director for resolution.

[10.12.7.12 NMAC - N, 7/1/2015]

10.12.7.13 ABSENCE WITHOUT LEAVE:

A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of department policy governing their readiness for work shall be considered to be absent without leave in accordance with 10.12.6.13 NMAC.

B. Employees shall not be paid for any periods of absence without leave and shall not accrue annual or sick leave.

[10.12.7.13 NMAC - N, 7/1/2015]

10.12.7.14 ADMINISTRATIVE LEAVE:

A. The department may authorize employees leave with pay for up to five consecutive work days when it is in the best interests of the department to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the chief except for administrative leave granted in accordance with the provisions of 10.12.11 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 with the approval of the chief.

C. Employees who are registered voters with the permission of their supervisors 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 supervisor may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose work day 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. Employees who chose to vote pursuant to this provision on the day of elections, may be required subject to confirmation that they voted. Employees are encouraged to use early voting and absentee voting provisions to exercise the right to vote however, voting leave shall not be used for early voting or absentee 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 department.

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 department.

[10.12.7.14 NMAC - N, 7/1/2015]

10.12.7.15 EDUCATIONAL LEAVE:

A. The department may grant employees educational leave with or without pay to pursue special training related to their employment.

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 10.12.7.8 NMAC and Subsection B of 1.12.7.10 NMAC.

D. Employees who are granted paid educational leave for training in excess of 100 work hours in a calendar year shall agree in writing to continue with the department for a period of time equal to three times the period of the training.

[10.12.7.15 NMAC - N, 7/1/2015]

10.12.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the national guard ordered to active duty 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 chief may grant members of the national guard paid military leave for active duty training, 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 15 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed 15 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.

[10.12.7.16 NMAC - N, 7/1/2015]

10.12.7.17 PERSONAL LEAVE DAY:

A. Employees in career status are entitled to one personal leave day each calendar year. The personal leave day will be consistent with the employee's normal workday. Such leave must be requested and approved in advance.

B. The personal leave day must be taken during consecutive hours.

C. The personal leave day must be taken by December 31 or it will be lost.

D. Employees who do not take the personal leave day shall not be paid for it upon separation from the department.

[10.12.7.17 NMAC - N, 7/1/2015]

10.12.7.18 TRANSFER OF LEAVE:

A. All accrued annual and sick leave shall be transferred when persons change status from a position in the exempt service to a non-exempt position in the department without a break in employment.

B. The department shall accept all accrued sick leave and military leave from persons who separate from the executive, judicial or legislative branches of state government and are employed in the department without a break in employment.

C. The department may accept accrued annual leave from persons who separate from the executive, judicial or legislative branches of state government and are employed in the department without a break in employment as determined by the chief.

[10.12.7.18 NMAC - N, 7/1/2015]

10.12.7.19 DONATING AN ORGAN OR BONE MARROW:

A. In accordance with the provisions of Section 24-28-3 NMSA 1978, the chief may authorize a leave of absence, not to exceed 20 workdays, to an employee for the purpose of donating an organ or bone marrow.

B. 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 chief may grant paid administrative leave for the remainder of the needed leave up to the maximum total of twenty workdays.

D. The chief 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.

[10.12.7.19 NMAC - N, 7/1/2015]

PART 8: DRUG AND ALCOHOL ABUSE

10.12.8.1 ISSUING AGENCY:

Public Defender Commission

[10.12.8.1 NMAC - N, 7/1/2015]

10.12.8.2 SCOPE:

Applies to all employees.

[10.12.8.2 NMAC - N, 7/1/2015]

10.12.8.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978.

[10.12.8.3 NMAC - N, 7/1/2015]

10.12.8.4 DURATION:

Permanent.

[10.12.8.4 NMAC - N, 7/1/2015]

10.12.8.5 EFFECTIVE DATE:

7/1/2015, unless a later date is cited at the end of a section.

[10.12.8.5 NMAC - N, 7/1/2015]

10.12.8.6 OBJECTIVE:

The objective of Part 8 of Chapter 12 is: to provide 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.

[10.12.8.6 NMAC - N, 7/1/2015]

10.12.8.7 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.

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. "Reasonable suspicion" means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.

[10.12.8.7 NMAC - N, 7/1/2015]

10.12.8.8 SUBSTANCE ABUSE COORDINATOR:

A. The human resource director or designee shall serve as the substance abuse coordinator who shall be responsible for the department'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.

C. The substance abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the duties required by 10.12.8.14 NMAC.

[10.12.8.8 NMAC - N, 7/1/2015]

10.12.8.9 AUTHORIZED DRUG AND ALCOHOL TESTING:

A. The department shall require employees to undergo drug, alcohol testing or both if the department 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.

B. 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 chief. 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 or designee within 24 hours of the request for testing.

[10.12.8.9 NMAC - N, 7/1/2015]

10.12.8.10 COLLECTION OF SPECIMENS:

A. Unless otherwise specified in these rules, 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 human resource director within ten working days of taking the breath specimen.

[10.12.8.10 NMAC - N, 7/1/2015]

10.12.8.11 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 following initial cutoff concentrations shall be used when screening specimens on the initial drug tests to determine whether they are negative for these seven drugs or classes of drugs.

(1)	Marijuana metabolites	75 (ng/ml)
(2)	Cocaine metabolites	150 (ng/ml)
(3)	Opiate metabolites	2,000 (ng/ml)
(4)	6-Acetylmorphine	10 (ng/ml)
(5)	Phencyclidine (PCP)	25 (ng/ml)
(6)	Amphetamines	500 (ng/ml)
(7)	MDMA	500 (ng/ml)

C. All specimens identified as positive on the initial drug test, shall be confirmed by the laboratory at the cutoff concentration listed below for each drug. All confirmations shall be by quantitative analysis:

(1)	Marijuana metabolite - Delta - 9-tetrahydrocannabinol - 9-carboxylic acid (THCA)	25 (ng/ml)
(2)	Cocaine metabolite - Benzoyllecgonine	100 (ng/ml)
(3)	Opiates:	
	(a) Morphine	2,000 (ng/ml)
	(b) Codeine	2,000 (ng/ml)
(4)	6-Acetylmorphine	10 (ng/ml)
(5)	Phencyclidine (PCP)	25 (ng/ml)

(6) Amphetamines:

(a) Amphetamine 250 (ng/ml)

(b) Methamphetamine ¹ 250 (ng/ml)

(7) MDMA (Methylenedioxymethamphetamine) 250 (ng/ml)

(a) MDA (Methylenedioxyamphetamine) 250 (ng/ml)

(b) MDEA (Methylenedioxyethylamphetamine) 250 (ng/ml)

(8) To be reported as positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/ml.

D. 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.

E. 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.

[10.12.8.11 NMAC - N, 7/1/2015]

10.12.8.12 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. The chief may approve a lower test result below 0.08% for blood alcohol content (BAC).

D. For employees who have undergone alcohol rehabilitation, pursuant to 10.12.8.17 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.

[10.12.8.12 NMAC - N, 7/1/2015]

10.12.8.13 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 chief, or substance abuse coordinator or designee.

C. The substance abuse coordinator or designee shall advise 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.

[10.12.8.13 NMAC - N, 7/1/2015]

10.12.8.14 EXPLANATION OF POSITIVE TEST RESULTS:

A. Employees 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 human resource director or the 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 employee does not request a review of the test results within two workdays, the employee waives review by the medical review officer and any retesting of the.

(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.

(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 department 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 employee an opportunity to discuss the test results. The discussion between the medical review officer and the employee may be in person or by telephone.

(c) The medical review officer shall advise the chief, the human resource director or 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 department. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the 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 department may consider, the department 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 department:

(a) shall provide a written explanation to the employee as to why the explanation is unsatisfactory, along with the test results, within 11 calendar days of the department'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 department:

(a) shall notify the employee in writing within 11 calendar days of the department's determination; and

(b) shall retain such records as confidential for one year.

10.12.8.15 RETESTING:

Employees who tested positive for drugs or alcohol urine tests may elect to have, at their expense, an aliquot, if any exists, 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 employees' choosing. The department shall pay for the retest if the retest is negative. Any remaining samples after the appropriate times listed here may be destroyed and the final results received will remain as the final record without further right to appeal or challenge the results.

[10.12.8.15 NMAC - N, 7/1/2015]

10.12.8.16 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. Laboratory reports or test results shall be placed in a special locked file maintained by the substance abuse coordinator or designee. Files relating to laboratory reports or test results maintained by the substance abuse coordinator are confidential within the meaning of 10.12.1.12 NMAC.

[10.12.8.16 NMAC - N, 7/1/2015]

10.12.8.17 REHABILITATION AND SANCTIONS:

A. Voluntary self-identification by employees:

(1) Any employee who requests referral to an employee assistance program (EAP), counseling or a drug or alcohol rehabilitation program, prior to directed to drug and alcohol testing due to reasonable suspicion shall be referred by the substance abuse counselor. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The chief 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 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. Employees who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal. The chief may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation after considering all factors relevant to the employee's condition and job performance history.

(4) 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.

B. Positive Reasonable Suspicion Testing:

(1) Employees who test positive on a reasonable suspicion drug or alcohol test or both required by these rules 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.

(2) 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.

(3) The chief 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.

C. 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.

D. 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.

[10.12.8.17 NMAC - N, 7/1/2015]

PART 9: PERFORMANCE APPRAISALS

10.12.9.1 ISSUING AGENCY:

Public Defender Commission

[10.12.9.1 NMAC - N, 7/1/2015]

10.12.9.2 SCOPE:

Applies to all employees.

[10.12.9.2 NMAC - N, 7/1/2015]

10.12.9.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978 and, Section 31-15-7 NMSA 1978.

[10.12.9.3 NMAC - N, 7/1/2015]

10.12.9.4 DURATION:

Permanent.

[10.12.9.4 NMAC - N, 7/1/2015]

10.12.9.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.9.5 NMAC - N, 7/1/2015]

10.12.9.6 OBJECTIVE:

The objective of Part 9 of Chapter 12 is: to provide for the regular appraisal and documentation of employee performance and review of department management compliance in conducting performance appraisals.

[10.12.9.6 NMAC - N, 7/1/2015]

10.12.9.7 DEFINITIONS:

[RESERVED]

[10.12.9.7 NMAC - N, 7/1/2015]

10.12.9.8 FORM:

A. The performance and development of managers and employees shall be documented on a chief 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 form shall be initiated within 30 calendar days of appointment, reassignment, promotion, demotion, reduction, transfer and/or the employee's appraisal date, and shall become a part of each employee's employment history.

[10.12.9.8 NMAC - N, 7/1/2015]

10.12.9.9 PERFORMANCE APPRAISAL:

A. Managers and supervisors must successfully complete a human resource director-approved course of study on employee performance appraisal within 90 days of appointment as a supervisor.

B. The performance and development of a career employee shall include at least one interim evaluation and a final evaluation appraised by the immediate supervisor prior to the employee's anniversary date.

C. The performance and development of a probationary employee shall be reviewed through at least two interim reviews and a final review prior to the completion of the employee's probationary period. The performance and development of promoted employees shall be reviewed through at least two interim reviews and a final review prior to the completion of a one-year period upon promotion.

D. The appraisal of employee performance and development 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. 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 this rule may be subject to disciplinary action including dismissal.

[10.12.9.9 NMAC - N, 7/1/2015]

10.12.9.10 REBUTTAL:

Employees may submit a rebuttal to performance appraisals, which shall become a part of the performance appraisal.

[10.12.9.10 NMAC - N, 7/1/2015]

10.12.9.11 REPORT TO THE CHIEF:

During the fourth quarter of each calendar year the human resource director shall report to the chief on the record of each district defender, managing attorney, or other supervisor in conducting performance appraisals of their employees. All managers shall cooperate with the human resource director and provide the human resource director with such information concerning its performance appraisals as the human resource director may require.

[10.12.9.11 NMAC - N, 7/1/2015]

PART 10: FURLOUGH, REDUCTION IN FORCE, REEMPLOYMENT, SEPARATION WITHOUT PREJUDICE

10.12.10.1 ISSUING AGENCY:

Public Defender Commission

[10.12.10.1 NMAC - N, 7/1/2015]

10.12.10.2 SCOPE:

Applies to current and former employees.

[10.12.10.2 NMAC - N, 7/1/2015]

10.12.10.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6), Section 31-15-7 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. NMSA 1978.

[10.12.10.3 NMAC - N, 7/1/2015]

10.12.10.4 DURATION:

Permanent

[10.12.10.4 NMAC - N, 7/1/2015]

10.12.10.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.10.5 NMAC - N, 7/1/2015]

10.12.10.6 OBJECTIVE:

The objective of Part 10 of Chapter 12 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.

[10.12.10.6 NMAC - N, 7/1/2015]

10.12.10.7 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 department or its legal predecessor began.

[10.12.10.7 NMAC - N, 7/1/2015]

10.12.10.8 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 chief for approval to execute the furlough.

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 chief. Notice shall be served by certified mail.

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.

[10.12.10.8 NMAC - N, 7/1/2015]

10.12.10.9 REDUCTION IN FORCE:

A. The department 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. The human resource director shall identify organizational units for purposes of a layoff and submit a written plan to the chief. Such organizational units may be recognized on the basis of geographic area, function, funding source, or other factors. The human resource director must define the classifications affected within the organizational unit.

C. Upon chief approval of a layoff plan, the department 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 department 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 department employees affected by the reduction in force;

(3) the 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 11 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 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 human resource director or chief 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 day's written notice of layoff. Notice shall be served by certified mail.

[10.12.10.9 NMAC - N, 7/1/2015]

10.12.10.10 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 department, 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 agency hire date to any position 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;

(2) Offers of employment shall be made in writing and shall be delivered by a method that provides proof of service or attempted service;

(3) 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

(4) 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 these rules shall have that period of time they were laid off counted as time in the department, shall hold the status of the position in accordance with 10.12.2.9 NMAC, 10.12.2.10 NMAC or 10.12.2.11 NMAC and do not have to serve a new probationary period if reemployed into career status.

[10.12.10.10 NMAC - N, 7/1/2015]

10.12.10.11 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 Sections 28-15-1 to 28-15-3 NMSA 1978.

[10.12.10.11 NMAC - N, 7/1/2015]

10.12.10.12 EARLY RETURN-TO-WORK/MODIFIED DUTY ASSIGNMENTS:

A. Employees who have been unable to work because of a compensable injury or illness under the workers' compensation act may return to work in a modified duty assignment for up to six months which may be extended for a period of up to six 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 department 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 Section 52-1-25.1 NMSA 1978 and 52-3-49.1 NMSA 1978. At the department'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.

[10.12.10.12 NMAC - N, 7/1/2015]

10.12.10.13 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 department without prejudice provided:

(1) the employee has been afforded modified duty in accordance with these rules;

(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) reasonable efforts to find other suitable vacant positions within the department at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position have been made 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 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 department without prejudice provided:

(1) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented; and

(2) reasonable efforts have been made 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 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. Modified duty may be provided to employees for a period of up to four 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 department 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 three 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 department shall notify 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 and shall be subject to the same timelines stated herein and any final decision made will be binding on the employee directly;

(2) if there is a request for an oral response to the notice of contemplated separation without prejudice, the department shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the department agree in writing to an extension of time; a representative of the employee's choosing may represent the employee and shall be subject to the same timelines stated herein and any final decision made will be binding on the employee directly;

(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 department 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 chief with a written statement of the grounds for the appeal delivered to the human resources office in Santa Fe, New Mexico, and received by the human resource director within 30 calendar days of the effective date of the separation without prejudice; and

(f) the adjudication process is outlined in 10.12.12 NMAC.

[10.12.10.13 NMAC - N, 7/1/2015]

10.12.10.14 REEMPLOYMENT OF JOB-RELATED INJURED OR ILL FORMER EMPLOYEES:

A. A former employee who has separated from the department 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 Section 52-1-50.1 NMSA 1978 and Section 52-3-49 NMSA 1978 under the following provisions:

(1) Reemployment rights under this rule are extended only to employees of the department 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 human resource director in writing 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 department 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 department is to fill a vacant position which is a position and location indicated by the former employee, the department 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 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 these provisions will hold the status of the position in accordance with these rules 10.12.2.9 NMAC, 10.12.2.10 NMAC or 10.12.2.11 NMAC and do not have to serve a probationary period if they were in career status at the time of separation. Tab not spaces

B. The risk management division of the general services department shall be notified immediately of any injured or ill former employee who applies for a position and subsequently declines a job offer.

[10.12.10.14 NMAC - N, 7/1/2015]

PART 11: DISCIPLINE

10.12.11.1 ISSUING AGENCY:

Public Defender Commission

[10.12.11.1 NMAC - N, 7/1/2015]

10.12.11.2 SCOPE:

Applies to all employees

[10.12.11.2 NMAC - N, 7/1/2015]

10.12.11.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6), NMSA 1978; Section 31-15-7, NMSA 1978 and Sections 28-2-1 to 28-2-6 NMSA 1978.

[10.12.11.3 NMAC - N, 7/1/2015]

10.12.11.4 DURATION:

Permanent.

[10.12.11.4 NMAC - N, 7/1/2015]

10.12.11.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.11.5 NMAC - N, 7/1/2015]

10.12.11.6 OBJECTIVE:

The objective of Part 11 of Chapter 12 is: to provide a mechanism by which management can implement constructive, progressive steps towards solving performance or conduct problems.

[10.12.11.6 NMAC - N, 7/1/2015]

10.12.11.7 DEFINITIONS:

[RESERVED]

[10.12.11.7 NMAC - N, 7/1/2015]

10.12.11.8 DISCIPLINE:

A. The primary purpose of discipline is to correct performance or conduct that is below acceptable standards, or contrary to the department'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. Alternative methods to resolve conflicts or improve employee performance or conduct shall be utilized whenever appropriate.

[10.12.11.8 NMAC - N, 7/1/2015]

10.12.11.9 NOTICES AND COMPUTATION OF TIME:

A. Notices prescribed by 10.12.11 NMAC shall be served in accordance with the provisions of 10.12.1.10 NMAC.

B. The computation of time prescribed or allowed by 10.12.11 NMAC shall be in accordance with the provisions of 10.7.1.11 NMAC.

[10.12.11.9 NMAC - N, 7/1/2015]

10.12.11.10 JUST CAUSE:

A. An employee who has completed the probationary period required by Subsection A of 10.12.2.8 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 department.

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 10.12.8 NMAC; failure to comply with any provision of office policies and procedures after the employee has been given an opportunity to correct the conduct; 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, NMSA 1978 apply.

[10.12.11.10 NMAC - N, 7/1/2015]

10.12.11.11 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. The written notice shall advise the employee of the conduct, actions, or omissions which resulted in the suspension, demotion, or dismissal which may or may not amount to just cause.

[10.12.11.11 NMAC - N, 7/1/2015]

10.12.11.12 ADMINISTRATIVE LEAVE PENDING DISCIPLINARY ACTION:

The chief may authorize administrative leave for a period sufficient and consistent with the best interests of the department to complete a disciplinary action proceeding or investigation.

[10.12.11.12 NMAC - N, 7/1/2015]

10.12.11.13 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, a notice of contemplated action shall be served 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; 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 action is served by mail, the employee receiving service shall have three additional calendar days in which to file a response.

B. Response to notice of contemplated action:

(1) A representative of the employee's choosing, subject to some restrictions, may respond in writing to the notice of contemplated action on behalf of the employee and shall be subject to the same timelines stated herein and any final decision made will be binding on the employee directly. A member of management or human resources may not serve as a representative during a disciplinary action.

(2) If there is a request for an oral response to the notice of contemplated action, management representatives shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the human resource director agree in writing to an extension of time.

(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 a notice of final action shall be issued 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 department shall issue a notice of final action no later than 11 calendar days from the date of receipt of the oral or written 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 but no more than 30 calendar days 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 chief by delivering a written statement of the grounds for appeal to the human resources director at 301 North Guadalupe Street, Suite 101, Santa Fe, New Mexico 87501 no later than 30 calendar days from the issuance 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 chief as stated above in Subparagraph (a) of Paragraph (4) of Subsection C of 10.12.11.13 NMAC or make an irrevocable election to appeal to an arbitrator pursuant to any collective bargaining agreement then in effect.

[10.12.11.13 NMAC - N, 7/1/2015]

PART 12: ADJUDICATION

10.12.12.1 ISSUING AGENCY:

Public Defender Commission

[10.12.12.1 NMAC - N, 7/1/2015]

10.12.12.2 SCOPE:

Applies to all employees in career status.

[10.12.12.2 NMAC - N, 7/1/2015]

10.12.12.3 STATUTORY AUTHORITY:

Section 10-15-1(H) NMSA 1978; Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978.

[10.12.12.3 NMAC - N, 7/1/2015]

10.12.12.4 DURATION:

Permanent.

[10.12.12.4 NMAC - N, 7/1/2015]

10.12.12.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.12.5 NMAC - N, 7/1/2015]

10.12.12.6 OBJECTIVE:

The objective of Part 12 of Chapter 12 is: to provide a system for career status employees to appeal disciplinary actions.

[10.12.12.6 NMAC - N, 7/1/2015]

10.12.12.7 DEFINITIONS:

A. "Discipline Review Board" or "board" means a three member board to hear disciplinary appeals composed of one district defender, one neutral hearing officer and one employee appointed by the chief from a pool of volunteers.

B. "Chairperson" means the district defender appointed to the board.

C. "Neutral hearing officer" means a hearing officer on contract with the department selected by the chief in consultation with the pool of volunteer employees.

D. "Pool" means employees selected by each district to serve as a volunteer on the disciplinary review board.

[10.12.12.7 NMAC - N, 7/1/2015]

10.12.12.8 FILING AN APPEAL:

A. Employees who have completed the probationary period as required by Subsection A of 10.12.2.8 NMAC and have been demoted, dismissed, or suspended have the right to appeal to the discipline review board at a public hearing.

B. A notice of appeal must be in writing and filed with the human resource 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 human resource director for lack of jurisdiction.

C. Within 15 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, human resource director shall submit a recommended decision to the deputy chief which shall contain a summary of the evidence and findings of fact and conclusions of law. The deputy chief shall then issue a final decision.

D. Upon acceptance of a notice of appeal, the chief shall appoint a district defender to serve as the chairperson of the disciplinary review board. The chairperson shall issue a scheduling order directing the parties, in part, to submit to the chairperson 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 chairperson 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.

[10.12.12.8 NMAC - N, 7/1/2015]

10.12.12.9 AGENCY WITHDRAWAL OF DISCIPLINE:

A. The department may withdraw a completed disciplinary action prior to commencement of a disciplinary review board hearing so long as the appellant is fully restored to pre-disciplinary status insofar as employment, back pay and benefits are concerned.

B. Upon department withdrawal of a disciplinary action, the chairperson may dismiss the appeal without prejudice to the department, which may reinstitute disciplinary action.

[10.12.12.9 NMAC - N, 7/1/2015]

10.12.12.10 CHAIRPERSON:

A. The chairperson 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 the chief public defender to disqualify the designated chairperson 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 chairperson shall rule on motions for disqualification and an appeal of the ruling may be made to the deputy chief within 14 calendar days of the hearing officer's ruling.

B. No person shall communicate concerning the merits of any pending adjudicatory proceeding with the designated chairperson or member of the disciplinary review board unless both parties or their representatives are present.

C. The chairperson may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the chairperson or upon the filing of a motion to withdraw the appeal at any time.

D. The chairperson 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 chairperson deems proper.

[10.12.12.10 NMAC - N, 7/1/2015]

10.12.12.11 CONSOLIDATION AND JOINDER:

A. The chairperson may consolidate cases in which two or more appellants have cases containing identical or similar issues.

B. The chairperson may join the appeals of an appellant who has two or more appeals pending.

C. The chairperson may consolidate or join cases if it would expedite final resolution of the cases and would not adversely affect the interests of the parties.

[10.12.12.11 NMAC - N, 7/1/2015]

10.12.12.12 DISCOVERY:

The chairperson has the power to compel, by subpoena or order, the production of written materials or other evidence the chairperson 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 chairperson.

[10.12.12.12 NMAC - N, 7/1/2015]

10.12.12.13 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 chairperson 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 12 calendar days from the date of filing of the motion. A reply to a response is due seven days from the date of filing the response. The response and reply schedule may also be set or modified by the chairperson.

D. Responses to any motions shall be filed according to a schedule set by the chairperson.

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 chairperson shall rule on all motions except for dispositive motions on the merits.

[10.12.12.13 NMAC - N, 7/1/2015]

10.12.12.14 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.

[10.12.12.14 NMAC - N, 7/1/2015]

10.12.12.15 SUBPOENAS:

A. The chairperson has the power to subpoena witnesses.

B. The chairperson 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 chairperson 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 10.12.7.14 NMAC.

[10.12.12.15 NMAC - N, 7/1/2015]

10.12.12.16 SANCTIONS:

A. The chairperson 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 chairperson 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 chairperson may refuse to consider any motion or other action which is not filed in a timely fashion.

B. The chairperson 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 chairperson may dismiss the appeal or rule for the appellant. If the order is contested and the chairperson dismisses the appeal or rules for the appellant, such decision is appealable to the deputy chief within 14 calendar days of the order.

C. The chief may prohibit a representative from appearing before its disciplinary review board for a period of time set by the chief for good cause shown.

[10.12.12.16 NMAC - N, 7/1/2015]

10.12.12.17 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.

[10.12.12.17 NMAC - N, 7/1/2015]

10.12.12.18 HEARINGS:

A. All members of the board shall be present in person to conduct the hearing.

B. The hearing shall be open to the public unless the parties agree that it shall be closed.

C. 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.

D. The chairperson may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The department 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.

E. The department shall present its evidence first.

F. Oral evidence shall be taken only under oath or affirmation.

G. 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.

H. 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.

I. The chairperson 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 chairperson shall exclude immaterial, irrelevant, or unduly cumulative testimony.

J. If scientific, technical, or other specialized knowledge will assist the disciplinary review board 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.

K. The chairperson may take administrative notice of those matters in which courts of this state may take judicial notice.

L. 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.

M. The chairperson 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.

N. The hearing shall be recorded by a video and/or audio-recording device under the supervision of the chairperson. No other recording of the hearing, by whatever means, shall be permitted without the approval of the chairperson.

O. The chief shall provide for and require that the chairperson to

(1) appoint a signed language interpreter pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 to 61-34-17 NMSA 1978 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, Section 38-10-1 to 38-10-8 NMSA 1978 for hearing participants who do not understand English well enough to understand the proceedings.

[10.12.12.18 NMAC - N, 7/1/2015]

10.12.12.19 POST-HEARING BRIEFS:

The chairperson 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 chairperson. If case law is cited, a copy of the case shall be provided to the hearing officer.

[10.12.12.19 NMAC - N, 7/1/2015]

10.12.12.20 BOARD'S DECISION:

The disciplinary review board shall make a decision as soon as practicable upon conclusion of the hearing. The chairperson shall provide a copy of the recommended decision to the parties by certified mail with return receipt requested.

[10.12.12.20 NMAC - N, 7/1/2015]

10.12.12.21 EXCEPTIONS TO A DECISION:

A. The parties to a proceeding may file a request for reconsideration of a decision by citing specific exceptions with supporting briefs to a disciplinary review board's decision according to a scheduling order issued by the chairperson.

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 chairperson.

C. Exceptions to a board's 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.

[10.12.12.21 NMAC - N, 7/1/2015]

10.12.12.22 DECISIONS OF THE DISCIPLINARY REVIEW BOARD:

A. As a general rule, the board shall only consider post-hearing briefs, and proposed findings of fact and conclusions of law, the board's decision, and exceptions to the decision. Where circumstances warrant, the board may review all or a portion of the record.

B. The board shall not consider any additional evidence or affidavits not in the record or pleadings not filed in accordance with the chairperson's scheduling order.

C. The board may consider the record in executive session.

D. 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.

[10.12.12.22 NMAC - N, 7/1/2015]

10.12.12.23 REINSTATEMENT:

A. The board may order the department 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 department 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

department 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 chairperson shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay.

[10.12.12.23 NMAC - N, 7/1/2015]

10.12.12.24 REPORT OF DECISIONS:

When the board renders a final decision in an appeal, the board's decision will be available to the public pursuant to the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 (as amended through 2003). Copies of the board's final order and the recommended decision shall be stored in the office, separate from personnel files, and will be available to the public when provided to the parties. The human resource director will redact any privileged and confidential information pursuant to state and federal law.

[10.12.12.24 NMAC - N, 7/1/2015]

PART 13: RULE MAKING

10.12.13.1 ISSUING AGENCY:

Public Defender Commission

[10.12.13.1 NMAC - N, 7/1/2015]

10.12.13.2 SCOPE:

Applies to all employees.

[10.12.13.2 NMAC - N, 7/1/2015]

10.12.13.3 STATUTORY AUTHORITY:

Section 31-15-2.4(B)(6) NMSA 1978; Section 31-15-7 NMSA 1978

[10.12.13.3 NMAC - N, 7/1/2015]

10.12.13.4 DURATION:

Permanent.

[10.12.13.4 NMAC - N, 7/1/2015]

10.12.13.5 EFFECTIVE DATE:

7/1/2015 unless a later date is cited at the end of a section.

[10.12.13.5 NMAC - N, 7/1/2015]

10.12.13.6 OBJECTIVE:

The objective of Part 13 of Chapter 12 is: to provide a process for adoption, amendment, or repeal of a public defender commission rule.

[10.12.13.6 NMAC - N, 7/1/2015]

10.12.13.7 DEFINITIONS:

[RESERVED]

[10.12.13.7 NMAC - N, 7/1/2015]

10.12.13.8 NOTICE AND COMMENT:

A. The public defender commission shall provide an opportunity for employees of the department 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 public defender commission 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 department.

(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.

[10.12.13.8 NMAC - N, 7/1/2015]

10.12.13.9 HEARING:

The public defender commission 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.

[10.12.13.9 NMAC - N, 7/1/2015]

10.12.13.10 EFFECTIVE DATE:

The public defender commission shall determine the effective date of rules, which shall be filed with the New Mexico commission of public records.

[10.12.13.10 NMAC - N, 7/1/2015]

10.12.13.11 EMERGENCY RULES:

The public defender commission may adopt, amend, or suspend a rule as an emergency, without compliance with 10.12.13.8 NMAC and 10.12.13.9 NMAC, if the public defender commission 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 but may be extended once for no more than an additional 60 days if the emergency still continues.

[10.12.13.11 NMAC - N, 7/1/2015]

10.12.13.12 PUBLICATION OF RULES:

Rules, including emergency rules, adopted, amended, or repealed by the public defender commission shall be published in the New Mexico register.

[10.12.13.12 NMAC - N, 7/1/2015]

10.12.13.13 DEMONSTRATION PROJECTS:

The public defender commission may authorize demonstration projects which may require the temporary suspension of the rules when the chief agrees to utilize such a project to improve operations.

[10.12.13.13 NMAC - N, 7/1/2015]

PART 14: INTERIM CASE REFUSAL PROTOCOL

10.12.14.1 ISSUING AGENCY:

New Mexico Public Defender Commission.

[10.12.14.1 NMAC - N, 8/28/18]

10.12.14.2 SCOPE:

Applies to all employees of the New Mexico public defender department and to its contract attorneys.

[10.12.14.2 NMAC - N, 8/28/18]

10.12.14.3 STATUTORY AUTHORITY:

N.M. Const., Article VI, Section 39; Subsection B of Section 31-15-2.4 NMSA 1978.

[10.12.14.3 NMAC - N, 8/28/18]

10.12.14.4 DURATION:

Permanent.

[10.12.14.4 NMAC - N, 8/28/18]

10.12.14.5 EFFECTIVE DATE:

August 28, 2018, unless a later date is cited at the end of a section.

[10.12.14.5 NMAC - N, 8/28/18]

10.12.14.6 OBJECTIVE:

The objective of Part 14 of Chapter 12 is: to create guidelines for the department to use when excessive attorney workloads would make acceptance of additional clients by the affected attorneys ethically irresponsible or would violate the New Mexico rules of professional conduct or the constitutional rights of clients.

[10.12.14.6 NMAC - N, 8/28/18]

10.12.13.7 DEFINITIONS:

"The 2007 report" means the report published by the New Mexico sentencing commission in 2007 on a workload study conducted in conjunction with the national center for state courts.

[10.12.14.7 NMAC - N, 8/28/18]

10.12.14.8 DEPARTMENT COLLECTION AND REPORTING OF INFORMATION REGARDING ATTORNEY CASE ASSIGNMENTS AND TIME KEEPING:

A. Each office of the public defender department shall maintain a continuing record of the case assignments per year for each attorney employed by that office.

B. This record shall include for each case assignment the nature of the charges, whether the case includes felony charges or charges only misdemeanors, and whether the case involves a juvenile respondent.

C. The department shall maintain similar records of cases it assigns to contract attorneys.

D. The chief public defender or the chief's designee shall review case assignment reports for department attorneys and contract attorneys on a quarterly basis, and these reports shall include the information described in Subsections A and B of 10.12.14.8 NMAC.

E. The department shall institute mandatory timekeeping by department attorneys and contract attorneys as soon as possible.

F. The department shall maintain records of the time recorded by department attorneys and contract attorneys in working on their assigned cases.

G. The time records described in Subsection F of 10.12.14.8 NMAC shall include the identity of the client and the nature of the attorney's work for each unit of time recorded.

H. These time records shall be provided upon request to the chief or the chief's designee.

[10.12.14.8 NMAC - N, 8/28/18]

10.12.14.9 DUTY OF THE CHIEF TO INVESTIGATE EXCESSIVE WORKLOAD LEVELS:

A. When reported case assignments for three or more months show the attorneys of a particular office have or a contract attorney has case assignments in excess of quarterly standards derived from the 2007 report, the chief shall conduct an investigation. In conducting this investigation, the chief shall review available attorney time records for the period during which workloads for the affected attorneys have exceeded the 2007 report's quarterly standards.

B. In conducting this investigation, the chief shall also obtain information from the affected office and attorneys and staff regarding the attorneys' ability to provide competent representation to existing clients.

C. In deciding whether the affected office and attorneys can provide competent representation to existing clients, the chief shall consider whether the affected offices

and attorneys consistently are able to comply with the department's 2016 performance standards.

D. After the investigation described above, the chief should determine whether additional case assignments would create a significant risk that the affected office's and attorneys' obligation to provide competent representation to existing clients would materially limit their representation of additional clients.

E. If the chief determines that a significant risk exists that the affected attorneys' duty to existing clients would materially limit their representation of additional clients as described in Subsection D of 10.12.14.9 NMAC, the chief then shall determine whether administrative measures are reasonably available that would alleviate that risk short of refusing additional case assignments.

F. If the chief determines such administrative measures are reasonably available, the chief shall institute these measures and evaluate their effectiveness on a quarterly basis as long as affected attorney workloads exceed the 2007 report's quarterly standards.

G. In the event of multiple investigations, the chief shall decide the priority in which they are conducted and what further steps are taken.

[10.12.14.9 NMAC - N, 8/28/18]

10.12.14.10 DETERMINATION BY THE CHIEF TO REFUSE ADDITIONAL CASE ASSIGNMENTS BASED ON EXCESSIVE WORKLOADS:

A. If the chief determines that reasonably available administrative measures would fail or have failed to alleviate the risk described in Subsection E of 10.12.14.9 NMAC, the chief shall state in writing that accepting additional cases would be ethically irresponsible.

B. The chief's determination under Subsection A of 10.12.14.10 NMAC shall include a summary of the facts and copies of all documents considered while preserving from disclosure confidential client and personnel information except as otherwise provided by law.

C. The chief shall continue to monitor affected office and attorney workloads on a monthly basis and shall report in writing when quarterly workloads drop below the 2007 report standards.

D. When quarterly workload levels have dropped below the 2007 report standards, the chief shall determine on a monthly basis whether the affected office and attorneys are able to represent additional clients in an ethically responsible manner as described in Subsection A of 10.12.14.10 NMAC and shall maintain a record of this determination and the facts supporting it.

[10.12.14.10 NMAC - N, 8/28/18]

10.12.14.11 NOTICE TO AFFECTED COURTS OF CASE REFUSAL; MOTIONS TO WITHDRAW; AND NOTICES OF RENEWED AVAILABILITY:

A. When the chief determines that affected office and attorney workloads make it ethically irresponsible for affected offices and attorneys to accept additional case assignments as described in Subsection A of 10.12.14.10 NMAC the chief shall prepare a notice of case refusal.

B. The notice of case refusal shall state that it would be ethically irresponsible for affected office and attorneys to accept additional cases at the present time and shall bear the chief's signature.

C. The Notice shall have attached to it a copy of the chief's written determination and supporting documents as provided in 10.12.14.10 NMAC.

D. The chief shall deliver a copy of the notice to the chief district judge of the affected jurisdiction; all affected courts within that jurisdiction; and the administrative office of the courts.

E. Notwithstanding the above provisions, if the chief determines it would be ethically responsible, case assignments may continue to be accepted for cases involving homicides, violent felonies, sexual offenses, and juvenile respondents.

F. The affected attorneys shall promptly move to withdraw from case assignments that occurred after the chief's determination, subject to the exceptions listed in Subsection E of 10.12.14.11 NMAC.

G. The affected office and attorneys shall continue to be unavailable to accept new cases except as provided herein until such time as the chief determines pursuant to Subsection C of 10.12.14.10 NMAC and Subsection D of 10.12.14.10 NMAC that workload levels have fallen below 2007 report standards and it would be ethically responsible to accept additional cases.

H. The chief shall provide a copy of his monthly determination of continued unavailability pursuant to Subsection C of 10.12.14.10 NMAC and Subsection D of 10.12.14.10 NMAC to all parties listed in Subsection D of 10.12.14.11 NMAC until such time as he determines it would be ethically responsible for the affected office and attorneys to accept additional case.

I. When the chief determines as provided above that the affected office and attorneys are able to accept additional cases, the chief shall issue a notice of renewed availability, which shall bear the chief's signature.

J. The notice of renewed availability shall be delivered to the chief district judge of the affected jurisdiction; all affected courts within that jurisdiction; and the administrative office of the courts.

K. Upon communication of the chief's notice of renewed availability, the office and attorneys previously disqualified from accepting additional cases shall begin accepting new cases under normal case assignment procedures.

[10.12.14.11 NMAC - N, 8/28/18]

CHAPTER 13: [RESERVED]

CHAPTER 14: CORRECTIONAL SERVICES

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: COLLECTION AND ANALYSIS OF CRIMINAL AND JUVENILE JUSTICE DATA BY THE NEW MEXICO SENTENCING COMMISSION

10.14.2.1 ISSUING AGENCY:

New Mexico Sentencing Commission.

[10.14.2.1 NMAC - N, 1/1/2007]

10.14.2.2 SCOPE:

This rule applies to state, county and municipal agencies that possess criminal or juvenile justice data.

[10.14.2.2 NMAC - N, 1/1/2007]

10.14.2.3 STATUTORY AUTHORITY:

Sections 9-3-10, 9-3-10.1, 29-10-6 and 31-18-15 NMSA 1978.

[10.14.2.3 NMAC - N, 1/1/2007]

10.14.2.4 DURATION:

Permanent.

[10.14.2.4 NMAC - N, 1/1/2007]

10.14.2.5 EFFECTIVE DATE:

January 1, 2007, unless a later date is cited at the end of a section.

[10.14.2.5 NMAC - N, 1/1/2007]

10.14.2.6 OBJECTIVE:

The objective of this rule is to establish procedures for the commission's collection, analysis and dissemination of criminal or juvenile justice data in the possession of agencies. The commission will use the data to support the provision of information to the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice.

[10.14.2.6 NMAC - N, 1/1/2007]

10.14.2.7 DEFINITIONS:

A. "Agency" means an executive or judicial agency in state, county or municipal government.

B. "Commission" means the New Mexico sentencing commission.

C. "Data" means criminal or juvenile justice records, data and information.

[10.14.2.7 NMAC - N, 1/1/2007]

10.14.2.8 COMMISSION RESPONSIBILITIES:

The commission shall:

A. advise the executive, judicial and legislative branches of government on policy matters relating to criminal and juvenile justice;

B. study past and current sentencing and release practices and create a statistical database for simulating the impact of various sentencing policies;

C. assess the impact of commission recommendations to modify criminal sentencing policy on the availability of and need for correctional resources and programs;

D. serve as a clearinghouse for the systematic collection, analysis and dissemination of information relating to felony offense charges, plea agreements, convictions, sentences imposed, incarceration time actually served and actual and projected inmate population in the state correctional system;

E. publish an annual, written report that specifies the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as

defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year.

[10.14.2.8 NMAC - N, 1/1/2007]

10.14.2.9 PROVISION OF AGENCY DATA TO THE COMMISSION:

A. In general, an agency shall provide agreed-upon data to the commission on at least an annual basis for the immediately preceding fiscal year. The agency data shall be provided to the commission no later than October 1 following the conclusion of the immediately preceding fiscal year.

B. When the commission directs its staff to collect data for a special research project, the commission shall file a written request with the appropriate agency for the necessary data. The agency shall respond to the written request in a timely manner.

C. When possible, agency data shall be provided electronically to the commission.

[10.14.2.9 NMAC - N, 1/1/2007]

10.14.2.10 SAFEGUARDS FOR AGENCY DATA:

A. The commission is not authorized to inspect data that:

- (1)** is privileged under the New Mexico Rules of Evidence;
- (2)** compromises or tends to disclose any privileged record or information;
- (3)** consists of reports, memoranda or other internal documents given to or communications made to a prosecutor or defense attorney in connection with the investigation, prosecution or defense of a criminal case.

B. Data provided by an agency to the commission shall have the same legal status with regard to access or release as when the data was in the possession of the agency.

C. Prior to publishing a report, the commission shall allow an agency that provided data used in the report to review the report.

D. Data provided by an agency to the commission will be reported by the commission as statistical or analytical data. Names of individuals and all other personal identifiers will be removed from commission reports.

[10.14.2.10 NMAC - N, 1/1/2007]

10.14.2.11 BASIS OF DENIAL CONCERNING REQUESTS FOR COMMISSION DATA:

A. The commission may deny a request for data maintained by the commission when the request is:

- (1)** made by an organization that gathers data from public sources and subsequently resells that data;
- (2)** burdensome or will hamper the operations of the commission;
- (3)** for data that is collected by the commission in a statistically invalid manner;
- (4)** for data in a format that is not maintained by the commission; or
- (5)** for data that is prevented by statute or court order from being released.

B. The commission may deny a request from any entity for a direct link to a commission database.

[10.14.2.11 NMAC - N, 1/1/2007]

PART 2-199: [RESERVED]

PART 200: DNA IDENTIFICATION SYSTEM

10.14.200.1 ISSUING AGENCY:

DNA Identification System Oversight Committee & Administrative Center, c/o Metropolitan Forensic Science Center 5350 Second Street N.W., Albuquerque, NM 87107 (505) 823-4200.

[10.14.200.1 NMAC - Rp, 10.14.200.1 NMAC, 09/30/2016]

10.14.200.2 SCOPE:

Department of public safety, department of corrections, attorney general, state medical investigator, local, county and state New Mexico law enforcement agencies, jails and detention facilities, city of Albuquerque, covered offenders and persons arrested for felony offenses.

[10.14.200.2 NMAC - Rp, 10.14.200.2 NMAC, 09/30/2016]

10.14.200.3 STATUTORY AUTHORITY:

Subsection C of 29-3-10, Subsection G of 29-11A-5, Paragraph (6) of Subsection B of 29-16-4, Subsection B of 29-16-5 and Subsection E of 29-16-5 NMSA 1978.

[10.14.200.3 NMAC - Rp, 10.14.200.3 NMAC, 09/30/2016]

10.14.200.4 DURATION:

Permanent.

[10.14.200.4 NMAC - Rp, 10.14.200.4 NMAC, 09/30/2016]

10.14.200.5 EFFECTIVE DATE:

September 30, 2016, unless a later date is cited at the end of a section.

[10.14.200.5 NMAC - Rp, 10.14.200.5 NMAC, 09/30/2016]

10.14.200.6 OBJECTIVE:

To establish a DNA identification system for covered offenders, persons arrested for felony offenses, unidentified persons and unidentified human remains. To facilitate the use of DNA records by local, state and federal law enforcement agencies in the identification, detection or exclusion of persons in connection with criminal investigations, the registration of sex offenders required to register pursuant to the provisions of the Sex Offender Registration and Notification Act and to facilitate the use of DNA records by local, state and federal law enforcement agencies and the state medical investigator in the identification of unidentified persons or unidentified human remains pursuant to the DNA Identification Act.

[10.14.200.6 NMAC - Rp, 10.14.200.6 NMAC, 09/30/2016]

10.14.200.7 DEFINITIONS:

A. "Administrative center" means the part of a national DNA index system qualified New Mexico crime laboratory that administers and operates the DNA identification system and is governed by the DNA oversight committee.

B. "Analysis" means DNA profile generation.

C. "Arrestee" for purposes of DNA sample collection means any person as described in Subsection A of 29-3-10 NMSA 1978.

D. "Buccal cell" means cells from the interior linings of the cheek and gum in a liquid or semiliquid form.

E. "CODIS" means the federal bureau of investigation's national DNA index system for storage and exchange of DNA records submitted by designated forensic or database DNA laboratories.

F. "Collection kit" see Subsection N of 10.14.200.7 NMAC.

G. "Core loci" means the minimal chromosomal locations designated as being required for a known DNA profile to be considered complete by the board of the national DNA index system, and consistent with the federal DNA Identification Act of 1994 and subsequent federal laws.

H. "Covered offender" for purposes of fee assessment means any person convicted of a felony offense, committed after July 1, 1997, and as defined by Subsection C of 29-16-3 NMSA 1978 and as described in Paragraphs (1) through (3) of Subsection A of 29-16-6 NMSA 1978.

I. "Covered offender" for purposes of DNA sample collection means any person as defined by Subsection C of 29-16-3 and Subsection A of 29-16-6 NMSA 1978.

J. "DNA" means deoxyribonucleic acid.

K. "DNA Identification Act" means Sections 29-16-1 to 29-16-13 NMSA 1978, and any subsequent amendments or additions to these sections, the law that authorizes the DNA identification system and the DNA oversight committee.

L. "DNA identification system" means the system established pursuant to the DNA Identification Act.

M. "DNA oversight committee" means the DNA identification system oversight committee.

N. "DNA sample collection kit" means a group of materials assembled or gathered for the collection of DNA samples.

O. "FTA card" means an FTA collection card, a card of blotter paper designed for the collection of liquid or semiliquid biological samples or any other device designed for the collection of liquid or semiliquid biological samples.

P. "Head of the administrative center" means the authorized person who supervises the day-to-day operations of the administrative center.

Q. "Identification system" see Subsection L of 10.14.200.7 NMAC.

R. "In writing" see Subsection Z of 10.14.200.7 NMAC.

S. "Kit" see Subsection N of 10.14.200.7 NMAC.

T. "Records" means the results of DNA collection, analysis, testing, and other related information.

U. "Sample" means a sample of biological material sufficient for DNA testing.

V. "Sample collection kit" see Subsection N of 10.14.200.7 NMAC.

W. "Sample profile hit" means a match of the examined loci as determined by the servicing forensic DNA laboratory that has undergone a defined level of confirmatory processes and reviews sufficient to allow the issuance of a letter of notification to the servicing forensic DNA laboratory and the reporting of statistical information to the federal bureau of investigation.

X. "Sample profile match" means a match of the examined loci as determined by the servicing forensic laboratory that has not yet undergone the processes described in Subsection W. of 10.14.200.7 NMAC.

Y. "Secured" means limited and controlled access only by authorized personnel including use of protection and safety devices such as restricted space access, physical locks and keys, passwords, encryption, firewalls etc. to safeguard any and all functions of that equipment or facility that may be determined to be necessary.

Z. "Written" means a document that is hand or typewritten on paper and includes the use of facsimile copies, computer or other electronically generated or scanned, traceable documents that can be subsequently printed.

[10.14.200.7 NMAC - Rp, 10.14.200.7 NMAC, 09/30/2016]

10.14.200.8 COLLECTION AND TRANSFER OF SAMPLES AND FEES:

A. Routine collection of samples from a covered offender shall be performed only by employees of the department of corrections adult prisons or probation and parole divisions, jail or detention facility personnel, employees of the county sheriff office, members of the administrative center or persons designated by the administrative center and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee and provided by the administrative center.

B. Collection and deposit of assessed fees from covered offenders shall be performed by employees of the department of corrections adult prisons and probation and parole divisions pursuant to policies and procedures established by the department of corrections.

C. The department of corrections shall be responsible for establishing policies and procedures for the collection of samples and assessed fees from covered offenders when custody is maintained by private or out-of-state, probation and parole or corrections facilities.

D. Routine collection of samples from arrestee's shall:

(1) be performed only by jail or detention facility personnel, members of the administrative center or persons designated by the administrative center and in coordination with the administrative center, utilizing the collection protocol approved by the oversight committee and provided by the administrative center; and

(2) include the issuance to each collected arrestee a written statement or notice informing the arrestee that if the arrestee is not convicted of the felony charges in this arrest, or that the felony charges are otherwise dismissed, that the arrestee may request that the collected DNA sample and records be expunged, as well as how the arrestee can obtain information related to expungement procedures. Such written statement or notice shall also include information that if the arrestee posted bond or was released prior to appearing before a judge or magistrate and then failed to appear for a scheduled hearing, that the arrestee's DNA sample will automatically be analyzed.

E. DNA sample collection kits and information on the collection, storage, and transfer of samples shall be provided at no cost by the administrative center.

F. The routine method of sample collection shall be by buccal cell collection using the sample collection kit supplied by the administrative center. In non-routine circumstances, including a refusal by an arrestee or a covered offender the collection shall, pursuant to Section 29-16-9 NMSA 1978:

- (1) be referred to the administrative center;
- (2) require a written consent or court order;
- (3) consist of an appropriate, alternative sample type as designated by the administrative center or the court; and
- (4) shall be collected by members of the administrative center; or
- (5) by persons trained in the collection of the designated alternative sample type in coordination with, and as designated by, the administrative center.

G. In the case of an arrestee who refuses to provide a DNA sample to jail or detention facility personnel upon booking as required by Subsection A of 29-3-10 NMSA 1978, the jail or detention facility personnel shall immediately document the refusal and shall immediately report the refusal to the administrative center in order for the administrative center to coordinate, with the office of the district attorney for the county where the arrest took place, the initiation of the required legal proceedings as required by Paragraph (2) of Subsection F of 10.14.200.8 NMAC.

H. The determination of a person's eligibility for DNA sample collection as a qualifying arrestee or as a covered offender shall be the responsibility of the authorized collector designated in Subsection A or D of 10.14.200.8 NMAC. An authorized collector may request, and receive, assistance from the administrative center when making such

a determination. The determination of a person's eligibility shall be based upon the statutory requirements for the specific collection.

I. Questions on supplies, collection or packaging should be directed to the administrative center.

[10.14.200.8 NMAC - Rp, 10.14.200.8 NMAC, 09/30/2016]

10.14.200.9 HANDLING AND SECURITY OF SAMPLES:

A. DNA records and samples are confidential and shall not be disclosed except as authorized by the DNA oversight committee and as governed by the DNA Identification Act.

B. All files, computer, and sample storage systems maintained by the administrative center pursuant to the DNA Identification Act shall be secured. Access shall be limited to employees of the administrative center as authorized by the head of the administrative center pursuant to and directed by the official functions and duties stated in Paragraph (1) of Subsection B of 29-16-4 NMSA 1978, and as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978 and to technical repair personnel as required to maintain the system as authorized by the head of the administrative center.

C. Both state and national database searches shall be performed via secured computer systems.

D. Any person who willfully discloses, seeks to obtain or use information from the DNA identification system for purposes not authorized in these rules and in violation of Section 29-16-12 NMSA 1978 shall be subject to the penalties thereof.

E. All samples received by the administrative center for DNA analysis shall be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

F. Samples shall be handled, examined, and processed one at a time to avoid possible cross-contamination from another sample or from the examiner.

G. All sample collection kits shall be received in a sealed condition. If the kit is not sealed upon receipt the sample shall be rejected and a request for a new sample shall be made by the head of the administrative center.

H. If the documentation or certification sections are not filled out, it shall be documented and the head of the administrative center shall be notified. The decision as to whether to accept the sample or request a new sample shall be made by the head of the administrative center.

I. Each sample shall receive a unique identifying NMDIS database number that does not include any personal identification information. The database number shall be placed on the sample collection kit and on the FTA card or its proximal container.

J. The FTA card shall be returned to its proximal container and placed into secured storage until processed for analysis.

K. Known, collected and non-analyzed, duplicate arrestee or covered offender samples and DNA collection kits may be destroyed at the discretion of the head of the administrative center, provided that:

(1) the kit duplication is confirmed and documented by fingerprint comparison between the original and duplicate kits;

(2) an image of the duplicate collection kit is retained; and

(3) the original, or other previously collected, DNA collection kit are maintained by the administrative center.

L. Unopened, unanalyzed arrestee samples that are collected but are found to not qualify to have been collected pursuant to Subsection B of 29-3-10 NMSA 1978, and whereby the person collected is not otherwise required to provide a DNA sample pursuant to another DNA collection related New Mexico statute, shall be destroyed by the administrative center.

M. Provided that there has been no qualifying request for expungement pursuant to 29-16-10 NMSA 1978, arrestee samples that are collected, may be retained unopened and unanalyzed as long as may be required to make a final determination of compliance with Subsection B of 29-3-10 NMSA 1978.

N. Unopened, unanalyzed arrestee samples that are collected and after more than one year from the date of collection are found to have no available information with which to make a final determination of compliance with Subsection B of 29-3-10 NMSA 1978, and whereby the person collected is not otherwise required to provide a DNA sample pursuant to another DNA collection related New Mexico statute, shall be destroyed by the administrative center.

[10.14.200.9 NMAC - Rp, 10.14.200.9 NMAC, 09/30/2016]

10.14.200.10 SAMPLE PROCESSING AND ANALYSIS BY THE ADMINISTRATIVE CENTER:

A. All samples received by the administrative center for DNA analysis should be considered potentially bio-hazardous. Universal safety precaution procedures shall be followed when handling biological samples.

B. The mechanism of sample collection authorization for samples collected pursuant to Subsection C of 29-16-6 NMSA 1978 shall be documented and a copy of that authorization maintained by the administrative center.

C. Samples shall be handled, examined, and processed individually to avoid possible cross-contamination from another sample or from the examiner.

D. Samples tested shall follow DNA testing procedures approved by the administrative center. Remaining samples shall be returned to secured storage.

E. Five percent of all samples tested annually, shall consist of samples:

(1) with a known DNA profile; or

(2) that constitute randomly collected, unknown duplicate samples; and

(3) shall be presented to the analyzing laboratory in a "blind" fashion to ensure proficiency and to act as a quality assurance measure. Results of these analyses are to be evaluated with the corresponding offender or arrestee samples. Should any resultant "blind" sample's DNA profile (other than a sample that is determined to be of insufficient quality or quantity to generate a profile) not match the expected known DNA profile for that sample, or should the known personally identifying information for the collectee not reasonably match (other than from the purposeful misidentification by the collected individual or for monozygotic siblings), an error rate is to be calculated by the administrative center and be presented to the analyzing laboratory and to the oversight committee.

F. The genetic markers analyzed shall consist of those contained in commercial analysis kits approved by the board of the national DNA index system, having been selected for identification and statistical purposes only.

G. Excess extracted or amplified arrestee and offender DNA shall be destroyed within 30 days after completion of analysis.

H. Excess DNA collected pursuant to Subsection C of 29-16-2 NMSA 1978 shall be retained by the administrative center, the analyzing laboratory or the submitting agency at the discretion of the submitting agency.**I.** No written letters of notification shall be released on any specific DNA sample except as authorized by the DNA Identification Act, these rules and the current New Mexico DNA identification system standard operating procedures.

J. Analysis of arrestee DNA samples collected on, or after, July 1, 2011, shall only be analyzed in conformance with the requirements of Subsection B of 29-3-10 NMSA 1978.

10.14.200.11 ACCESS TO DNA SAMPLE INFORMATION, RECORDS AND SAMPLES:

A. Access to or disclosure of DNA records and samples collected shall be authorized only in the following circumstances:

- (1)** when used as statistical or research information, and only when all personal identification is removed; or
- (2)** for identification, comparison, and investigative purposes, to local, state, and federal law enforcement agencies and the state medical investigator in response to official inquiries as authorized by Section 29-16-2 and Subsection B of 29-16-8 NMSA 1978 and these rules; or
- (3)** in order to minimize duplicate sample collection and testing to local, state and federal law enforcement agencies, the corrections department, jails and detention facilities as provided by Subparagraph (e) of Paragraph (6) of Subsection B of 29-16-4 and Subsection C of 29-16-8 NMSA 1978; or
- (4)** pursuant to court order.

B. Access to the DNA identification system shall be consistent with the DNA identification act and only by:

- (1)** authorized law enforcement agencies and the state medical investigator through their servicing forensic DNA laboratory or by direct written request to the head of the administrative center; or
- (2)** authorized law enforcement agencies, the corrections department, jail and detention facilities through secure electronic methods established by the administrative center.

C. DNA records and samples.

- (1)** All requests for information on DNA records or requests for DNA samples, other than those intended to minimize duplicate sample collection and testing or accessed through the secure electronic methods established by the administrative center, shall be submitted in writing to the administrative center.
- (2)** The head of the administrative center shall verify the validity of all written requests prior to releasing any DNA related information or samples pursuant to the DNA Identification Act.
- (3)** A copy of the request and resulting action shall be retained in a retrievable written format.

(4) Samples from persons defined in Subsections C and I of 10.14.200.7 NMAC are collected and records of analysis for such persons are generated. Samples and records submitted shall not be compared to any other sample or record of analysis unless such comparison is performed pursuant to a CODIS or other DNA identification system maintained database search process or unless it is for a quality control or quality assurance purpose.

D. DNA database searches.

(1) All specific, non-routine requests for searches of, or through, the administrative center DNA database computers, other than those intended to minimize duplicate sample collection and testing or accessed through the secure electronic methods established by the administrative center, shall be submitted in writing to the administrative center.

(2) The head of the administrative center shall verify the validity of all written requests pursuant to the DNA Identification Act, prior to initiating any database searches or releasing information from such searches and shall reject inappropriate or invalid requests.

(3) A copy of the request and resulting action shall be placed with the original sample records if a database hit should occur. If a database hit should occur pursuant to this request, it shall be administratively handled pursuant to the provisions of Subsection E of 10.14.200.11 NMAC.

(4) A separate file shall be established where copies of all specific, non-routine requests and resulting action shall be kept.

(5) All routine searches will be performed in such a manner as to not target a specific covered offender or arrestee sample. No documentation of routine searches is required to be maintained.

E. Database hits.

(1) If a DNA profile match should occur between the DNA profile from a covered offender or arrestee and an unknown forensic sample, an unidentified person or unidentified human remains, a reanalysis of the stored DNA sample shall be performed, if possible, to verify the generated profile.

(2) A written letter of notification indicating the hit shall be forwarded to the requesting agency through their servicing laboratory or directly by the head of the administrative center. Release of personal identifying information shall be made only after compliance with Subsection D of 10.14.200.11 NMAC.

(3) Should the reanalysis of a profile match not be confirmed, a written letter of notification to that effect shall be forwarded to the requesting agency through their

servicing laboratory or directly by the head of the administrative center and a non-conformance investigation will be executed.

(4) All written letters of notification that possess an original signature shall be kept by the administrative center. Copies of letters of notification that possess an original signature will be distributed as deemed appropriate by the head of the administrative center. As required, a certified copy of a letter of notification that possesses an original signature will be distributed as deemed appropriate by the head of the administrative center.

F. Only DNA records that directly relate to the identification characteristics of individuals shall be collected and stored in the DNA identification system database. The information contained in the DNA identification system database shall not be collected, stored, or released for the purpose of obtaining information about physical characteristics, traits, or predisposition for a disease or mental illness or behavior and shall not serve any purpose other than those specifically allowed by the DNA Identification Act.

G. CODIS.

(1) The administrative center will contribute data obtained from the DNA identification system to CODIS.

(2) The information maintained and accessed by CODIS shall adhere to the procedures, rules and regulations established by the board of the national DNA index system and the FBI for CODIS access.

(3) Both state and national CODIS searches shall be performed via secured computer systems.

[10.14.200.11 NMAC - Rp, 10.14.200.11 NMAC, 09/30/2016]

10.14.200.12 EXPUNGEMENT OF INFORMATION:

A. A person may request expungement of his arrestee or offender DNA sample and DNA records from the DNA identification system on the following grounds:

(1) that the conviction that led to the inclusion of the offender DNA sample and DNA records in the DNA identification system has been reversed; or

(2) that the arrest that led to the inclusion of the arrestee DNA sample and DNA records in the DNA identification system has resulted in a felony or misdemeanor charge that has been resolved by a dismissal with or without prejudice, nolle prosequi, the successful completion of a pre-prosecution diversion program or a conditional discharge, misdemeanor conviction or acquittal; or

(3) that the arrest that led to the inclusion of the arrestee DNA sample and DNA records did not result in a felony charge being filed within one year of the date of arrest.

B. The head of the administrative center shall expunge a person's arrestee or offender DNA sample and DNA records from the DNA identification system when the person provides the administrative center with the following materials:

(1) a written request for expungement of the sample and DNA records; and

(2) for offender samples and DNA records, a certified copy of a court order or mandate that reverses the *conviction that led to the inclusion of the sample and DNA records in the DNA identification system*; or

(3) for arrestee samples and DNA records, a certified copy of the dismissal with or without prejudice, nolle prosequi, conditional discharge, misdemeanor conviction or acquittal or, documentation certifying the successful completion of a pre-prosecution diversion program or, a sworn affidavit that the arrest that led to the inclusion of the sample has not resulted in a felony charge being filed within one year of the date of arrest.

C. Before expungement of an arrestee or offender DNA sample the administrative center shall, within 30 days of the receipt of the request for expungement, request that an independent review of the submitted materials be conducted by the attorney general's office. The attorney general shall confirm or reject the expungement request, or request a reasonable extension of time for the review of the request from the administrative center, in writing within 45 days from the receipt of the request for review by the attorney general's office. If no action is taken and there is no request for an extension of the review by the attorney general after 45 days from the receipt of the request for review, expungement shall automatically occur.

D. A person may request expungement of his DNA sample and DNA records from the missing persons DNA identification system at any time.

E. The head of the administrative center shall expunge a person's sample and DNA records from the missing persons DNA identification system when the person provides the administrative center with the following materials.

(1) A written request for expungement of his sample and DNA records.

(2) A certified copy of a court order overturning any original search warrant or court order that led to the inclusion of his sample and DNA records in the missing persons DNA identification system, if applicable.

F. Before expungement of a DNA sample collected for the missing persons DNA identification system, a review of the mechanism of sample collection authorization shall

be conducted by the administrative center. The administrative center shall confirm or reject the expungement request in writing within 30 business days from the receipt of the written request by the administrative center.

G. Requests for a review extension and the rejection of requests for expungement shall not be made without cause.

H. Should a request for expungement be rejected, the written notification shall include information as to the reason for rejection and that the rejection may be appealed to the oversight committee.

I. The administrative center shall not expunge a person's sample or DNA records from the DNA identification system if the person has a prior felony conviction or a pending felony charge for which collection of a sample is authorized pursuant to the provisions of the DNA Identification Act.

J. When a person's sample and DNA records are to be expunged from the DNA identification system, the head of the administrative center shall ensure that the person's sample and DNA records are expunged from CODIS within 30 days after the receipt of the confirmation of the expungement request by the attorney general.

K. Written confirmation of the expungement shall be sent to the requesting party and a record of the written confirmation, as well as all expungement related correspondence and checklists, shall be securely kept solely by the head of the administrative center.

L. Expungement related confirmation, correspondence and checklists shall not list any results of DNA testing or the NMDIS database number and if such items do contain these identifiers the identifiers shall be obliterated.

M. All items kept by the head of the administrative center pursuant to Subsection K of 10.14.200.12 NMAC shall be destroyed not less than six months, nor greater than seven months, from the date of the written confirmation of the expungement being sent to the requesting party.

N. For purposes of this section, expungement means the complete destruction of all samples, records, personal identification and information concerning that person, such that the person could not be re-associated with the expunged materials as described in this section.

[10.14.200.12 NMAC - Rp, 10.14.200.12 NMAC, 09/30/2016]

10.14.200.13 OPERATION AND OVERSIGHT OF THE ADMINISTRATIVE CENTER:

A. The written agreement required in Section 29-16-4 NMSA1978 shall:

(1) provide for the general terms of the operation and administration of the administrative center; and

(2) define the relationship between the DNA oversight committee and the law enforcement agency that administers and operates the DNA identification system; and

(3) be read and interpreted consistent with the provisions of these rules and the DNA Identification Act.

B. Personnel staffing.

(1) Staffing for the administrative center, to include the head of the administrative center, shall be selected by the law enforcement agency or unit that administers and operates the DNA identification system following the agency or unit's standard hiring policies.

(2) In the event of a vacancy of the position held by the head of the administrative center, the law enforcement agency or unit that administers and operates the DNA identification system shall notify the oversight committee chairperson of the vacancy and coordinate the inclusion of two or more oversight committee members, not affiliated with the law enforcement agency that administers and operates the DNA identification system, for the selection interviews.

(3) The head of the administrative center shall meet or exceed the educational and experience requirements of a technical leader or a CODIS administrator as required by the FBI's quality assurance standards.

(4) All analysts shall meet or exceed the educational and experience requirements of an analyst as required by the FBI's quality assurance standards.

C. Funding of positions.

(1) All positions funded by the DNA identification system shall be for the execution of the duties listed in Subsection B of 29-16-4 NMSA 1978 and for the benefit of the DNA identification system.

(2) The creation of any full-time or permanent, DNA identification system funded staff positions by the law enforcement agency or unit that administers and operates the DNA identification system shall be approved by the oversight committee prior to the hiring process.

(3) The utilization of part-time or temporary, DNA identification system funded staff positions shall be at the discretion of the head of the administrative center, however any such positions shall be limited in duration and maintained only for such time as their specific need exists.

D. Authority of the head of the administrative center.

(1) The head of the administrative center is authorized to make all reasonable administrative decisions as are required to comply with the duties listed in Subsection B of 29-16-4 NMSA 1978, these rules, the operational procedures of the board of the national DNA index system and the FBI's quality assurance standards.

(2) The head of the administrative center shall abide by all decisions of the oversight committee.

E. General strategic plan.

(1) The head of the administrative center shall present a general strategic plan to the oversight committee within the first four months of each calendar year, for approval by the committee.

(2) Should significant changes to the strategic plan, the operations or processes of the administrative center be necessary during the interim period, those changes shall require the prior approval of the oversight committee.

F. Authority of the administrative center over forensic laboratories with respect to their participation in CODIS.

(1) The administrative center shall have "stop work" authority over forensic laboratories. This authority shall not be exercised without cause.

(2) Forensic laboratories shall utilize and provide any documents as designed by, or otherwise required by, the administrative center.

(3) Forensic laboratories shall abide by all policies and procedures established by the administrative center.

(4) Forensic laboratories shall abide by all federal and New Mexico laws, rules and standards as shall be enacted.

G. For purposes of the required memorandum between the federal bureau of investigation, laboratory division and a New Mexico, national DNA index system participating forensic laboratory the signatory shall be the crime laboratory director that oversees the respective forensic laboratory. For purposes of the required memorandum between the federal bureau of investigation, laboratory division and the administrative center the signatory shall be the chairperson of the DNA oversight committee, after review and advisement of the DNA oversight committee.

[10.14.200.13 NMAC - Rp, 10.14.200.13 NMAC, 09/30/2016]

10.14.200.14 [RESERVED]

10.14.200.15 [RESERVED]

10.14.200.16 MISCELLANEOUS PROVISIONS:

A. Savings clause. These rules shall be read and interpreted consistent with the provisions of the DNA Identification Act. If a topic is not addressed in these rules, reference shall be made to the DNA Identification Act.

B. Annual review. These rules shall be reviewed on, at least, an annual basis by the DNA oversight committee.

C. Purpose and intent. The purpose and intent of these rules is to fully implement the provisions of Sections 29-3-10, 29-16-1 et seq. and 29-11A-1 et seq. NMSA 1978. These rules are governed by the Uniform Statute and Rule Construction Act, Section 12-2A-1 et seq. NMSA 1978. These rules rely on the primary text of each statute and the common and technical use of the language in each statute.

D. Chairperson. The DNA oversight committee shall, in such a manner and for such duration as the DNA oversight committee may choose, select from the members of the DNA oversight committee, a chairperson and a vice-chairperson. In the absence of the chairperson, the vice-chairperson shall act in the capacity of the chairperson. In the circumstance that the chairperson is no longer willing, or able, to continue to act as the chairperson, the vice-chairperson shall act in the capacity of the chairperson until such time that the DNA oversight committee selects a new chairperson. The chairperson is eligible to vote on all motions brought before the DNA oversight committee.

E. Spokesperson. The chairperson of the DNA oversight committee, or designee, shall be empowered to act as the official spokesperson on behalf of the DNA oversight committee and the administrative center.

F. Proxy, abstention and electronic participation and voting. Designation of a proxy by any member of the DNA oversight committee is allowed when the respective member is unable to attend a meeting of the DNA oversight committee. Such proxy shall count towards establishing a quorum and be eligible to cast a vote as may be necessary. Any member of the DNA oversight committee, or their proxy, may abstain from any vote and such abstention shall not count towards, or against, the majority on any motion. Electronic participation and voting may be allowed pursuant to the approval of a majority of the quorum that is physically present at any meeting of the DNA oversight committee. Such approved electronic participation and voting shall be considered to be the same as if the member of the DNA oversight committee were physically present at that meeting.

[10.14.200.16 NMAC - Rp, 10.14.200.16 NMAC, 09/30/2016]

CHAPTER 15: STATE CORRECTIONAL FACILITIES [RESERVED]

CHAPTER 16: COUNTY AND MUNICIPAL CORRECTIONAL FACILITIES [RESERVED]

CHAPTER 17: [RESERVED]

CHAPTER 18: COMMUNITY CORRECTIONS [RESERVED]

CHAPTER 19: PRIVATE CORRECTIONAL INSTITUTIONS [RESERVED]

CHAPTER 20: CIVIL EMERGENCY PREPAREDNESS AND DISASTER RELIEF

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: HAZARDOUS MATERIALS EMERGENCY RESPONSE PLAN AND PROCEDURES MANUAL

10.20.2.1 ISSUING AGENCY:

New Mexico State Police.

[Recompiled 11/30/01]

10.20.2.2 SCOPE:

[RESERVED]

10.20.2.3 STATUTORY AUTHORITY:

The New Mexico Hazardous Materials Emergency Response (HMER) Plan is adopted pursuant to the authority of the New Mexico Emergency Management Act as amended in 1984.

[Recompiled 11/30/01]

10.20.2.4 DURATION:

Permanent.

[Recompiled 11/30/01]

10.20.2.5 EFFECTIVE DATE:

Filed January 31, 1986.

[Recompiled 11/30/01]

10.20.2.6 OBJECTIVE:

In accordance with the mandates and authorities of the Emergency Management Act, it is the purpose of this plan to initiate and implement comprehensive procedures which can be applied state-wide by all persons who may be involved in responding to a hazardous materials incident.

[Recompiled 11/30/01]

10.20.2.7 DEFINITIONS:

[RESERVED]

10.20.2.8 EMERGENCY RESPONSE PLAN AND PROCEDURES MANUAL:

This document is an excerpt from New Mexico Hazardous Materials Emergency Response Program. The Plan and Procedures Manual includes the basic information needed to understand the workings of an emergency response to a hazardous materials accident. Included in the Program but not in the Plan and Procedures Manual are extensive lists of resources and several other chapters containing information pertinent mainly for those individuals who are responsible for administering the plan or serving as members of the emergency management task force or hazardous materials safety Board. Additional copies of this document and/or information on the program may be obtained from the New Mexico State Police, Hazardous Materials Emergency Response Administrator, P. O. Box 1628, Santa Fe, New Mexico 87504-1628, phone (505) 827-9226. The emergency response plan is a concise statement of the authority, responsibility, and organization for management of hazardous materials emergencies in New Mexico. Procedures for emergency response functions are detailed in the Procedures Manual which follows the plan.

[Recompiled 11/30/01]

10.20.2.9 RESPONSIBILITY:

Authority and responsibility shall be consistent with the legislative intent of the Emergency Management Act and the procedures developed pursuant to that act. General responsibility shall be:

A. State government: State government shall have primary responsibility for management of a hazardous materials incident.

B. Local government: Local governments shall assist the state in performing emergency response functions in respective jurisdictions. Local governments may enter into cooperative agreements with the state for management of hazardous materials incidents, in accordance with Section VII [now 10.20.2.13 NMAC] of this plan.

C. Federal government: Federal government shall have primary responsibility for weapons-related shipments. In addition, it shall act as an additional resource to the state when the state has determined that its capability has been exceeded. If the state requests assistance in carrying out its emergency management responsibilities regarding a WIPP-related emergency, the U.S. department of energy has agreed to provide all appropriate and reasonably available federal emergency response resources at the earliest possible time. It will continue to provide those resources until all significant radiological risks have been eliminated and damages mitigated to the maximum extent practicable.

D. Industry: Industry shall be responsible for notifying the appropriate state authorities of an incident; providing expertise to federal, state and local emergency response personnel; providing equipment and personnel for cleanup of the incident site; reimbursing state and local emergency response agencies as appropriate; and providing any other assistance consistent with the Emergency Management Act.

[Recompiled 11/30/01]

10.20.2.10 ORGANIZATION:

The organizational structure for implementation of the plan, training, emergency response, and postaccident review shall consist of:

A. Emergency management task force: The task force shall meet at least quarterly to perform the duties required by the Emergency Management Act. Sections 6, 11, and 12 charge the task force with developing a comprehensive emergency response program, directing the hazardous materials emergency response administrator, reviewing program implementation, reporting resources and needs, and recommending legislation. Task force membership consists of:

- (1) the chief of the New Mexico state police or a designee;
- (2) the state fire marshal or a designee;

(3) a staff member of the environmental improvement division who is knowledgeable about radioactive materials;

(4) a staff member of the environmental improvement division who is knowledgeable about hazardous substances;

(5) the director of the civil emergency preparedness division;

(6) the director of the emergency medical services bureau;

(7) the chief highway administrator or a designee;

(8) the chair of the state corporation commission or a designee;

(9) a representative of the governor to serve as chair.

B. Hazardous materials safety board: The safety board shall meet at least quarterly to fulfill the mandates of the Emergency Management Act. Sections 8 and 9 of the act place responsibility for training and postaccident review with the safety board. Safety board membership consists of the designated training officers from the responsible state agencies named in the Emergency Management Act:

(1) New Mexico state police,

(2) radiation protection bureau,

(3) environmental improvement division,

(4) state fire marshal's office,

(5) emergency medical services bureau, and

(6) civil emergency preparedness division.

C. Hazardous materials emergency response administrator: The HMER administrator shall be a civilian employee of the New Mexico state police. Duties shall be to:

(1) serve as staff to the task force and safety board;

(2) maintain inventories and data bases relevant to task force and safety board activities;

(3) maintain current rosters of emergency response personnel and other contact persons with knowledge, resources, and capabilities for emergency response functions;

- (4) update the plan and accompanying documents at the direction of the task force;
- (5) schedule activities required by the task force and safety board;
- (6) control budgets; and
- (7) perform other duties requested by the task force and safety board in accordance with the provisions of the Emergency Management Act and the state HMER plan.

D. State emergency response officer: The chief of the New Mexico state police shall designate one or more persons to be trained as state emergency response officers to evaluate accidents and coordinate emergency response. When a hazardous materials emergency is reported, the state emergency response officer at Santa Fe headquarters shall consult with the responsible state agencies to determine the most appropriate course of action. If the plan is activated, the state emergency response officer shall serve as central coordinator to direct the response functions of the responsible state agencies.

E. District emergency response officer: Each New Mexico state police district shall designate one or more district emergency response officers to be trained in hazardous materials emergency management. The district emergency response officer on duty at the time of an emergency in the district shall immediately notify the state emergency response officer at headquarters in Santa Fe and go quickly to the scene to set up a command post (radio-equipped vehicle or facility) and serve as on-scene coordinator.

F. First responder: "First responder" is the title given the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of a hazardous materials accident. The first responder shall immediately notify either the nearest state police district emergency response officer, or the radio communications bureau (Santa Fe control), and then take protective actions as instructed by the central coordinator.

[Recompiled 11/30/01]

10.20.2.11 COMMUNICATION:

A. The hazardous material emergency communication system shall incorporate the two 24-hour state-wide radio communications systems:

- (1) the New Mexico state police network which links state and district headquarters, patrol cars, and personal pagers; and

(2) the radio communications bureau (Santa Fe control) of the communications division of the general services department which provides emergency medical personnel paging and links radio-equipped state agencies, emergency medical services and local governments.

B. The operations centers of these two systems (both located at state police headquarters in Santa Fe) shall be connected by hot line to facilitate rapid communication between the state emergency response officer and emergency response personnel from other state agencies. In the event that the primary state police communication system fails, a backup system is available.

C. The Emergency Management Act assigns responsibility for communication to the chief of the state police and details the following communication requirements:

(1) First responder: if equipped with state police radio, notifies nearest district emergency response officer; if on the network of the radio communications bureau, notifies Santa Fe control;

(2) District emergency response officer or Santa Fe control: notifies state emergency response officer at state police headquarters in Santa Fe; and

(3) State police emergency response officer: evaluates the accident from information provided by the first responder, instructs the first responder how to proceed, confers with the responsible state agencies and advises of the necessary response, notifies local law enforcement officers, and notifies the governor of New Mexico.

[Recompiled 11/30/01]

10.20.2.12 FUNCTIONS OF STATE AGENCIES:

The state agencies named below shall be responsible for the emergency response functions assigned them by the Emergency Management Act or the emergency management task force. Procedures for performing these functions are detailed in the Procedures Manual of the New Mexico Hazardous Materials Emergency Response Program. State agencies and their functions are:

A. New Mexico state police:

- (1) central coordination;
- (2) on-scene coordination;
- (3) notifying emergency response personnel;
- (4) warning approaching motorists;

- (5) communications;
- (6) law enforcement;
- (7) traffic control;
- (8) crowd control;
- (9) public information;
- (10) transportation of emergency response personnel;
- (11) vehicular accident assessment;
- (12) recordkeeping.

B. Civil emergency preparedness division:

- (1) warning nearby residents;
- (2) evacuation;
- (3) social services.

C. Environmental improvement division, radiation protection bureau and ground water quality and hazardous waste bureau:

- (1) public health;
- (2) environmental monitoring;
- (3) hazardous and radioactive material accident assessment;
- (4) protective response;
- (5) exposure control;
- (6) decontamination;
- (7) supervision of cleanup.

D. Emergency medical services bureau:

- (1) rescue;
- (2) emergency medical services;

- (3) evacuation of bedridden persons.

E. State fire marshal:

- (1) fire;
- (2) rescue;
- (3) flammable accident assessment;
- (4) protective response;
- (5) exposure control.

F. Highway department:

- (1) providing sanitation services;
- (2) public works;
- (3) transportation of emergency response personnel;
- (4) road closure;
- (5) designation of alternate routes.

G. Radio communications bureau: assisting all responsible state agencies with communication functions:

H. Any other state agencies called upon by the central coordinator.

[Recompiled 11/30/01]

10.20.2.13 COOPERATIVE AGREEMENTS:

In compliance with the Emergency Management Act, the state shall negotiate agreements with local governments and bordering states and incorporate those agreements into the HMER program.

A. Local governments: Local governments which demonstrate resources and capability for managing hazardous materials emergencies may enter into cooperative agreements with the state. Negotiated agreements will identify areas of coordination between state and local government.

B. Bordering states: Any bordering state which may become involved in an emergency response action which will impact that state, either directly, such as

engaging in joint management of an incident, or indirectly, such as providing more proximate resources or considering possible environmental damage impacting that state, may enter into cooperative agreements.

[Recompiled 11/30/01]

10.20.2.14 TRAINING AND CERTIFICATION:

A. Emergency response personnel shall be designated in accordance with the intent of the Emergency Management Act, organizational procedures of state agencies, and negotiated agreement with local governments.

B. Designated emergency response personnel shall complete training and receive certification specified by the safety board as consistent with the emergency response functions to be performed during an emergency.

C. All emergency response personnel shall be recertified annually in accordance with safety board requirements.

[Recompiled 11/30/01]

10.20.2.15 LIABILITY:

Nothing in the hazardous materials emergency response plan shall be construed as a waiver or alteration of the immunity from liability granted under the New Mexico Tort Claims Act or as a waiver or alteration of any other immunity or privilege under law.

[Recompiled 11/30/01]

10.20.2.16 VOLUNTEERS:

Volunteers who are acting in the service of a governmental entity, when authorized, required, or requested to perform such duties by the governmental entity are, in most cases, covered by the state Tort Claims Act for liability arising from such activities; independent contractors, however, are not covered by the act. Volunteer firefighters and emergency medical technicians associated with fire departments may be covered by workman's compensation and, if so, may be eligible for medical coverage that is financed by the state fire fund. Designated red cross volunteers are covered by the red cross' public liability policy and also have insurance coverage for medical expenses resulting from injuries that occur while functioning in a volunteer capacity. Volunteers not designated by the red cross are not eligible for red cross insurance benefits; however, any volunteer who wants this coverage can obtain red cross designation. (NOTE: Not all fire department volunteers will be covered by workman's compensation. If their departments have not purchased coverage they must rely on their own insurance. At the present time, most departments have not purchased workman's compensation coverage for volunteers.)

[Recompiled 11/30/01]

10.20.2.17 REVISIONS TO THE PLAN:

The hazardous materials emergency response administrator shall update the plan, procedures, resources and other documentation at the direction of the task force. Suggested revisions to the plan shall be presented to the task force for review at their quarterly meetings. Once accepted, revisions will be distributed to all responsible state agencies and local governments having agreements with the state. Revised plans shall be distributed as needed.

[Recompiled 11/30/01]

10.20.2.18 EMERGENCY RESPONSE PROCEDURES MANUAL:

This procedures manual, developed by the emergency management task force, is a guide for use by responsible state emergency response personnel in managing, coordinating, and controlling a hazardous materials accident. It defines procedures to be followed for central and on-scene coordination by all state emergency response agencies. It is organized largely by function and includes sections for carrier representatives and the first responder.

A. Notification: Notification procedures are outlined in the Emergency Management Act and detailed here. They rely heavily on the two statewide communications systems operated by the New Mexico state police and the communications division of the general services department. Procedures:

- (1) Driver shall notify nearest New Mexico state police district office.
- (2) First responder shall notify nearest New Mexico state police district emergency response officer or Santa Fe control, communications division of the general services department.
- (3) State police district emergency response officer or Santa Fe control shall notify state police emergency response officer in Santa Fe.
- (4) State police emergency response officer shall notify for: agency, telephone, 24-hour:
 - (a) radioactive materials; radiation protection bureau.
 - (b) other hazardous materials; ground water quality and hazardous waste bureau.
 - (c) fire or flammable materials; state fire marshal.

(d) injuries or casualties; emergency medical services bureau.

(e) further identification of materials involved in accident; carrier, shipper.

(5) When other emergency functions are required, the state police emergency response officer shall notify:

(a) air transportation (types of aircraft listed under resources); agency: aviation division; state corporation commission; eastern New Mexico university; energy and minerals department; forestry division; game and fish department; highway department; New Mexico state university; state police;

(b) evacuation of residents; agency: civil emergency preparedness division; national guard; state school superintendent;

(c) evacuation of bedridden persons; agency: emergency medical services bureau;

(d) warning, traffic and crowd control, and law enforcement; agency: New Mexico state police;

(e) sanitation, public works, road closure, and alternate routes; agency: highway department;

(f) public health, environment monitoring, decontamination, and cleanup supervision; agency: radiation protection bureau; ground water quality and hazardous waste bureau;

(g) social services; agency: civil emergency preparedness division;

(h) backup support; agency: federal emergency management agency (region VI, Denton, TX); joint nuclear accident coordinating center (Albuquerque); U.S. environmental protection agency (national response center).

B. Carrier representative: The driver or carrier representative shall notify the nearest state police headquarters and perform protective actions only to the extent that his/her knowledge and capability permit.

(1) Notification: Notify the nearest state police headquarters; advise them of the accident; provide as much information as possible.

(2) Protective actions:

(a) Set out reflective warning devices.

(b) If instrumentation or other monitoring devices are provided by carrier, take readings/measurements to determine if there is a possibility of a release of materials.

(c) If there is a manageable fire, attempt to extinguish it.

(d) Isolate accident scene as much as possible to avoid possible exposure to general public and others involved in the accident.

(e) Aid first responder and emergency response personnel as requested.

(f) If a release of materials has occurred, request contamination check from personnel on-scene.

(g) Provide appropriate resources for the resolution of the incident, including cleanup. If a release of hazardous materials has occurred, repackage and dispose of the spilled material and any contaminated material.

C. First responder: "First responder" means the first law enforcement officer or other public service provider with a radio-equipped vehicle to arrive at the scene of a hazardous materials accident.

(1) Notification:

(a) Notify and maintain communication with the nearest state police district office or communications division.

(b) If applicable, follow all notification procedures required by your departmental procedures.

(2) Protective actions:

(a) render any life saving assistance necessary;

(b) wear protective clothing, if available;

(c) establish 2,000 ft hazard perimeter to avoid possible exposure to general public;

(d) identify all persons who may have been exposed to a possible release of hazardous materials;

(e) obtain shipping papers, manifest, and any other information available from the driver;

(f) provide all information requested through the communications channel;

- (g) follow all instructions received through the communications channel;
- (h) aid emergency response expertise as they arrive on the scene;
- (i) if a release of material has occurred, request a contamination check from the experts on site for yourself and all persons who may have been exposed to the hazardous material.

D. Accident assessment: The Emergency Management Act directs the state police emergency response center to evaluate and determine the scope of the accident based on information provided by the first responder. Responsible state agencies advise state police and travel to scene as needed.

(1) The first responder shall establish communication with the New Mexico state police in Santa Fe through the New Mexico state police district emergency response officer, and maintain this communication until sufficient information is received to make an initial assessment:

- (a) location of accident;
- (b) type of hazardous materials involved;
- (c) personal injuries;
- (d) accident description;
- (e) package conditions;
- (f) weather conditions; and
- (g) readings taken with carrier instruments, if available.

(2) The New Mexico state police in Santa Fe will contact and relay information to appropriate emergency response agencies:

- (a) radiation protection bureau: radioactive materials;
- (b) ground water quality and hazardous waste bureau: hazardous substances;
- (c) state fire marshal: fire or flammable materials; and
- (d) emergency medical services bureau: injuries or casualties.

(3) Responsible state agencies will advise New Mexico state police in Santa Fe of:

(a) protective measures to be taken in approaching the accident scene for lifesaving measures or information gathering;

(b) advisability of moving or separating various types of hazardous materials;

(c) protection of materials from the elements;

(d) primary containment methods;

(e) establishment of the appropriate perimeter to isolate the scene; and

(f) security of the perimeter until expertise arrives.

(4) The New Mexico state police district emergency response officer, will relay all information from state police headquarters to the first responder.

(5) Responsible state agency will maintain contact with state police emergency response officer and:

(a) advise as to additional expertise required at the scene;

(b) advise as to resources required at the scene; and

(c) estimated time of arrival at the scene.

(6) Responsible state agency will prepare to travel to the scene and:

(a) assemble appropriate instrumentation for the circumstances; and

(b) if communication en route is not possible, notify alternate to maintain communication with state police emergency response officer to advise if conditions change.

E. Central coordination: According to the Emergency Management Act, central coordination is the responsibility of the chief of the New Mexico state police. The chief designates emergency response officers who are trained in emergency management and coordination of responsible state agencies during a hazardous material accident. The emergency response officer on duty at Santa Fe headquarters serves as central coordinator.

(1) maintain contact with first responder and instruct first responder on how to proceed at the accident scene;

(2) record all initial information and any changes in accident characteristics;

- (3) establish and maintain contact with responsible state agency representative having expertise relevant to accident characteristics;
- (4) report all information received from first responder to responsible state agency representative;
- (5) relay all instructions from responsible state agency representative to first responder and on-scene coordinator;
- (6) maintain communications with the scene at all times to relay requests for additional expertise, personnel, or equipment;
- (7) log all communications;
- (8) make arrangements to acquire state-owned air transportation if circumstances warrant;
- (9) collect information or establish contact with persons who can readily provide information on the area surrounding the accident:
 - (a) population affected;
 - (b) environmental conditions, e.g., rural/urban, agricultural, recreational, etc.;
 - (c) accessibility of site for communications and emergency response personnel;
 - (d) accessibility of site to general public;
 - (e) alternate routes available to traveling public; and
 - (f) canals, storm drains, surface water, and groundwater sources.

F. On-scene coordination: On-scene coordination encompasses the responsibilities of the on-scene coordinator and the operations officer. The on-scene coordinator is responsible for the management of the accident and delegation of responsibility to qualified field personnel. The on-scene coordinator is also responsible for all protective actions prior to the arrival of experts. The operations officer is designated by the on-scene coordinator and is the individual with appropriate expertise to properly handle the immediate threat to health and safety of the citizen of the state.

- (1) Establish and maintain communication with state police emergency response officer in Santa Fe.

(2) The New Mexico state police district emergency response designee will establish an on-scene command post in a radio-equipped vehicle or facility, and assume the duties of on-scene coordinator.

(3) Designate trained command post staff personnel to assume the following duties:

(a) operations officer;

(b) logistics officer;

(c) plans officer;

(d) law enforcement coordinator;

(e) information officer;

(f) communications officer;

(g) any other staff position that may be required to properly coordinate the operation.

(4) Schedule briefings for all field personnel as they arrive on-scene.

(5) Direct all representatives of responsible state agencies to maintain contact with the command post, act as advisors to the on-scene coordinator, and direct the activities of field personnel.

(6) Direct all emergency response personnel at the scene to maintain contact with the representative of the responsible state agency whose expertise is compatible with their own.

(7) Establish one to three perimeters, depending on the circumstances:

(a) hazard perimeter: distance specified by the on-scene coordinator:

(i) no access without authorization;

(ii) no access without appropriate protective clothing;

(iii) no access without proper personnel monitoring equipment;

(iv) time records to be kept on all personnel entering the hazard perimeter - time in and time out;

(v) no personnel will remain inside this perimeter beyond the time specified by the on-scene coordinator; and

(vi) personnel not leaving this perimeter within a specified time will be presumed to be a casualty and rescue operations will be initiated.

(b) resource perimeter: buffer perimeter and holding area for personnel and equipment to relieve those within the hazard perimeter:

(i) safe distance from hazard perimeter to minimize exposure from released materials;

(ii) backup resources on standby within this perimeter;

(iii) no eating, drinking or smoking within this perimeter; and

(iv) decontamination prior to leaving perimeter.

(c) command and support perimeter:

(i) clearly marked command post with expert representatives from all responsible state agencies required at the scene;

(ii) records to be kept by all on-scene expertise as to communications between emergency response personnel in the field, on-scene coordinator and New Mexico state police emergency response officer in Santa Fe;

(iii) on-scene spokesman for liaison with media and local government;

(iv) emergency medical center, if required;

(v) sanitation facilities for extended response;

(vi) check point for all personnel to be checked for need for decontamination;
and

(vii) law enforcement security of all accesses into and out of this perimeter. All access must be authorized by the command post.

(8) Designate record keeper for each perimeter to check personnel into and out of the perimeter and advise on:

(a) eating, drinking and smoking;

(b) maximum time allowable within each perimeter;

- (c) types of protective clothing required within each perimeter;
 - (d) need for exposure check on leaving perimeter, and;
 - (e) directions to decontamination area and systems to be used.
- (9) Designate recordkeeper to document how the accident is proceeding and record what actions are being taken.
- (10) Obtain information on surrounding area:
- (a) population affected;
 - (b) environmental conditions;
 - (c) accessibility of site for communications and emergency response personnel;
 - (d) accessibility of site to general public;
 - (e) alternate routes available to traveling public;
 - (f) canals, storm drains, surface water, and ground water sources; and
 - (g) meteorological information.
- (11) Monitor any changes in accident characteristics and evaluate threat to emergency response personnel, traveling public, and nearby residents.
- (12) Relocate perimeters based on evaluation of changing characteristics.
- (13) Request additional local, state or federal expertise based on evaluation of changing characteristics.
- (14) If required, set up decontamination station. (see decontamination.)

G. Operations officer: The operation officer designated by the on-scene coordinator is the individual with appropriate expertise to properly handle the immediate threat to health and safety of the citizens of the state.

- (1) Provide instructions to the scene through established communications channel.
- (2) From information received through communications channel, select appropriate equipment and arrange travel to the scene.

(3) If communication during travel is not possible, appoint a representative at the scene to maintain communications and advise Santa Fe control of changing conditions.

(4) On arriving at scene, wear appropriate protective clothing if necessary.

(5) Render any lifesaving assistance necessary.

(6) Obtain all information available at the scene by personal observation, and from first responder, driver, etc.

(7) Determine if there has been a release of hazardous material and if so, take appropriate actions as follows:

(a) Airborne release:

(i) evacuate the immediate vicinity;

(ii) keep all persons upwind of the release;

(iii) take air samples for laboratory analysis when possible;

(iv) control all food and drinks in the area which might have been contaminated; and

(v) use respirators when necessary.

(b) Surface water contamination:

(i) isolate area; do not allow public access;

(ii) determine if water is used as a potable water source and prohibit human consumption; and

(iii) obtain appropriate samples for laboratory analysis.

(c) Land spill:

(i) isolate the incident area from public access;

(ii) confine the spill to as small an area as possible;

(iii) monitor the area; and

(iv) obtain laboratory samples.

(8) Provide technical assistance to other emergency response personnel on-scene such as law enforcement, firefighters, medical personnel, and rescue teams.

(9) Conduct exposure and contamination surveys and record this information.

(10) Supervise hazardous materials recovery; supply technical support needed by industry or recovery team.

(11) Provide technical information to appropriate media and authorities as per procedure.

H. Public information: Accurate public information is a vital part of any emergency response effort, both to keep the public informed of a possible danger and to apprise the public of the need for a possible isolation or evacuation of an area. This section sets forth procedures for releasing information to the public and also contains some sample press releases that can be used as a pattern to advise the public of an accident. Procedures:

(1) A spokesperson will be designated by the on-scene coordinator. Information will be released by and through this spokesperson only.

(2) The spokesperson shall gather information from the various agencies with expertise on the scene and condense it to a single public announcement.

(3) Information released to the public must be approved by the on-scene coordinator.

(4) All information releases will be relayed to a representative of the governor prior to release.

(5) The command center spokesperson will request the appointment of a counterpart from the local jurisdiction in which the accident occurred. This spokesperson may be an elected official, a law enforcement officer, a civil defense coordinator, etc.

(6) The command center spokesperson shall periodically give updated material to the media and the local representative.

(7) Information releases may be written or oral, at the discretion of the on-scene coordinator.

(8) Information regarding a danger to evacuation of citizens in the immediate area of the accident shall be released immediately to:

(a) the media;

(b) local government representative; and

(c) local civil defense coordinator.

(9) In the event of evacuation, the local government representative and the civil defense coordinator shall warn:

(a) all citizens in the area, by means of the media or house-to-house notification by law enforcement officers, firefighters, civil defense personnel, volunteers, etc. not actively engaged in the emergency operation; and

(b) the local civil defense coordinator, local school superintendent and local national guard unit to provide transportation and social services for the evacuees.

(10) Sample press release: An accident involving a _____ (truck, train, airplane) carrying _____ (material) occurred near/at _____ (location) at _____ (time/date).

(a) Option No. 1 The state emergency response team has been dispatched to the scene. Initial reports from the scene indicate that no release of material occurred. However, it is advisable for motorists to avoid this area until a full assessment has been made by the response team.

(b) Option No. 2 The state emergency response team has been dispatched to the scene. Initial reports from the scene indicate that a release of material may have occurred. It is advisable to remain clear of this area until a more complete assessment has been made.

(c) Option No. 3 The accident is accompanied by a fire which could result in a breach of packaging and a release of materials into the atmosphere. The state emergency response team has been dispatched to the scene for a more thorough assessment. It is advisable to remain clear of this area until this assessment has been completed.

(d) Option No. 4 Officials at the scene have measured the amount of material released and report an insufficient quantity of material to cause any hazard to the public.

(e) Option No. 5 Officials at the scene report a release of _____ (material) in the form of _____ (smoke, dust, runoff, etc.). This material is traveling (N, S, E, W) and can result in _____ (skin irritation, breathing difficulty, etc.) on contact. If you have come in contact with this material, officials advise you to report to _____ (location of triage or emergency room) for observation.

(f) Option # 6 Officials at the scene report a release of material in sufficient quantity to pose a threat to persons within a _____ (distance in feet, blocks, miles, etc.) radius of the accident. Anyone within this area is instructed to report immediately to _____ (location of nearest civil defense shelter or school).

I. Protective actions: Protective actions are included in the areas of: emergency medical services, firefighting, law enforcement, public works and sanitation, transportation, evacuation, environmental monitoring, decontamination and exposure control. Protective actions should be executed only after determining that such actions will not endanger personal life or safety. Do not become a casualty.

(1) Emergency medical services:

(a) Designate a representative to maintain communication with the command post to advise the on-scene coordinator and direct the activities of personnel providing emergency response services.

(b) Render life saving assistance as needed.

(c) Wrap the victim and all clothing and the pillow on the stretcher with a blanket to prevent spread of contamination.

(d) Provide available contamination information to the appropriate hospital by radio or telephone.

(e) Save all contaminated and possibly contaminated materials in plastic containers.

(f) When external contamination is complicated by a wound, take care not to cross-contaminate the wound from surrounding surfaces, and vice versa.

(g) All personnel and equipment should be surveyed by an EID representative for contamination prior to being released from emergency service.

(2) Firefighting:

(a) Designate a representative to maintain communication with the command post, offer expertise to the on-scene coordinator, and direct the actions of all firefighters engaged in emergency response activities.

(b) Render any life saving assistance necessary.

(c) If appropriate, extinguish the fire as quickly as possible.

(d) Do not move or remove any radioactive materials without the consent of the on-scene coordinator.

- (e) Restrict personnel exposure as much as possible.
 - (f) Wear protective clothing designated by the on-scene coordinator.
 - (g) Work upwind from the fire, keep out of smoke as much as possible.
 - (h) Assure that all personnel and equipment is monitored for possible contamination prior to leaving the scene.
- (3) Law enforcement:
- (a) Perform rescue and first aid.
 - (b) Notify the nearest state police district headquarters and maintain communication.
 - (c) Isolate the accident area. A distance of 2000 feet is recommended unless other instructions are received through communications channel.
 - (d) Restrict access to the accident area.
 - (e) Do not move packages, shipping containers or wreckage unless it is necessary to rescue people.
 - (f) Detour vehicles and pedestrians, if necessary. Move wreckage the shortest distance possible to clear a traffic path.
 - (g) In case of fire, keep everyone upwind of smoke and dust.
 - (h) A designated law enforcement representative will remain at the command post to offer expertise to the on-scene coordinator and direct the actions of all law enforcement personnel engaged in emergency response activities.
 - (i) At the direction of the on-scene coordinator, provide the following:
 - (i) radio-equipped vehicle to maintain communication with central coordinator;
 - (ii) traffic control;
 - (iii) crowd control; and
 - (iv) security of perimeter (established by on-scene coordinator).
 - (j) If evacuation of residents is required, provide civil emergency preparedness division with the following:

- (i) vehicles with public address capability to patrol the area to be evacuated.
- (ii) personnel to perform house-to-house notification, and
- (iii) security for the evacuated area.

(4) Public works and sanitation:

(a) The highway department shall be responsible for providing sanitation services at the scene, road closure, and designation of alternative routes for the traveling public.

(b) Designate a representative to maintain communication with the command post to advise the on-scene coordinator and direct the activities of emergency response personnel.

(c) At the direction of the on-scene coordinator, move debris to provide access to traffic paths.

(d) At the direction of the on-scene coordinator, provide heavy equipment and operators to aid in containing runoff or spills by trenching and diking.

(5) Transportation:

(a) The New Mexico state police and highway department shall be responsible for transportation of emergency response personnel to the scene of an accident if necessary.

(b) Locate available state-owned aircraft for transporting emergency response personnel and equipment to the scene, if urgency is a factor (through New Mexico state police).

(c) Locate any state-owned or contracted mass transportation vehicles for evacuation of residents (through civil emergency preparedness division).

(d) Designate alternate routes for traveling public (through state highway department).

(e) Set up road blocks to divert traffic from the accident area (through state highway department).

(6) Evacuation:

(a) The civil emergency preparedness division of the office of military affairs shall be responsible for warning nearby residents, evacuation and social services.

(b) Designate a representative to maintain communication with the command post to advise the on-scene coordinator and direct the activities of personnel in the field.

(c) Use all available resources and personnel at the scene and in nearby communities to inform the public of the areas which are to be evacuated. Resources are as follows:

(i) command post spokesperson;

(ii) media;

(iii) local civil defense coordinators;

(iv) law enforcement officers not actively engaged in emergency response activities; and

(v) firefighters not actively engaged in emergency response.

(d) Use all equipment available at the scene and nearby communities:

(i) civil defense warning systems;

(ii) law enforcement vehicles equipped with public address systems; and

(iii) personnel for house-to-house notification.

(e) Designate specific areas as temporary shelters and assign representatives to register all people checking into the following shelters:

(i) civil defense shelters;

(ii) public buildings; and

(iii) school gymnasiums and cafeterias.

(f) Provide mass transportation:

(i) national guard vehicles; and

(ii) school buses.

(g) Designate gathering areas for mass transportation connections.

(h) Use all available local, state and federal resources to provide temporary social services, including shelter, food and medical care.

(7) Environmental monitoring: The environmental improvement division will conduct environmental monitoring of:

(a) hazardous materials, including air, water, soil, livestock and vegetation.

(b) firefighting, washdowns, or runoffs, including natural water paths, culverts, storm drains and surface waters.

(8) Decontamination:

(a) The on-scene coordinator shall be responsible for establishing a decontamination station with the assistance of EID.

(b) If required, set up decontamination station. A decontamination station consists of the following:

(i) change room;

(ii) wash-down procedures;

(iii) paper clothes;

(iv) plastic bags for contaminated clothing;

(v) decontamination equipment required;

(vi) personal showers;

(vii) scrub-down shuffle boxes;

(viii) changing of SCBA tanks;

(ix) location of monitoring equipment;

(x) street clothes;

(xi) replacements for damaged or contaminated clothing;

(xii) respirator replacement cartridges;

(xiii) backup personnel;

(xiv) communication with personnel on-scene;

(xv) garbage cans; and

(xvi) rest area, with stool for those in protective clothing.

(9) Exposure control:

(a) Keep all persons a safe distance from the accident area until the extent of the hazard is determined. Suggested distance is 2,000 feet.

(b) After initial notification, environmental improvement division (EID) designee will maintain constant communication with the scene and provide technical expertise to all responsible state agencies at the scene and to the on-scene coordinator. In addition, the EID designee will carry out or assist with accident assessment, protective actions, and exposure control procedures.

(c) Prior to entering an accident area where there is a release or suspected release of hazardous material, EID will provide safety requirements for performing:

(i) accident assessment;

(ii) control and containment;

(iii) decontamination; and

(iv) cleanup.

(d) Avoid exposure to smoke, dust, mists, liquids, or any other suspicious material.

(e) All emergency response personnel will leave the scene through designated checkpoints. This will assure appropriate monitoring and decontamination of all personnel.

(f) If the situation warrants, all personnel leaving the scene will be instructed on decontamination procedures and location of equipment available for decontamination.

(i) clothing: remove and place in plastic bags;

(ii) equipment: do not remove beyond resource perimeter;

(iii) skin and hair: wash thoroughly with water and soap or detergent;

(iv) eyes, ears, mouth and nose: flush with large amounts of water - distilled water if available.

(g) Logs will be maintained at the hazardous perimeter check point and all personnel entering and leaving the hazard area.

(h) Logs will be maintained at the decontamination center on all emergency response personnel and procedures used.

(i) Logs will be maintained at the medical facility of all persons treated, reason for treatment, and disposition.

(j) If radioactive materials are involved, personal dosimeters will be made available through the RPB personnel on scene.

(k) Designated personnel from responsible state agencies will provide HMER administrator with current medical examination results. Medical records will be updated annually.

(l) Until assessment has been made, the following protective clothing is recommended inside the hazard area:

(i) pressure-demand, self-contained breathing apparatus;

(ii) chemical resistant clothing (overalls and long-sleeved jackets; coveralls; hooded, one or two piece chemical splash suit; disposable chemical resistant coveralls);

(iii) chemical resistant gloves;

(iv) chemical resistant boots (steel toe and shank);

(v) hard hat or face shield;

(vi) 2-way radio (intrinsically safe).

J. Postaccident: In addition to supervision of cleanup, a responsibility of the environmental improvement division, the Emergency Management Act places postaccident responsibility with industry and the safety board.

(1) Cleanup:

(a) Hazardous materials owners, shippers and carriers shall be responsible for cleanup of a spill of hazardous materials.

(b) The environmental improvement division shall supervise industry cleanup operations and determine at what point the accident scene is restored to the satisfaction of the state.

(2) Accident Review:

(a) Safety board reviews all hazardous materials accidents in which the state emergency response plan is used.

(b) The review:

- (i) assesses the performance of emergency response personnel; and
- (ii) determines cause of accident.

(c) The accident review process includes:

- (i) assessing performance of all responsible state agencies;
- (ii) documenting all agencies' activities; and
- (iii) completing summary review report.

(d) The results of the review shall be sent to:

- (i) responsible state agencies;
- (ii) state corporation commission;
- (iii) EID legal counsel; and
- (iv) affected local jurisdiction.

[Recompiled 11/30/01]

CHAPTER 21-23: [RESERVED]

CHAPTER 24: SEARCH AND RESCUE

PART 1: CERTIFICATION OF SEARCH AND RESCUE PERSONS

10.24.1.1 ISSUING AGENCY:

Department of Public Safety.

[10.24.1.1 NMAC - N, 6-27-17]

10.24.1.2 SCOPE:

This rule applies to all persons who desire to obtain and maintain a certification with the New Mexico department of public safety, search and rescue (SAR).

[10.24.1.2 NMAC - N, 6-27-17]

10.24.1.3 STATUTORY AUTHORITY:

Section 24-15A-5 NMSA 1978 and Section 9-19-6(E) NMSA 1978.

[10.24.1.3 NMAC - N, 6-27-17]

10.24.1.4 DURATION:

Permanent.

[10.24.1.4 NMAC - N, 6-27-17]

10.24.1.5 EFFECTIVE DATE:

June 27, 2017, unless a later date is cited at the end of a section.

[10.24.1.5 NMAC - N, 6-27-17]

10.24.1.6 OBJECTIVE:

The purpose of this rule is to provide a system of certification and maintenance of certification of search and rescue persons.

[10.24.1.6 NMAC - N, 6-27-17]

10.24.1.7 DEFINITIONS:

In addition to the definitions set forth in the Search and Rescue Act, Section 24-15A-3 NMSA 1978, the following terms are defined:

A. Agency administrator means the chief of the New Mexico state police. The chief may appoint an agency administrator designee for search and rescue (SAR) matters.

B. Field coordinator means a SAR person certified by the department of public safety to act as incident commander for a SAR mission.

C. Incident command system means a standardized system for the command, control, and coordination of emergency response operations for search and rescue.

D. Incident commander means the person within the incident command system officially assigned to manage a SAR incident.

E. Probation status means the status of a certification of a SAR field coordinator, incident command system general staff, or SAR person or volunteer, when the

certification is not current on maintenance of certification requirements, but is still eligible to meet the requirements at a later time.

F. SAR incident command system general staff means a SAR person working SAR management under the incident command system on a SAR mission.

G. SAR resource officer means the official located within the department of public safety responsible for coordinating SAR resources and administering the state SAR plan.

H. SAR review board means the policy advisory committee whose duty it is to evaluate the operation of the New Mexico search and rescue plan, evaluate problems of specific missions, and make findings of fact and recommendations to the chief and other appropriate authorities.

I. SAR person means a person who volunteers or provides time and equipment to aid in SAR missions.

J. Section chief means a person who has the responsibility for a major functional area of a SAR mission, such as operations, plans, logistics, or finance and administration. Section chiefs report directly to the incident commander and are part of the incident command system general staff.

K. Special operations commander means the commander of the New Mexico state police special operations bureau.

L. Type means a graded management system that is based on experience and training for the selection of a SAR field coordinator or incident command system general staff. The measurement correlates to the level of complexity of the mission in which a SAR field coordinator or incident command system general staff may participate, with type I being the most complex.

[10.24.1.7 NMAC - N, 6-27-17]

10.24.1.8 SYSTEM OF CERTIFICATION:

A. Certification for field coordinator:

(1) Certification is required for SAR persons or volunteers in order to act as field coordinators. To be certified as a field coordinator an applicant must:

- (a)** submit an application with the New Mexico department of public safety;
- (b)** successfully complete a SAR management course and other criteria for qualifications as required by the New Mexico department of public safety;

(c) complete the training standards for field coordinators which will comprise of a minimum of 40 hours of training, and may include, but is not limited to, management of SAR resources, development of goals and objectives, and search theory applications; and

(d) receive final approval for certification from the SAR review board and the agency administrator.

(2) Levels of certification:

(a) Field coordinators will be certified as type I, type II, type III or type IV according to experience and performance.

(b) A field coordinator will initially be designated as type IV and may advance up to a type I certification.

(c) The agency administrator will provide final approval of advancement to higher certification types.

B. Certification for incident command system general staff:

(1) Certification is encouraged and preferred, but is not required, for a person to be recognized and to act as a SAR incident command system general staff. Additionally, training and certification for section chiefs may be required in order to be a listed resource in the SAR resource directory. An applicant wishing to receive certification as a member of the incident command system general staff must:

(a) submit an application supplied by the SAR resource officer;

(b) successfully complete an incident command system general staff course and other criteria for minimum qualifications as required by the New Mexico department of public safety;

(c) complete the training standards for incident command general staff which will comprise of a minimum of 16 hours of training, and which may include, but is not limited to, leadership and supervisory responsibilities, and development of search strategies and communications; and

(d) receive final approval for certification from the SAR resource officer and agency administrator.

(2) Levels of certification:

(a) Incident command system general staff will be certified as type I, type II or type III according to experience and performance.

III. (b) Incident command system general staff will initially be designated as type

(c) Requests to advance to a higher certification type will be reviewed and approved by the SAR resource officer.

C. Certification for SAR person or volunteer:

(1) Certification is encouraged, but not required, for a person to be recognized and to participate as a SAR person or volunteer. To become a certified SAR person or volunteer, an applicant must:

(a) submit a questionnaire supplied by the SAR resource officer;

(b) meet the criteria for minimum qualifications as established by the agency administrator;

(c) successfully complete training as required by the New Mexico department of public safety;

(d) complete the field certification training, which will comprise of a minimum of eight hours of training, and which may include communications, navigation and gear requirements, and other training as determined necessary by the SAR resource officer; and

(e) receive approval for certification by the SAR resource officer and agency administrator.

(2) Levels of certification: There are no specified levels of certification developed for the SAR person or volunteer.

D. Levels of certification established: The agency administrator may develop additional levels of certification for volunteers with search and rescue beyond those described above.

E. Training Standards and Lesson Plans: The search and rescue resource officer will determine training standards, and will prepare and update lesson plans for optimal educational teaching effectiveness. The SAR review board will review the training curriculum and recommend approval to the agency administrator.

[10.24.1.8 NMAC - N, 6-27-17]

10.24.1.9 MAINTENANCE OF CERTIFICATION:

A. Maintenance of certification for field coordinator:

(1) Annual maintenance training is required to maintain field coordinator certification.

(2) The maintenance of certification training programs for field coordinators shall provide a minimum total of eight hours of training.

(3) Any field coordinator that is unable to complete the maintenance of certification training within the year will be placed on probation status and must attend the next maintenance of certification training provided in order to be removed from probation status.

(4) If the maintenance of certification training is not completed within the next 12 months, it shall be basis for removal from the field coordinator position and from certification as field coordinator.

(5) A certification that is on probation status is still active and valid unless the certification is suspended or has been revoked.

B. Maintenance of certification for incident command system general staff:

(1) Training is required every three years to maintain incident command system general staff certification.

(2) The maintenance of certification training programs for the incident command system general staff shall provide a minimum total of eight hours of training.

(3) Any person certified in an incident command system general staff position that is unable to complete the maintenance of certification training within the year after it becomes due will have his or her certification placed on probation status and must attend the next maintenance of certification training provided in order to be removed from probation status.

(4) If the maintenance of certification training is not completed within the next 12 months after it is due, it shall be basis for removal from incident command system general staff certification status.

(5) A certification that is on probation status is still active and valid unless the certification is suspended or has been revoked.

C. Maintenance of certification for SAR persons or volunteers:

(1) Training is required every three years to maintain SAR person or volunteer certification.

(2) The maintenance of certification training programs for SAR persons or volunteers shall provide a minimum total of two hours of on-line training or in person training.

(3) If the maintenance of certification training is not completed within the three-year period, the certification will be placed on probation status.

(4) If the maintenance of certification training is not completed within the next 12 months after it is due, it shall be basis for removal from SAR person or volunteer certification status.

(5) A certification that is on probation status is still active and valid unless the certification is suspended or has been revoked.

[10.24.1.9 NMAC - N, 6-27-17]

10.24.1.10 ADDITIONAL CERTIFYING ORGANIZATIONS:

This rule shall not prevent the New Mexico department of public safety from entering into a written agreement for search and rescue certifications and trainings through an outside certifying body. The SAR review board will review the training curriculum and recommend approval to the agency administrator. That certifying body's program for certification, as agreed upon by the department of public safety, would then take the place of the system of certification or maintenance of certification within this rule and shall be adhered to by the field coordinators, incident command system general staff, and SAR person or volunteers.

[10.24.1.10 NMAC - N, 6-27-17]

10.24.1.11 DENIAL OF CERTIFICATION, DECERTIFICATION, AND REVIEW:

A. Denial, suspension, or revocation of certification: SAR persons seeking certification as a field coordinator, incident command system general staff, or SAR person or volunteer may have their request for certification denied within the discretion of the agency administrator for not having met the criteria as established in this rule. SAR persons holding any certification issued by the New Mexico department of public safety can be decertified, or have their certification suspended, as determined within the discretion of the agency administrator for lack of compliance with the standard of care, performance considerations, or improper conduct. Upon decertification, the individual will be required to return any identification cards and equipment that he or she possesses that was issued to the individual by the department of public safety related to that certification.

B. Procedure for denial, suspension, or revocation of certification of field coordinator, incident command general staff, or SAR person or volunteer:

(1) A decision to deny, suspend, or revoke certification will be recommended by the search and rescue resource officer to the agency administrator through the special operations commander.

(2) After reviewing the facts and circumstances, the special operations commander may accept or reach a different outcome than the recommendation of search and rescue resource officer.

(3) If a decision is made to deny, suspend, or revoke a certification, the special operations commander will issue or have a letter issued to the volunteer whose certification is impacted.

C. Procedure for requesting informal meeting:

(1) The volunteer whose certification is impacted will have 30 calendar days from the date of delivery to make a written request to the special operations commander to reconsider the decision to deny, suspend, or revoke a certification. The request shall include the basis for reconsideration and documents or items to be considered.

(2) After a written request for reconsideration of the decision is received, an informal meeting with the volunteer and special operations commander will be arranged to determine whether to continue with the decision to deny, suspend, or revoke a certification.

(3) The decision by the special operations commander will be made within 10 business days from the date of the informal meeting, unless more time is needed based on the complexity of the facts and circumstances.

(4) The decision of the special operations commander to deny, suspend, or revoke certification will be reported to the SAR review board subsequent to either the informal meeting or the expiration of time to request an informal meeting, in the event an informal meeting was not requested.

D. SAR review board review of denial, suspension, or revocation of certification:

(1) After the SAR review board receives the decision of the special operations commander to deny, suspend, or revoke certification, it will make a recommendation to the agency administrator on a course of action to take regarding the volunteer's certification.

(2) A volunteer whose certification is impacted may make a written request to be heard by the SAR review board if the volunteer previously requested an informal meeting and the request is made before a recommendation is reached. The volunteer will be provided an opportunity to be heard for a period of time as permitted by the SAR review board.

(3) The agency administrator will have notification sent to the volunteer of the final decision concerning the matter after having reviewed the facts and circumstances, along with the recommendation of the SAR review board.

[10.24.1.11 NMAC - N, 6-27-17]

PART 2: [RESERVED]

CHAPTER 25: STATE FIRE MARSHAL

PART 1: GENERAL PROVISIONS

10.25.1.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[10.25.1.1 NMAC - N, 11/15/2007]

10.25.1.2 SCOPE:

This rule applies to any person 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, Section 60-2C-1 through 60-2C-11 NMSA 1978.

[10.25.1.2 NMAC - N, 11/15/2007]

10.25.1.3 STATUTORY AUTHORITY:

Sections 8-8-6, 8-8-15, 59A-52-2, 59A-52-15, 59A-52-16, and 60-2C-3 NMSA 1978.

[10.25.1.3 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.4 DURATION:

Permanent.

[10.25.1.4 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.5 EFFECTIVE DATE:

November 15, 2007, unless a later date is cited at the end of a section.

[10.25.1.5 NMAC - N, 11/15/2007]

10.25.1.6 OBJECTIVE:

The purpose of this rule is to set forth general provisions governing fire prevention, control of fires, and safe egress from and use of public occupancies.

[10.25.1.6 NMAC - N, 11/15/2007]

10.25.1.7 DEFINITIONS:

In addition to the definitions in Chapter 59A, Article 52 NMSA 1978; Sections 60-2C-2 and 60-2C-2.1 NMSA 1978; 10.25.1 NMAC; 10.25.5 NMAC; and the code adopted in 10.25.5 NMAC; as used in these rules:

A. AHJ means an authority having jurisdiction; this may refer to the fire marshal or to other authorities with concurrent jurisdiction such as a municipality or county that has enacted an ordinance concerning fire protection;

B. certificate of fitness means the fire marshal's approval of a fire protection installation, maintenance and inspection company obtained pursuant to 10.25.2 NMAC;

C. CID means the construction industries division of the regulation and licensing department;

D. commission means the New Mexico public regulation commission;

E. fire marshal means the state fire marshal as established under the State Fire Marshal Act, Section 59A-52-1 et seq. NMSA 1978, or his designee; and

F. these rules means the rules adopted by the commission in Title 10, Chapter 25 NMAC.

[10.25.1.7 NMAC - N, 11/15/2007]

10.25.1.8 REQUIREMENTS FOR FILED DOCUMENTS:

In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the fire marshal, including applications referenced in 10.25.6 NMAC, shall be filed as follows.

A. Address for filing documents.

(1) Documents filed by mail shall be addressed to the New Mexico fire marshal division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269.

(2) Documents filed in person or by delivery service shall be delivered to the New Mexico fire marshal division located on the fourth floor of 1120 Paseo de Peralta, in Santa Fe, New Mexico.

B. Required format. All reports, articles, applications and other documents filed with the fire marshal shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink.

C. Facsimile filing prohibited. The fire marshal will not accept documents for filing or applications submitted by facsimile.

D. Date of filing. The fire marshal shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the fire marshal's division, unless the document is returned pursuant to 12.3.1.11 NMAC, except that if the fire marshal receives a document after regular business hours, the fire marshal shall stamp and consider it received on the next regular business day.

[10.25.1.8 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.9 APPLICATIONS, FORMS AND GUIDELINES:

A. Mandatory applications. For ease and consistency of data entry, the fire marshal has prepared mandatory permit and license applications for compliance with 10.25.2 and 10.25.6 NMAC.

B. Optional permit application and guidelines. The fire marshal provides an optional permit application for display fireworks, described in Subsection E of 10.25.6.8 NMAC, and other guidelines to aid in fire prevention and safety, and to assist in carrying out certain requirements of these rules.

C. How to obtain. Interested persons may obtain copies of mandatory and optional applications, forms, and guidelines:

- (1) by calling the fire marshal division at 505-476-0080 or 1-800-244-6702;
- (2) at the fire marshal division located on the fourth floor of 1120 Paseo de Peralta in Santa Fe;
- (3) by writing to the fire marshal division, P.O. Box 1269, Santa Fe, New Mexico 87504-1269; or
- (4) from the fire marshal website: <http://www.nmprc.state.nm.us/>.

[10.25.1.9 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.10 INCOMPLETE FILINGS:

A. A filing will be considered incomplete if:

- (1) it is unsigned;
- (2) it omits any information required by law or fire marshal rule or order;
- (3) it is not accompanied by the appropriate filing fee, paid as required by 12.3.1.14 NMAC; or
- (4) the fire marshal determines the filing is otherwise insufficient.

B. Return of incomplete filings. Any application returned by the fire marshal shall be deemed denied. The fire marshal shall return an incomplete filing with a statement indicating the nature of the insufficiency to:

- (1) the address on any cover letter included with the form or document;
- (2) if no cover letter was included, then to the return address on the envelope in which the document or form was received;
- (3) if no cover letter or envelope with return address were included, then to the address on any check delivered with the form or document for filing; or
- (4) if none of the above were included, then to any other address in the applicant's file.

[10.25.1.10 NMAC - N, 11/15/2007]

10.25.1.11 INSPECTION OF DOCUMENTS:

Any person who wishes to inspect public records or other documents relating to fires shall make a request to the fire marshal. The request shall meet the requirements of the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, and shall follow the procedure required by that law.

[10.25.1.11 NMAC - N, 11/15/2007; A, 9/1/2008]

10.25.1.12 REQUESTS FOR COPIES:

A. Filing of request. A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered as provided in 12.3.1.9 NMAC, or sent by facsimile to (505) 827-3778. If a person cancels a request within 24 hours, the fire marshal shall not assess any fees.

B. Estimate of fees. When the fire marshal receives a request for copies, the fire marshal's office shall issue an informal estimate of fees. The fire marshal shall charge

the fees enumerated in Subsection C of 1.2.2.8 NMAC, Public Regulation Commission Rules of Procedure.

C. Completion of request.

(1) If the person approves the estimate, the fire marshal shall prepare the copies within the time periods provided in the Inspection of Public Records Act, Section 14-2-1 *et seq.* NMSA 1978.

(2) When the requested documents are ready, the fire marshal shall provide a written statement of fees due and shall release the copies electronically upon payment of all fees due.

[10.25.1.12 NMAC - N, 11/15/2007; A, 9/1/2008; A/E, 6/28/2019; A, 11/26/2019]

10.25.1.13 PAYMENT OF FEES:

A person shall pay fees charged by the commission or the fire marshal by cashier's or company check or money order from funds on deposit with a United States financial institution, made payable to the New Mexico public regulation commission. The fire marshal will not accept personal checks or cash.

[10.25.1.13 NMAC - N, 11/15/2007]

10.25.1.14 RULES OF PROCEDURE:

In all matters before the commission involving the fire marshal, the commission shall follow the commission's rules of procedure. A specific provision in these rules shall control over a conflicting general provision in the commission's rules of procedure.

[10.25.1.14 NMAC - N, 11/15/2007]

10.25.1.15 APPEALS:

A person aggrieved by any order of the fire marshal may appeal the decision:

A. to the commission in accordance with Section 59A-52-21 NMSA 1978, by filing an appeal with the New Mexico Public Regulation Commission Docketing Office by mail to P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or by delivery to the P.E.R.A. Building, Room 413, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501; or

B. to district court in accordance with Section 59A-52-22 NMSA 1978.

[10.25.1.15 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

PART 2: CERTIFICATES OF FITNESS

10.25.2.1 ISSUING AGENCY:

Department of Homeland Security and Emergency Management.

[10.25.2.1 NMAC - N, 11/15/2007; A/E, 10/7/2022; A, 7/18/2023]

10.25.2.2 SCOPE:

This rule applies to all fire protection installation, maintenance and inspection companies that operate in the state of New Mexico.

[10.25.2.2 NMAC - N, 11-15-07]

10.25.2.3 STATUTORY AUTHORITY:

Sections 8-8-21, 59A-52-2, and 59A-52-15 NMSA 1978.

[10.25.2.3 NMAC - N, 11-15-07]

10.25.2.4 DURATION:

Permanent.

[10.25.2.4 NMAC - N, 11-15-07]

10.25.2.5 EFFECTIVE DATE:

November 15, 2007, unless a later date is cited at the end of a section.

[10.25.2.5 NMAC - N, 11-15-07]

10.25.2.6 OBJECTIVE:

The purpose of this rule is to assure a minimum level of quality in the installation, inspection, maintenance and repair of fire protection equipment and to encourage fire prevention and control of fires.

[10.25.2.6 NMAC - N, 11-15-07]

10.25.2.7 DEFINITIONS:

In addition to the definitions in 10.25.1 NMAC, "qualified party" means a person holding a license from CID to install or repair fire protection systems.

[10.25.2.7 NMAC - N, 11-15-07]

10.25.2.8 TYPES OF CERTIFICATES REQUIRED:

A. When required. No person shall install, inspect, maintain, service, tag or repair fire protection equipment or systems unless he has obtained a certificate of fitness from the fire marshal in compliance with these rules. Any person holding a certificate of fitness shall have a copy of it available in all service vehicles and offices for review if requested during inspection by the fire marshal or AHJ. Certificates of fitness are not transferable.

B. Types of certificates. The fire marshal or AHJ may issue certificates of fitness for installation, inspection, maintenance, repair, recharging or tagging in the following disciplines:

- (1) automatic fire suppression systems and fire pumps;
- (2) automatic fire detection and alarm systems;
- (3) chemical fire suppression systems;
- (4) portable fire extinguishers; and
- (5) fire and smoke dampers.

[10.25.2.8 NMAC - N, 11/15/2007; A/E, 10/7/2022; A, 7/18/2023]

10.25.2.9 APPLICATION PROCEDURE:

Any person may apply for a certificate of fitness by submitting the required application to the fire marshal as provided in 10.25.1.9 NMAC or to an AHJ. The mandatory applications described in 10.25.1.9 NMAC are available as indicated in 10.25.1.9 NMAC.

A. Information required for initial application. Each application for a certificate of fitness shall include:

- (1) the applicant's name, mailing address, telephone number and signature of authorized representative;
- (2) the disciplines for which certification is requested, listed in 10.25.2.8 NMAC;
- (3) a statement that the applicant agrees to be inspected by the fire marshal, his designees or an AHJ at any time during normal business hours;

(4) for certification for automatic fire suppression systems and fire pumps: the name of the qualified party, the type and number of his CID license and a copy of his license;

(5) for certification for automatic fire detection and alarm systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(6) for certification for chemical fire suppression systems: the name of the qualified party, the type and number of his CID license and a copy of his license;

(7) for certification for portable fire extinguishers, a statement indicating that the applicant:

(a) operates from a fixed location, provides mobile recharging service, or both;

(b) agrees to allow only trained personnel to maintain, service and recharge portable fire extinguishers; and

(c) agrees to provide its personnel with all service manuals and documentation, proper tools, recharging materials, lubricants and manufacturers' recommended replacement parts or parts specifically listed for use in fire extinguishers.

(8) for certification to inspect and test fire and smoke dampers, an application shall include:

(a) for mechanically actuated fire and smoke dampers, applicants shall provide documentation of a valid NFPA-Certified Fire Protection Specialist certification or of an approved fire and life safety certification from a program accredited by the American National Standards Institute (ANSI).

(b) for electrically actuated fire and smoke dampers monitored by a fire alarm system, applicants shall comply with requirements of Paragraph (5) of Subsection A of 10.25.2.9 NMAC.

(c) for fire and smoke dampers with both mechanical and electrical components, the applicant inspecting the mechanical components shall provide documentation pursuant to subparagraph (a) of this paragraph and the applicant inspecting the electrical components shall provide documentation pursuant to subparagraph (b) of this paragraph.

B. Requirements for renewal. Any person seeking to renew a certificate of fitness shall apply following the process provided, and submit all information required, for an initial application.

[10.25.2.9 NMAC - N, 11/15/2007; A/E, 10/7/2022; A, 7/18/2023]

10.25.2.10 REVIEW OF APPLICATION:

A. Review. The fire marshal shall review each application and return it pursuant to 10.25.1.10 NMAC if incomplete. An application returned by the fire marshal shall be deemed denied. An AHJ shall follow the review process provided in its applicable ordinance.

B. Denial. The fire marshal or AHJ shall deny an application if:

(1) the application is incomplete or does not include documentation required by these rules;

(2) the applicant does not have required licenses or qualifications for the disciplines requested;

(3) the application is not properly signed; or

(4) the fire marshal determines that the application contains any falsification or misrepresentation.

C. Approval. If the fire marshal approves the application, he shall issue a certificate valid for up to two years, expiring on December 31 of the second year.

[10.25.2.10 NMAC - N, 11-15-07]

10.25.2.11 CHANGES TO INFORMATION ON APPLICATION OR CERTIFICATE:

An applicant or certificate holder shall notify the fire marshal or AHJ of any change of information in the application or on the certificate, such as a change of address, within ten (10) days after such change.

[10.25.2.11 NMAC - N, 11-15-07]

10.25.2.12 EXPIRATION AND REVOCATION OF CERTIFICATE:

A. Expiration. A certificate of fitness automatically expires at the conclusion of the time period for which it was issued.

B. Revocation. The fire marshal or AHJ may revoke a certificate if:

(1) any of the required licenses or qualifications of the applicant expire, are canceled or are revoked;

(2) during an inspection, the fire marshal or AHJ finds a substantial violation of these rules or applicable codes for a discipline for which the certificate has been issued;

(3) the applicant made false statements or misrepresentations of material fact in the application or documentation submitted with the application; or

(4) the certificate was issued in error or in violation of an applicable statute or these rules.

C. Rules of procedure. In all matters before the commission involving the fire marshal, the commission shall follow the commission's rules of procedure. A specific provision in these rules shall control over a conflicting general provision in the commission's rules of procedure.

D. Appeals. A person whose certificate of fitness is revoked by the fire marshal may appeal the revocation using the procedures enumerated in 10.25.1.15 NMAC.

[10.25.2.12 NMAC - N, 11-15-07]

PART 3: PARENTAL RESPONSIBILITY

10.25.3.1 ISSUING AGENCY:

New Mexico Public Regulation Commission, State Fire Marshal Division, Post Office Box 1269, Santa Fe, NM 87504-1269.

[10.25.3.1 NMAC - Rp, 10.25.3.1 NMAC, 11/26/2019]

10.25.3.2 SCOPE:

This rule applies to all persons required to have a license issued by the state fire marshal in order to sell fireworks.

[10.25.3.2 NMAC - Rp, 10.25.3.2 NMAC, 11/26/2019]

10.25.3.3 STATUTORY AUTHORITY:

Sections 8-8-6, 8-8-15, 40-5A-9 and 60-2C-3 NMSA 1978.

[10.25.3.3 NMAC - Rp, 10 25.3.3 NMAC, 11/26/2019]

10.25.3.4 DURATION:

Permanent.

[10.25.3.4 NMAC - Rp, 10.25.3.4 NMAC, 11/26/2019]

10.25.3.5 EFFECTIVE DATE:

November 26, 2019, unless a later date is cited at the end of a section.

[10.25.3.5 NMAC - Rp, 10.25.3.5 NMAC, 11/26/2019]

10.25.3.6 OBJECTIVE:

The purpose of this rule is to implement the requirements of the Parental Responsibility Act, Sections 40-5A-1 to 40-5A-13 NMSA 1978, as they apply to the issuance, renewal, suspension or revocation of fireworks vendor licenses.

[10.25.3.6 NMAC - Rp, 10.25.3.6 NMAC, 11/26/2019]

10.25.3.7 DEFINITIONS:

All terms defined in the Parental Responsibility Act shall have the same meanings in this rule unless defined below.

A. HSD means the New Mexico human services department.

B. License means a display distributor, distributor, manufacturer, retailer, specialty retailer or wholesaler license issued to an individual pursuant to the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978.

C. Statement of compliance means a certified statement from HSD stating that an applicant or licensee is in compliance with a judgment and order for support.

D. Statement of non-compliance means a certified statement from HSD stating that an applicant or licensee is not in compliance with a judgment and order for support.

[10.25.3.7 NMAC - Rp, 10.25.3.7 NMAC, 11/26/2019]

10.25.3.8 SANCTIONS:

If an applicant or licensee is not in compliance with a judgment and order for support, the state fire marshal shall:

A. deny an application for a license;

B. deny the renewal of a license;

C. have grounds for suspension or revocation of a license.

[10.25.3.8 NMAC - Rp, 10.25.3.8 NMAC, 11/26/2019]

10.25.3.9 CERTIFIED LIST:

A. Receipt of certified list from HSD: Upon receipt of HSD's certified list of obligors not in compliance with a judgment and order for support, the state fire marshal shall match the certified list of obligors against the current list of applicants and licensees. By the end of the month in which the certified list of obligors is received from HSD, the state fire marshal shall report to HSD the names of applicants and licensees who are on the certified list of obligors and the action the state fire marshal has taken in connection with such applicants and licensees.

B. Receipt of application: Upon the later receipt of an application for license or renewal, the state fire marshal shall match the applicant against the most recent certified list of obligors.

[10.25.3.9 NMAC - Rp, 10.25.3.9 NMAC, 11/26/2019]

10.25.3.10 INITIAL NOTICE:

A. Notification by letter: Upon determination that an applicant or licensee appears on HSD's certified list of obligors, the state fire marshal shall notify the applicant or licensee by letter that the applicant or licensee must provide the state fire marshal with a subsequent statement of compliance within 30 days of the date the state fire marshal mailed the notification.

B. Contents of letter: The notice letter to applicants and licensees shall advise that failure to timely provide the statement of compliance shall result in commencement of a formal hearing brought by the state fire marshal before the state fire board for rejection of an application or suspension or revocation of an issued license as provided in 10.25.3.11 NMAC.

C. Retailer permits: In order to ensure compliance with the Parental Responsibility Act, every distributor, wholesaler, or manufacturer, before issuing retail permits to individuals, must receive a letter of clearance from the state fire marshal or his designee, stating that the individual applicant is not on the HSD certified list of obligors in violation of a child support judgment and order. Retail permits issued by distributors, wholesalers, and manufacturers to individuals are invalid without state fire marshal's clearance being attached and available for display. Telefaxed transmission of the state fire marshal's clearance letter is permissible.

[10.25.3.10 NMAC - Rp, 10.25.3.10 NMAC, 11/26/2019]

10.25.3.11 PROCEEDING TO REJECT APPLICATION OR TO SUSPEND OR REVOKE LICENSE:

If an applicant or licensee fails to respond to the initial notice as required by 10.25.3.10 NMAC, the state fire marshal shall file and serve a complaint upon the applicant or licensee. If the state fire marshal's complaint for rejection of an application or suspension or revocation of a license is based solely on the respondent's failure to

comply with a judgment and order of support, and there are no additional grounds based on violations of the Fireworks Licensing and Safety Act, Sections 60-2C-1 to 60-2C-11 NMSA 1978, the complaint shall state:

A. the grounds for the state fire marshals proposed action, and

B. that a hearing shall be held before the state fire board at least 30 days after the date the complaint is mailed, unless the respondent applicant or licensee provides the state fire marshal with a statement of compliance prior to the hearing date.

[10.25.3.11 NMAC - Rp, 10.25.3.11 NMAC, 11/26/2019]

10.25.3.12 EVIDENCE AND PROOF:

In any hearing under 10.25.3.11 NMAC, relevant evidence is limited to the accuracy or veracity of the statement of non-compliance. The statement of non-compliance is conclusive evidence requiring the state fire marshal to take the rejection, suspension or revocation action under 10.25.3.11 NMAC, and is rebuttable only with a subsequent statement of compliance. Upon presentation of the subsequent statement of compliance, the state fire marshal shall dismiss the rejection, suspension or revocation action if it is based solely upon licensee or permittees failure to comply with a judgment and order for support.

[10.25.3.12 NMAC - Rp, 10.25.3.12 NMAC, 11/26/2019]

10.25.3.13 ORDER:

When an action to reject an application or suspend or revoke a license or permit is taken by the state fire marshal solely because the applicant, licensee or permittee is not in compliance with a judgment and order for support, the final order shall state that:

A. in application rejection actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

B. in suspension actions, the respondent may be reinstated for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal;

C. in revocation actions, the respondent may reapply for a license at any time upon presentation of a subsequent statement of compliance filed with the state fire marshal.

[10.25.3.13 NMAC - Rp, 10.25.3.13 NMAC, 11/26/2019]

10.25.3.14 PROCEDURES:

Proceedings and administrative hearings held pursuant to this rule shall be governed by Section 60-2C-11 NMSA 1978 and the New Mexico public regulation commission rules of procedure, 1.2.2 NMAC.

[10.25.3.14 NMAC - Rp, 10.25.3.14 NMAC, 11/26/2019]

PART 4: [RESERVED]

PART 5: FIRE PREVENTION AND PUBLIC OCCUPANCY

10.25.5.1 ISSUING AGENCY:

New Mexico Department of Homeland Security and Emergency Management.

[10.25.5.1 NMAC - Rp, 10.25.5.1 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.2 SCOPE:

A. This rule establishes the state's minimum requirements that apply to structures, processes, premises and safeguards regarding:

- (1) the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices;
- (2) conditions hazardous to life, property, or public welfare in the occupancy of structures or premises;
- (3) fire hazards in the structure or on the premises from occupancy or operation;
- (4) matters related to the construction, extension, repair, alteration, or removal of fire protection systems; and
- (5) conditions affecting the safety of firefighters and emergency responders during emergency operations.

B. This rule does not apply to detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures not more than three stories above grade in height built to the New Mexico Residential Building Code except for those being used as commercial properties.

C. Other state agencies have adopted rules that may or may not apply and that may or may not affect this rule.

(1) The construction industries division of the New Mexico regulation and licensing department (CID) adopts regulations for all construction pursuant to Title 14 NMAC, Housing and Construction, Chapters 5 through 10 NMAC, setting forth the state's minimum requirements that include provisions on fire prevention.

(2) The New Mexico environmental improvement board has adopted rules for aboveground and underground storage tanks containing petroleum or hazardous substances and rules governing hazardous waste administered by the environment department in Title 20, Chapter 5 NMAC.

(3) The board of licensure for professional engineers and surveyors has adopted rules for the design of fire protection and alarm systems pursuant to Title 16, Chapter 39 NMAC.

(4) CID has jurisdiction over all contractors and journeymen installers of fire protection systems and establishes the minimum requirements for licenses and certificates pursuant to the Construction Industries Licensing Act and to Title 14, Chapter 6, Part 6 NMAC on CID license classifications and scopes.

D. AHJs, defined below, may adopt fire protection requirements that are more stringent than 10.25.5 NMAC, provided such requirements do not conflict with this rule. The authority for administration and interpretation of construction-related sections of the NMFC, defined below, that apply to construction projects requiring a building permit is the responsibility of the chief building official or the AHJ. The FM, defined below, shall have the authority for the administration and interpretation of fire protection systems and the chief building official of an AHJ shall have the authority for the administration and interpretation of building codes other than fire protections systems.

[10.25.5.2 NMAC - Rp, 10.25.5.2 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.3 STATUTORY AUTHORITY:

Sections 8-8-6, 8-8-15, 59A-52-15, and 59A-52-16 NMSA 1978.

[10.25.5.3 NMAC - Rp, 10.25.5.3 NMAC, 11/26/2019]

10.25.5.4 DURATION:

Permanent.

[10.25.5.4 NMAC - Rp, 10.25.5.4 NMAC, 11/26/2019]

10.25.5.5 EFFECTIVE DATE:

November 1, 2022 unless a later date is cited at the end of a section.

[10.25.5.5 NMAC - Rp, 10.25.5.5 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.6 OBJECTIVE:

The purpose of this rule is to prescribe minimum requirements for the installation, operation and maintenance of fire protection and life safety features in buildings and structures necessary to reasonably protect life and property from the hazards created by fire, explosion, and similar emergencies, and which minimum requirements shall not conflict with the provisions of the Construction Industries Licensing Act.

[10.25.5.6 NMAC - Rp, 10.25.5.6 NMAC, 11/26/2019]

10.25.5.7 DEFINITIONS:

In addition to the definitions in 10.25.1 NMAC:

A. "Authority Having Jurisdiction (AHJ)" means an organization, office, or individual responsible for enforcing the minimum requirements of codes, standards and permits for approving equipment, materials and installations or a procedure within its jurisdiction.

B. "Certificate of Fitness" means the State Fire Marshall's verification document of a fire protection installation, maintenance and inspection company's competence in the methods and materials of the specific fire system subject to the permit, which is obtained pursuant to 10.25.2 NMAC.

C. "Fire Code Official" shall have the meaning provided in Section 202 of the IFC.

D. "Fire Marshal (FM)" means the fire marshal with the authority over permitting and inspections of fire systems within a particular political subdivision of the state.

E. "IFC" means the New Mexico currently adopted international fire code, 2021 edition, published by the International Code Council and is available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

F. "Life Safety Features" means compliance with NFPA 1 and NFPA 101 for structures built on or before November 15, 2007, and the NMFC for structures build after November 15, 2007.

G. "NFPA 1" means the fire prevention code, 1997 edition, published by the National Fire Protection Association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101.

H. "NFPA 101" means the life safety code, 1997 edition, published by the National Fire Protection Association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269-9101.

I. "New Mexico Fire Code (NMFC)" means the New Mexico fire code created by this rule including the IFC currently adopted by the construction industries division of the regulation and licensing department in New Mexico by reference.

J. "State Fire Marshal (SFM)" means the director of the state fire marshal division under the department of homeland security and emergency management who has the authority for final determination of the application of the fire provisions of this rule throughout the state.

[10.25.5.7 NMAC - Rp, 10.25.5.7 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.8 ADOPTION OF NATIONAL STANDARD:

The SFM adopts the IFC which is then incorporated by reference as revised in this rule. In this rule, revisions are numbered to correspond with the section numbering of the IFC and such revisions further amend such sections of the IFC. All references in the IFC to the International Mechanical Code mean the New Mexico Mechanical Code, CID rule 14.9.2 NMAC. All references in the IFC to the International Plumbing Code mean the New Mexico Plumbing Code, CID rule 14.8.2 NMAC. For purposes of this rule, the application of building code section 102.4 of the IFC, 2021 edition, means that the design and construction of new structures shall comply with the currently adopted New Mexico Building Code (NMBC), CID rule 14.7.2 NMAC, and any alterations, additions, changes in use or changes in structures required by the NMFC, and shall be made in accordance with the currently adopted NMBC, CID rule 14.7.2 NMAC.

[10.25.5.8 NMAC - Rp, 10.25.5.8 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.9 CHAPTER 1 ADMINISTRATION:

A. Section 101 General.

- (1) Section 101.1 Title. Insert in brackets: New Mexico.
- (2) Section 101.2 Scope. This section of the IFC shall not apply. 10.25.5.2 NMAC defines the scope of this rule.
- (3) Section 101.2.1 Appendices. The SFM adopts appendices D and I. All other appendices of the IFC shall not apply except where adopted by the local AHJ.
- (4) Sections 101.3 through 101.5. See the corresponding sections of the IFC.

B. Section 102.3 (Applicability, Change in use or occupancy.) Delete this section and replace with the following: "Changes shall not be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the NMBC. Subject to the approval of the building code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure allowed to be occupied for purposes in other groups without conforming to all of the requirements of this code and the NMBC for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use."

C. Section 104 Duties and Powers of the Fire Code Official. If Section 104.6 (official records) or any other provision of the NMFC conflicts with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, the provisions of the Inspection of Public Records Act shall control.

D. Section 105 permits. The following sections of the IFC are deleted: Section 105.3, Section 105.5, Section 105.6.2 through 105.6.3, Section 105.6.5, Section 105.6.8 through 105.6.18, Section 105.6.20 through 105.6.22, and Section 105.6.24. All permits required through the CID permitting process are strictly within the authority of CID. The NMFC establishes the state minimum fire code allowing local jurisdictions and political subdivisions the ability to enact stricter ordinances provided the state minimum is complied with by all such jurisdictions. The SFM requires permits and licenses for fireworks as provided in 10.25.6 NMAC.

E. Certificates of fitness. The SFM requires certificates of fitness for the installation, inspection, maintenance and repair of fire protection systems as provided in 10.25.2 NMAC.

F. Section 105.3 Conditions of a Permit. This section is deleted in its entirety.

G. Section 106.1 Construction documents: submittals. This section is deleted in its entirety and replaced with the following language:

(1) One set of construction documents shall be submitted to the Building Official, SFM or FM, who is the AHJ for the construction project.

(2) All construction documents that are submitted to the SFM shall comply with the plans submittal information provided by the SFM on their respective website and shall be submitted with the applicant's certificate of fitness number, permit application and permit number or building official unique identifier and shall comply with the approval process provided in 10.25.5.16 NMAC and with the CID regulation on permits, CID rule 14.5.2 NMAC.

H. Section 107 Fees. This section of the IFC shall not apply.

I. Section 108.2.2 Approval Required. Change the last sentence to read, "Any portions that do not comply shall be corrected and such portion shall not be covered or concealed prior to inspection as required by the fire code official."

J. Section 111 Means of Appeals. This section is deleted in its entirety and replaced with the following language: The appeal processes provided in Sections 59A-52-21 and 59A-52-22 NMSA 1978 shall apply and may be initiated by filing an appeal as provided in 10.25.1 NMAC.

K. Section 112 Violations. The penalties listed in section 109.4 of the IFC shall not apply in New Mexico. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

L. Section 113 Stop work order. The penalties listed in section 111.4 of the IFC shall not apply. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

[10.25.5.9 NMAC - Rp, 10.25.5.9 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.10 CHAPTER 2 DEFINITIONS:

A. Definitions defined by the SFM or the NMFC shall apply specifically to the enforcement and requirements of 10.25.5 NMAC. Terms not defined in this rule but defined in the New Mexico Building Code, CID rule 14.7.2 NMAC, the New Mexico Residential Building Code, CID rule 14.7.3 NMAC, the New Mexico Existing Building Code, CID rule 14.7.7 NMAC, the New Mexico Mechanical Code, CID rule 14.9.2 NMAC, the New Mexico Plumbing Code, CID rule 14.8.2 NMAC, the New Mexico Electrical Code, CID rule 14.10.4 NMAC, or the National Fire Protection Association's (NFPA) NFPA 54 shall have the meanings as ascribed in those codes.

B. Section 202 General Definitions. The definition of "record drawings" is deleted in its entirety and replaced with the following language: "record drawings" means submittals and amended submittals that document the location of all appurtenances of fire protection systems to include any corrections incurred during final acceptance.

[10.25.5.10 NMAC - Rp, 10.25.5.10 NMAC, 11/26/2019]

10.25.5.11 CHAPTER 3 GENERAL REQUIREMENTS:

A. Section 301.1 Scope. This section applies as mandated by the local AHJ.

B. Section 301.2 Permits. This Section shall apply to the extent mandated by the local AHJ.

C. Section 304.1.2 Vegetation. This section applies to the extent mandated by the local AHJ.

D. Section 307 Open burning, recreational fires and portable outdoor fireplaces. This section of the IFC applies only and to the extent mandated by the local AHJ.

E. Section 308.1.6.3 Sky lanterns. Add "unless approved by the local AHJ" at the end of section.

F. Section 308.3 Group A Occupancies Exception #2. Delete the word "international" and replace with the word "New Mexico".

G. Section 319.2 Permit required. This section applies as mandated by the local AHJ.

[10.25.5.11 NMAC - Rp, 10.25.5.11 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.12 CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS:

A. Section 405.3 Frequency. Add Exception: "E" occupancies shall comply with PED rule 6.29.1.8 NMAC emergency drills and practiced evacuations.

B. Section 405.6 Record keeping. Item number 7 is deleted and replaced with the following language: "Problems encountered and corrective actions for the problems encountered."

[10.25.5.12 NMAC - Rp, 10.25.5.12 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.13 CHAPTER 6 BUILDING SERVICES AND SYSTEMS:

Amend section 605.9 to add "if required by the fire code official" at the end of the section.

[10.25.5.13 NMAC - Rp, 10.25.5.13 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.14 CHAPTER 9 FIRE PROTECTION SYSTEMS:

Throughout chapter 9, the following shall apply:

A. Delete the term "International Mechanical Code" where used in this chapter and replace with the term "New Mexico Mechanical Code".

B. Delete the term "International Plumbing Code" where used in this chapter and replace with the term "New Mexico Plumbing Code".

C. Section 904.12 Commercial cooking systems. The replacement of commercial cooking equipment, including but not limited to a stove, hood, deep fryer, grill, griddle, or any other device used in the cooking process, shall comply with this Section and with the Uniform Mechanical Code as adopted by reference in CID rule 14.9.2.13 NMAC.

D. Section 905.3.4.1 Hose and Cabinet. Insert the following sentence at the end of this section, "Unless required by a fire code official, one and one-half inch hoses and hose cabinets are not required for class II and class III standpipe systems.

E. Section 903.3.8.5 Calculations. Add "A 10 psi safety factor shall be added to all hydraulic calculations as mandated by the AHJ".

[10.25.5.14 NMAC - Rp, 10.25.5.13 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.15 CHAPTER 10 MEANS OF EGRESS:

See Section 10 of the NMBC, CID rule 14.7.2 NMAC, and IFC section 1032, Maintenance of the Means of Egress.

[10.25.5.15 NMAC - Rp, 10.25.5.14 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.16 CHAPTER 56 EXPLOSIVES AND FIREWORKS:

This chapter of the IFC and 10.25.6 NMAC apply to fireworks. If there is any conflict between this chapter of the IFC and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978, the Fireworks Licensing and Safety Act shall control.

[10.25.5.16 NMAC - Rp, 10.25.5.16 NMAC, 11/26/2019]

10.25.5.17 REPEAL OF CODES:

NFPA 1 and NFPA 101 are repealed except as provided in 10.25.5.19 NMAC.

[10.25.5.17 NMAC - Rp, 10.25.5.16 NMAC, 11/26/2019]

10.25.5.18 APPROVAL OF FIRE PROTECTION SYSTEMS:

Prior to beginning construction or occupancy of any building or structure regulated by the currently adopted New Mexico Building Codes and the NMFC, the contractor shall apply for a permit and submit drawings for plan review by the AHJ and approval of the fire protection system from the SFM or FM, as appropriate, of all fire protection system for the building or structure. The review and approval of fire protection systems is in addition to all review required by CID pursuant to Title 14 of the New Mexico administrative code.

A. Filing drawings with the SFM for review.

(1) Documents required. The contractor shall submit one set of drawings for the building or structure. Submittals shall be in accordance with "Plans Submittal Information" obtained via the SFM website and this rule. For convenience, a contractor

may submit additional sets of drawings and an envelope with prepaid postage directly to the SFM for the SFM's use in returning the drawings after review. Electronic filing of fire protection plans will be accepted via electronic plans review software that is compatible with software used by the SFM.

(2) Where to submit. The contractor shall submit drawings of the fire protection system to the fire code enforcement bureau of the SFM in compliance with 10.25.1 NMAC or to an AHJ as required by the AHJ. The SFM shall not accept drawings by facsimile transmission.

(3) Requirements for drawings. The drawings shall clearly indicate fire protection systems in sufficient detail to establish compliance with applicable codes and standards and shall include the signature and seal of the licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act (found at Chapter 61, Article 23 NMSA 1978) that prepared the drawings. Drawings submitted shall comply with plans submittal information provided by the SFM on its website.

(4) Fees. The SFM does not require any fees for review of fire protection systems.

B. Third party review. The FM or FM, as appropriate, in their sole discretion, may require third party review of drawings if specialized expertise or knowledge is needed, and shall so notify the contractor in writing with a cost estimate if so determined. If the contractor agrees to proceed with review, the contractor shall file written approval by the method provided in 10.25.1.8 NMAC and shall pay directly to the third party the cost of such review before the SFM or FM, as appropriate, returns the drawings.

C. Return of drawings. If the SFM or FM, as appropriate, approves the drawings, the drawings shall be stamped "approved", with the SFM or FM, as appropriate, retaining one complete set of drawings or submittals. If the SFM or FM, as appropriate, rejects the drawings or submittals or does not approve the drawings, an explanation for the basis for rejection or non approval shall be given to the contractor. The contractor shall pick up approved drawings if prior arrangements have not been agreed to for return by mail.

D. Rejection. The SFM or FM, as appropriate, may reject fire protection system drawings for the following reasons:

- (1) the drawings are incomplete;
- (2) the drawings indicate a violation of these rules or applicable codes and standards;
- (3) the submitted drawings are not in accordance with Title 16, Chapter 39 NMAC;

- (4) no certificate of fitness is on file with the SFM;
- (5) the drawings or submittals contain a misrepresentation or inaccuracy;
- (6) third party review of the drawings or submittals reveals a violation of these rules, applicable codes or standards;
- (7) all SFM or FM requirements have not been included in the submittals; or
- (8) any other valid reason as determined by the SFM.

E. Re-submission. If drawings are rejected, the contractor may correct the deficiencies noted in the rejection letter. New submittals shall be submitted by the same process for filing original drawings for review.

F. Construction.

(1) Construction may commence upon approval of plans and issuance of the proper permits.

(2) After installation of the fire protection system has been completed, a request for inspection shall be made to the FM. The request may be made orally or in writing to the FM or as otherwise required by the SFM.

G. Inspection and testing. The SFM or FM, as appropriate, will inspect the fire protection system of a building or structure within a reasonable period of time after a request for inspection. The SFM or FM, as appropriate, shall notify the AHJ of approval or rejection of drawings or of the fire protection system, and, if applicable, the AHJ may request a letter indicating the system is in compliance with approved plans and applicable codes and standards. The SFM or FM, as appropriate, shall not approve the installation if the inspection indicates:

- (1) a violation of this rule or applicable codes and standards;
- (2) the fire protection system was not installed in compliance with the drawings;
- (3) the fire protection system was not installed by a licensed entity and certified journeyman;
- (4) no valid certificate of fitness is on file with the SFM;
- (5) the final acceptance testing of each fire protection system is not recorded as complete; or
- (6) any other valid reason as determined by the SFM.

H. Re-inspection. If the FM does not approve the installation of the fire protection system and the responsible party corrects the deficiencies noted in the inspection, the responsible party may re-apply for inspection following the same procedure as for the initial inspection.

[10.25.5.18 NMAC - Rp, 10.25.5.18 NMAC, 11/26/2019; A, 11/01/2022]

10.25.5.19 CODE REQUIREMENTS FOR EXISTING BUILDINGS AND STRUCTURES:

For purposes of this section, "constructed" shall mean that the contractor has begun any substantial portion in the design, permitting or building of a building or structure. A change in occupancy requires approval from the appropriate building code official. All new construction, alteration, repair, and additions require adherence to applicable building codes and laws.

A. Existing buildings and structures.

(1) Upon an inspection being conducted by the FM, an owner or contractor is not required to renovate or adapt an existing building or structure to comply with the currently-adopted NMFC, but shall comply with the requirements in place when the existing building or structure was constructed. See IFC, Section 104.

(2) Following the adoption of this provision, an existing structure or part of a structure that changes its occupancy classification, however done, must comply with the currently-adopted NMFC.

(3) Following the adoption of this provision, an existing fire protection system that is replaced, repaired, or altered by the FM, whose classification has not changed, shall comply with the currently-adopted NMFC. The system shall comply with the currently-adopted New Mexico Existing Building Code.

(4) Fire protection systems constructed prior to November 15, 2007, which fall under NFPA 1, 1997 edition, and NFPA 101, 1997 edition, shall be required to have a permit using the requirements of the currently-adopted NMFC, section 105, for the installation of any new, altered, remodeled, repaired or partial fire protection system.

(5) Fire protection systems plans which were initially submitted to the AHJ for review under the currently-adopted NMFC as per the requirements for new construction under Subsection B of 10.25.2.19 NMAC will be inspected per the currently-adopted NMFC.

B. New construction. Any new building, new alteration, new addition, or new structure after the effective date of the adoption of the currently-adopted NMFC shall comply with the currently-adopted NMFC.

C. Variance. The SFM may grant a variance from any of the requirements of this subsection if the applicant demonstrates to the SFM's satisfaction that the variance sought does not degrade the overall protection of individuals from fire and similar emergencies.

D. Hazard to life or property. Notwithstanding any other provision of these rules, if the FM or AHJ determines that a nonconforming facility constitutes an immediate hazard to life or property, the FM or AHJ shall so notify the contractor or owner of the facility in writing, and shall permit the contractor a reasonable period of time to comply with current rules. If the contractor does not comply with the notification and its requirements within the time specified, the FM or AHJ may order the owner or contractor to take the facility out of service.

[10.25.5.19 NMAC - Rp, 10.25.5.19 NMAC, 11/26/2019]

10.25.5.20 CHAPTER 23 MOTOR FUEL-DISPENSING FACILITIES AND REPAIR GARAGES:

Section 2311.2.3 applies as mandated by the local AHJ.

[10.25.5.20 NMAC – N, 11/01/2022]

PART 6: SAFE HANDLING AND SALE OF FIREWORKS

10.25.6.1 ISSUING AGENCY:

New Mexico Public Regulation Commission.

[10.25.6.1 NMAC - N, 11/15/2007]

10.25.6.2 SCOPE:

This rule applies to all persons applying for licenses or permits to sell fireworks in New Mexico and to all persons applying for certification as fireworks safety inspectors. It does not apply to local governing bodies for display fireworks.

[10.25.6.2 NMAC - N, 11/15/2007]

10.25.6.3 STATUTORY AUTHORITY:

Sections 8-8-6, 8-8-15, 59A-52-15, and 60-2C-3 NMSA 1978.

[10.25.6.3 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.6.4 DURATION:

Permanent.

[10.25.6.4 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019]

10.25.6.5 EFFECTIVE DATE:

November 15, 2007, unless a later date is cited at the end of a section.

[10.25.6.5 NMAC - N, 11/15/2007]

10.25.6.6 OBJECTIVE:

The purpose of this rule is to implement the Fireworks Licensing and Safety Act, Chapter 60, Article 2C NMSA 1978, so as to increase the observance of safety precautions in handling fireworks and decrease the number of fireworks related accidents in New Mexico.

[10.25.6.6 NMAC - N, 11/15/2007]

10.25.6.7 DEFINITIONS:

See the definitions in 10.25.1.7 NMAC.

[10.25.6.7 NMAC - N, 11/15/2007]

10.25.6.8 LICENSES AND PERMITS FOR SALE OF FIREWORKS:

The fire marshal issues licenses and permits as provided in Section 60-2C-4 NMSA 1978. Local governing bodies may have additional requirements for fireworks sale or use.

A. Application procedures and forms. Any person may apply for a license or permit to sell fireworks as provided in Section 60-2C-4 NMSA 1978 by submitting a required application to the fire marshal as provided in 10.25.1.9 NMAC. The following information shall be included in each application for a permit or license involving fireworks:

- (1) the applicant's name and mailing address;
- (2) the applicant's telephone number and social security number;
- (3) any company or corporate name or name the applicant is using for business purposes;
- (4) the type of permit or license requested;

(5) the physical address where applicant will sell fireworks and a description of the type of structure in which applicant proposes to sell fireworks;

(6) name and phone number of a contact person at the location where applicant proposes to sell fireworks;

(7) the name and address of applicant's primary supplier of fireworks;

(8) the following statement: "All information provided on and with this form is true and correct to the best of my knowledge and belief. I have read, reviewed and understand the New Mexico laws and rules regarding safe packaging, handling and sale of fireworks. I agree to fully comply with these laws and rules as a condition of obtaining and operating pursuant to a fireworks license or permit. I understand that the approval of this application depends upon compliance with Sections 60-2C-1 through 60-2C-11 NMSA 1978 of the Fireworks Licensing and Safety Act. In the event that my license or permit is lost or destroyed, I understand that I shall immediately notify the Fire Marshal's office and that I am not entitled to a refund of the original application fees, but must submit a new application and pay a \$20.00 replacement fee for the type of license or permit required for that location. I understand that Section 60-2C-4 NMSA 1978 does not permit the fire marshal to process applications for a license or permit during any holiday selling periods";

(9) each application shall contain the date and notarized signature of the applicant; and

(10) an applicant shall submit fees required by Section 60-2C-4 NMSA 1978 with each application following the provisions of 10.25.1.13 NMAC.

B. Review of application. The fire marshal shall review all applications for licenses and permits. Unless otherwise prohibited by law, the fire marshal shall issue licenses and permits within 30 days of receipt of complete applications. The fire marshal shall disapprove and return incomplete applications within 30 days of receipt.

C. Damaged or lost license or permit. The fire marshal will not issue duplicate fireworks licenses or permits. If a license or permit is lost or damaged, the vendor shall immediately notify the fire marshal who shall revoke the license or permit. The fire marshal will not refund any fees for a lost or damaged license or permit. If the vendor wishes to continue to sell fireworks at that location, the vendor shall submit the \$20.00 fee required by section 60-2C-4 NMSA 1978 for a replacement license or permit.

D. Special provisions for retailer permits. Applicants may obtain retailer permits for the sale of fireworks from the fire marshal or from a licensed manufacturer, distributor or wholesaler.

(1) Products list. Any person with a retailer permit shall maintain a complete written list of products for sale, available on inspection by an AHJ, of all fireworks at each retail location.

(2) Obtaining books of 20 retailer permits. A licensed manufacturer, distributor or wholesaler may obtain books of 20 retailer permits from the fire marshal by following the process in Subsection A of 10.25.6.8 NMAC.

(3) Requirements for resale of retailer permits. A licensed manufacturer, distributor or wholesaler may re-sell retailer permits in books of 20, by requiring the same mandatory application form, fees and other requirements in Subsection A of 10.25.6.8 NMAC. A licensed manufacturer, distributor or wholesaler shall account for all fees collected and permits sold.

(a) Semi-annual report. On January 31 and July 31 of each year, a licensed manufacturer, distributor or wholesaler that has purchased any books of 20 retailer permits shall provide a report to the fire marshal detailing the numbers of sold and unsold permits, with all information required by Section 60-2C-3 NMSA 1978. The report shall include a copy of each permit application and permit issued, as well as the name and address of each location permitted for the sale of fireworks.

(b) Unsold permits. If a licensed manufacturer, distributor or wholesaler has not sold all permits in books of 20 purchased, it may request in writing that the fire marshal issue to it credit toward new permits. The written request shall contain a list of all unsold permit numbers and shall include the original unsold permits.

(c) Inspection list. On or before June 15 of each year, each licensed manufacturer, distributor and wholesaler shall provide to the fire marshal a list of locations of sales of fireworks for the retailer permits it has sold to assist the fire marshal in conducting inspections of these locations.

E. Display permit. The fire marshal provides an optional permit application for display fireworks as required by Section 60-2C-9 NMSA 1978, available as provided in 10.25.1 NMAC, for the use of counties and municipalities requiring such display permits.

F. Revocation of license or permit.

(1) Notwithstanding any other provision of these rules, if the fire marshal determines that any licensee's or permittee's actions or facility constitutes:

(a) a hazard to life or property, the fire marshal shall so notify the licensee or permittee in writing, and shall permit him a reasonable period of time to comply with these rules and to eliminate the hazard; if the licensee or permittee does not comply with the notification and its requirements within the time specified, the fire marshal may revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements;

(b) an imminent hazard to life or property, the fire marshal shall order the licensee or permittee to eliminate the hazard immediately; if the licensee or permittee fails to eliminate the hazard immediately, the fire marshal shall revoke the applicable license or permit; for reinstatement, the licensee or permittee must comply with initial application requirements and demonstrate that the hazard has been eliminated.

(2) If any retailer possesses fireworks not permitted by Section 60-2C-7 NMSA 1978, the fire marshal shall revoke the retailer's permit and confiscate the impermissible fireworks using the procedure required by 10.25.6.11 NMAC.

[10.25.6.8 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/29/2019]

10.25.6.9 FIREWORKS SAFETY INSPECTIONS:

A. Who may conduct inspections. Fireworks safety inspectors with authority to conduct inspections are:

- (1) the state fire marshal and his staff;
- (2) any person appointed by the state fire marshal; and
- (3) any person authorized by an AHJ.

B. When inspections may be conducted. A fireworks safety inspector may at reasonable hours enter and inspect a licensee's or permittee's premises, buildings, motor vehicles, and mobile, temporary or permanent structures to determine compliance with the Fireworks Licensing and Safety Act and these rules.

C. Inspection procedures. Fireworks safety inspectors shall conduct all inspections using the required form available from the fire marshal as provided in 25.5.1.9 NMAC. Inspectors shall provide completed forms to the fire marshal within 10 working days of the date of inspection.

D. Frequency of inspections. Fireworks safety inspectors shall inspect all retail locations at least twice during each sales period listed in Section 60-2C-8K NMSA 1978 and shall inspect all specialty retail locations within New Mexico semi-annually.

[10.25.6.9 NMAC - N, 11/15/2007]

10.25.6.10 CITATIONS FOR FIREWORKS SAFETY VIOLATIONS:

A. A commissioned law enforcement officer shall issue a citation to or file charges in magistrate or municipal court against any person who violates any provision of the Fireworks Licensing and Safety Act or this rule.

B. Within five days of issuing a citation or filing charges, a law enforcement officer shall submit a detailed written report to the fire marshal describing the incident and violation.

[10.25.6.10 NMAC - N, 11/15/2007]

10.25.6.11 CONFISCATION OF FIREWORKS:

A. A fireworks safety inspector may confiscate fireworks for either of the following reasons:

(1) the fireworks are not permissible fireworks enumerated in Section 60-2C-7 NMSA 1978; or

(2) the person selling the fireworks does not have an appropriate license or permit.

B. Whenever a fireworks safety inspector confiscates fireworks, he shall issue a written receipt for the fireworks including an inventory of all items confiscated and shall provide an opportunity for the violator to sign the receipt. The fireworks safety inspector shall store all confiscated fireworks as evidence until final disposition of any enforcement case.

[10.25.6.11 NMAC - N, 11/15/2007]

10.25.6.12 REQUIRED SAFETY PROVISIONS:

A. Tents and mobile structures used for the sale of fireworks shall comply with these rules, which adopt and incorporate by reference the IFC.

B. Licensees and permittees shall:

(1) maintain fire extinguishers at all sale locations in accordance with these rules, which adopt and incorporate by reference the IFC;

(2) train their employees in the proper use of fire extinguishers;

(3) exhibit the proper use of fire extinguishers when so requested by the AHJ during an inspection; and

(4) provide at least one method of fire alarm and emergency communication that is approved by the AHJ in each tent or other permanent or temporary structure used for selling fireworks.

C. No loose combustible material shall be permitted within any tent or other permanent or temporary structure used for selling fireworks.

D. All fireworks vendors shall provide to all purchasers of fireworks a safety-tips handout containing at a minimum the following information: "In order to ensure that you and your family have a safe holiday, the state fire board and the fire marshal offer the following safety tips.

- (1) ALWAYS read and follow label directions.
- (2) ALWAYS have an adult present when handling fireworks.
- (3) ALWAYS buy from a reliable fireworks vendor.
- (4) ALWAYS ignite fireworks outdoors.
- (5) ALWAYS have water handy.
- (6) ALWAYS light one fireworks at a time.
- (7) ALWAYS store fireworks in a cool, dry place.
- (8) ALWAYS dispose of fireworks properly.
- (9) NEVER re-ignite malfunctioning fireworks.
- (10) NEVER give fireworks to small children.
- (11) NEVER experiment with or attempt to make your own fireworks.
- (12) NEVER throw fireworks at another person.
- (13) NEVER carry fireworks in your pockets.
- (14) NEVER shoot fireworks in metal or glass containers."

[10.25.6.12 NMAC - N, 11/15/2007]

PART 7-9: [RESERVED]

PART 10: FIRE PROTECTION FUND

10.25.10.1 ISSUING AGENCY:

New Mexico Public Regulation Commission, State Fire Marshal's Division.

[10.25.10.1 NMAC - Rp, 10.25.10.1 NMAC, 7-15-13]

10.25.10.2 SCOPE:

This rule applies to all counties, municipalities, and any governmental entity, under law, that receive fire protection fund money.

[10.25.10.2 NMAC – Rp, 10.25.10.2 NMAC, 7-15-13]

10.25.10.3 STATUTORY AUTHORITY:

Section 59A-53-12 NMSA 1978.

[10.25.10.3 NMAC – Rp, 10.25.10.3 NMAC, 7-15-13]

10.25.10.4 DURATION:

Permanent.

[10.25.10.4 NMAC – Rp, 10.25.10.4 NMAC, 7-15-13]

10.25.10.5 EFFECTIVE DATE:

July 15, 2013, unless a later date is cited at the end of a section.

[10.25.10.5 NMAC – Rp, 10.25.10.5 NMAC, 7-15-13]

10.25.10.6 OBJECTIVE:

The purpose of this rule is to clarify the requirements under which fire departments are funded and to specify the items and services that can be procured for use in the operations, maintenance and betterment of local fire departments with the intention of reducing losses by fire and reducing fire insurance rates, as well as to ensure that all firefighters within New Mexico have the basic skills and knowledge required to perform as team members of a fire department during emergency operations.

[10.25.10.6 NMAC – Rp, 10.25.10.6 NMAC & 10.25.11.6 NMAC, 7-15-13]

10.25.10.7 DEFINITIONS:

As used in this rule:

A. accreditation means to give official authorization or approval; or to recognize or vouch for as conforming to a standard;

B. certified fire department means a fire department that has been certified pursuant to paragraph 10.25.10.11 of this rule;

C. certification means to attest authoritatively; specifically, the issuance of a document that states that one has demonstrated the knowledge and skills necessary to function in a particular field, by a testing procedure;

D. certifying entity means an organization that is accredited, or a government agency statutorily authorized to issue certificates;

E. competent means capable; fit to perform the assigned tasks;

F. fire department means an organization created by any municipality, county, or other governmental entity entitled to fire protection funds and capable of providing fire suppression and related activities;

G. fire chief means the highest-ranking officer in charge of a fire department;

H. fire company means a group of members that is under the direct supervision of an officer or leader; trained and equipped to perform assigned tasks; arrives at the incident scene on the fire apparatus, or assembles at the scene prior to assignment; usually operates with one piece of apparatus; examples of companies are pumper/engine, truck/ladder, service, elevating platform, rescue, wild land, hazardous materials, and emergency medical/ambulance;

I. fire protection fund (FPF) means funds distributed pursuant to the Fire Protection Fund Act, Section 59A-53-1 NMSA 1978;

J. fire marshal means the state fire marshal as established under the State Fire Marshal Act, Section 59A-52-1 NMSA 1978;

K. fire service apparatus means a motorized vehicle designated to respond to fire service functions performed by the fire department;

L. fire service means all fire departments and fire department members that have the skills and equipment needed to perform the functions of a fire department based on NFPA standards or nationally accepted practices; fire service functions performed by fire departments ensure public safety and health; fire services functions may include, but are not limited to, structural firefighting, wild land firefighting, emergency medical services, rescue, and hazardous materials;

M. fire suppression means the activities involved in controlling and extinguishing fires; fire suppression shall include all activities performed at the scene of a fire incident or training exercise that expose fire department members to the dangers of heat, flame, smoke, and other products of combustion, explosion or structural collapse;

N. initial attack apparatus means a fire service apparatus that meets the general requirements of the applicable NFPA standard and has a permanently mounted fire pump of at least 250 gpm capacity, a water tank, and a hose body; the primary function

is to initiate a fire suppression attack on structural, vehicular, or vegetation fires, and to support associated fire department operations;

O. insurance services office, inc (ISO) means an independent statistical, rating, and advisory organization that serves the property and casualty insurance industry. ISO collects information on a community's public fire protection and analyzes the data using its fire suppression rating schedule (FSRS). ISO then assigns a public protection classification from 1 to 10. Class 1 represents the best public protection and Class 10 indicates no recognized protection;

P. local government means either the municipal or county governing body that governs a given fire department;

Q. main station means a structure owned or leased by the local government that provides adequate protection for all apparatus designated to respond from the structure; as a minimum, the structure should contain an area dedicated for administration, classrooms or a training area, and restrooms; the structure shall house at least one apparatus that meets the criteria for an initial attack or pumper apparatus; the structure shall serve as the command and control station for either all or a designated portion of the department's response area; each fire department shall have at least one main station; if the fire department has more than one main station, there shall be a minimum of three fire companies under the direct control of the senior-ranking officer assigned to each main station; the companies shall be housed in the main station or in substations that are under the command of the senior-ranking officer; separate buildings that house only fire service administration and that are not co-located with other stations may also be considered main stations;

R. may means an optional or discretionary requirement;

S. member means a person involved in performing the duties and responsibilities of a fire department under the auspices of the organization; a fire department member may be a full-time or part-time paid employee, a paid or unpaid volunteer; may occupy any position or rank within the fire department, and may or may not engage in emergency operations;

T. NFPA standard means the most recent edition of the national fire protection association standard for a given subject;

U. New Mexico firefighters training academy (NMFTA) means the primary institution within the state fire marshal's office responsible for developing or conducting fire service related training; the NMFTA is accredited by the international fire service accreditation congress (IFSAC); as it pertains to this system, the mission statement for IFSAC is to measure the level of professionalism of the fire service internationally through the accreditation of those entities who administer standardized written or manipulative examinations of the required knowledge and skills to meet nationally and internationally recognized professional qualification standards;

V. operational/functional status means a certified fire department that has sufficient membership to ensure the response of at least four members to structure fires; all four members shall have sufficient structural firefighting protective clothing and be, as a minimum, competent at the firefighter I level as established by the NMFTA bureau;

W. position task book (PTB) means a document that lists the minimum performance requirements (tasks) for a specific position within the fire service in format that allows a trainee to be evaluated against written standards;

X. pumper apparatus means a fire department apparatus that meets the general requirements of the applicable NFPA standard and has a permanently mounted fire pump of at least 750 gpm capacity, a water tank, and a hose body; the primary function is to combat structural and associated fires;

Y. shall means a mandatory requirement;

Z. should means a recommendation or that which is advised;

AA. SFMO means the state fire marshal's office;

BB. substation means a structure owned or leased by the local government that provides adequate protection for all apparatus designated to respond from the structure; the structure should house at least one apparatus that meets the general criteria of an initial attack or pumper apparatus; the structure may or may not include separate interior rooms, such as offices, classrooms, and quarters;

CC. trainee means a member of a fire department that is working towards being recognized as competent in a given fire department position; training may be through an academy, conducted by the department, on the job, or by any other means that ensures the trainee can complete the appropriate tasks;

DD. wildland fire apparatus means a fire service apparatus that meets the general requirements of the applicable NFPA standard and is equipped with a pump having a capacity between 20 gpm and 250 gpm, a water tank, and equipment whose primary purpose is to combat vegetation fires, and to support associated fire department operations.

[10.25.10.7 NMAC – Rp, 10.25.10.7 NMAC & 10.25.11.7 NMAC, 7-15-13]

10.25.10.8 APPLICATION REQUIREMENTS TO PARTICIPATE IN DISTRIBUTION:

A. Every local government that desires to have a fire department(s) participate in the distribution of the fire protection fund shall file a complete application on a form prescribed by the fire marshal. This form shall include information necessary to determine the funding needs of the fire department for the following state fiscal year.

B. The application for fire protection funds shall be received in the office of the fire marshal on or before the 30th day of April each year.

[10.25.10.8 NMAC – Rp, 10.25.10.8 NMAC, 7-15-13]

10.25.10.9 ACCUMULATION OF FUNDS:

A. FPF funds cannot be accumulated when the money is not required to accomplish the purpose of the Fire Protection Fund Act or any associated rules promulgated by the fire marshal.

B. FPF funds may be rolled over to subsequent fiscal years for the purposes of accumulating money to procure items or services for use in the operation, maintenance and betterment of the fire department. A request for authorization to rollover and accumulate FPF funds shall accompany the application to participate in distribution. The request must include a detailed description of the intended use of the accumulated money.

C. If the item to be purchased requires rollover and accumulation of FPF funds for more than one-year, only one request and subsequent authorization to accumulate funds is needed. If the item to be purchased changes, a new request for authorization to rollover and accumulate FPF funds shall be submitted to the fire marshal.

[10.25.10.9 NMAC – Rp, 10.25.10.9 NMAC, 7-15-13]

10.25.10.10 PERIODIC REQUIREMENTS:

A. Each fire department shall complete a monthly fire report utilizing the national fire incident reporting system. This report shall be filed with the state fire marshal's office by the 10th day of each month following the month for which the report is prepared, (e.g., the report for January is due by February 10th). Each fire department shall identify and file with the fire marshal's office, as a minimum, one representative responsible to comply with the reporting requirements.

B. Each fire department receiving FPF funds shall submit any other reports the fire marshal shall, from time to time, require and deem necessary.

C. Each fire department receiving FPF funds shall cooperate during any inspection deemed necessary by the fire marshal.

D. Each local government that receives FPF funds shall have in place an accounting system that clearly delineates FPF transactions and, upon request by the fire marshal, make available all records regarding FPF transactions.

[10.25.10.10 NMAC – Rp, 10.25.10.10 NMAC, 7-15-13]

10.25.10.11 CRITERIA FOR THE ESTABLISHMENT, CERTIFICATION AND FUNDING OF NEW DEPARTMENTS:

A. Establishment of a new department. The following actions are to be taken in the order listed.

(1) Local government shall request from the fire marshal an onsite visit of the proposed response area to determine the feasibility of starting a new department.

(2) If the fire marshal determines that starting a new fire department is feasible, the citizens of the community, or communities, shall organize the new fire department. To achieve an operational/functional status, the department shall have sufficient membership to ensure the response of at least four trained members to fires in structures. To meet this minimum number, the department should have at least 12 adults willing and able to volunteer their services as firefighters.

(3) The local government shall identify water sources within the proposed response area. Ideally, all single point water sources should have a minimum of 30,000 gallons of water usable for suppression. The local government shall obtain written permission from property owners in which they agree to allow the fire department to use private water sources.

(4) The citizens shall petition the local government to establish the fire department by appropriate resolution. The resolution shall contain a legal description of the response area boundaries by section, township, and range.

(5) The local government shall submit to the fire marshal two copies of the resolution along with two clear and concise maps depicting the boundaries of the response area. The maps should be of a scale that clearly depicts the district and identifies the range and township. The preferred scale is one inch equals two miles. The district boundaries should be clearly outlined. Boundaries shall include additional areas to be serviced within an adjacent municipality or county if such additional coverage has been designated by resolution or law. All sources of water for firefighting within the boundaries shall be clearly indicated on the map. An additional copy of the resolution and map should be:

(a) on file with the local government;

(b) on file with the fire department (a copy of the map should be posted).

(6) Upon successful completion of Paragraphs (1) through (5), the fire marshal shall place the new department on probation for one year. The fire department's one-year probation period shall start no earlier than the date of the local government resolution.

(7) The local government shall obtain essential firefighting equipment and personal protective equipment.

(8) As a minimum, the local government shall obtain an operational apparatus meeting the general criteria for an initial attack or pumper apparatus. A waiver may be granted by the fire marshal for an apparatus not meeting this requirement. The request for a waiver shall include a detailed plan that establishes how this requirement is to be eventually met.

(9) The apparatus shall be housed to provide adequate protection. The structure should be owned or leased to the local government. However, while on probation other arrangements approved by the local government are acceptable.

B. Certification of a new department. The fire marshal shall certify a new department when the following requirements have been met:

(1) the department shall have been on probation for a period of no less than one year;

(2) the department shall have an alarm notification system in place; this system shall be designed so that there is no delay in the receipt of alarms and the dispatch of firefighters; a waiver may be granted by the fire marshal for a specific period if there is a detailed plan that establishes how this requirement is to be met;

(3) as a minimum, the following records shall be on file with the fire department:

(a) response records that indicate the date, times (alarm to return to service), location and type of response and the number and names of responders;

(b) training records that indicate the date, times (start to end), location and description of training, and the number and names of attendees;

(c) minutes of department business meetings;

(d) maintenance records of equipment and apparatus;

(e) up-to-date roster of fire department members;

(4) no later than 30 days prior to the end of the one-year probation period, the fire department provide the fire marshal with the following:

(a) a description of the alarm system;

(b) a complete itemized inventory of firefighting equipment and apparatus;

(c) a roster of firefighters names, addresses and telephone numbers;

(d) a written request for a certification inspection;

(5) a fire department that fails to comply with any portion of the certification requirements shall remain on probation until all requirements are met;

(6) upon review and approval of all requirements, probational departments shall be certified by written notice.

C. Funding of new departments.

(1) Certified new departments shall receive their first year funding based on pro rata distribution of the department's ISO class. Departments that have not been evaluated by ISO shall have their pro rata distribution based on an ISO Class 10. The distribution shall be based on the state's fiscal year.

(2) All subsequent annual funding shall be based on the department's ISO classification and number of approved main and substations.

[10.25.10.11 NMAC – Rp, 10.25.10.11 NMAC, 7-15-13]

10.25.10.12 ISO CLASS 10 DEPARTMENTS:

A. All Class 10 departments shall have three years from the date of certification as a fire department or from the effective date of this rule (whichever is longer) to achieve Class 9 or better.

B. Class 10 departments may submit a written request to the fire marshal for extension if Class 9 has not been obtained. The request shall identify why Class 9 has not been achieved and include a comprehensive plan that details how these deficiencies shall be corrected.

C. Departments that fail to achieve a Class 9 or better within three years, and that do not receive an extension, shall be inspected to determine their operational/functional status. Departments determined to be non-operational by the fire marshal shall be subject to closure in accordance with Section 59A-53-14 NMSA 1978.

[10.25.10.12 NMAC – Rp, 10.25.10.12 NMAC, 7-15-13]

10.25.10.13 ESTABLISHMENT OF MAIN STATION AND SUBSTATION FOR FUNDING PURPOSES:

A. All stations shall have a name or numerical designation. (example: Washington Street Station or XYZ Fire Department Station No. 2).

B. Existing main and substations shall meet the following requirements:

(1) be a sufficient distance from other stations to reasonably effect response time or ISO classification for a given population, or be located in an area that historically has had periods where accessibility to the area from other stations has been limited due to man made obstacles, geographical constraints, or acts of nature (example: river, railroad tracks, etc.);

(2) be owned or leased to the local government. FPF money cannot be used to pay for additions to or major reconstruction of a leased building; departments shall have three years from the date of certification as a fire department or from the effective date of this document (whichever is longer) to have established a main station that is either leased to or owned by the local government; departments may submit a written request to the fire marshal for extension of the three years; the request shall identify why the extension is needed and include a comprehensive plan that details how and when this requirement shall be met;

(3) provide apparatus with adequate protection, within reasonable expectation from elements, preventing possible damage to any components of the apparatus;

(4) house at least one operational apparatus that meets the general criteria for an initial attack or pumper apparatus; a waiver may be granted by the fire marshal for an apparatus not meeting this requirement.

C. Requirements/procedure for establishment of new main and substations are as follows:

(1) the local government shall file a written request with the fire marshal for an inspection of the proposed new station site; as a minimum, the station, when completed, shall comply with the requirements for existing substations identified above;

(2) inspection and approval of proposed location from the fire marshal;

(3) if FPF funds shall be used in whole or part to construct the station, the local government shall hold fee simple title to the land on which the substation is to be constructed; however, this provision shall not prohibit construction of a substation on donated land where the donor has reserved the right of reversion of the land under stated conditions;

(4) the local government shall request in writing an onsite inspection and certification by the fire marshal; certifications of new main and substations shall take place before the last day of May for the stations to be included in the calculations for distribution of funds for the next fiscal year.

10.25.10.14 RESPONSIBILITIES:

A. SFMO

(1) NMFTA shall publish or adopt all performance evaluations required under this rule in the form of position task books (PTBs). The NMFTA shall use NFPA standards, other national standards, or nationally accepted training curriculum as the basis for PTBs. The NMFTA shall develop and offer performance-based courses that fulfill the requirements of a PTB.

(2) Trainees who successfully complete the NMFTA training program that was established to fulfill a PTB requirement shall be certified as having passed the written and manipulative examination for that position by the NMFTA. Depending on the training program, certification by NMFTA may be accomplished by one or more of the following:

(a) attending NMFTA campus course and successfully completing the written and manipulative examination(s);

(b) attending an NMFTA filed (adjunct) course and successfully completing the written and manipulative examinations(s);

(c) successful completion of the written and manipulative examination(s) for a given course (i.e., challenge the course).

(3) Certification by NMFTA is not mandatory. The intent of NMFTA certification is to provide assurance to local government that a fire department member has been evaluated and has demonstrated the knowledge and skills necessary to function in the position identified in a given PTB.

B. Local government, in conjunction with the fire department(s), under its jurisdiction.

(1) Local government shall ensure fire department members under its charge have the knowledge and skills necessary to perform in their assigned positions. This includes not only initial competency, but also that the competency is maintained.

(2) All fire departments shall have a training program and policy that ensures that personnel are trained, and that competency is maintained to effectively, efficiently, and safely execute all operations consistent with the department's local responsibilities.

(3) All fire departments shall make available training and education for all members commensurate with the duties and functions they are expected to perform. All fire departments shall provide their members with training and education appropriate for their duties and responsibilities before permitting them to engage in emergency operations.

(4) If there is a PTB that has been published by or recognized by the fire marshal, all fire departments should have all appropriate members evaluated against the document. Only those members that are determined to be qualified (evaluated under a specific PTB) by local government should hold the applicable title (i.e., firefighter).

(5) Regardless of whether or not the trainee has been certified by NMFTA, local government shall ensure that the trainee is competent and that the level of competency achieved under a given PTB is maintained. Use only the PTB by local government does not constitute state certification, and the local government assumes responsibility and liability for competence of their firefighters. A PTB does not meet prerequisite requirements for other state certification or training courses.

(6) A trainee should be determined to be competent, by local government, at all tasks required by local government within two years of entering trainee status (i.e., assigned a PTB).

(7) Upon request by the fire marshal, completed and signed PTBs shall be made available for inspection.

[10.25.10.14 NMAC – Rp, 10.25.11.8 & 10.25.10.14 NMAC, 7-15-13]

10.25.10.15 PURCHASE OF EQUIPMENT AND SUPPLIES:

A. Training and equipment needed to support the fire department's ability to suppress structure fires shall be the first priority when expending FPF funds. Departments that are not adequately trained or equipped to conduct structural firefighting shall only expend FPF monies on equipment and training directly related to structural firefighting. Exceptions to these rules shall be requested in writing to the fire marshal and shall receive authorization by the fire marshal prior to any expenditure.

B. Factors that shall be utilized to determine if a fire department has the ability to conduct structural firefighting are as follows:

(1) shall have and be able to sustain an ISO classification of nine or better, and;

(2) shall meet the criteria of operational/functional status as defined in the rule.

C. Fully operational departments may expend funds relevant to the operations and maintenance of the fire department based on NFPA standards or nationally accepted fire service practices without prior approval of the fire marshal if a reasonable need exists for each purchase.

D. No expenditure of funds from the fire protection fund shall be made by any fire department for any fire service apparatus, land, buildings, building renovations, or dedicated water supply for fire suppression until such fire department has presented to the state fire marshal sufficient evidence that a need exists for such fire service apparatus, land, buildings, building renovations, or dedicated water supply for fire suppression. Approval may be denied if the requesting department is not in good standing with the periodic requirements as identified in this rule.

(1) Any fire department intending to purchase any fire service apparatus, land, buildings, building renovations, or dedicated water supply for fire suppression shall submit a written request for approval to expend fire protection funds to the state fire marshal before any purchase is made.

(2) The written request shall be approved in writing by the state fire marshal before any fire protection funds may be expended or obligated in any way. Purchases shall always be made in the name of the appropriate municipality or county.

E. Equipment and appliances necessary to perform fire service functions and emergency medical services as provided by the fire department are allowed without prior approval of the state fire marshal if a reasonable need exists for each purchase. A guideline is available to all local governments and fire departments upon request, or may be viewed electronically on the public regulation commission's web page at <http://www.nmprc.state.nm.us/sfm.htm>.

F. Fire departments may purchase meals for members with state fire funds, provided the following guidelines are followed:

(1) any major incident (structure fires, wild land fires, etc.) lasting more than four hours of time on scene;

(2) any training which is physically exerting in nature lasting four hours or more (structural fire training, wild land, rescue, etc.); classroom trainings do not qualify for this provision;

(3) to provide rehab supplies on emergency apparatus, such as water, sport drinks, MRE's trail mixes, etc.

G. The use of FPF funds for social events is prohibited.

H. Schools, courses, and conferences attended shall be related to fire service and shall be of content relevant to the needs of the department.

[10.25.10.15 NMAC – Rp, 10.25.10.14 NMAC, 7-15-13]

10.25.10.16 PURCHASE OF AUTOMOTIVE APPARATUS:

All vehicles purchased with FPF funds shall meet the following requirements:

A. new vehicle specifications for bid shall be submitted to the fire marshal and shall be approved by the fire marshal prior to advertising for bids;

B. a detailed description of used vehicles shall be submitted to the fire marshal and shall be approved prior to expending or committing FPF funds;

C. all new apparatus shall meet the general requirements established under the appropriate NFPA standard or nationally accepted practices if applicable, and shall be designed to meet the operational requirements of the department; if assistance is needed in determining what would be appropriate to meet the potential fire flow requirements for the department's response area, a department may submit the following information to the fire marshal:

(1) a description of the water supply source(s) (example: hydrants, cisterns, river, overhead tank, etc.);

(2) a description of how the water supply shall be delivered to the apparatus (example: short lay of five-inch supply line from hydrants, long lay of five-inch supply line from relay pumper, tanker shuttle, etc.); and

(3) a list containing the five highest commercial fire flow requirements within the response area (identify how this determination was made, example: taken from ISO batch report, used NFPA 1142, etc.); if unable to determine fire flow requirements, describe what each building is being used for (occupancy class), what each building is built of (construction classification), and square footage and height;

D. a requesting department shall provide documentation verifying the department's ability to achieve the required fire flow within its identified response district prior to any funds being expended on non-structural apparatus.

[10.25.10.16 NMAC – Rp, 10.25.10.15 NMAC, 7-15-13]

10.25.10.17 COMPLIANCE WITH PROCUREMENT CODE REQUIRED:

All purchases shall be made by the designated purchasing officer in compliance with the provisions and requirements of the New Mexico procurement code.

[10.25.10.17 NMAC – Rp, 10.25.10.16 NMAC, 7-15-13]

10.25.10.18 EQUIPMENT INVENTORY:

All fire departments shall maintain an equipment inventory list. All single items purchased with FPF monies costing two hundred and fifty dollars (\$250) or more shall be listed on the fire department's inventory list. A physical inventory of such items shall

be conducted no less than annually. A copy of the inventory shall be maintained at the main station(s).

[10.25.10.18 NMAC – Rp, 10.25.10.17 NMAC, 7-15-13]

PART 11: FIREFIGHTING QUALIFICATION SYSTEM [REPEALED]

[This part was repealed on July 15, 2013.]

PART 12 INSPECTION OF FIRE AND SMOKE DAMPERS

10.25.12.1 ISSUING AGENCY:

New Mexico Department of Homeland Security & Emergency Management

[10.25.12.1 NMAC - N, 2/8/2022]

10.25.12.2 SCOPE:

This rule requires the inspection and testing of mechanical fire and smoke dampers and smoke control systems in places of assembly, educational occupancies, institutional occupancies, residential occupancies consisting of four or more family units, mercantile occupancies, industrial occupancies, storage occupancies, and miscellaneous structures consisting of towers, underground structures and windowless buildings and all buildings owned or occupied by the state or any political subdivision thereof or by municipal governments. It also sets the minimum qualifications for the inspection and testing of fire and smoke dampers and some control systems.

[10.25.12.2 NMAC - N, 2/8/2022]

10.25.12.3 STATUTORY AUTHORITY:

Section 59A-52-15.1 NMSA 1978.

[10.25.12.3 NMAC - N, 2/8/2022]

10.25.12.4 DURATION:

Permanent.

[10.25.12.4 NMAC - N, 2/8/2022]

10.25.12.5 EFFECTIVE DATE:

Unless a later date is otherwise provided by law or in the rule, the effective date of this rule shall be the date of publication in the New Mexico register.

[10.25.12.5 NMAC - N, 2/8/2022]

10.25.12.6 OBJECTIVE:

The purpose of this rule is to protect the safety and welfare of New Mexicans by providing inspection and testing in accordance with national fire protection association standards.

[10.25.12.6 NMAC - N, 2/8/2022]

10.25.12.7 DEFINITIONS:

[RESERVED]

[10.25.12.7 NMAC - N, 2/8/2022]

10.25.12.8 CERTIFICATE OF FITNESS FOR INSPECTORS AND TESTERS:

A. The state fire marshal or its designee shall issue a certificate of fitness for the inspection and testing of fire and smoke dampers to persons fulfilling all requirements pursuant to 10.25.2.8 and 10.25.2.9 NMAC.

B. For inspectors and testers other than the state or a political subdivision of the state with a fire and life safety enforcement program, the certificate of fitness application shall include verification of the applicant's fire life safety certification from an American national standards institute's accredited program in addition to all other requirements listed herein.

C. for certification to inspect and test fire and smoke dampers, an application shall include:

(1) for mechanically actuated fire and smoke dampers, applicants shall provide documentation of a valid NFPA-Certified Fire Protection Specialist certification or of an approved fire and life safety certification from a program accredited by the American National Standards Institute (ANSI).

(2) for electrically actuated fire and smoke dampers monitored by a fire alarm system, applicants shall comply with requirements of Paragraph (5) of Subsection A of 10.25.2.9 NMAC.

(3) for fire and smoke dampers with both mechanical and electrical components, the applicant inspecting the mechanical components shall provide documentation pursuant to (1) of this section and the applicant inspecting the electrical components shall provide documentation pursuant to (2) of this section.

[10.25.12.8 NMAC - N, 2/8/2022]

10.25.12.9 REQUIRED INSPECTION AND TESTING OF FIRE AND SMOKE DAMPERS:

A. Inspections. The inspection and testing of fire and smoke dampers and smoke control systems shall be required in accordance with national fire protection association standards in places of assembly, educational occupancies, institutional occupancies, residential occupancies consisting of four or more family units, mercantile occupancies, industrial occupancies, storage occupancies, and miscellaneous structures consisting of towers, underground structures and windowless buildings and all buildings owned or occupied by the state or any political subdivision thereof or by municipal governments.

B. Findings. The person conducting the inspection or test shall submit findings of noncompliance to the owners of the public occupancy and to the state fire marshal.

C. Inspector Qualifications. The inspection and testing of fire and smoke dampers and smoke control systems shall be conducted by qualified individuals pursuant to 10.25.12.8 NMAC.

[10.25.12.9 NMAC - N, 2/8/2022]

CHAPTER 26-28: [RESERVED]

CHAPTER 29: LAW ENFORCEMENT ACADEMY

PART 1: GENERAL PROVISIONS

10.29.1.1 ISSUING AGENCY:

- Department of Public Safety, New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico 87507

[10.29.1.1 NMAC - Rp, 10.29.1.1 NMAC, 11/15/16; A, 06/27/2017]

10.29.1.2 SCOPE:

All police officers, telecommunicators, and law enforcement agencies in the state of New Mexico.

[10.29.1.2 NMAC - Rp, 10.29.1.2 NMAC, 11/15/16]

10.29.1.3 STATUTORY AUTHORITY:

Section 29-7-3 NMSA 1978, (Repl. Pamp. 1994), Section 29-7-4 NMSA 1978, (Repl. Pamp. 1994), Section 29-7-5 NMSA 1978, (Repl. Pamp. 1994), Section 10-15-1 NMSA 1978, (Repl. Pamp. 1995), Section 29-7-6 NMSA 1978, (Repl. Pamp. 1994), Section

29-7-13 NMSA 1978, (Repl. Pamp. 1994), Section 40-5A-1 to 40-5A-13 NMSA 1978, (Cum. Supp. 1996).

[10.29.1.3 NMAC - Rp, 10.29.1.3 NMAC, 11/15/16]

10.29.1.4 DURATION:

Permanent.

[10.29.1.4 NMAC - Rp, 10.29.1.4 NMAC, 11/15/16]

10.29.1.5 EFFECTIVE DATE:

November 15, 2016, unless a later date is cited at the end of a section.

[10.29.1.5 NMAC - Rp, 10.29.1.5 NMAC, 11/15/16]

10.29.1.6 OBJECTIVE:

The objective of Part 1 is to establish procedures and policies for conducting meetings of the law enforcement academy board, establish criteria for admission to the law enforcement academy consistent with statutory requirements for certification, identify grounds for the suspension, revocation or denial of certification consistent with statutory requirements, establish administrative procedures for the denial, suspension or revocation of a police officer's or telecommunicator's certification, require Parental Responsibility Act compliance and identify the appropriate procedures in the event of non-compliance.

[10.29.1.6 NMAC - Rp, 10.29.1.6 NMAC, 11/15/16]

10.29.1.7 DEFINITIONS:

A. "HSD" means the New Mexico human services department.

B. "Statement of compliance" means a certified statement from HSD stating that an individual is in compliance with a judgment and order for support.

C. "Statement of non-compliance" means a certified statement from HSD stating that an individual is not in compliance with a judgment and an order for support.

D. "Moral turpitude" means any criminal act done contrary to justice, honesty, or with disregard to one's responsibilities to society in general.

[10.29.1.7 NMAC - Rp, 10.29.1.7 NMAC, 11/15/16]

10.29.1.8 REGULATIONS, POLICIES AND PROCEDURES FOR CONDUCTING THE BUSINESS OF THE LAW ENFORCEMENT ACADEMY BOARD:

A. Duties of board officers:

(1) The attorney general shall serve as the chairman of the board and shall preside at all meetings and shall be charged with the responsibility of preserving order and decorum and enforcing these regulations. The chairman shall execute all of those duties commonly performed by a presiding officer.

(2) The vice-chairman shall act in the capacity of chairman in the absence or unavailability of the chairman.

B. Election of vice-chairman: The board shall elect a vice-chairman at the first board meeting of each calendar year.

C. Academy director: The director of the law enforcement academy shall be appointed by the board pursuant to Section 29-7-4 NMSA 1978, (Repl. Pamp. 1994).

(1) The director shall be the chief executive officer of the academy, and as such, employ necessary personnel; act as executive secretary to the board; issue appropriate certificates to graduates of the academy; and perform all other acts necessary and appropriate to carry out his duties. He shall supervise the operation of the academy as its chief executive officer and shall administer the agency subject to the direction of the board through its official proceedings. He shall perform all duties delegated to the director by law and those customarily exercised by the chief executive officer of a state agency.

(2) The board may direct the director to implement, carry out, or finalize a particular policy or agreement. When the board has so directed; the director is authorized to sign for the board those contracts and other documents customarily signed by the chairman and secretary of the board.

(3) As secretary of the board, the director is responsible for the review and certification of the minutes of the board.

D. Meetings: Regular meetings of the board will be held at least four times a year at a time and place to be designated by the chairman.

(1) A majority of the board members present shall constitute a quorum for the transaction of business at any regular or emergency meeting. The transaction of the board's business shall be by the vote of the majority of its members present at the meeting. The chairman may vote on any item of business before the board.

(2) If a number of board members less than a quorum shall assemble for any meeting, they may postpone or adjourn that meeting until such time as a quorum can be obtained and notice again given in accordance with the rules herein set forth.

(3) If prior to the commencement of a regular or emergency meeting, the director has received notices that the majority of the members of the board will not be able to attend the meeting, the director may cancel the meeting and is instructed to attempt to give notice of cancellation of the meeting to all board members and the news media.

(4) All meetings of the board shall be open to the public except that the board may exclude the public for the portion of the meeting in which the subject matter being discussed in an adjudicatory matter, a personnel matter or the issuance, suspension, renewal or revocation of a certification, or as otherwise authorized by the New Mexico Open Meetings Act.

(5) The board may request that persons having business before the board, in addition to providing written information for the board to review, appear personally before the board to discuss their item of business.

(6) All meetings of the board that are open to the public shall allow for a portion of the meeting time to be designated for public comment.

(7) The order of business of the board at regular meetings shall be as follows:

- (a)** roll call;
- (b)** approval of agenda;
- (c)** approval of minutes;
- (d)** old business;
- (e)** new business;
- (f)** designation of place of next meeting; and
- (g)** adjournment

(8) The director shall prepare an agenda for each meeting and shall be guided in his preparation of his agenda by consultation with the chairman of the board and the director's staff.

(9) The agenda for an emergency meeting shall specify the items of business to be considered by the board at that meeting. No business other than that specifically stated on the agenda for that emergency meeting shall be considered. The subject

matter to be considered at any emergency meeting shall be included in that notice given by the director to the members of the board as required in these regulations and the New Mexico Open Meetings Act.

(10) All meetings shall be called to order and business of the meeting conducted by the chairman of the board, or in his absence, the vice-chairman. Should both the officers of the board be absent from the meeting, if a quorum is present, the board shall designate one of its members to assume the responsibilities of the chairman for that meeting.

(11) The board shall conduct its meetings in a manner consistent with Roberts Rules of Order or other accepted parliamentary procedure as instituted by the chair or otherwise determined by the board. In the event a question as to the proper method of procedure arises in any meeting, the chairman is vested with authority to resolve such question and his decision shall be final.

(12) The director shall send to all board members at least one week prior to the regular meeting date, a copy of the agenda for the regularly scheduled meeting, any documents or other items of information that may assist the board members in preparing for the upcoming meeting, and a copy of all petitions received by the director.

(13) The minutes of each board meeting shall comply with requirements of the Open Meetings Act. The director or his staff are directed to compile the minutes of the meeting from stenographic notes of the meeting, a tape recording of the meeting, or both. After the board approves the minutes of the meeting, the stenographic notes or tape recording of the meeting may be destroyed. The approved minutes of a meeting shall constitute the official record of business transacted at the meeting. The approved minutes of the board meeting shall be preserved in a book of minutes and shall be available for public inspection during normal working hours.

E. Petitions:

(1) All persons, other than members of the board or its director, desiring to place before the board any item for discussion or item of business for the board's consideration may do so by submitting to the director as early as possible, and no later than 10 days in advance of the regular meeting, a written petition containing:

(a) a request that the item of business be placed on the agenda of the next regularly scheduled meeting;

(b) a description of the general subject matter of the item of business;

(c) the action that the petitioner desires the board to take on the item of business; and

(d) the reason why the petitioner feels the action proposed by the petitioner is appropriate.

(2) The director may, in his own discretion or at the direction of the chairman, place any agenda item requested by a timely petition on the agenda of the next regular meeting and notify the petitioner in writing of the time, date, and place of the meeting. The decision as to whether or not to place a petition item on the agenda, and the amount of time allowed to present on the item, may be decided by the director or the chairman, and that decision shall be final.

(3) All petitions received by the director shall remain on file in the office of the board and subject to public inspection.

F. Regulations:

(1) The board may alter and amend these regulations from time to time as it deems necessary. Alteration or amendment of these regulations may be accomplished by a majority vote of the board after a public hearing for which notice of not less than 30 days has been posted to the board's website and at least one newspaper of general circulation, and provided to any interested parties who have submitted a written request for such notice. The notice shall also state where interested persons may secure copies of any proposed regulations. Changes to the regulations shall comply with requirements under the State Rules Act, Chapter 14, Article 4 NMSA 1978.

(2) At the hearing, the board shall allow all interested persons reasonable opportunity to submit data, views or arguments orally or in writing, and to examine witnesses testifying at the hearing. Any person heard or represented at the hearing shall be given written notice of the actions of the board. The board may designate a hearing officer to take evidence in the hearing. A record shall be made of all proceedings at the hearing.

(3) The board may direct the director to develop proposals for regulations and other guidelines as it feels are necessary for the fair and orderly conduct of the board's responsibilities.

(4) The board shall consider proposed revisions as well as any public comment received prior to adopting any changes. The board shall provide rationale and justification for its decision either through statements made on the record during a public meeting or in a written order.

G. Miscellaneous:

(1) In computing any period of time prescribed or allowed by these regulations, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or Sunday or legal holiday, in which event the period runs until

the end of the next day which is not a Saturday, Sunday or legal holiday. For purposes of this rule, a legal holiday shall include any day during which state offices are closed for any consecutive period of three hours or more between 8:00 a.m. and 5:00 p.m.

(2) The law enforcement academy will maintain a database of all certified law enforcement officers and public safety telecommunicators that will reflect a valid mailing address for each individual. It will be incumbent on each certified individual to provide the law enforcement academy a current and valid mailing address for the purpose of board communications, notices of hearing, notices of action, and other official means of notification listed within the scope of this rule. Each certified law enforcement officer and public safety telecommunicator will provide notice of change of address in writing by use of the law enforcement academy LEA-82A form within 30 days of any change of address. If an address change is due to termination, resignation, or retirement of a certified individual from a New Mexico public safety agency, the agency may provide a valid mailing address for the individual on the law enforcement academy LEA-82 form. Reporting and notification to the law enforcement academy of valid mailing address information is a requirement of certification maintenance and is the sole responsibility of the certified individual.

[10.29.1.8 NMAC - Rp, 10.29.1.8 NMAC, 11/15/16; A, 06/27/2017]

10.29.1.9 OPEN MEETINGS ACT REQUIREMENTS:

A. Authority: Any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and Subsection D of Section 10-15-1 of the Open Meeting Act requires the board to determine annually what constitutes reasonable notice of its public meetings, which shall be done in the form of a resolution adopted annually pursuant to the Open Meetings Act and these rules. A member of the board may participate in a meeting of the board by conference telephone or other means of communication when it is otherwise difficult or impossible for the member to attend the meeting.

B. Notice:

(1) Regular meetings of the board shall ordinarily be held quarterly at a time and place designated in the notice or as otherwise determined by the board. The agenda will be available from the law enforcement academy director whose office is located at 4491 Cerrillos Road, Santa Fe, New Mexico. Notice of regular meetings will be given 10 days in advance of the meeting date.

(2) Special meetings of the board may be called by the chairman or a majority of the members upon 72 hours' notice.

(3) Emergency meetings of the board are meetings called under circumstances which demand immediate action by the board. Although the board would

avoid emergency meetings whenever possible, such circumstances may occasionally arise. Emergency meetings of the board may be called by the chairman or a majority of the members upon 24 hours' notice, unless shorter notice is necessary as authorized by the Open Meetings Act.

C. Closed meetings: The board may close a meeting to the public if the subject matter of such discussion or action is subject to a listed exemption of the Open Meetings Act. If any board meeting is closed, such closure shall comply with the specific requirements described in the Open Meetings Act.

[10.29.1.9 NMAC - Rp, 10.29.1.9 NMAC, 11/15/16]

10.29.1.10 QUALIFICATIONS FOR ADMISSION TO THE ACADEMY:

A. Qualifications for police officer admission: In accordance with those qualifications enumerated under Section 29-7-6 NMSA 1978, (Repl. Pamp. 1994), the director shall reject applicants for admission to the academy if, after investigation, it is determined that the applicant does not meet the following criteria:

- (1) citizenship and age requirements as set forth in Section 29-7-6 NMSA 1978, (Repl. Pamp. 1994);
- (2) holds a United States high school diploma or its equivalent;
- (3) holds a valid driver's license;
- (4) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge, or within the three year period immediately preceding his/her application, to any violation of any federal law or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;
- (5) is found, after examination by a licensed physician, to be free from any physical condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act;
- (6) is found, after examination by a certified psychologist, to be free of any emotional or mental condition which might adversely affect their performance as police officers or prohibit them from successfully completing prescribed basic law enforcement training required by the Law Enforcement Training Act;
- (7) is found to be of good moral character and has not committed any acts constituting dishonesty or fraud; or

(8) is found not to have committed any other acts which would be grounds for denial, revocation, or suspension of certification under the provision of 10.29.1.11 NMAC.

B. Qualifications for telecommunicator admission: In accordance with those qualifications enumerated under Section 29-7C-3 NMSA 1978, the director shall reject applicants for admission to the academy if, after investigation, it is determined that the applicant does not meet the following criteria:

(1) United States citizenship or legal resident and age requirements as set forth in Section 29-7C-3 NMSA 1978;

(2) holds a United States high school diploma or its equivalent from an accredited institution;

(3) has not been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge, or within the three year period immediately preceding his/her application, to any violation of any federal law or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and has not been released or discharged under dishonorable conditions from any of the armed forces of the United States;

(4) is found to be of good moral character and has not committed any acts constituting dishonesty or fraud;

(5) is found not to have committed any other acts which would be grounds for denial, revocation, or suspension of certification under the provision of 10.29.1.11 NMAC; or

(6) has been examined by a certified technician and have no uncorrected hearing loss in either ear of greater than 25db at 500, 1000, 2000 Hz, and no more than a 20db loss in the better ear by audiometry, using American National Standards Institute (ANSI 1969) standards.

C. Status: Applicants shall be appraised by the director of the status of their application and any deficiencies therein, in writing, as soon as possible. If an applicant is denied admission, the written order shall include an explanation of the specific facts and circumstances upon which the decision is based and any right to appeal the decision. Decisions of the director may be appealed to the board through the procedures provided for in 10.29.1.13 NMAC through 10.29.1.15 NMAC.

D. Withdrawal/dismissal enrollment: During the course of an academy program if an enrolled student is unable to complete the full course of academy instruction, whether due to personal absence, withdrawal, or dismissal by the academy, the student will be required to re-enroll and complete the academy course in its entirety regardless of drop date.

[10.29.1.10 NMAC - Rp, 10.29.1.10 NMAC, 11/15/16; A, 06/27/2017]

10.29.1.11 GROUND FOR DENIAL, REVOCATION OR SUSPENSION OF POLICE OFFICER OR TELECOMMUNICATOR CERTIFICATION; REPORTING REQUIREMENTS:

A. Authority: In accordance with the provisions of the Law Enforcement Training Act, Section 29-7-13 NMSA 1978, (Repl. Pamph. 1994), the director may seek to deny, suspend or revoke a police officer's or telecommunicator's certification, if after investigation and consultation with the employing agency, it is determined that the individual has failed to comply with the provisions of the Law Enforcement Training Act or board regulations concerning qualifications for certification in the state of New Mexico.

B. Arrest or indictment on felony charges; summary suspension:

(1) The director upon being notified that a certified police officer or telecommunicator has been arrested or indicted on any felony charge(s) shall immediately notify the individual of the intent to suspend the certification. The procedures set forth in 10.29.1.12 NMAC shall not apply to the immediate suspension. Notice of the immediate suspension shall be served on the officer or telecommunicator. Upon service of the notice, the individual shall have 15 days to request to be heard at the next meeting of the board. At the meeting, the individual may present evidence, witnesses and argument as to why their certification should not be suspended. The board may deliberate and shall issue a decision on the suspension at the meeting.

(2) The director upon being notified that a police officer or telecommunicator has been convicted on any felony charge(s) shall initiate the disciplinary process pursuant to 10.29.1.12 NMAC.

C. Grounds for discipline of a police officer: The following conduct may constitute grounds for denial, suspension or revocation of certification of a police officer under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances, or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects an officers' ability to exercise the duties of a police officer;

(5) committing acts of violence or brutality which indicate that the officer has abused the authority granted to him or her as a commissioned police officer in the state of New Mexico; or

(6) having committed acts which would be grounds for denial of application for admission under 10.29.1.10 NMAC.

D. Grounds for discipline of a telecommunicator: The following conduct may constitute grounds for denial, suspension or revocation of certification of a certified telecommunicator under this rule:

(1) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any felony charge;

(2) subsequent conviction, entry of plea of guilty or entry of plea of nolo contendere to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude;

(3) making false statements or giving any false information to the academy in connection with an application for admission/certification;

(4) committing acts which indicate a lack of good moral character, or which constitute dishonesty or fraud, and which adversely affects an telecommunicator's ability to exercise the duties of a certified telecommunicator;

(5) committing acts which indicate that the telecommunicator has abused the authority granted to a certified telecommunicator in the state of New Mexico; or

(6) having committed acts which would be grounds for denial of application for admission under 10.29.1.10 NMAC.

E. Agency reports of alleged misconduct: Any law enforcement agency employing a police officer or telecommunicator who has committed, or reasonably appears to have committed, any act in violation of these rules shall report such conduct to the director within 90 days after the agency initiates an internal affairs review or is otherwise made aware of the alleged misconduct. A law enforcement agency shall immediately inform the director if an officer or telecommunicator employed by the agency is arrested or indicted on felony charges. Resignation or termination from employment does not relieve the agency from its duty to file a misconduct report with the academy director. Agencies should undertake a timely and thorough investigation to determine whether an allegation of misconduct is sustained. For the purposes of this

subpart, "misconduct" is defined as any act listed or otherwise contemplated under 10.29.1.11 NMAC. Violations of agency policy that do not relate to grounds for discipline under board rules are not required to be reported to the director. The director will establish a reporting form to be used in reporting alleged misconduct. An agency's delay or failure to report alleged misconduct does not prevent the director from filing a separate report or divest the board of jurisdiction to take disciplinary action authorized under the Law Enforcement Training Act.

[10.29.1.11 NMAC - Rp, 10.29.1.11 NMAC, 11/15/16]

10.29.1.12 PROCEDURES FOR DENIAL, SUSPENSION OR REVOCATION OF POLICE OFFICER OR TELECOMMUNICATOR CERTIFICATION:

A. Notice of investigation: In those instances where the director opens an investigation after receiving a report of alleged misconduct, a notice of investigation shall be served on the individual respondent. Such notice shall contain:

- (1) a concise statement of the purpose and scope of the investigation;
- (2) a description of the acts for which the investigation is sought;
- (3) a statement that the respondent has seven calendar days from receipt of the notice of the option to provide a written response or to request an opportunity for an oral response before the director; and
- (4) notice describing the disciplinary procedures of the board.

B. Response to notice of investigation; written or oral: A respondent may provide a written response to the director regarding the circumstances surrounding the investigation or may request to meet with the director and provide an oral response.

(1) If a request for an oral response to the notice of investigation is made, the director shall meet with the respondent within 14 calendar days of receipt of such request unless the parties agree in writing to an extension.

(2) A respondent served with a notice of investigation pursuant to this rule may choose a representative to respond orally or in writing on his or her behalf.

C. Recommended decision: After considering the allegations raised in the report of alleged misconduct, response received, and any additional information gathered during the investigation, the director shall make a recommended decision within 30 days from the date a written or oral response is received. The director shall provide one of the following recommendations to the board:

(1) Formal discipline - The director shall provide the type and length of recommended discipline as well as a statement or summary of facts which the director

believes justifies the recommended action. Upon deciding to recommend formal discipline, the director shall immediately forward the matter to the board's administrative prosecutor with a request to issue a notice of contemplated action. The opportunity to have a formal evidentiary hearing must take place prior to any discipline being imposed by the board.

(2) Pre- notice of contemplated action settlement agreement - The director may, if believed to be in the best interest of the board, choose to propose a pre-notice of contemplated action settlement agreement that includes stipulated discipline. Any proposed settlement agreement must be signed by the respondent before being presented to the board for review and action to accept or reject the proposal. Failure to comply with the terms of a settlement agreement shall result in the immediate issuance of a notice of contemplated action based on the originally reported alleged misconduct.

(3) Dismiss complaint - The director may recommend to the board that the complaint be dismissed based on the totality of the circumstances and evidence available. If the board rejects the recommendation a notice of contemplated action shall be issued.

D. Notice of contemplated action: A notice of contemplated action (NCA) may be issued upon request of the director or by vote of the board. The NCA shall be drafted by the board's administrative prosecutor and signed by the director, and must be postmarked, certified mail return receipt requested, no later than 90 days after the request for issuance of the NCA is made by the director or the board, unless the director agrees in writing to an extension. The NCA shall include the following:

(1) a summary of the director's recommended decision and notice that the recommended formal discipline is only a recommendation and is subject to the approval or modification by the board;

(2) notice that the board has sufficient evidence that, if not rebutted or explained, will justify the board taking the contemplated action, up to and including the revocation of certification;

(3) a statement of alleged violations of the Law Enforcement Training Act or board rules;

(4) a general explanation and summary of the evidence that justify the contemplated action; and

(5) that unless the respondent, within 30 days after the service of the notice, provides a written request for a formal hearing, the board may take the contemplated action.

10.29.1.13 PROCEEDINGS FOR DENIAL, REVOCATION, OR SUSPENSION BEFORE THE LAW ENFORCEMENT ACADEMY BOARD; PROCEDURES:

A. All contemplated actions to deny, suspend or revoke a police officer's or telecommunicator's certification shall be brought before the board before taking effect.

B. An evidentiary hearing will be held if the board receives, within 30 calendar days from the receipt of the notice of contemplated action, a request for hearing. Such request shall be made in writing and shall be addressed to the board. The request may be either personally served upon the director or sent by registered mail to the New Mexico law enforcement academy. If a request for hearing is not received within the time and in the manner required, the board may take the action contemplated in the notice and such action shall be considered final.

C. Within 20 days of receiving a request for hearing the director, or designated hearing clerk, shall issue a scheduling order that includes:

- (1)** date, time, and location of the hearing;
- (2)** identifying the hearing officer or board member(s) to preside over the hearing;
- (3)** notice that the respondent must appear in person but may be represented by counsel; and
- (4)** filing information and deadlines for completion of discovery and hearing proceedings.

D. A hearing shall be held within 90 days of the date the request for hearing is received unless additional time is agreed upon by the respondent and prosecutor. A written waiver shall be required by the respondent if the time limitations are exceeded.

E. The respondent may, within 10 calendar days after receiving the scheduling order, file with the board as concise statement of the issues on which he or she wishes to be heard regarding the alleged misconduct and a concise statement setting forth the factual grounds and authorities relied upon.

F. The parties shall file with the board a list of witnesses and brief description of their testimony and all anticipated exhibits to be introduced at the hearing at least 10 calendar days in advance of the hearing date.

G. The board may appoint a hearing officer to receive testimony and make recommendations to the board.

H. Neither an appointed hearing officer nor any member of the board shall participate in any adjudicatory proceeding if, for any reason, the hearing officer or board member cannot afford a fair and impartial hearing to the parties.

I. Either party may peremptorily excuse one hearing officer by filing a notice of peremptory excusal within 10 calendar days of receipt of the scheduling order.

J. Either party may petition to excuse a hearing officer or board member for good cause from hearing or deciding the case by filing a motion of excusal at least 20 calendar days prior to the date of the hearing or board meeting and states with particularity the specific reasons for excusal. The board or designated hearing officer shall rule on motions of excusal and no interlocutory appeal of the decision shall be permitted.

K. Parties are not to discuss the merits of any pending adjudicatory proceeding with members of the board or a designated hearing officer unless both parties, or their respective representatives, are present or included in the communication.

L. The parties may engage in discovery limited to interrogatories, requests for production, and requests for admission.

M. In connection with any hearing under these rules, the board or hearing officer shall have power to have counsel to develop the case; to subpoena, for purposes of discover and of the hearing, witnesses and relevant books, papers, documents, and other evidence; to administer oaths or affirmations to witnesses called to testify; to take testimony; to examine witnesses; and to direct a continuance of any case. Hearing officers may also hold conferences before or during the hearing for the settlement or simplification of the issues with the consent of the respondent.

N. Proposed settlements may be proposed by the administrative prosecutor, and shall be accompanied by a waiver by the respondent of time limits imposed by these rules. Any proposed settlement is subject to final approval by the board.

O. Extensions of time requirements set forth in these rules shall be granted in the discretion of the hearing officer or the board. The hearing officer shall ensure that necessary waivers are provided as needed when granting extensions.

P. The hearing officer may allow the record to remain open for no more than 30 days to permit the parties to submit proposed findings. The decision to leave the record open shall be in the absolute discretion of the hearing officer as well as the decision to incorporate or exclude any submitted finding in the final report to the board.

[10.29.1.13 NMAC - Rp, 10.29.1.13 NMAC, 11/15/16]

10.29.1.14 HEARINGS BEFORE THE LAW ENFORCEMENT ACADEMY BOARD; PROCEDURES:

A. Hearings conducting pursuant to this rule shall be open to the public unless the parties agree that it shall be closed. Hearings shall be conducted at the law enforcement academy or other location selected by the board or designated hearing officer.

B. A respondent may appear through a New Mexico licensed attorney or assisted by a representative, provided that such individual has made a written entry of appearance at least seven calendar days prior to the hearing date.

C. The board or designated hearing officer shall conduct the hearing in an orderly manner without strict adherence to the rules of evidence required in judicial proceedings.

D. Oral evidence shall be taken only under oath or affirmation.

E. The board or designated hearing officer may admit all evidence, including affidavits, if it is the sort of evidence upon which responsible persons are accustomed to rely on in the conduct of serious affairs. Immaterial, irrelevant, or unduly cumulative evidence may be excluded.

F. 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.

G. The board or designated hearing officer may utilize their experience, technical competence, and specialized knowledge in the evaluation of evidence presented to them. Notice may be taken of judicially cognizable facts in addition to technical or scientific facts within the board's specialized knowledge.

H. The hearing shall be recorded either by stenographic means or by a sound recording device. All evidence received during the course of the hearing shall be made part of the formal record. The record of proceedings shall be maintained by the law enforcement academy staff in Santa Fe and copies shall be made available to the parties upon request.

[10.29.1.14 NMAC - Rp, 10.29.1.14 NMAC, 11/15/16]

10.29.1.15 DECISIONS OF THE BOARD; PROCEDURES:

A. In the event the hearing is conducted by a quorum of the board a decision shall be made during a public meeting and a written order shall be issued within 60 calendar days after the hearing.

B. In the event a hearing officer has been appointed, the hearing officer shall prepare a hearing officer report with proposed findings of fact and a recommended decision of whether a violation occurred within 60 calendar days of the completion of the hearing or closing of the record. A copy of the report shall be served on the parties by

certified mail, return receipt requested. Upon receipt, the parties may within 10 calendar days, file a statement of objections to the hearing officer report with the board. The board shall proceed to consider the case and as soon as practicable review the hearing officer report and any objections filed by parties, as well as the director's recommendation, and issue a determination. No additional oral arguments by the parties shall be allowed. If the board rejects the hearing officer's recommended findings or decision, particularly when 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. The board shall consider the matter at its next board meeting after filing of the hearing officer report. The board's written decision and order shall be signed within 30 days after the board's vote on the matter.

C. After a decision of the board is rendered, the board shall serve upon the parties a written copy of the decision and final order by certified mail, return receipt requested. Final orders of the board shall at a minimum contain findings of fact, conclusions of law, and an order based on the determination.

[10.29.1.15 NMAC - Rp, 10.29.1.15 NMAC, 11/15/16]

10.29.1.16 METHOD OF SERVICE NOTICE; PROCEDURE:

A. Any notice required by rules may be served upon a respondent at his or her last known address, either by hand delivery by an officer authorized by law to serve process or by certified mail with return receipt requested.

B. Service of notice is complete when the notice is:

- (1)** hand delivered; or
- (2)** deposited with the United States postal service by certified mail, return receipt requested.

[10.29.1.16 NMAC - Rp, 10.29.1.16 NMAC, 11/15/16]

10.29.1.17 COMPUTATION OF TIME:

In computing any period of time prescribed or allowed by these rules, the day of the act from which this period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation.

[10.29.1.17 NMAC - Rp, 10.29.1.17 NMAC, 11/15/16]

10.29.1.18 PARENTAL RESPONSIBILITY ACT COMPLIANCE:

A. This rule is adopted pursuant to the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978. All terms defined in the Parental Responsibility Act shall have the same meanings in this subpart.

B. Disciplinary action: If an applicant, certified police officer or certified telecommunicator is not in compliance with a judgment and order for child support the law enforcement academy board:

(1) shall deny an application for certification; and

(2) has grounds for suspension or revocation of a police officer's or telecommunicator's certification.

C. Certified list: Upon receipt of human services division's certified list of obligors not in compliance with a judgment and order for support, the law enforcement academy board shall match the certified list against the current list of certified police officers, and certified telecommunicators and applicants for certification. Upon the later receipt of an application for certification, the board shall match the applicant against the current certified list. By the end of the month in which the certified list is received, the board shall report to human services division the names of board applicants, certified police officers and certified telecommunicators who are on the certified list and the action the board has taken in connections with such individuals.

D. Initial action: Upon determination that an applicant, certified police officer or telecommunicator appears on the certified list, the director shall:

(1) issue a notice of contemplated action pursuant to these rules to take the appropriate action to deny or revoke the certification; or

(2) for current certified police officers or certified telecommunicators only, informally notify the individual that his or her name is on the certified list, and that the individual must provide the director with a subsequent statement of compliance from HSD within 30 days of receipt of the notice from the director; if the certified police officer or certified telecommunicator fails to provide this statement, the director shall issue a notice of contemplated action.

E. Notice of final decision: Prior to taking any contemplated action, the director shall serve upon the applicant, certified police officer or certified telecommunicator a written notice stating that:

(1) the director has grounds to bring such an action before the law enforcement academy board, and that such action will be taken unless the applicant, certified police officer or certified telecommunicator:

(a) mails a letter (certified mail return receipt requested) within 30 days after service of the notice of contemplated action requesting a hearing; or

(b) provides the director, within 30 days of receipt of the notice of contemplated action, with a statement of compliance from HSD; and

(2) if the applicant, certified police officer or certified telecommunicator disagrees with the determination of non-compliance, or wishes to come into compliance the individual should contact the HSD child support enforcement division.

F. Evidence and proof: In any hearing under this section, relevant evidence is limited to the following:

(1) a statement of non-compliance is conclusive evidence that requires the board to take the contemplated action, unless;

(2) the applicant, certified police officer or certified telecommunicator provides the board with a subsequent statement of compliance which shall preclude the board from taking any action under this section.

G. Order: When a disciplinary action is taken under this subpart solely because the applicant, certified police officer or certified telecommunicator is not in compliance with a judgment and order for support, the order shall state that the application or certification shall be reinstated upon presentation of a subsequent state of compliance. Reinstatement following board action under the subpart shall require the certificate holder to meet all other board requirements for reinstatement.

H. Procedures: Proceedings under this subpart shall be governed by the applicable provisions of Section 29-7-13B NMSA 1978, (Repl. Pamp. 1994) and the board's rules regarding disciplinary proceedings.

[10.29.1.18 NMAC - Rp, 10.29.1.18 NMAC, 11/15/16]

PART 2: FINANCIAL

10.29.2.1 ISSUING AGENCY:

New Mexico Law Enforcement Academy - Training and Recruiting Division, Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87505

[10-1-97; 10.29.2.1 NMAC – Rn, 10 NMAC 29.2.1, 7/1/01]

10.29.2.2 SCOPE:

All law enforcement agencies in New Mexico (state, county, municipal or other local governments, associations and other groups).

[10-1-97; 10.29.2.2 NMAC – Rn, 10 NMAC 29.2.2, 7/1/01]

10.29.2.3 STATUTORY AUTHORITY:

NMSA 1978, Section 29-7-4 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-5 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-12 (Repl. Pamp. 1994)

[10-1-97; 10.29.2.3 NMAC – Rn, 10 NMAC 29.2.3, 7/1/01]

10.29.2.4 DURATION:

Permanent

[10-1-97; 10.29.2.4 NMAC – Rn, 10 NMAC 29.2.4, 7/1/01]

10.29.2.5 EFFECTIVE DATE:

October 1, 1997

[10-1-97; 10.29.2.5 NMAC – Rn, 10 NMAC 29.2.5, 7/1/01]

10.29.2.6 OBJECTIVE:

The purpose of part 2 is to establish guidelines for use of academy facilities, fees for use of facilities and services offered by the academy and procedures for their collection.

[10-1-97; 10.29.2.6 NMAC – Rn, 10 NMAC 29.2.6, 7/1/01]

10.29.2.7 DEFINITIONS:

[RESERVED]

10.29.2.8 USE OF FACILITIES; OTHER ORGANIZATIONS; CHARGES:

A. Guidelines

(1) The following guidelines are established for use in connection with handling requests for the use of the department of public safety training center building and facilities. Please allow sufficient time for arrangements to be made for the facilities requested. The request shall be made in writing. Use of the training center building and facilities will be confined to the following:

(a) Official state agencies and institutions for official purposes;

(b) Official county, city, or municipal agencies for official purposes and specifically to include the New Mexico municipal league and association of counties;

(c) The New Mexico sheriffs' and police officers' association;

- (d) The New Mexico sheriffs' association;
 - (e) The New Mexico mounted patrol;
 - (f) Other law enforcement related associations or activities; and
 - (g) Other groups, agencies, and activities in the discretion of the director.
- (2) Other requests not specifically mentioned or included above will be considered.
- (3) A fee will be charged for the use of the facilities.
- (4) The fee is subject to change and quotes will be provided upon request.
- (5) Any organization requesting services which are not utilized will be obligated to pay for all services requested unless written notification of cancellation is made at least five (5) days prior to the date of services.
- (6) All requests are contingent upon available facilities and compatibility with the training center's functions.
- (7) The department of public safety training and recruiting division director may cancel the use of training center facilities fifteen (15) days prior to scheduled date if circumstances warrant such cancellation.

B. Charges for Services

- (1) There will be a fee established for all services rendered by the training and recruiting division.
- (2) The fee will cover training costs, rooms, board, and facilities provided by the training center.
- (3) The fee schedule shall be maintained by the director of the training center.
- (4) Said fee shall be subject to change without notice.
- (5) The director of the training center may raise said fee at any time.
- (6) Any increase shall take effect immediately.
- (7) All increases shall be subject to the approval or disapproval of the academy board at its next meeting.

C. Charges for Dormitory Usage Only

(1) The following policy is hereby established for use of the department of public safety training and recruiting division dormitory by non-students.

(2) Use of the training center's dormitory by non-students shall be at the discretion of the director of the department of public safety training and recruiting division.

(3) If permission is granted for use of the dormitory facilities by a non-student, a fee of \$15.00 per day will be charged. The fee shall be paid to the department of public safety training and recruiting division.

(4) Any exceptions to the above can be made by the director of the department of public safety training and recruiting division.

[3-15-80, 4-11-89, 10-1-97; 10.29.2.8 NMAC – Rn, 10 NMAC 29.2.8, 7/1/01]

10.29.2.9 ACCOUNTS AND COLLECTIONS - INVOICES; PAYMENTS:

A. Department of public safety will submit invoices to each agency whose personnel have attended all or part of a basic or specialized training course. The notices of payment due will be mailed no later than seven (7) days after the training course terminates.

B. If payment is not received within thirty (30) days from the date of the invoice, the department of public safety will send a second notice by certified, return receipt mail, to delinquent agencies.

C. If payment is still not received after fifteen (15) days from the mailing of the second notice, said debts will be referred to the proper authorities for collection. The department of public safety training and recruiting division may also refuse to accept or certify further personnel from such departments until all debts to the department of public safety are paid in full.

D. Payment in advance from continually delinquent agencies or departments or from those who have been referred for collection may be required in the discretion of the director of the training and recruiting division.

[3-15-80, 4-11-89, 10-1-97; 10.29.2.9 NMAC – Rn, 10 NMAC 29.2.9, 7/1/01]

PART 3: COURSE ACCREDITATION PROCEDURES/GUIDELINES

10.29.3.1 ISSUING AGENCY:

New Mexico Law Enforcement Academy - Training and Recruiting Division, Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87505

[10-1-97; 10.29.3.1 NMAC – Rn, 10 NMAC 29.3.1, 7/1/01]

10.29.3.2 SCOPE:

All entities and organizations either for profit or public who offer law enforcement training or educational courses.

[10-1-97; 10.29.3.2 NMAC – Rn, 10 NMAC 29.3.2, 7/1/01]

10.29.3.3 STATUTORY AUTHORITY:

NMSA 1978, Section 29-7-4 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-5 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-10 (Repl. Pamp. 1994)

[10-1-97; 10.29.3.3 NMAC – Rn, 10 NMAC 29.3.3, 7/1/01]

10.29.3.4 DURATION:

Permanent

[10-1-97; 10.29.3.4 NMAC – Rn, 10 NMAC 29.3.4, 7/1/01]

10.29.3.5 EFFECTIVE DATE:

October 1, 1997

[10-1-97; 10.29.3.5 NMAC – Rn, 10 NMAC 29.3.5, 7/1/01]

10.29.3.6 OBJECTIVE:

The purpose of part 3 is to establish in the office of director a program for preparation and implementation of guidelines to be utilized in evaluating law enforcement training conducted by trainers and educators not affiliated with the New Mexico law enforcement academy.

[10-1-97; 10.29.3.6 NMAC – Rn, 10 NMAC 29.3.6, 7/1/01]

10.29.3.7 DEFINITIONS:

[RESERVED]

10.29.3.8 JUSTIFICATION AND AUTHORIZATION:

Due to the numerous requests received by non-affiliated law enforcement trainers and educators that conduct law enforcement training for various New Mexico law enforcement agencies, the director of the department of public safety training and

recruiting division is hereby instructed to prepare guidelines to be utilized to evaluate the proposed training. Such guidelines shall be updated as necessary and, when applicable, such changes shall be reported to the New Mexico law enforcement academy board at their next regularly scheduled meeting.

[9-29-86, 4-10-89, 10-1-97; 10.29.3.8 NMAC – Rn, 10 NMAC 29.3.8, 7/1/01]

PART 4: INSTRUCTOR CERTIFICATION AND ADVANCED CERTIFICATIONS

10.29.4.1 ISSUING AGENCY:

New Mexico Law Enforcement Academy - Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87507

[10.29.4.1 NMAC - Rp, 10.29.4.1 NMAC, 06/27/17]

10.29.4.2 SCOPE:

All law enforcement agencies in the state of New Mexico, any law enforcement instructor, professional lecturer, or specialized law enforcement or telecommunicator instructor conducting training programs in New Mexico.

[10.29.4.2 NMAC - Rp, 10.29.4.2 NMAC, 06/27/17]

10.29.4.3 STATUTORY AUTHORITY:

NMSA 1978, Section 29-7-4 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-5 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-7.1 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-10 (Repl. Pamp. 1994)

[10.29.4.3 NMAC - Rp, 10.29.4.3 NMAC, 06/27/17]

10.29.4.4 DURATION:

Permanent

[10.29.4.4 NMAC - Rp, 10.29.4.4 NMAC, 06/27/17]

10.29.4.5 EFFECTIVE DATE:

June 27, 2017, unless a later date is cited at the end of a section.

[10.29.4.5 NMAC - Rp, 10.29.4.5 NMAC, 06/27/17]

10.29.4.6 OBJECTIVE:

The purpose of Part 4 is to encourage and regulate the certification of law enforcement and telecommunicator instructors and upgrade and improve in-service law enforcement and telecommunicator training programs.

[10.29.4.6 NMAC - Rp, 10.29.4.6 NMAC, 06/27/17]

10.29.4.7 DEFINITIONS:

A. "Advanced police training" is approved police officer training beyond the basic level and does not include mandated in-service training courses.

B. "Advanced telecommunicator training" is approved telecommunicator training beyond the basic level and does not include mandated in-service training courses.

C. "Agency" means a law enforcement or public safety agency recognized by the New Mexico law enforcement academy.

D. "Director" means the director of the New Mexico law enforcement academy.

E. "General instructor" means a New Mexico law enforcement academy certified general instructor who is authorized to teach those generalized, lecture-based topics of instruction which would not otherwise require a specialized, technical, high-risk or master instructor certification.

F. "Instructor course" is any approved advanced police or telecommunicator training intended to further the individual's knowledge, skills, and abilities, beyond a basic level, for instructor certification in the respective field.

G. "Master course" is any approved advanced police or telecommunicator training intended to further the individual's knowledge, skills, and abilities set, beyond an instructor course, for master certification to deliver train-the-trainer level instruction.

H. "Master instructor" is the only designation which authorizes the New Mexico law enforcement academy certified master instructor to train instructor level or train-the-trainer courses.

[10.29.4.7 NMAC - Rp, 10.29.4.7 NMAC, 06/27/17]

10.29.4.8 GENERAL INSTRUCTOR:

A. To qualify for general instructor certification, an applicant shall complete the instructor certification application, and satisfactorily demonstrate to the director a combination of education and experience in criminal justice, as well as proficiency in the instructional process, and meet the following requirements:

(1) certified police officer or public safety telecommunicator, or a duly elected sheriff;

(2) has acquired three years of practical experience as a certified police officer, certified telecommunicator, or police administrator, or specialist in a field relevant to or related to the criminal justice system; this requirement may be waived by the director only upon written request from the agency head with supporting documentation;

(3) completion of a 40 hour instructor training or development course, or equivalent training approved in writing by the director;

B. Qualified applicants for a general instructor designation will be issued a certification for a period of two or more years.

C. An evaluation will be completed by the students subsequent to the completion of each class taught by the instructor; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction; and

D. Instructors attending and completing a national highway traffic safety administration (NHTSA) driving while intoxicated and standardized field sobriety testing (DWI/SFST), or drug recognition expert (DRE) instructor course with the approval of the contract oversight committee of the department of transportation will not be required to attend and complete a 40 hour instructor training/development course, but may receive a limited instructor certification to teach only national highway traffic safety administration (NHTSA) approved courses in driving while intoxicated (DWI), standardized field sobriety testing (SFST) or drug recognition expert (DRE) courses and shall not permit the instructor to teach any other topics of instruction without completing a 40 hour general instructor training/development course.

E. A general instructor certification will require successful completion of an approved eight hour general instructor update training program prior to the instructor applying to renew their general instructor certification.

[10.29.4.8 NMAC - Rp, 10.29.4.8 NMAC, 06/27/17]

10.29.4.9 PROFESSIONAL LECTURER:

A. The director may certify as a professional lecturer a person in their formally recognized profession, e.g., medicine, law, psychology, who by virtue of formal academic graduate degrees or professional experience has developed special expertise in a subject area material to the presentation of criminal justice training or educational programs. To be eligible for certification, an applicant shall:

(1) be properly licensed or certified by a legally recognized state or national licensing body for the designated profession to actively engage in the designated profession, or have retired in good standing. This requirement may be waived by the director upon written request should a professional or specialist not have an available or required licensing agency;

(2) have acquired a minimum of one year of practical experience in the designated profession and area of expertise; and

(3) obtain an endorsement from the chief or administrator of the agency conducting in-service training; such endorsement must:

(a) recommend the individual as a professional lecturer;

(b) describe the individual's expected participation, topic areas, duties, and responsibilities in criminal justice conducted by the academy, school, or agency; and

(c) specify the professional subject area and training courses in which certification is requested.

B. Professional lecturer designation will be issued for a period of two or more years.

C. An evaluation will be completed by the students subsequent to the completion of each class taught by the lecturer; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction.

[10.29.4.9 NMAC - Rp, 10.29.4.9 NMAC, 06/27/17]

10.29.4.10 SPECIALIZED LAW ENFORCEMENT INSTRUCTOR:

A. To qualify for a specialized law enforcement instructor certification, an applicant shall be required to demonstrate to the director proof of skills, successful experience, and training in the related field for which they will be providing instruction, and must meet the following requirements:

(1) must be sponsored by a law enforcement agency in the state of New Mexico; this requirement may be waived by the director upon written request based on a showing of previous training/experience in the field for which certification is requested; the following fields will require specialized training:

(a) high risk, including such areas as firearms, baton, unarmed self-defense, etc.; and

(b) specialized training, two years assignment to the specialty and a showing of a number of cases in the field that the applicant brought to a logical conclusion;

(c) technical, including such areas as fingerprinting, photography, accident investigation, traffic enforcement, vehicle operations, radio-dispatching, etc.;

(2) completion of a 40 hour instructor training or development course, or equivalent training approved in writing by the director; and

B. Applicants for certification who have federal training or certifications, or who have training or hold certifications from another state that meets or exceeds the minimum instructor requirements for the state of New Mexico, may be considered by the director upon written request for specialized instructor status upon successful proof of skills and equivalency standards set forth in this section.

C. Qualified applicants for a specialized law enforcement instructor designation will be issued a certification for a period of two or more years.

D. An evaluation will be completed by the students subsequent to the completion of each class taught by the instructor; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction.

E. The director will maintain and provide to all agencies a listing of those courses which require an instructor to provide supporting documentation of training for certification to instruct in either the high risk or technical law enforcement training areas.

F. Specialized instructor certification subject areas: The following list is provided to each agency to assist in determining the area in which specialized training or prior training experience must be achieved by the individual requesting instructor certification in the high risk or technical areas. This list is by no means all-inclusive and the academy will determine whether the request qualifies in either the high risk or technical areas if not included below:

(1) High risk: use of force; baton, bombs, crowd control, officer survival, emergency vehicle operations, motorcycle operations, unarmed self-defense; and firearms.

(2) Technical: accident investigation, accident reconstruction, auto theft, child abuse, civil-vicarious liability, crime prevention, electronic surveillance, executive development, evidence, crisis intervention, field training officer, fingerprinting, hazardous materials, homicide investigation, intoxilyzer, jail administration, legal/criminal laws, photography, police officer as prosecutor, polygraph, national crime information center (NCIC), computer aided dispatch (CAD), search and seizure, and traffic enforcement.

G. Renewal of a firearms instructor certification shall require successful completion of an approved 16 hour firearms instructor update prior to renewal application.

[10.29.4.10 NMAC - Rp, 10.29.4.10 NMAC, 06/27/17]

10.29.4.11 MASTER INSTRUCTOR:

To qualify for a master instructor certification, an applicant shall be required to demonstrate to the director proof of skills, successful experience, and training in the related field for which they will be training new instructors, and must meet the following requirements:

A. must be sponsored by a law enforcement agency in the state of New Mexico; this requirement may be waived by the director upon written request based on a showing of previous training/experience in the subject area for which certification is requested;

B. must have completed a minimum of two years certification as a general, specialized, or professional lecturer instructor in the same subject area as the request for master instructor certification;

C. must produce documentation of successful completion of an instructor-trainer course, train-the-trainer course or master instructor course (or what other term is used to describe a course that qualifies a person to train instructors) in the same subject area for which certification is requested or:

(1) must have completed at least one four-year certification as a general, specialized, or professional lecturer instructor in the same subject area; and

(2) must show documentation of additional training hours of expertise of at least the same amount of hours as the original instructor-level certification; and

(3) must show rosters and student evaluations from at least 10 training classes as the lead instructor in the same subject area;

D. qualified applicants for a master instructor designation will be issued a certification for a period of two or more years; an evaluation will be completed by the students subsequent to the completion of each class taught by the master instructor; the agency administrator responsible for conducting the class shall review the evaluations and maintain the course rosters to ensure the quality of the instruction.

[10.29.4.11 NMAC - Rp, 10.29.4.11 NMAC, 06/27/17]

10.29.4.12 REVOCATION OF INSTRUCTOR CERTIFICATION:

A. The director may revoke or suspend an instructor certification based on a preponderance of evidence that the instructor:

(1) failed to meet minimum standards;

(2) displayed a lack of good moral character or behavior that adversely affects his credibility as an instructor;

(3) lacked the ability to effectively communicate or instruct in the academy setting; or

(4) had their police officer or telecommunicator certification suspended or revoked.

B. The employing agency may request action on an instructor certification by submitting the request to the director in writing and including all supporting documentation.

C. The director may take all necessary steps to review the matter, and all steps shall be at the discretion of the director. These steps may include, but are not limited to, issuing written notice to the instructor of the specific allegations no later than 30 days after receiving the request for action, conducting an oral response meeting with the instructor no later than 60 days after receiving all relevant supporting documentation, and issuing a final decision no later than 120 days after receiving all relevant supporting documentation. The director shall inform the instructor in writing whether the instructor certification has been revoked or suspended, and the reasons for the revocation or suspension.

[10.29.4.12 NMAC - Rp, 10.29.4.12 NMAC, 06/27/17]

10.29.4.13 POLICE OFFICER ADVANCED CERTIFICATION:

The law enforcement academy awards advanced certification credit for approved training beyond the basic level. An applicant must submit a completed application packet containing copies of all training certificates and other supporting documentation. Applications should be submitted only after the required number of hours have been accrued. Individual certificates will not be processed if they are not attached to an application for a specific level of certification. Advanced certifications are ranked from intermediate to executive and are only awarded if criteria for the previous level(s) of certification have been met.

A. Certification fee: A fee not to exceed one hundred and fifty dollars (\$150.00) may be assessed for processing an application. Payment can be made in the form of an agency check, purchase order, or money order. Payment must accompany the application. As published in the New Mexico law enforcement academy director's fee schedule, these fees are subject to change. For the current applicable fee schedule, please refer to the New Mexico law enforcement academy or academy website.

B. Advance certification criteria and guidelines:

(1) **Intermediate** (minimum of 200 cumulative hours required): two years' experience, non-probationary status at time of application, and 200 cumulative hours of advanced police training (beyond basic and maintenance training).

(2) **Advanced** (minimum of 400 cumulative hours required): four years' experience, non-probationary status at time of application, and 400 cumulative hours of advanced police training or formal education (beyond basic and maintenance training) approved by the director.

(3) **First-line supervisor** (minimum of 500 cumulative hours required): must have held rank of corporal or sergeant with one year in rank and completion of a law enforcement academy approved first-line supervisor course (40 hours minimum).

(4) **Command** (minimum of 700 cumulative hours required): must have held rank of lieutenant with one year in rank and 100 hours of management training or formal education approved by the director.

(5) **Executive** (minimum of 800 cumulative hours required): must have held rank of chief, assistant chief, sheriff, under-sheriff, director or deputy director with one year in rank: or

(a) majors and captains who report directly to department head and have one year in rank; and

(b) 200 cumulative hours of management or administrative training or formal education approved by the director.

C. Criteria for cumulative credit calculations:

(1) **Certificate criteria:** The law enforcement academy will accept certificates of completion for credit toward an advanced certificate.

(2) **College course credit:** College courses will receive the credit ratio of 15 advanced certification hours for each credit hour up to a maximum of 400 advanced hours. College course credits apply only to advanced level certification and above. Official copies of college transcripts are required. Credit hours may be given only for college courses that are law enforcement related.

(3) **Military course credit:** Military advanced level courses related to law enforcement and approved by the director can be used for credit towards advanced level certification and above at an hourly ratio of one-to-one. Training hours and dates must be noted on the training certificate for credit or on an official training transcript.

(4) **In-service training:** Law enforcement academy approved in-service training will be accepted based upon the approved course hours. Mandated training required to maintain police officer certification or instructor certification will not be

credited towards advanced certifications. In-service training will be accepted only upon providing evidence that a test was administered and passed, or a certificate of completion was issued.

(5) Rank requirements: Certificates at the first-line supervisor level and above require that the pre-requisite rank or title was held for a minimum period of at least one year prior to the date of the application. Documentation indicating date(s) of promotion must be included with the application packet. Non-traditional rank designations will be reviewed for equivalency to ranks designated for applicable certificates.

(6) Out-of-state certificates: Only course certificates clearly indicating the hours and dates of training received will be accepted.

[10.29.4.13 NMAC - N, 06/27/17]

10.29.4.14 TELECOMMUNICATOR ADVANCED CERTIFICATION:

The law enforcement academy awards advanced certification credit for approved training beyond the basic level. An applicant must submit a completed application packet containing copies of all training certificates and other supporting documentation. Applications should be submitted only after the required number of hours have been accrued. Individual certificates will not be processed if they are not attached to an application for a specific level of certification. Advanced certifications are ranked from intermediate to executive and are only awarded if criteria for the previous level(s) of certification have been met.

A. Certification fee: A fee not to exceed one hundred and fifty dollars (\$150.00) may be assessed for processing an application. Payment may be made in the form of an agency check, purchase order, or money order. Payment must accompany the application. As published in the New Mexico law enforcement academy director's fee schedule, these fees are subject to change. For the current applicable fee schedule, please refer to the New Mexico law enforcement academy or academy website.

B. Advance certification criteria and guidelines:

(1) Intermediate (minimum of 200 cumulative hours required): two years' experience, non-probationary status at time of application, and 200 cumulative hours of advanced telecommunicator training (beyond basic and maintenance training).

(2) Advanced (minimum of 400 cumulative hours required): four years' experience, non-probationary status at time of application, and 400 cumulative hours of advanced telecommunicator training or formal education (beyond basic and maintenance training) approved by the director.

(3) First-line supervisor (minimum of 500 cumulative hours required): must have held the title of shift supervisor, terminal agency coordinator (TAC) or training officer with one year in rank and completion of a law enforcement academy approved first-line supervisor course (40 hours minimum).

(4) Command (minimum of 700 cumulative hours required): must have held rank of deputy director, assistant supervisor, terminal agency coordinator (TAC), 9-1-1 coordinator, or training coordinator with one year in rank and 100 hours of management training or formal education approved by the director.

(5) Executive (minimum of 800 cumulative hours required): must have held rank of director or deputy director with one year in rank: or

(a) held the title or rank of regional manager or manager who reports directly to the department or agency head and have one year in rank; and

(b) 200 cumulative hours of management or administrative training or formal education approved by the director.

C. Criteria for cumulative credit calculations:

(1) Certificate criteria: The law enforcement academy will accept certificates of completion for credit toward an advanced certificate.

(2) College course credit: College courses will receive the credit ratio of 15 advanced certification hours for each credit hour up to a maximum of 400 advanced hours. College course credits apply only to advanced level certification and above. Official copies of college transcripts are required. Credit hours may be given only for college courses that are law enforcement related and approved by the director.

(3) Military course credit: Military advanced level courses related to law enforcement and approved by the director can be used for credit towards advanced level certification and above at an hourly ratio of one-to-one. Training hours and dates must be noted on the training certificate for credit or on an official training transcript.

(4) In-service training: Law enforcement academy approved in-service training will be accepted based upon the approved course hours. Mandated training required to maintain telecommunicator certification or instructor certification will not be credited towards advanced certifications. Other in-service training will be accepted only upon provided evidence that a test was administered and passed, or a certificate of completion was issued.

(5) Rank requirements: Certificates at the first-line supervisor level and above require that the pre-requisite rank or title was held for a minimum period of at least one year prior to the date of the application. Documentation indicating date(s) of promotion must be included with the application packet. Non-traditional rank

designations will be reviewed for equivalency to ranks designated for applicable certificates.

[10.29.4.14 NMAC - N, 06/27/17]

PART 5: REGIONAL/SATELLITE POLICE OFFICER BASIC ACADEMIES

10.29.5.1 ISSUING AGENCY:

New Mexico Law Enforcement Academy - Training and Recruiting Division, Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87505

[10-1-97; 10.29.5.1 NMAC – Rn, 10 NMAC 29.5.1, 7/1/01]

10.29.5.2 SCOPE:

All law enforcement agencies and any other entities who operate a police academy or criminal justice certificate program in New Mexico.

[10-1-97; 10.29.5.2 NMAC – Rn, 10 NMAC 29.5.2, 7/1/01]

10.29.5.3 STATUTORY AUTHORITY:

NMSA 1978, Section 29-7-4 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-7 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-7.1 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-10 (Repl. Pamp. 1994)

[10-1-97; 10.29.5.3 NMAC – Rn, 10 NMAC 29.5.3, 7/1/01]

10.29.5.4 DURATION:

Permanent

[10-1-97; 10.29.5.4 NMAC – Rn, 10 NMAC 29.5.4, 7/1/01]

10.29.5.5 EFFECTIVE DATE:

October 1, 1997, unless a different date is cited at the end of a section.

[10-1-97, 4-16-98; 10.29.5.5 NMAC – Rn, 10 NMAC 29.5.5, 7/1/01]

10.29.5.6 OBJECTIVE:

The purpose of part 5 is to establish procedures for implementation of a satellite academy program; to define the required content for such programs and to implement

evaluation procedures to be utilized by the department of public safety training and recruiting division for satellite academies.

[10-1-97; 10.29.5.6 NMAC – Rn, 10 NMAC 29.5.6, 7/1/01]

10.29.5.7 DEFINITIONS:

[RESERVED]

10.29.5.8 CERTIFICATION:

A. The New Mexico law enforcement academy board shall determine the maximum number of satellite academies which may be certified at any given time. The New Mexico law enforcement academy board shall weigh the impact on other academies, department of public safety training staff and the department of public safety training budget.

B. Approved satellite academy programs may not be sold, purchased, or transferred prior to New Mexico law enforcement academy board approval.

C. The following procedures must be adhered to by all basic law enforcement, certification by waiver and police radio dispatch academies and criminal justice certificate programs for the training program to be approved for certification in accordance with NMSA 1978, Section 29-7-1 et. al., (Repl. Pamp. 1997).

[3-15-80, 2-14-87, 4-11-89, 10-1-97, 4-16-98, 6-1-99; 10.29.5.8 NMAC – Rn, 10 NMAC 29.5.8, 7/1/01]

10.29.5.9 PROGRAM IMPLEMENTATION:

A. An academy must undergo an accreditation process to ensure that the facilities, instructors, program management, and curriculum meet or exceed the standards and expectations established by the board and the director. Initial accreditation will involve a detailed review of all of the above. An academy will renew its accreditation every three (3) years. A renewal will automatically be processed by the department of public safety training and recruiting division, provided the academy has delivered at least three (3) basic training programs during the previous three (3) calendar years. In the event that an academy has not done so, it must complete the initial accreditation process prior to commencing another academy program. The director will publish a compliance manual for satellite academy accreditation.

B. All agencies and institutions requesting approval for each basic training programs must notify the department of public safety training and recruiting division and supply the following information for review and approval prior to any such program's implementation:

(1) Curriculum which must correspond with the current minimum standards of training for the requested program as set forth in 10.29.9.8 NMAC, effective January 1, 1998 (640 hours), Subsection A of 10.29.6 NMAC, effective January 1, 1999 (120 hours), or 10.29.10.8 NMAC, effective October 1, 1997. Curriculum is subject to change at the discretion of the New Mexico law enforcement academy board;

(2) List of department of public safety training and recruiting division certified instructors and their assigned course(s). Instructors must be certified through the department of public safety training and recruiting division, or instruction conducted by a non-certified instructor must be monitored by the department of public safety training and recruiting division certified instructor. Technical or high risk areas must be instructed by certified department of public safety training and recruiting division instructors; for example, firearms training - qualification must be conducted by a certified department of public safety training and recruiting division firearms instructor;

(3) Schedule of classes for the entire training period; and

(4) Roster of students' full names, dates of birth, and social security numbers.

C. For basic law enforcement and certification by waiver academies, comparable training facilities for the below listed proficiency areas must be available or contracted for by the requesting agency or instructor and inspected by the department of public safety training and recruiting division prior to approval.

(1) Comparable driving track facility;

(2) Comparable firearms range facility; and

(3) Comparable obstacle/agility course facility.

D. Upon receipt of this information, a thorough evaluation will be made and notification sent to the agency or institution advising the decision of the department of public safety training and recruiting division. In the event that the program is not approved, notification and recommendations will be sent advising the agency or institution of the program deficiencies. Once these deficiencies have been corrected, the program will again be examined and notification will be sent as to final disposition.

E. Once approval is granted, the agency or institution can conduct the program with the assurance that the program is comparable to or exceeds the minimum standards of training as established by the New Mexico law enforcement academy board. Any deviation from the previously approved program must be submitted to the department of public safety training and recruiting division for review and approval pending final certification of the program conducted.

F. Within two (2) weeks of the satellite academy start date, all fitness assessment scores, psychological testing reports and medical examination reports shall be received by the department of public safety training and recruiting division.

G. A minimum of ten (10) students must be identified prior to commencing an academy program. A hardship waiver must be applied for and approved by the director if fewer than ten (10) students are identified. There is no maximum amount of students. However, an appropriate instructor to student ratio must be maintained. This is especially important in the critical skill areas of physical fitness, firearms, defensive tactics, emergency vehicle operations, and situational training exercises. The certification of students completing an academy program is important. A low certification percentage, as determined by the board, will be grounds for non-renewal of academy accreditation. Students will be allowed two (2) opportunities to pass the certification exam.

H. The board will establish minimum guidelines for instructor and student conduct.

I. The board will determine which academies are authorized to conduct basic law enforcement training, certification by waiver of previous training, and radio dispatcher training programs. The type of student i.e.; pre-service, local law enforcement, or state law enforcement; allowed to attend a satellite academy program must be approved by the board.

[3-15-80, 2-14-87, 4-11-89, 10-1-97, 4-16-98; 10.29.5.9 NMAC – Rn, 10 NMAC 29.5.9, 7/1/01]

10.29.5.10 PROGRAM COMPLETION:

- Upon completion of the satellite program, the agency/institution must provide the following information to the department of public safety training and recruiting division prior to administration of the law enforcement officer certification examination (LEOCE) or police radio dispatcher certification examination (PRDCE).

A. Final (revised) student roster: full name, date of birth, social security number, and mailing address of each student;

B. Final (revised) class schedule: dates, time, and length of instruction. Each block of the minimum standards of training will be included;

C. Final (revised) listing of instructors: instructors must be certified through the department of public safety training and recruiting division certified instructor. Technical or high risk areas must be instructed by a certified department of public safety training and recruiting division instructor for the specific areas instructed; example, firearms training - qualification must be conducted by a certified department of public safety training and recruiting division firearms instructor;

D. Block test scores must be provided for each instructional area, as well as scoring for the skill proficiency areas, i.e., firearms, defensive tactics, patrol fitness (1.5 mile run and obstacle course), and driving program. A roster of student names and test scores attested to by the satellite program director is sufficient to meet the department of public safety training and recruiting division testing requirements. Department of public safety training and recruiting division testing requirements and minimum scores for the various block and skill proficiency areas are the only acceptable testing criteria; and

E. Final attendance roster for students of the training program.

[3-15-80, 7-17-82, 2-14-87, 4-11-89, 10-1-97, 4-16-98, 6-1-99; 10.29.5.10 NMAC – Rn, 10 NMAC 29.5.10, 7/1/01]

10.29.5.11 LAW ENFORCEMENT OFFICER CERTIFICATION EXAMINATION; TIME LIMITATIONS:

A. Students who successfully complete a department of public safety training and recruiting division accredited satellite program will be allowed to take the law enforcement officer certification examination. Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director of the department of public safety training and recruiting division, will be administered the law enforcement officer certification examination.

(1) Students will be allowed two (2) opportunities in which to pass the law enforcement officer certification examination within one year from the date of completion of the satellite program. Students who fail the exam two (2) times must attend the academic portion of the certification by waiver of previous training program prior to taking the exam a third (3rd) time. Students who fail the test three (3) times will be required to successfully complete the New Mexico law enforcement academy's basic police training program. Students will not be allowed to attend a regional/satellite program.

(2) Students who achieve a passing score on the law enforcement officer certification examination will be allowed one year from the date of the test in which to be eligible for certification. Certification can be granted only when the eligible student is hired by a recognized New Mexico law enforcement agency in a law enforcement position.

(3) If a student secures a law enforcement position after one year from the date of successful completion of the law enforcement officer certification examination, he will be required to attend the certification by waiver of previous training program (short course) conducted by the department of public safety training and recruiting division.

(4) Students will be allowed three (3) years from the date of successful completion of the law enforcement officer certification examination to secure a law

enforcement position. After three (3) years, they will be required to attend and successfully complete another basic police officer training program certified by the New Mexico law enforcement academy board.

B. Students who have successfully completed a satellite program and passed the law enforcement officer certification examination will be provided a letter from the director of the department of public safety training and recruiting division attesting to the student's eligibility for certification as a police officer in New Mexico.

C. An application for certification and required supporting documentation must be submitted to the department of public safety training and recruiting division within fourteen days of the student's employment as a police officer as required under New Mexico law enforcement academy board rule 10.29.9.10 NMAC. Any officer (or department) not submitting the required documents is in violation of NMSA 1978, Section 29-7-1 et. al., (Repl. Pamp. 1994), and will be required to forfeit his position.

D. When all paperwork is completed to the satisfaction of the director of the department of public safety training and recruiting division for any student requesting certification by successful completion of a certified satellite program, or any other previous comparable training, the request will be submitted to the New Mexico law enforcement academy board for final approval and award of certification under NMSA 1978, Section 29-7-1 et. al., (Repl. Pamp. 1994).

[2-14-87, 4-11-89, 11-12-89, 10-1-97, 4-16-98, 9-1-99; 10.29.5.11 NMAC – Rn, 10 NMAC 29.5.11, 7/1/01]

10.29.5.12 POLICE RADIO DISPATCHER CERTIFICATION EXAMINATION; TIME LIMITATIONS:

A. Students who successfully complete a department of public safety training and recruiting division accredited satellite program will be allowed to take the police radio dispatcher certification examination. Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director of the department of public safety training and recruiting division, will be administered the police radio dispatcher certification examination.

B. Students will be allowed two (2) opportunities in which to pass the police radio dispatcher certification examination within one year from the date of completion of the satellite program. Students who fail the test two (2) times will be required to successfully complete the New Mexico law enforcement academy's police radio dispatch training program. Students will not be allowed to attend a regional/satellite program.

C. Students who achieve a passing score on the police radio dispatcher certification examination will be allowed one year from the date of the test in which to be eligible for certification. Certification can be granted only when the eligible student is hired by a recognized New Mexico law enforcement agency in a dispatcher position.

D. If a student secures a police dispatcher position between one and three years from the date of successful completion of the police radio dispatcher certification examination, the student will be required to apply for certification by waiver of previous training. This determination is conducted by the department of public safety training and recruiting division staff, and approved by the director.

E. If a student secures a police dispatcher position after three (3) years from the completion of the police radio dispatcher certification examination, they will be required to attend and successfully complete another police radio dispatcher training program certified by the New Mexico law enforcement academy board.

F. Students who have successfully completed a satellite program and passed the police radio dispatcher certification examination will be provided a letter from the director of the department of public safety training and recruiting division attesting to the student's eligibility for certification as a police radio dispatcher in New Mexico.

G. When all paperwork is completed to the satisfaction of the director of the department of public safety training and recruiting division for any student requesting certification by successful completion of a certified satellite program, or any other previous comparable training, the request will be submitted to the New Mexico law enforcement academy board for final approval and award of certification under NMSA 1978, Section 29-7-1 et. al., (Repl. Pamp. 1997).

[2-14-87, 4-11-89, 10-1-97, 4-16-98, 6-1-99; 10.29.5.12 NMAC – Rn, 10 NMAC 29.5.12, 7/1/01]

10.29.5.13 PROGRAM MONITORING AND EVALUATION:

A. Department of public safety training and recruiting division director, or his designee, has the authority to visit the satellite training program at any time to monitor and evaluate the training conducted to insure that the program meets the established minimum standards of training.

B. The department of public safety training and recruiting division director, or his designee, will investigate any reported information concerning the operation of the satellite academy and delivery of training programs. At any time that information on program deficiency is verified, the director can request decertification of the satellite program.

(1) The decertification procedures will require a written report on program deficiencies to the director of the satellite program allowing for correction of noted deficiencies.

(2) If the corrections are not made to the department of public safety training and recruiting division director's satisfaction, decertification will be recommended to the New Mexico law enforcement academy board.

(3) All efforts will be made by the director of the department of public safety training and recruiting division and the satellite program director to resolve program deficiencies prior to initiation of any decertification proceedings.

(4) The satellite program director may appear before the New Mexico law enforcement academy board to appeal, or defend against, program certification recommendations.

[2-6-93, 10-1-97; 6-1-99; 10.29.5.13 NMAC – Rn, 10 NMAC 29.5.13, 7/1/01]

PART 6: CERTIFICATION BY WAIVER

10.29.6.1 ISSUING AGENCY:

Department of Public Safety, New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico 87505.

[10.29.6.1 NMAC - Rp, 10.29.6.1 NMAC, 11/15/16]

10.29.6.2 SCOPE:

All applicants for police officer certification by waiver of basic training and all law enforcement agencies in the state of New Mexico.

[10.29.6.2 NMAC - Rp, 10.29.6.2 NMAC, 11/15/16]

10.29.6.3 STATUTORY AUTHORITY:

Section 29-7-10 NMSA 1978 (Repl. Pamp. 1994), Section 29-7-4 NMSA 1978 (Repl. Pamp. 1994), and Section 29-7-5 NMSA 1978 (Repl. Pamp. 1994).

[10.29.6.3 NMAC - Rp, 10.29.6.3 NMAC, 11/15/16]

10.29.6.4 DURATION:

Permanent.

[10.29.6.4 NMAC - Rp, 10.29.6.4 NMAC, 11/15/16]

10.29.6.5 EFFECTIVE DATE:

November 15, 2016, unless a later date is cited at the end of a section.

[10.29.6.5 NMAC - Rp, 10.29.6.5 NMAC, 11/15/16]

10.29.6.6 OBJECTIVE:

The purpose of Part 6 is to establish training requirements and eligibility standards for police officers and telecommunicators who seek certification by waiver of basic training under Section 29-7-10 NMSA 1978 (Repl. Pamp. 1994), Section 29-7C-6 NMSA 1978. Certification by waiver of previous training for officer minimum standards of training will include:

- A.** ethics and sexual harassment - eight hours;
- B.** search and seizure - 16 hours;
- C.** New Mexico legal block - 16 hours
- D.** dealing with the mentally ill (HB 93) - eight hours;
- E.** use of force, response to resistance, and training simulator - 16 hours;
- F.** domestic violence and human trafficking - eight hours;
- G.** reality based training scenarios - four hours;
- H.** administrative time - one hour;
- I.** law enforcement officers certification exam - three hours; and
- J.** 80 hours of academy accredited training is required for successful completion of the certification by waiver of previous training course.

[10.29.6.6 NMAC - Rp, 10.29.6.6 NMAC, 11/15/16]

10.29.6.7 DEFINITIONS:

[RESERVED]

10.29.6.8 REQUIREMENTS FOR POLICE OFFICERS:

A. To be eligible for certification by waiver of basic training, such applicants shall be required to successfully meet all qualifications for police officer admission as set forth in Section 29-7-6 NMSA 1978 (Repl. Pamp. 1997).

B. All applicants must submit a required two-part application packet.

(1) Part I of the packet contains materials documenting employment history, training and certification status, and previous training to be used by the academy board to make a determination of whether the applicant has completed a basic law enforcement training program that is comparable to, or exceeds, the standards of the programs of the academy.

(2) Part II of the packet contains the application for admission and certification; employment verification; completion of a medical and psychological evaluation; criminal history; fingerprint affidavit; waiver of liability; release of information; notarized copy of high school diploma, general education development (GED) certificate, or college diploma; applicant affidavit of United States (U.S.) citizenship or proof of U.S. citizenship; applicant affidavit of proof of current valid driver's license; and a notarized copy of DD214, only applicable if an applicant has military service. Applicants must meet these requirements to be eligible for the certification by waiver program.

C. Once an applicant has successfully met the aforementioned requirements, the applicant shall complete one of the following paths to successfully meet the certification requirements:

(1) The applicant's agency will provide documentation attesting to the applicant's successful completion of 80 hours of accredited training. Upon review and approval of submitted documentation of aforementioned training, the applicant will then be eligible to challenge, and must successfully pass with a minimum score of seventy percent, the law enforcement officer's certification examination (LEOCE).

(2) If the applicant is unable to complete any of 80 hours of accredited training, or did not successfully pass the LEOCE, the applicant will be required to attend 80 hour certification by waiver training program and successfully pass with a minimum score of seventy percent the LEOCE.

D. Applicants will have two opportunities to successfully pass the LEOCE. If an applicant is unable to pass the LEOCE after two attempts he or she will be required to attend and pass the basic police officer training program.

E. For the purposes of certification by waiver of previous training, pursuant to Section 29-7-10 NMSA 1978 (Repl. Pamp. 1997), the academy board has adopted the following formula to be applied to individuals who have not completed a comparable basic training program: applicants will be given credit for previous certified law enforcement experience at the rate of 40 hours per year for each year of service, up to but not to exceed 10 years, for a total of 400 hours, and the applicant will receive credit for advanced training, up to but not to exceed 400 hours. Applicant experience and training must be equivalent to the current minimum standards of training curriculum in effect at the time of application, unless such deficiencies are covered in the certification by waiver program.

[10.29.6.8 NMAC - Rp, 10.29.6.8 NMAC, 11/15/16]

10.29.6.9 ELIGIBILITY OF OUT-OF-STATE POLICE OFFICER APPLICANTS:

A. In the event a certified officer from another state or duly commissioned officer from a federal agency makes application for certification in the state of New Mexico, they must meet all qualifications and requirements as determined by the director.

B. Any applicant who has not been employed as a full-time law enforcement officer for a period in excess of eight years must attend the basic police officer training program to become certified.

C. Any applicant who has successfully completed an accredited law enforcement academy from another state, but has never been certified, must secure a law enforcement position with a recognized New Mexico law enforcement agency within three years of academy completion and must meet all other qualifications and requirements as determined by the director to be eligible for certification by waiver.

[10.29.6.9 NMAC - Rp, 10.29.6.9 NMAC, 11/15/16]

10.29.6.10 ELIGIBILITY OF RETIREES:

In the event a retired certified officer who has appropriately separated from law enforcement service makes application to obtain or regain New Mexico certification by waiver of basic training, such applicants shall satisfy the following requirements.

A. Applicant must have graduated from a certified law enforcement academy that was comparable to or exceeded the standards of the programs of the New Mexico academy.

B. Separation must be under honorable conditions.

C. Complete all other conditions required under the current certification by waiver of basic training, except for the physical fitness and agility requirements.

D. Complete any other requirements imposed on applicant by sponsoring agency.

[10.29.6.10 NMAC - Rp, 10.29.6.10 NMAC, 11/15/16]

10.29.6.11 REQUIREMENTS FOR ACTIVE DUTY MILITARY POLICE APPLICANTS:

A. Qualifying military police must have successfully completed a basic military police course and completed a four-year enlistment as a military police officer in the U.S. army, U.S. marine corps, U.S. air force, or U.S. navy. Persons serving in the U.S. coast guard and department of defense police do not meet occupational requirements.

B. Individuals meeting the aforementioned qualifications must have successfully completed basic military training from one of the following military police courses for the military branch they served:

- (1) U.S. army after 9/1/2003;
- (2) U.S. marine corps after 9/1/2003;
- (3) U.S. air force after 9/1/2005; or
- (4) U.S. navy after 9/1/2005.

C. Military occupational specialties or air force career classifications considered are:

- (1) U.S. army 95B, or 31B;
- (2) U.S. marine corps 5811;
- (3) U.S. air force 3PO51, or 3PO91; or
- (4) U.S. navy master at arms, or navy enlisted classification (NEC) 9545 (completed NAVEDTRA 14137).

D. Individuals serving in the armed forces who have completed a basic military police course prior to the above dates, but had continuous military service in an approved military occupation specialty or air force career (MOS/AFC) since completion of the military basic course, along with continuing educational courses may be considered. Applicants meeting this criterion will be required to complete part I and part 2 packets as listed in Section 29-7-6 NMSA 1978, qualifications for certification, listing all schools and training to the New Mexico law enforcement academy (NMLEA) director for consideration.

E. All of the aforementioned military police applicants must attend the 80 hour certification by waiver training course and successfully pass the LEOCE with a score of seventy percent or better.

F. Applicants currently on active duty status must also submit a notarized letter from their current command attesting to their current status, records of any disciplinary actions, and a statement attesting the applicant is eligible for a general/honorable discharge.

G. members who have only served in the national guard or reserves are not eligible for the certification by waiver program.

[10.29.6.11 NMAC - Rp, 10.29.6.11 NMAC, 11/15/16]

10.29.6.12 REQUIREMENTS FOR PUBLIC SAFETY TELECOMMUNICATOR:

A. In order to be eligible for certification by waiver of basic training, such applicants shall be required to successfully complete a certification by waiver of previous training

program in order to demonstrate proficiency. The training will include the following topics: human relations; civil law; criminal law; domestic violence; national crime information center; New Mexico law enforcement telecommunications system (NCIC – NMLETS) and critical incident management training. The public safety telecommunicator certification examination will be administered at the end of the training program. The applicant will have two opportunities to successfully pass the exam. Two failures of the exam will require the applicant to attend the basic public safety telecommunicator training program.

B. For the purposes of certification by waiver of previous training, pursuant to Section 29-7C-6 NMSA 1978, the academy board has adopted the following formula to be applied to individuals who have not completed a comparable basic training program. Applicants will be given credit for previous public safety telecommunicator experience at the rate of 24 hours per year for each year of service, up to but not to exceed five years, for a total of 120 hours, and the applicant will receive credit for advanced training, up to but not to exceed 120 hours. Applicant experience and training must be equivalent to the current minimum standards of training curriculum in effect at the time of application, unless such deficiencies are covered in the certification by waiver program.

[10.29.6.12 NMAC - Rp, 10.29.6.12 NMAC, 11/15/16]

10.29.6.13 ELIGIBILITY OF OUT-OF-STATE PUBLIC SAFETY TELECOMMUNICATOR APPLICANTS:

A. In the event a certified telecommunicator from another state or a telecommunicator from a federal agency makes application for certification in the state of New Mexico they must meet all qualifications and requirements as determined by the director.

B. Any applicant who has not been employed as a certified telecommunicator for a period in excess of eight years must attend the basic public safety telecommunicator training program to become certified.

C. Any applicant who has successfully completed an accredited law enforcement academy from another state, but has never been certified, must secure a telecommunicator position with a New Mexico public safety agency within three years of academy completion and must meet all other qualifications and requirements as determined by the director to be eligible for certification by waiver.

[10.29.6.13 NMAC - Rp, 10.29.6.13 NMAC, 11/15/16]

PART 7: IN-SERVICE TRAINING REQUIREMENTS

10.29.7.1 ISSUING AGENCY:

Department of Public Safety, New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico 87507.

[10.29.7.1 NMAC - Rp, 10.29.7.1 NMAC, 07/10/2018]

10.29.7.2 SCOPE:

Applies to all New Mexico certified police officers and public safety telecommunicators.

[10.29.7.2 NMAC - Rp, 10.29.7.2 NMAC, 07/10/2018]

10.29.7.3 STATUTORY AUTHORITY:

Section 29-7-7.1 NMSA 1978, (Repl. Pamp. 1994), Section 29-7-4 NMSA 1978, (Repl. Pamp. 1994), Section 29-7-5 NMSA 1978, (Repl. Pamp. 1994)

[10.29.7.3 NMAC - Rp, 10.29.7.3 NMAC, 07/10/2018]

10.29.7.4 DURATION:

Permanent.

[10.29.7.4 NMAC - Rp, 10.29.7.4 NMAC, 07/10/2018]

10.29.7.5 EFFECTIVE DATE:

July 10, 2018, unless a different date is cited at the end of a section.

[10.29.7.5 NMAC - Rp, 10.29.7.5 NMAC, 07/10/2018]

10.29.7.6 OBJECTIVE:

The purpose of Part 7 is to establish in-service training requirements for certified police officers and certified public safety telecommunicators.

[10.29.7.6 NMAC - Rp, 10.29.7.6 NMAC, 07/10/2018]

10.29.7.7 DEFINITIONS:

A. "Academy" means the New Mexico law enforcement academy.

B. "NHTSA" means the national highway traffic safety administration.

[10.29.7.7 NMAC - Rp, 10.29.7.7 NMAC, 07/10/2018]

10.29.7.8 IN-SERVICE TRAINING CYCLE FOR LAW ENFORCEMENT OFFICERS:

A. All New Mexico certified law enforcement officers shall receive a minimum of 40 hours of training bi-annually (every other year). Each two year in-service training cycle will begin on the first day of the subsequent even numbered year and conclude on the final day of the sequential odd numbered year.

(1) A minimum of four hours training shall be in safe pursuit pursuant to Section 29-20-3 NMSA 1978.

(2) A minimum of one hour training shall be in domestic violence incident training pursuant to Section 29-7-4.1 NMSA 1978, annually.

(3) A minimum of two hours training shall be in the detection, investigation and reporting of a crime motivated by hate pursuant to Subsection B of Section 31-18B-5 NMSA 1978.

(4) For all officers who may be involved in the arrest of driving while intoxicated (DWI) offenders as a normal part of their duties, four hours training shall be in NHTSA approved standardized field sobriety testing (SFST) protocols or successful course completion of the NHTSA approved 16 hour advanced roadside impaired driving enforcement course.

(5) A minimum of one hour training shall be in ensuring child safety upon arrest pursuant to Section 29-7-7.3 NMSA 1978, annually.

(6) Four hours training of academy approved day and night firearms training on agency approved weapons systems including, but not limited to, duty handgun, backup handgun, shotgun, and rifle. No more than one hour training shall be classroom lecture. A minimum of three hours training, divided equally between day and night training, and shall consist of practical exercises using live fire, Simmunitions®, Airsoft® or other firearms training systems. Qualification testing may not be used as training to meet this requirement.

(7) A minimum of two hours training in child abuse incident training pursuant to Section 29-7-4.2 NMSA 1978, annually.

(8) A minimum of one hour training shall be in missing persons and Amber alert training pursuant to Section 29-7-7.4 NMSA 1978, annually.

(9) A minimum of two hours training shall be in academy accredited interaction with persons with mental impairments training pursuant to Section 29-7-7.5 NMSA 1978.

(10) A minimum of 30 minutes training shall be in academy accredited tourniquet and trauma kit training pursuant to Section 29-7-7.7 NMSA 1978, annually.

(11) A minimum of two hours training shall be in legal update training to include changes in New Mexico state statutes and recent state and federal case law.

(12) Remaining training hours shall be in maintenance or advanced areas to meet the agencies specific needs.

B. Required training may be received through the following means:

(1) Where scheduling will allow, the New Mexico law enforcement academy will assign staff to instruct the course at the academy and regional training sites.

(2) Curriculum developed by the New Mexico law enforcement academy will be provided to individual agencies upon request for their own certified instructors to present to their officers, provided the instructor is qualified in the subject matter.

(3) Individual agencies or private contractors may develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

C. This three-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon law enforcement and the opportunity to have statewide consistency in certain critical areas.

D. Implementation is to begin on January 1, of the first even numbered year of a training cycle.

E. Officers obtaining certification within an even numbered year will be required to obtain one-half-of the in-service training requirements. Officers obtaining certification within an odd numbered year will be required to meet the next two-year in-service training requirement which will go into effect on January 1 of the succeeding even numbered year. The in-service training requirements are applicable in subsequent two-year cycles (one even number year and the subsequent odd numbered year constitutes a two-year cycle. Officers transferring from one agency to another will carry with them the responsibility for in-service training.

[10.29.7.8 NMAC - Rp, 10.29.7.8 NMAC, 07/10/2018]

**10.29.7.9 IN-SERVICE TRAINING CYCLE FOR PUBLIC SAFETY
TELECOMMUNICATORS:**

A. All New Mexico certified public safety telecommunicators shall receive a minimum of 20 hours of training bi-annually (every other year). Each two year in-service training cycle will begin on the first day of the subsequent even numbered year and conclude on the final day of the sequential odd numbered year.

(1) A minimum of two hours training in academy accredited interaction with persons with mental impairments training in line with requirements pursuant to Section 29-7-7.5 NMSA 1978.

(2) Remaining training hours shall be in maintenance or advanced training areas to meet the agency's specific needs and abilities of the telecommunicator.

B. Required training may be received through the following means.

(1) Where scheduling will allow, the academy will assign staff to instruct the course at regional training sites.

(2) Curriculum may be developed by the academy and provided to individual agencies for their own certified instructors to present to their telecommunicators, provided the instructor is qualified in the subject matter.

(3) Individual agencies or private contractors may develop curriculum for review and approval (accreditation) by the academy which meets the criteria established by the board.

C. This three-pronged approach gives all agencies the flexibility they need to address individual training needs. It also allows the board to implement a planned program of in-service training that is responsive to the changing demands placed upon telecommunicators and the opportunity to have statewide consistency in certain critical areas.

D. Implementation is to begin on January 1, of the first even numbered year of a training cycle.

E. Telecommunicators obtaining certification within an even numbered year will be required to obtain one-half-of the in-service training requirements. Telecommunicators obtaining certification within an odd numbered year will be required to meet the next two-year in-service training requirement which will go into effect on January 1 of the succeeding even numbered year. The in-service training requirements are applicable in subsequent two-year cycles (one even number year and the subsequent odd numbered year constitutes a two-year cycle). Telecommunicators transferring from one agency to another will carry with them the responsibility for in-service training.

[10.29.7.9 NMAC - Rp, 10.29.7.9 NMAC, 07/10/2018]

PART 8: OFFICER TRANSITION TRAINING PROGRAM

10.29.8.1 ISSUING AGENCY:

New Mexico Law Enforcement Academy - Training and Recruiting Division.

[10.29.8.1 NMAC - N, 11/30/09]

[Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87505]

10.29.8.2 SCOPE:

All police officers and law enforcement agencies in the state of New Mexico.

[10.29.8.2 NMAC - N, 11/30/09]

10.29.8.3 STATUTORY AUTHORITY:

NMSA 1978, Section 29-7-4 (B) (C) (F) (Repl. Pamp. 1994), NMSA 1978, Section 29-7-5 (E) (F) (Repl. Pamp. 1994), NMSA 1978, Section 29-7-6 (A) (4) (6) (Repl. Pamp. 1994), NMSA 1978, Section 29-7-7.1 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-7.2 (Repl. Pamp. 1994), NMSA 1978, Section 29-7-10 (Repl. Pamp. 1994)

[10.29.8.3 NMAC - N, 11/30/09]

10.29.8.4 DURATION:

Permanent.

[10.29.8.4 NMAC - N, 11/30/09]

10.29.8.5 EFFECTIVE DATE:

November 30, 2009, unless a later date is cited at the end of a section.

[10.29.8.5 NMAC - N, 11/30/09]

10.29.8.6 OBJECTIVE:

The purpose and intent of this rule is to provide the ability for New Mexico reserve police officers to attain New Mexico law enforcement certification. These rules do not require the certification of a reserve program, nor do they require any agency or individual currently involved as a law enforcement reserve to attain such certification. The objectives of Part 8 are to:

A. establish minimum standards of training for police officer certification of officers obtaining certification by the police officer transition training program;

B. establish criteria for applicants to attend a police officer transition training program;

C. identify criteria for medical and psychological evaluations required under law and fingerprint clearance; and

D. establish entry level and requalification firearms training requirements.

[10.29.8.6 NMAC - N, 11/30/09]

10.29.8.7 DEFINITIONS:

A. "Reserve officer" means a commissioned person who is not a certified police officer by the New Mexico law enforcement academy that assists law enforcement agencies in the state of New Mexico.

B. "Certified officer" means a commissioned person who assists law enforcement agencies in the state of New Mexico who has met all the requirements for law enforcement certification as established by the Article 7, New Mexico Law Enforcement Training Act, NMSA 1978 Section 29-7-1 to 29-7-13 and is commissioned and employed by a recognized New Mexico law enforcement agency.

C. "Transition officer student" means a person that has made application and been approved by the director for obtaining law enforcement certification through the police officer transition training program. This person may not be employed as a certified police officer by any law enforcement agency in this state until the person satisfies the qualifications for certification set forth in 29-7-6, Subsection A, and is awarded a certificate by the director attesting to that fact.

D. "Police officer transition training program" means a program approved by the New Mexico law enforcement academy equivalent to the existing standards established under 10.29.9.8 NMAC that allows for police officer certification.

E. "Certification by prior basic reserve training" means the validation and approval of a comparable basic training program for prior reserve training conducted in New Mexico as recognized and approved by the director through December 31, 2011. Effective January 1st 2012 no credit will be given for law enforcement certification purposes for any basic reserve training conducted outside of the officer transition training program.

[10.29.8.7 NMAC - N, 11/30/09]

10.29.8.8 POLICE OFFICER TRANSITION MINIMUM STANDARDS OF TRAINING:

A. The training standards as established under 10.29.9.8 NMAC are the minimum standards of training for police officer transition certification except as noted in Subsection B of this section.

B. Block 3: Physical and emotional readiness for transition programs; 76 total block hours - this unit of instruction will instruct the student in health and physical fitness concepts, flexibility, strength, body composition and cardiovascular endurance. The student will be expected to successfully complete both entrance and exit standards of fitness and exit standards of job-related agility. The subjects and standards include.

(1) Physical fitness/wellness; 1 hour.

(a) Academy entry standard: This standard is based on cooper clinic studies, data and recommendations. Each academy entry student will be pre-assessed on five fitness/wellness evaluations: (1) 1.5 mile run (altitude adjusted); (2) 1 minute sit-up; (3) 1 minute push-up; (4) sit and reach; and (5) 300 meter run. Entry evaluations 1 through 5 will be measured relative to age and gender norms. Each academy entry candidate must score in the 40th percentile or better, in each of the five designated fitness/wellness evaluations, to be eligible for entry into state-certified law enforcement basic transition training academies.

(b) Academy exit goal: For each academy student the goal, through participation in the physical fitness program, is to be able to score in the 60th percentile in each of the above five fitness/wellness evaluations.

(2) Physical performance requirements; 72 hours.

(a) Fitness program: Each student will participate in a fitness program approved by the director within six months of the projected completion date of all basic training program requirements.

(b) Academy fitness exit standard: Complete the 1.5 mile run and 300 meter run at the 60th percentile.

(c) Academy agility course #1 - Pursuit and control exit standard: Score passing time (3 minutes, 5 seconds) on agility course while wearing 10 pounds of extra weight.

(i) Officer is seated in a vehicle with seatbelt in use. As the timed exercise begins, the officer will undo the seatbelt and open the vehicle door.

(ii) Run 30 feet and open a building door.

(iii) Cross the threshold (4 feet) and run up two flights of stairs and pause for 60 seconds. (A rise and run of 7 inches by 11 inches is standard; 8 inches by 10 inches or 6 inches by 12 inches are acceptable variations. Standard floor landings are 10 feet

high.) It is appropriate, if only one floor is available, to run up, run down, run up and pause. There is no restriction on how the officer negotiates the stairs.

(iv) Run down the stairs and out the door.

(v) Run 100 feet from the door to a 5-foot high platform; run up steps to the top of the 5-foot platform and jump down. A ladder or ramp are acceptable variations to getting on top of the platform.

(vi) Run 37.5 feet; turn and reverse; run 37.5 feet; turn and reverse; run 25 feet to a 6-foot high wall and scale it. The wall is constructed of cinder block, unpainted with a smooth top. If the applicant chooses, he or she may drag a rigid aid or object 10 feet from the side of the wall and use it as a platform to scale the wall. The rigid aid or object will have handles, a flat top, weigh 50 pounds and be 25 inches tall.

(vii) After scaling the wall, run 50 feet to a handcuff/arrest simulator; pull the arms down; touch the ends and hold for 60 seconds. The arrest simulator is 5 feet high with 60 pounds resistance in the right arm and 40 pounds in the left arm.

(d) Academy agility course #2 - Rescue exit standard: Score passing time (42 seconds) on agility course while wearing 10 pounds of extra weight.

(i) Officer is standing at starting point wearing a 10-pound weight belt around the waist to simulate a gun belt. On signal the officer will run 30 feet straight ahead and jump across a 4-foot wide barrier. The barrier is low to the ground, e.g., a ditch, highway divider, etc.

(ii) Run 12.5 feet and climb, jump or hurdle over a 3-foot high barrier. The barrier is to resemble a fence or low wall, no more than 4 inches wide and at least 8 feet long, made of metal or wood.

(iii) Run 12.5 feet to the back of a vehicle equivalent to a full-sized police vehicle and push it 30 feet on a flat surface in the direction of a clear area where a victim extraction will take place. The car is occupied by a dummy (victim) wearing a seatbelt and weighing 190 pounds plus or minus 10 pounds. The dummy must meet standards established by the New Mexico law enforcement academy.

(iv) Approach the victim's door; open the door; undo the seatbelt; pull the victim out of the vehicle and drag them 20 feet perpendicular to the direction of the vehicle.

(3) Emotional health and stress management; 2 hours.

(4) Nutrition; 1 hour.

[10.29.8.8 NMAC - N, 11/30/09]

10.29.8.9 STUDENT HANDBOOK, PROCEDURES, AND RULES:

Due to the need to insure that students attending a regional law enforcement academy will comply with rules and regulations, the director of the New Mexico law enforcement regional academy is hereby instructed to prepare a handbook covering student rules and regulations, policies and procedures.

[10.29.8.9 NMAC - N, 11/30/09]

10.29.8.10 TRANSITION PROGRAM APPLICATION FOR ADMISSION:

A. Compliance with the reporting requirements listed in 10.29.9.10 NMAC is required.

B. Phase one application requirements.

(1) An applicant for training or certification, or his department, must submit the following application forms for admission or certification and all necessary paperwork 60 days prior to the basic training program start date.

(a) LEA-1A - application for admission to transition training program.

(b) LEA-5 - fingerprint affidavit.

(c) LEA-6 - applicant affidavit.

(d) LEA-9 - release of information.

(e) LEA-11 - employment history.

(f) LEA-12 - affidavit of United States citizenship.

(g) LEA-14 - entry physical fitness verification.

(h) LEA-82 - agency employment action.

(i) Notarized copy of current valid driver's license.

(j) Notarized copy of military DD214 (if applicant has had military service) must have character of service.

(k) Notarized copy of high school diploma, G.E.D. certificate or college diploma.

(2) Non-compliance with the 60 day application requirement will result denial of admission to the selected training.

(3) Applicants who falsify any information on their application for admission or certification will not be considered for admission or certification.

C. Phase two application requirements.

(1) An applicant for basic certification, or his department, must submit the following application forms for certification and all necessary paperwork no less than six months prior to the completion of the basic training program.

(a) LEA-3 - medical examination.

(b) LEA-4 - current psychological examination.

(2) Non-compliance with the six month submission requirement will result denial of eligibility to take the law enforcement certification examination.

(3) Applicants who falsify any information on their application for admission or certification will not be considered for admission or certification.

D. Phase three, certification by waiver training program requirement. An applicant for basic certification must complete the certification by waiver training program no less than six months after the completion of the basic transition training program.

[10.29.8.10 NMAC - N, 11/30/09]

10.29.8.11 PSYCHOLOGICAL EXAMINATION:

Prior to certification as a law enforcement officer in the state of New Mexico, it shall be necessary for each applicant to be examined by a licensed/certified psychologist who shall certify to the individual's emotional and mental condition on a form prescribed by the director and entitled "mental examination certification". Compliance with the provisions set forth in 10.29.9.12 NMAC is required.

[10.29.8.11 NMAC - N, 11/30/09]

10.29.8.12 FINGERPRINT CLEARANCE FOR ADMISSION/CERTIFICATION:

Prior to admission or certification as a law enforcement officer in the state of New Mexico, it shall be necessary for all New Mexico police officer applicants for certification must receive a fingerprint clearance from the department of public safety technical and emergency support division and the federal bureau of investigation. Compliance with the provisions set forth in 10.29.9.13 NMAC is required.

[10.29.8.12 NMAC - N, 11/30/09]

10.29.8.13 REQUALIFICATION FIREARMS TRAINING:

All New Mexico police officer applicants for certification must comply with the provisions set forth in 10.29.9.14 NMAC.

[10.29.8.13 NMAC - N, 11/30/09]

10.29.8.14 MEDICAL REVIEW PROCEDURES:

In accordance with the provisions of the Law Enforcement Training Act, Section 29-7-6, an applicant for certification or training must be examined by a licensed physician and be found to be free of any physical condition that might adversely affect his/her performance as a police officer or prohibit him/her from successfully completing a prescribed basic law enforcement training course. Compliance with the provisions set forth in 10.29.9.17 NMAC is required.

[10.29.8.14 NMAC - N, 11/30/09]

10.29.8.15 LAW ENFORCEMENT OFFICER CERTIFICATION EXAMINATION; TIME LIMITATIONS:

A. Students who successfully complete a New Mexico police officer transition training program, and certification by waiver training program, and are determined to have met all of the requirements for law enforcement certification, will be allowed to take the law enforcement officer certification exam. Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director of the department of public safety training and recruiting division, will be administered the law enforcement officer certification exam.

(1) Students will be allowed two opportunities in which to pass the law enforcement officer certification exam within 60 days from the date of completion of the training program. Students who fail the exam two times must attend and successfully complete the New Mexico law enforcement academy's basic police training program. Students will not be allowed to attend a regional/satellite program to obtain certification.

(2) Students who achieve a passing score on the law enforcement officer certification exam are eligible for certification upon submission of form LEA-15 by the employing New Mexico law enforcement agency.

B. Students who have successfully completed a New Mexico police officer transition training program, the certification by waiver program, and passed the law enforcement officer certification exam, will be provided a letter from the director of the department of public safety training and recruiting division attesting to the student's eligibility for certification as a police officer in New Mexico.

C. When all paperwork is completed to the satisfaction of the director of the department of public safety training and recruiting division for any student requesting certification by successful completion of a New Mexico police officer transition training

program, the request will be submitted to the New Mexico law enforcement academy board for final approval and award of certification under NMSA 1978, Section 29-7-1 et. al., (Repl. Pamp. 1994).

[10.29.8.15 NMAC - N, 11/30/09]

10.29.8.16 CERTIFICATION:

A. The New Mexico law enforcement academy board determines the maximum number of satellite academies which may be certified at any given time. Only approved satellite academy programs may conduct New Mexico police officer transition training programs.

B. The following procedures must be adhered to by all New Mexico police officer transition training programs for the training program to be approved for certification in accordance with NMSA 1978, Section 29-7-1 et. al., (Repl. Pamp. 1997).

[10.29.8.16 NMAC - N, 11/30/09]

10.29.8.17 PROGRAM IMPLEMENTATION:

A. The accredited academy will ensure that the facilities, instructors, program management, and curriculum meet or exceed the standards and expectations established by the board and the director.

B. All regional academies requesting approval for each transition basic training program must notify the department of public safety training and recruiting division and supply the following information for review and approval prior to any such program's implementation.

(1) Curriculum which must correspond with the current minimum standards of training for the requested program as set forth in 10.29.9.8 and 10.29.8.8 NMAC. Curriculum is subject to change at the discretion of the New Mexico law enforcement academy board.

(2) List of department of public safety training and recruiting division certified instructors and their assigned course(s). Instructors must be certified through the department of public safety training and recruiting division, or instruction conducted by a non-certified instructor must be monitored by the department of public safety training and recruiting division certified instructor. Technical or high risk areas must be instructed by certified department of public safety training and recruiting division instructors; for example, firearms training - qualification must be conducted by a certified department of public safety training and recruiting division firearms instructor.

(3) Schedule of classes for the entire training period.

- (4) Roster of students' full names, dates of birth, and social security numbers.

C. For New Mexico police officer transition training program, comparable training facilities for the below listed proficiency areas must be available or contracted for by the requesting agency or instructor and inspected by the department of public safety training and recruiting division prior to approval.

- (1) Comparable driving track facility.
- (2) Comparable firearms range facility.
- (3) Comparable obstacle/agility course facility.

D. Upon receipt of this information, a thorough evaluation will be made and notification sent to the regional academy advising the decision of the department of public safety training and recruiting division. In the event that the program is not approved, notification and recommendations will be sent advising the agency or institution of the program deficiencies. Once these deficiencies have been corrected, the program will again be examined and notification will be sent as to final disposition.

E. Once approval is granted, the agency or institution can conduct the program with the assurance that the program is comparable to or exceeds the minimum standards of training as established by the New Mexico law enforcement academy board. Any deviation from the previously approved program must be submitted to the department of public safety training and recruiting division for review and approval pending final certification of the program conducted.

F. 60 days prior to the regional academy start date, all fitness assessment scores, and the phase one student application packet shall be received by the department of public safety training and recruiting division.

G. Class size will be determined by each regional academy, however, an appropriate instructor to student ratio must be maintained. This is especially important in the critical skill areas of physical fitness, firearms, defensive tactics, emergency vehicle operations, and situational training exercises. The certification of students completing an academy program is important. A low certification percentage, as determined by the board, will be grounds for non-renewal of academy accreditation.

H. The board will establish minimum guidelines for instructor and student conduct.

I. The board will determine which academies are authorized to conduct transition law enforcement training. The type of student allowed to attend a satellite academy transition training program must meet the criteria listed on form LEA-1A.

10.29.8.18 PROGRAM COMPLETION:

Upon completion of the satellite program, the agency/institution must provide the following information to the department of public safety training and recruiting division prior to administration of the law enforcement officer certification examination (LEOCE).

- A.** Phase two application forms for certification and all necessary paperwork shall be submitted no less than six months prior to the projected completion of the basic training program.
- B.** Final (revised) student roster: full name, date of birth, social security number, and mailing address of each student.
- C.** Final (revised) class schedule: dates, time, and length of instruction. Each block of the minimum standards of training will be included.
- D.** Final (revised) listing of instructors: instructors must be certified through the department of public safety training and recruiting division certified instructor. Technical or high risk areas must be instructed by a certified department of public safety training and recruiting division instructor for the specific areas instructed; example, firearms training - qualification must be conducted by a certified department of public safety training and recruiting division firearms instructor.
- E.** Block test scores must be provided for each instructional area, as well as scoring for the skill proficiency areas, i.e., firearms, defensive tactics, patrol fitness (1.5 mile run and obstacle course), and driving program. A roster of student names and test scores attested to by the satellite program director is sufficient to meet the department of public safety training and recruiting division testing requirements. Department of public safety training and recruiting division testing requirements and minimum scores for the various block and skill proficiency areas are the only acceptable testing criteria.
- F.** Final attendance roster for students of the training program.

[10.29.8.18 NMAC - N, 11/30/09]

10.29.8.19 PROGRAM MONITORING AND EVALUATION:

- A.** Department of public safety training and recruiting division director, or his designee, has the authority to visit the satellite training program at any time to monitor and evaluate the training conducted to ensure that the program meets the established minimum standards of training.
- B.** The department of public safety training and recruiting division director, or his designee, will investigate any reported information concerning the operation of the satellite academy and delivery of training programs. At any time that information on

program deficiency is verified, the director can request decertification of the satellite program.

(1) The decertification procedures will require a written report on program deficiencies to the director of the satellite program allowing for correction of noted deficiencies.

(2) If the corrections are not made to the department of public safety training and recruiting division director's satisfaction, decertification will be recommended to the New Mexico law enforcement academy board.

(3) All efforts will be made by the director of the department of public safety training and recruiting division and the satellite program director to resolve program deficiencies prior to initiation of any decertification proceedings.

(4) The satellite program director may appear before the New Mexico law enforcement academy board to appeal, or defend against, program certification recommendations.

[10.29.8.19 NMAC - N, 11/30/09]

10.29.8.20 CERTIFICATION OF PRIOR NON-ACCREDITED BASIC TRAINING:

Students who have successfully completed a non-accredited police officer basic training academy not previously recognized by the New Mexico law enforcement academy, will be allowed to request recognition and approval of this training in partial fulfillment of the training requirements as established under the New Mexico police officer transition training program until 1/01/12. Each applicant must meet the following conditions and the listed documentation must be submitted.

- A.** Reserve academy daily class student attendance rosters.
- B.** Class schedule: dates, time, length of instruction, and a copy of each lesson plan.
- C.** On a form approved by the director, a listing will be submitted to the director of each completed block and sub-topic of training and the corresponding state approved standard of training that has been fulfilled, noting any deficiencies.
- D.** Listing of instructors: instructors must be certified through the department of public safety training and recruiting division certified instructor. Technical or high risk areas must be instructed by a certified department of public safety training and recruiting division instructor for the specific areas instructed; example, firearms training - qualification must be conducted by a certified department of public safety training and recruiting division firearms instructor.

E. Block test scores must be provided for each instructional area, as well as scoring for the skill proficiency areas, i.e., firearms, defensive tactics, patrol fitness (1.5 mile run and obstacle course), and driving program. A roster of student names and test scores attested to by the satellite program director is sufficient to meet the department of public safety training and recruiting division testing requirements. Department of public safety training and recruiting division testing requirements and minimum scores for the various block and skill proficiency areas are the only acceptable testing criteria.

F. Certificate of completion and total hours of training successfully completed.

G. Final roster for students of the training program.

H. Proof of advance training courses completed may be submitted for fulfillment of related deficient basic training hours. It will be the sole discretion of the director to approve any such training hours submitted.

I. Department of public safety training and recruiting division director, or his designee, will evaluate the basic and advance training completed and determine the training hours that will be recognized for basic law enforcement certification and the deficient hours that must be completed to meet the established minimum standards of training. Upon completion of the established minimum standards of training, a formal basic training transcript will be created and the individual will be eligible for attendance of the certification by waiver program.

J. An applicant for certification by waiver, or his department, must submit the application forms identified in phase one and phase two of 10.29.8.10 and LEA-15 for admission to the certification by waiver course.

[10.29.8.20 NMAC - N, 11/30/09]

PART 9: POLICE OFFICER

10.29.9.1 ISSUING AGENCY:

Department of Public Safety, New Mexico Law Enforcement Academy, 4491 Cerrillos Road, Santa Fe, New Mexico 87505.

[10.29.9.1 NMAC - Rp, 10.29.9.1 NMAC, 11/15/2016]

10.29.9.2 SCOPE:

All police officers and law enforcement agencies in the state of New Mexico.

[10.29.9.2 NMAC - Rp, 10.29.9.2 NMAC, 11/15/2016]

10.29.9.3 STATUTORY AUTHORITY:

Subsection (B) (C) (F) of Section 29-7-4 NMSA 1978 (Repl. Pamp. 1994), Subsection (E) (F) of Section 29-7-5 NMSA 1978, (Repl. Pamp. 1994), Paragraph (4) (6) of Subsection (A) of Section 29-7-6 NMSA 1978, (Repl. Pamp. 1994), Section 29-7-7.1 NMSA 1978, (Repl. Pamp. 1994), Section 29-7-7.2 NMSA 1978, (Repl. Pamp. 1994), Section 29-7-10 NMSA 1978, (Repl. Pamp. 1994).

[10.29.9.3 NMAC - Rp, 10.29.9.3 NMAC, 11/15/2016]

10.29.9.4 DURATION:

Permanent.

[10.29.9.4 NMAC - Rp, 10.29.9.4 NMAC, 11/15/2016]

10.29.9.5 EFFECTIVE DATE:

November 15, 2016, unless a different date is cited at the end of a section.

[10.29.9.5 NMAC - Rp, 10.29.9.5 NMAC, 11/15/2016]

10.29.9.6 OBJECTIVE:

The objectives of Part 9 are to establish minimum standards of training for police officer certification, authorize the adoption of a student handbook of student rules and regulations by the director, enumerate reporting requirements for law enforcement agencies in the state of New Mexico, establish criteria for applications to attend the New Mexico law enforcement academy, identify criteria for psychological evaluations required under law and fingerprint clearance, establish entry level and requalification firearms training requirements, establish criteria and procedures for temporary or emergency certification and renewal of certification after absence.

[10.29.9.6 NMAC - Rp, 10.29.9.6 NMAC, 11/15/2016]

10.29.9.7 DEFINITIONS:

[RESERVED]

10.29.9.8 POLICE OFFICER MINIMUM STANDARDS OF TRAINING:

The core basic training academy curriculum at a minimum will include:

A. Block 1: Introduction to the academy: seven total block hours. This unit of instruction prepares the cadet officer for the academy experience, focusing on the responsibilities the cadet must undertake to successfully complete the basic police officer's certification academy. The subjects include:

- (1) academy mission - one hour;
- (2) overall academy objectives - two hours;
- (3) rules and regulations of the academy - one hour;
- (4) learning skills - two hours; and
- (5) role and function of the New Mexico law enforcement academy (NMLEA) - one hour.

B. Block 2: Introduction to law enforcement in New Mexico: 20-six total block hours. This unit of instruction identifies the core background, principles and expectations of being a certified law enforcement officer in the state of New Mexico. The subjects include:

- (1) history and principles of law enforcement - one hour;
- (2) cultural diversity - four hours;
- (3) ethics and moral issues/sexual harassment - eight hours;
- (4) the New Mexico criminal justice system - two hours;
- (5) criminal and civil liability - standards of performance - three hours; and
- (6) survival Spanish for law enforcement - eight hours.

C. Block 3: Physical and emotional readiness: 64 total block hours. This unit of instruction will instruct the student in health and physical fitness concepts, flexibility, strength, body composition and cardiovascular endurance. The student will be expected to successfully complete both entrance and exit standards of fitness and exit standards of job-related agility. The subjects and standards include:

- (1) physical fitness practical training time - 60 hours;
- (2) emotional health, officer suicide and stress management - three hours;
- (3) nutrition - one hour; and
- (4) fitness standards for basic police officer training academy entrance and exit standards. Complete medical exam packets, law enforcement academy form three (LEA 3), must have been signed by a medical doctor and have been received with final clearance and approval prior to physical fitness testing being administered by academy staff. All entrance times were set by the NMLEA board on September 3, 2014, with the

altitude adjustment adopted by the NMLEA board on June 8, 2016. Physical fitness testing standards:

>6000' + 40 sec adj.	Entrance Standard	Mid-Point Standard	Exit Standard
1.5 Mile run	15:54	15:04	14:15
300 Meter	71.0 sec	67.5	64
Sit-ups (1 min)	27	32	37
Push-ups (1 min)	15	20	25
<6000'	Entrance Standard	Mid-Point Standard	Exit Standard
1.5 Mile run	15:14	14:24	13:45
300 Meter	71.0 sec	67.5	64
Sit-ups (1 min)	27	32	37
Push-ups (1 min)	15	20	25

*20 minute mandatory rest period between the 1.5 mile run and the 300 meter run.

(a) Sit-ups: The student starts by lying on their back, knees bent, heels flat on the floor, fingers interlaced and placed behind the head. Partner holds the feet down firmly. In the up position, the student should touch the elbows to knees and then return until the shoulder blades touch the floor. Any resting should be done in the up position. No rocking hips. If fingers become unlaced, adjustment must be made in the up position.

(b) Push-ups: The hands are placed about shoulder width apart. The administrator or partner places a fist on the floor below the student's chest at the midpoint of the sternum (unless a male is testing a female). Starting from the up position (elbows fully extended), the student must keep the back straight at all times (no swayback or elevated hips) and lower their body to the floor until the chest touches the administrator's fist. Student then returns to the up position. Any resting should be done in the up position. Modified push-ups are no longer optional for female applicants. All applicants are required to perform standard push-ups as described in (a) and (b) above.

(c) Exit job specific agility course standard: course #1: officer starts seated in his vehicle, hands on the steering wheel with seatbelt in use and wearing a 10 pound weight belt or vest around waist to simulate a gun belt. As the timed exercise begins, the officer will:

(i) release seatbelt and open vehicle door;

(ii) run 30 feet and open building door;

(iii) cross four foot threshold, run up two flights of stairs and pause for 60 sec. (Rise and Run of seven inches by 11 inches is standard, eight inches by 10 inches or six inches by 12 inches are acceptable. Standard floor landings are 10 feet high.) If only one floor is available it is acceptable to run up, run down, run up and pause 60 seconds. After 60 seconds, run down the stairs and out the door. There is no restriction on how the officer negotiates the stairs; however both feet must contact the top and bottom stair.

(4) Run 100 feet from door to a five foot high platform, run up steps, ladder, or ramp to the top of the platform and jump down.

(5) Run 37 and one-half feet, turn and reverse touching the ramp, run 25 feet to a six foot high wall and scale it. The wall is constructed of unpainted cinder block with a smooth top. If the applicant chooses, he or she may drag a rigid aid or object 10 feet from the side of the wall and use it to scale the wall. The rigid object will have handles, a flat top, weigh 50 pounds and be 25 inches tall.

(6) After scaling the wall, run 50 feet to a handcuff/arrest simulator, put arms down, touch ends and hold for 60 seconds. Arrest simulator is five foot high with 60 pounds resistance in the right arm and 40 pounds in left arm. End exercise. Passing score is three minutes five seconds.

(d) Course #2: Officer starts from a standing position wearing a 10 pound weight belt or vest around waist to simulate a gun belt. As the timed exercise begins, the officer will:

(i) Run 30 feet straight ahead and jump across a four foot wide barrier. The barrier is low to the ground, e.g. a ditch, highway divider, etc.

(ii) Run 12 and one-half feet, and climb, jump, or hurdle over a three foot high barrier. The barrier is to resemble a fence or low wall, no more than four inches wide and at least eight feet long, made of metal or wood.

(iii) Run 12 and one-half feet to the back of a vehicle equivalent to a full-sized police vehicle and push it 30 feet on a flat surface in the direction of a clear area where a victim extraction will take place. The car is occupied by a dummy (victim)

wearing a seatbelt and weighing 190 pounds plus or minus 10 pounds. The dummy must meet standards established by the New Mexico law enforcement academy.

(iv) Approach the victim's door; open the door; undo the seatbelt; pull the victim out of the vehicle and drag them 20 feet perpendicular to the direction of the vehicle.

(v) Both officer and dummy (victim) must completely cross the finish line to end the exercise. Passing Score 42 seconds.

D. Block 4: Law and procedures: 50 total block hours. This unit of instruction informs the student about law and its application to the function of a law enforcement officer. The subjects include:

- (1) authority and jurisdiction - three hours;
- (2) constitutional law - one hour;
- (3) criminal law - 10 hours;
- (4) criminal procedure and laws of arrest - seven hours;
- (5) search and seizure - 22 hours;
- (6) civil law - one hour;
- (7) liquor law - one hour;
- (8) Indian country law - one hour;
- (9) juvenile law - one hour;
- (10) handling juveniles and their problems - one hour; and
- (11) hate crimes - two hours.

E. Block 5: Patrol procedures and operations: 70 total block hours. This unit of instruction will cover the various types of incidents that a law enforcement officer can be expected to be involved in while on patrol, and the practices and procedures necessary to perform the patrol function. The subjects include:

- (1) patrol procedures and operations - eight hours;
- (2) vehicle stops techniques - two hours;
- (3) road blocks and barricades - one hour;

- (4) gangs, terrorism and explosive recognition overview - eight hours;
- (5) critical incident management overview - eight hours;
- (6) radio procedures - one hour;
- (7) patrol response practicum - five hours;
- (8) night-time vehicle stops practicum - five hours;
- (9) officer survival - eight hours;
- (10) building search practicum - eight hours;
- (11) missing persons, silver alert, Brittney alert and Amber alert - seven hours;
- (12) hazardous materials - eight hours; and
- (13) transporting prisoners - one hour.

F. Block 6: Principles of criminal investigation: 46 total block hours. This unit of instruction shall prepare the officer to effectively secure a crime scene, conduct an investigation, collect evidence and prepare reports so suspects may be prosecuted. The subjects include:

- (1) officer as first responder - eight hours;
- (2) interview and interrogation techniques and skills - two hours;
- (3) identifying, collecting and processing evidence - eight hours;
- (4) identification of suspects - one hour;
- (5) injury and death cases - three hours;
- (6) sex crimes - three hours;
- (7) controlled substances - three hours;
- (8) informants and intelligence - two hours;
- (9) surveillance - two hours;
- (10) technology crimes and investigations - two hours;
- (11) child abuse and neglect - four hours; and

- (12) crime scene practicum - eight hours.

G. Block 7: Motor vehicle law enforcement: 40 total block hours. This unit of instruction will furnish the officer with information relating to the applicable motor vehicle laws and the criteria for conducting traffic enforcement operations. The subject includes:

- (1) vehicle code enforcement - one hour;
- (2) title, registration and vehicle identification - one hour;
- (3) driver licensing - one hour;
- (4) occupant safety - one hour;
- (5) traffic enforcement strategies - one hour;
- (6) DWI enforcement/impaired operator - 32 hours;
- (7) commercial vehicle enforcement - one hour; and
- (8) off highway motor vehicle act - one hour.

H. Block 8: Motor vehicle collision investigation and related issues: 24 total block hours. This unit of instruction will provide the student with a basic level of competency to conduct a traffic crash investigation; to have an awareness of the risk posed by hazardous materials and the officer's role in a hazardous materials incident. Hazardous materials foundational knowledge as taught in sub-block 5.12 is applied in sub-block 8.1. The subjects include:

- (1) collision investigation - 23 hours; and
- (2) vehicle crash forms - one hour.

I. Block 9: Crisis intervention/management: 40 total block hours. This unit of instruction will prepare the officer to effectively manage high-risk incidents by providing resolution techniques through crisis intervention with the goal of successful conclusion. The subjects include:

- (1) behavior management and crisis intervention - eight hours;
- (2) dispute intervention and conflict management - eight hours;
- (3) handling the mentally ill and other specialty populations - 16 hours; and
- (4) suicide, barricaded, hostage and suicide by police - eight hours.

J. Block 10: Domestic issues: 20 total block hours. This unit of instruction will focus on the cycle of violence, the rights of victims and the responsibilities of law enforcement and the assistance available to victims. The subjects include:

- (1) domestic violence and police response - eight hours;
- (2) victims assistance law and human trafficking - two hours;
- (3) ensuring child safety upon parental arrest - two hours; and
- (4) domestic violence practicum - eight hours.

K. Block 11: Note taking and report writing: 16 total block hours. This unit of instruction will provide the student with the competencies to effectively communicate in written form the necessary information required in a police report and other official communications. The subjects include: note taking and report writing - 16 hours.

L. Block 12: Defensive tactics and handling arrested persons: 86 total block hours. This unit of instruction will provide the student with techniques used to arrest and control subjects and also how to defend themselves from physical attack. The student will learn the relationship between the subjects actions, crimes suspected of committing and the proper application of force when reasonably necessary. The subjects include:

- (1) use of force/force response to resistance - 12 hours;
- (2) medical implications - one hour;
- (3) oleo resin capsicum spray - three hours;
- (4) mechanics of arrest, restraint and control practical - 62 hours; and
- (5) electronic control devices (taser) - eight hours.

M. Block 13: Case presentation: 12 total block hours. This unit of instruction will give the student the skills for proper preparation and testimony in court and to prepare and question witnesses on the stand, make objections and arguments in petty misdemeanor and misdemeanor cases. The subjects include:

- (1) court room testimony and demeanor - two hours; and
- (2) police officer as prosecutor practical - 10 hours.

N. Block 14: Operation of a patrol vehicle: 54 total block hours. This unit of instruction will prepare the officer for proficiently operating a patrol vehicle, the various factors that affect the operation of a patrol vehicle, procedures for emergency driving and legal issues related to emergency vehicle operations. The student will demonstrate

their competencies on the sub-skills (lane change, slalom, perception reaction, lolly-pop and backing) driving course with a precision closed course and a precision open course and overall course. Satellite academy courses will be equivalent to the New Mexico law enforcement academy emergency vehicle operator's course(s):

- (1) introduction to emergency vehicle operations - two hours;
- (2) safe pursuit act and legal issues - 16 hours;
- (3) emergency response - two hours;
- (4) vehicle dynamics - two hours; and
- (5) skills development driving courses - 32 hours.

O. Block 15: Basic firearms (handgun) course: 77 total block hours. This unit of instruction will familiarize the student with the operation and maintenance of a firearm, firearm safety, safety equipment and fundamentals of marksmanship. The student will successfully complete the New Mexico firearms standardized qualification courses and will display proper decision-making in shoot/don't shoot simulations. The subjects include:

- (1) basic firearms (handgun) practical training and qualifications - 68 hours;
- (2) body armor - one hour; and
- (3) deadly force decision making practicum simulator - eight hours.

P. Block 16: Academy administration: 40 total block hours. This unit is for the administration of the basic academy training program. This includes examinations and reviews, assessments, inspections, discretionary training time and graduation. The subjects include:

- (1) cadet check in - three hours;
- (2) orientation - four hours;
- (3) block exams - 11 hours;
- (4) physical assessments - four hours;
- (5) administrative review - four hours;
- (6) law enforcement officer certification exam (LEOCE) - four hours;
- (7) equipment return - two hours;

- (8) graduation rehearsal - two hours;
- (9) graduation - three hours; and
- (10) dorm check-out - three hours.

Q. Total basic training academy minimum hours required for certification: 672 total hours.

[10.29.9.8 NMAC - Rp, 10.29.9.8 NMAC, 11/15/2016]

10.29.9.9 STUDENT HANDBOOK, PROCEDURES AND REGULATIONS:

Due to the need to insure that students attending the New Mexico law enforcement academy comply with rules and regulations, the director of the New Mexico law enforcement academy is hereby instructed to prepare a handbook covering student rules and regulations, policies and procedures. Such handbook shall be updated as necessary and when applicable, changes shall be reported to the New Mexico law enforcement academy board at their next regularly scheduled meeting.

[10.29.9.9 NMAC - Rp, 10.29.9.9 NMAC, 11/15/2016]

10.29.9.10 POLICE OFFICER REGISTRY REPORTING AND APPLICATIONS FOR ADMISSION/CERTIFICATION:

A. Reporting Requirements:

(1) Employment, termination, or conviction of any felony charge or violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude of all peace officers in the state of New Mexico must be reported to the New Mexico law enforcement academy within 30 days of such action.

(2) Required reporting forms shall be established by the director of the New Mexico law enforcement academy.

(3) All law enforcement agencies who do not comply with the requirement of submitting to the New Mexico law enforcement academy status reports on their employees will not be eligible for training funds or attendance at basic or in-service/advanced training classes until the registry is made current. Repeated failures to maintain the registry shall result in a period of suspension of training eligibility to be set by the director of the New Mexico law enforcement academy.

(4) In order to protect the lives and safety of the officer involved, any law enforcement agency employing undercover officers may indicate, in writing, a desire to protect the officer's identity. If such indication is made, the officer's name shall not

appear in the general office registry. His name and other information requested shall however be furnished to the New Mexico law enforcement academy.

B. Application Requirements:

(1) An applicant for training or for certification, or his department, must submit the initial application for admission/certification and all necessary paperwork within 30 days of the initial hire date for said applicant.

(2) Non-compliance with the 30 day application requirement will result in assignment to class after completion of all other requirements herein on a space available basis only - no special consideration will be given the applicant and the applicant must have his commission suspended if he exceeds one year from initial hire date.

(3) No applicant shall be admitted to the New Mexico law enforcement academy after one year of initial hire date unless the applicant and his chief, sheriff, or agency head certify:

(a) that he was suspended from duty as a law enforcement officer and his commission revoked within one year of his initial hire date; and

(b) that the department will reinstate the officer based upon his successful completion of the basic training course and certification by the New Mexico law enforcement academy board.

(4) The New Mexico law enforcement academy shall be notified of any change in the medical or psychological condition of an applicant prior to his admission or certification.

(5) Applicants who falsify any information on their application for admission or certification will not be considered for admission or certification.

[10.29.9.10 NMAC - Rp, 10.29.9.10 NMAC, 11/15/2016]

10.29.9.11 [RESERVED]

10.29.9.12 PSYCHOLOGICAL EXAMINATION:

A. Procedure:

(1) Prior to admission to training or certification as a law enforcement officer in the state of New Mexico, it shall be necessary for each applicant to be examined by a licensed/certified psychologist who shall certify to the individual's emotional and mental condition on a form prescribed by the director and entitled "mental examination certification".

(2) Private firms who administer psychological examinations for law enforcement officers shall be acceptable if, however, a qualified representative as stated in Paragraph (1) of Subsection A of 10.29.9.12 NMAC completes the appropriate form as prescribed by the director.

(3) The applicant shall also prepare and submit a form prescribed by the director and entitled "psychological statement of applicant".

(4) False or incorrect statements in either form are grounds for revocation of any certificate granted.

(5) Evaluations cannot be more than one year old for admission/certification purposes.

(6) The psychological evaluation/written report will be required to be attached to the LEA-4 form. The written evaluation shall be returned to the department head at the time of certification and shall not be maintained in student training files.

(7) The applicant shall not hold the privilege of obtaining the evaluation; evaluations are the property of the referring agency and shall be held in the strictest of confidence. A self-sponsored applicant may hold the privilege of obtaining the evaluation, however, the original report must still be sent directly to the academy upon completion by the psychologist.

(8) If any information concerning psychological screening/evaluation provided to the director or the person evaluating the applicant's suitability is found to be false or not truthful, the applicant will be either refused enrollment or if certified, decertified in accordance with 10.29.1.10 NMAC through 10.29.1.17 NMAC.

(9) Applicant failure of psychological examination must be reported to the New Mexico law enforcement academy within 30 days.

B. Screening process:

(1) Purpose: The intent of these guidelines is to set minimally acceptable standards for pre-employment psychological testing of persons seeking certification as police officers in New Mexico.

(2) Examiner standard: Pre-employment psychological testing shall be conducted by a licensed/certified psychologist. In the event the psychologist does not have appropriate training in this area, he/she should seek supervision as per the guidelines of the American psychological association ethical standards and code of conduct.

(3) Overview of process: At a minimum, the pre-employment psychological testing process shall consist of the following:

- (a)** psychological testing;
- (b)** face-to-face interview;
- (c)** written narrative report;
- (d)** completed New Mexico LEA-4 form; and
- (e)** informed consent/release of information form.

(4) Psychological testing: The pre-employment psychological testing shall include, at a minimum, testing across the following areas:

(a) a measure of reading ability such as the wide range achievement test (WRAT), the Nelson-Denny reading test, or other comprehensive measure which yields a grade-level score;

(b) a measure of psychopathology, such as the Minnesota multiphasic personality inventory second revised version (MMPI-2), the personality assessment inventory (PAI) or the Millon-3; and

(c) a measure of normal personality functioning, such as the 16PF, the LEADER or the Inwald personality inventory.

(5) Interview: The interview shall be conducted in-person by the licensed/certified psychologist in a face-to-face setting with the candidate. At a minimum, the interview will cover the following areas:

(a) a brief mental status exam;

(b) gather or review a social history, to include relevant information regarding early development, schooling, military service, job history and potential problems issues, such as drug and alcohol use, driving, fighting, domestic violence, and past critical life events;

(c) explore areas of judgment and reliability, such as impulse control, communication, appropriate use of force, social skills, common sense, and credit history; and

(d) any other aspects of personal development (i.e. medical history) that the examiner deems important.

(6) Written report: The report shall incorporate all information gathered in the interview and testing. Any clinically significant elevations in test scores shall be discussed and their impact upon job performance explored. The examiner should address the ability of the candidate to perform the essential job functions, some of

which may be unique to the sponsoring agency. If the candidate is not recommended, the report should enumerate which essential job functions he/she is incapable of performing.

(7) All psychologists performing pre-employment testing must conform to the guidelines of the American psychological association regarding storage of records.

C. Rejection of applicant and subsequent psychological evaluation within 12 months:

(1) In the event an applicant receives a psychological rejection a subsequent or additional psychological evaluation may only be obtained as provided for in Paragraph (1) of Subsection D of this section, and this subsequent psychological evaluation must first be approved by the director through the appeal process as outlined and provided for in Paragraph (1) of Subsection D of this section. This evaluation must be requested within 30 days of the rejection.

(2) A psychological evaluation obtained without the approval of the director within 12 months of the rejection will not be accepted.

(3) Any rejected applicant who does not appeal the rejection may reapply to a New Mexico law enforcement agency 12 months from the signature date of the rejection.

D. Appeal process:

(1) In the event an applicant receives a rejection, the applicant or agency may request that the rejection be reviewed within 30 days of signature date. This request shall be submitted to the New Mexico law enforcement academy director in writing and state the reason that an appeal is warranted.

(a) Reviewing authority will be a New Mexico licensed psychologist(s) designated by the director.

(b) Results of this review will be communicated in writing to the New Mexico law enforcement academy.

(2) If the reviewer concurs with the rejection, the applicant will be eligible to reapply to a New Mexico law enforcement agency 12 months from the signature date of the original evaluation.

(3) If, in the judgment of the reviewer, a second psychological opinion is warranted:

(a) The second opinion will be rendered by a New Mexico licensed psychologist chosen by the New Mexico law enforcement academy director or his/her designee.

(b) Psychologist will review all test data and other information that was available to the initial psychologist (i.e., background investigation and polygraph results).

(c) The second evaluation, at minimum, will follow the guidelines for pre-employment evaluations as outlined by the New Mexico law enforcement academy. The psychologist may review the original test data and will use, at a minimum, one additional testing instrument for the second evaluation.

(d) Psychologist may request other information from the applicant, the agency, or the New Mexico law enforcement academy prior to conducting the evaluation.

(e) The cost of this evaluation will be borne by the agency or the applicant.

(f) If the results of the second evaluation are negative, the applicant may reapply to a New Mexico law enforcement agency 12 months from the signature date of the second opinion.

(g) If the results of the second evaluation are positive, the applicant's name will be removed from the list of failed applicants.

[10.29.9.12 NMAC - Rp, 10.29.9.12 NMAC, 11/15/2016]

10.29.9.13 FINGERPRINT CLEARANCE FOR ADMISSION/CERTIFICATION:

Due to the fact that the New Mexico law enforcement academy is not recognized by federal regulations as a duly authorized law enforcement agency and therefore cannot be issued an originating agency identification (ORI) to send or receive fingerprint clearances through the federal bureau of investigation, the previous procedures established by the law enforcement academy are repealed and are replaced by the following procedures:

A. All New Mexico police officer applicants for certification must receive a fingerprint clearance from the department of public safety technical and emergency support division and the federal bureau of investigation. No officer applying for police officer certification is allowed to receive an original appointment on a permanent basis in New Mexico if the officer has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under dishonorable

conditions from any of the armed forces of the United States, Section 29-7-6 NMSA 1978, (Repl. Pamp. 1994).

B. One set (two cards) of police officer applicant fingerprint cards will be thoroughly completed by the hiring police agency and forwarded to the department of public safety technical and emergency support division. The department of public safety technical and emergency support division will use one fingerprint card for a records check with their agency and will forward the card back to the hiring agency and will forward the second completed card to the federal bureau of investigation identification section for a records check. The department of public safety technical and emergency support division will not log in the fingerprint cards received from the various law enforcement agencies and will not accept inquiries on the status of the fingerprint clearance either for department of public safety technical and emergency support division or the federal bureau of investigation. Department of public safety technical and emergency support division will forward applicant fingerprint requests to the federal bureau of investigation within three days upon receipt of the cards. Incomplete fingerprint cards or cards not properly completed will be returned by the department of public safety technical and emergency support division to the requesting agency.

C. All fingerprint clearances will be forwarded from department of public safety technical and emergency support division and the federal bureau of investigation back to the initiating agency. If the "ORI" label on the fingerprint card is different than that of the hiring agency, the hiring agency requesting the clearance must print their agency's address below the address located on the fingerprint card.

D. Upon receipt of clearance from both the department of public safety technical and emergency support division and the federal bureau of investigation, "no record", the hiring agency will be required to complete NMLEA Form #A-9, certified by the department head's signature, and forward this form to the New Mexico law enforcement academy stating that the officer is in compliance with Section 29-7-6 NMSA 1978, (Repl. Pamp. 1994).

E. Upon receipt of information from the department of public safety technical and emergency support division and the federal bureau of investigation that the applicant for certification has a criminal conviction for a felony crime or crime involving moral turpitude it will be the agency's responsibility to terminate the officer. If there is not adequate information, i.e., no disposition, listed on the "rap sheet" it is the agency's responsibility to determine the disposition of the case prior to requesting certification of the officer and certifying that the officer has no record of arrest under the provisions of the Law Enforcement Training Act. In situations in which the agency is unable to determine the disposition of an arrest/conviction, the agency should consult the attorney general's office for assistance. For guidance in determining whether misdemeanor convictions are crimes specifically involving moral turpitude, departments should request the assistance of the attorney general's office.

F. No police officer may be certified through the New Mexico law enforcement academy who has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under dishonorable conditions from any of the armed forces of the United States, Section 29-7-6 NMSA 1978, (Repl. Pamph. 1994). Any department head certifying that an officer has "no arrest" for the above and information to the contrary is received by the New Mexico law enforcement academy or the attorney general's office, decertification procedures will be immediately initiated and the law enforcement agency chief/sheriff or department head notified as well as the attorney general's office and the New Mexico law enforcement academy board.

[10.29.9.13 NMAC - Rp, 10.29.9.13 NMAC, 11/15/2016]

10.29.9.14 ENTRY LEVEL AND REQUALIFICATION FIREARMS TRAINING:

A. Entry level handgun standards: The entry level officer category includes any officer who is newly hired that has not previously received academy level training. This will result in the standardization of training in firearms and reduce the liability to departments by ensuring all officers are informed of the most recent legal and technical aspects of using deadly force. Prior to carrying a handgun on or off duty, all entry level non-certified officers shall receive a minimum of 16 hours of instruction in the following areas:

- (1)** safety - one hour;
 - (a)** on/off duty;
 - (b)** range;
- (2)** legal aspects - two hours;
 - (a)** state statutes;
 - (b)** use of force policy;
 - (c)** departmental policy;
 - (d)** civil liability considerations;
- (3)** mental conditioning - one hour of awareness training;
- (4)** weapons care and cleaning - one hour;

- (a)** nomenclature;
 - (b)** weapons operation;
 - (c)** disassembly/cleaning;
- (5)** marksmanship fundamentals - one hour;
 - (a)** stance;
 - (b)** grip;
 - (c)** sight alignment;
 - (d)** sight picture;
 - (e)** breath control;
 - (f)** trigger control;
 - (g)** follow through;
- (6)** weapon manipulation - two hours (lecture);
 - (a)** presentation;
 - (b)** reloading techniques;
 - (c)** aimed pairs;
 - (d)** failure drills;
 - (e)** malfunction clearance techniques;
 - (f)** use of cover;
 - (g)** shooting positions;
 - (h)** night shooting techniques;
- (7)** range training and testing - eight hours;
 - (a)** written test;
 - (b)** practical (non-shooting skills training);

(c) live-fire manipulation drills (minimum 130 rounds);

(d) decisional shooting (minimum 20 rounds), three scenarios: good guy/bad guy; shoot/don't shoot, and multiple assailant.

(e) handgun qualification eighty percent or greater (minimum 75 rounds);

(i) 50 rounds day qualification (see specific course);

(ii) 25 rounds night qualification (see specific course);

B. Entry level shotgun/rifle standards: Prior to carrying a shotgun or rifle on or off duty, all entry level non-certified officers shall receive (in addition to the above) a minimum of eight hours of instruction in the following areas:

(1) safety - 30 minutes;

(a) on/off duty;

(b) range;

(2) legal aspects - 30 minutes;

(a) use of force policy;

(b) departmental policy;

(3) weapons care and cleaning - one hour;

(a) nomenclature;

(b) weapons operation;

(c) disassembly/cleaning;

(4) weapon manipulation - two hours;

(a) low/high read;

(b) sling positions;

(c) reloading techniques;

(d) malfunction clearance techniques;

(e) shooting positions;

(5) range training and testing - four hours;

(a) written test;

(b) practical (non-shooting skills training);

(c) live-fire manipulation drills (minimum 50 rounds);

(d) qualification course.

C. Minimum standards description: Specific handgun courses of fire designed for daylight and nighttime conditions, will be used for qualification. This will ensure that all officers are tested to the same standard once a year only. It is recommended that the agency vary courses of fire for other agency required qualifications.

D. Instructor standards: All firearms training will be conducted by approved instructors or New **Mexico state certified firearms instructors.**

E. Requalification: All law enforcement officers must participate in requalification firearms training in accordance with the target/scoring methodology described in Subsection G of 10.29.9.14 NMAC.

F. Reporting:

(1) Training must be conducted and reported to the New Mexico law enforcement academy within 30 days of a non-certified police officer being hired. The reporting form shall be provided by the New Mexico law enforcement academy. No uncertified police officer will be allowed to carry a weapon while on duty until the entry level training has been completed and reported to the New Mexico law enforcement academy.

(2) Requalification scores of every law enforcement officer in the state of New Mexico shall be reported yearly to the New Mexico law enforcement academy by the employing agency for the daytime, nighttime, and other applicable courses of fire.

G. Target/scoring methodology:

(1) Silhouette dimensions will be no larger than 20 inches wide by 35 inches tall overall. Any target similar in design with the scoring boxes is acceptable for qualification. The target will represent the silhouette of a human with the following scoring zones: A "Coke bottle" shape scoring area - this area is worth two points (worth four points in low-light night qualification course). A template of the scoring area can be obtained from the academy and drawn onto the agency target.

(2) Any rounds impacting outside the scoring area, even if they are on the silhouette, are not worth any points.

(3) When the course calls for a "head shot" the rounds must hit within the "business card", which is the square shaped scoring area.

(4) A total possible score of 100 points can be achieved with this scoring system. A minimum score of eighty percent, or 80 points, is required for qualification. At least 40 rounds must impact within the scoring area and all rounds must be accounted for either as a hit or a miss. No soft scoring. For the low-light night qualification course, a total possible score of 100 points can be achieved with each round having a value of four points.

H. Ammunition: All firearms training will be with ammunition that is substantially similar to the duty ammunition. Only factory made new ammunition should be carried on duty.

I. Equipment: Officers will qualify with their duty equipment authorized by the department. Training officers will ensure practical and live-fire testing will be done in clothing consistent with the officer's normal duty uniform. As a minimum, body armor should be worn.

J. Backup weapons: It is recommended that officers be allowed to carry backup weapons, if approved by the departmental armorer/range master, and the officer should demonstrate proficiency with the weapon consistent with their departmental policies. If backup weapons are carried, the weapons should be inspected and by qualification on an appropriate course of fire.

K. Qualification course: Day (50 round course) - A minimum score of eighty percent is required. Please access the qualification courses through department of public safety (DPS)/NMLEA staff.

L. Qualification course: Night (25 round course) - A minimum score of eighty percent is required. Low-light conditions would include parking lights from vehicles, naturally existing light, or other light that is just enough to identify a threat. Please access the qualification courses through DPS/NMLEA staff.

[10.29.9.14 NMAC - N, 11/15/2016]

10.29.9.15 TEMPORARY OR EMERGENCY CERTIFICATION:

A. Procedure:

(1) The director may, in his discretion, grant a temporary certification in order to avoid hardships or prevent conflicts within a department arising solely from technical noncompliance with academy board rules.

(2) Said temporary certificate shall be granted only for good cause, proved to the satisfaction of the director, and shall be granted only to persons who have met the

minimum standards of training prescribed by the board as well as all other state requirements.

(3) Grounds for granting such temporary certification shall include, but not be limited to, the following: a person qualifying for certification by waiver during a period between board meetings.

(4) A temporary certification must be approved and made permanent no later than the next scheduled board meeting.

(5) In the event said certification is not approved and made permanent by the board, the certification shall expire and be of no further force or effect whatsoever.

B. [RESERVED]

[10.29.9.15 NMAC - Rp, 10.29.9.15 NMAC, 11/15/2016]

10.29.9.16 RENEWAL OF CERTIFICATION AFTER ABSENCE:

A. Break in law enforcement employment:

(1) In the event a certified officer in the state of New Mexico leaves his position for any reason and is not employed as a full-time law enforcement officer for a period of more than two years, but less than eight years, such officer will be considered to be decertified, and will be required to meet all current certification requirements of the New Mexico law enforcement academy and successfully complete the certification by waiver of previous training program conducted by the New Mexico law enforcement academy.

(2) In the event a certified officer in the state of New Mexico leaves his position for any reason and is not employed as a full-time law enforcement officer for a period in excess of eight years, such officer will be considered to be decertified and will be required to meet all current certification requirements and successfully complete the basic police officer training program.

(3) Those persons who hold a valid New Mexico police officer certification and are employed in an administrative capacity as a full-time police educator or trainer shall not be deemed to have left their position in law enforcement and shall not be required to reapply for certification as specified herein.

(4) The director of the New Mexico law enforcement academy shall have the authority to determine those positions as administrators or trainers that meet the requirements of Paragraph (3) of Subsection A of 10.29.9.16 NMAC above.

B. Minimum allowable employment - An officer must show proof of having worked a minimum of six consecutive months during a break in service of two or less years as a

full-time law enforcement officer for a recognized law enforcement agency of this or another state to retain their certification.

C. Military service impact on in-service and firearms credits - If a certified law enforcement officer or dispatcher, in good standing with the law enforcement academy, is called to active military duty, all biennial in-service and firearms qualifications requirements shall be suspended during the period of active military duty. The employing agency shall notify the law enforcement academy of the active military duty call-up and the date on which the call-up occurred. The suspension of the requirements for in-service and firearms training shall terminate 90 days after the officer/dispatcher leaves active military duty. Upon return from active military duty, the employing agency shall retrain or refresh the certified officer/dispatcher. The employing agency shall notify the law enforcement academy of the officer's/dispatcher's return and of the officer's retraining. Any necessary retraining shall occur within 90 days of return to commission. In the event that a certified law enforcement officers or dispatchers period of separation due to active military service exceeds two years, the individual must complete a certification by waiver training program with the exception of having to complete any of the entrance or testing requirements. If the officer/dispatcher believes that military training which the officer/dispatcher received during the military call-up may qualify for in-service training or firearms qualifications requirements, the agency or officer/dispatcher may petition the law enforcement academy for permission to accept such military training in lieu of in-service training or firearms qualifications requirements. Such petitioning must be submitted in form as prescribed by the director and must include proof of such military training. The law enforcement academy's decision to accept credit for such training shall be at the sole discretion of the director.

[10.29.9.16 NMAC - Rp, 10.29.9.16 NMAC, 11/15/2016]

10.29.9.17 MEDICAL REVIEW PROCEDURES:

A. Authority: In accordance with the provisions of the Law Enforcement Training Act, Section 29-7-6 NMSA 1978, an applicant for certification or training must be examined by a licensed physician and be found to be free of any physical condition that might adversely affect his/her performance as a police officer or prohibit him/her from successfully completing a prescribed basic law enforcement training course.

B. Introduction: In establishing medical selection guidelines, the New Mexico law enforcement academy board recognizes the principle that nothing the academy does should interfere with the employers hiring process. However, the academy reserves the right to determine if the candidate may pose a direct threat to his/her safety or that of others in attending and participating in all aspects of the training program.

C. Information to physician and agency: examination instructions: Under the medical selection guidelines the role of the physician is to identify the existence of any potentially excludable conditions. The physician and employer shall review these findings and the employer will make a decision as to whether the conditional offer of

employment should be withdrawn, or to initiate discussions with the candidate concerning reasonable accommodations. The employer then determines whether any particular proposed accommodation is acceptable and reasonable. Once the determination is made that the candidate with reasonable accommodation can perform the essential tasks of policing, and assuming that a position is available, the conditional offer of employment should be honored and the candidate scheduled for admission into the academy. (See LEA medical forms, 16 pages.)

D. The academy: In those instances where a candidate comes to the academy, with or without accommodation, and the director determines that the physical/medical condition of the individual poses a direct threat to his/her safety or that of others, admission to the academy can be denied for good reason, providing no reasonable accommodation can be found. The rejected candidate may appeal to the medical review board to seek redress. In that instance, the director, who is a member of the medical review board, shall excuse him/herself from the appeal.

E. Medical review board established: There is established a subcommittee of the New Mexico law enforcement academy board known as the medical review board. The membership of the medical review board is appointed by the chairperson and shall include:

- (1) chair: member of the New Mexico law enforcement academy board selected to serve as the chair of the medical review board;
 - (2) police chief;
 - (3) sheriff;
 - (4) advocate of the disabled community;
 - (5) two physicians (well experienced in medical employment examinations);
- and
- (6) director of academy

F. Appeal process: When a candidate who considered him/herself protected under the Americans with Disabilities Act, is rejected by the employer, he/she may pursue recourse through the courts. However, if the candidate is rejected by an examining physician under the medical selection guidelines due to a medical condition of particular severity, e.g., back problems, diabetes, cardiovascular disease, etc., and he/she feels that he/she can perform the essential tasks, he/she can appeal to the medical review board. At the candidate's initiation and expense, the candidate may present evidence/testimony/demonstrations of his/her ability to perform the essential tasks without posing a direct risk to his/her health and safety and that of others. The medical review board cannot determine whether accommodations are reasonable or unreasonable since those are matters which are exclusive to the applicant and the

employer. The medical review board will review the information presented by the applicant and make a recommendation to the academy board as to whether he/she can be admitted to the academy. After consideration of the medical review board recommendation, the academy board will make a final determination.

G. Medical selection guidelines (potentially excludable conditions") entry level law enforcement officer:

(1) Eyes and vision.

(a) Visual acuity - distant vision; uncorrected distant vision should be better than, or equal to, 20/100 (Snellen) binocular, and correctable to better than, or equal to, 20/30 (Snellen) binocular; distant vision correctable to better than, or equal to, 20/30 (Snellen) binocular. Preferred means of correction are soft contact lenses or shatterproof frames and lenses with headband.

(b) Visual acuity - near vision; near vision correctable to better than, or equal to, 20/40 (Snellen) binocular.

(c) Visual acuity - color vision; Correct reading of at least nine or more of the first 13 plates of the Ishihara test (24 plate edition). Recourse testing is available by means of the Farnsworth - Munsell 100-hue test.

(d) Visual acuity - depth perception; depth perception should be sufficient to demonstrate normal stereo depth perception with or without correction to the standard: 100 ARC seconds.

(e) Visual acuity - peripheral vision; Peripheral vision should be normal and not negatively impact candidate's ability to perform essential tasks.

(f) Glaucoma - if the candidate meets visual acuity guidelines following treatment, then the condition is non-disqualifying.

(g) Strabismus - if the candidate meets visual acuity guidelines following surgery, then the condition is non-disqualifying.

(h) Cataracts, current - if the candidate meets visual acuity guidelines following treatment, the condition is non-disqualifying.

(i) Proliferative retinopathy - if the candidate meets visual acuity guidelines following treatment, the condition is non-disqualifying.

(j) Nystagmus or other extra-ocular movement - if the candidate meets visual acuity guidelines, then the condition is non-disqualifying.

(k) Monocular vision.

(l) Blindness, including night-blindness.

(m) Retinal detachment - if the candidate meets visual acuity guidelines following treatment, then the condition is non-disqualifying.

(n) Chronic keratitis - if the candidate meets visual acuity guidelines following treatment, then the condition is non-disqualifying.

(o) Optic neuritis - if the candidate meets visual acuity guidelines following treatment, then the condition is non-disqualifying.

(2) Ears and hearing.

(a) Hearing acuity - the *average* hearing level (HL) at the test frequencies, 500, 1000, and 2000 Hz will not exceed 25dB in either ear, and no single hearing level will exceed 30 dB at any of these test frequencies in either ear. Hearing loss at 3000 Hz will not exceed 40 dB HL in either ear. Recourse testing of speech discrimination ability using phonetically balanced word lists in the presence of noise is available.

(b) Acute otitis media, otitis externa, and mastoiditis - if the candidate meets hearing acuity guidelines and the condition is under treatment, then the condition is non-disqualifying.

(c) Any inner/middle/outer ear disorder affecting equilibrium - if the candidate has historically had episodes of vertigo, he or she may require further evaluation.

(3) Nose, throat, and mouth - the conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) loss of sense of smell;

(b) aphonia, speech loss or speech defects; or

(c) deformities interfering with the proper fitting of a gas mask.

(4) Peripheral vascular system - the conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Hypertension - resting blood pressure should be less than, or equal to, 140 mmHg systolic and 90mmHg diastolic on three successive readings. (If the candidate has controlled hypertension and is on medication with side effect profiles

which do not interfere with performance of essential tasks then the condition may not be disqualifying.)

(b) Varicose veins - if the condition is serious enough to affect the candidate's ability to perform essential tasks, it should be noted.

(c) Venous insufficiency - if the condition is serious enough to affect the candidate's ability to perform essential tasks, it should be noted.

(d) Peripheral vascular diseases - if the condition is serious enough to affect the candidate's ability to perform essential tasks, it should be noted.

(e) Thrombophlebitis - if the condition is serious enough to affect the candidate's ability to perform essential tasks, it should be noted.

(5) Heart and cardiovascular system - the conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Congenital heart disease - if the candidate's functional work capacity is unimpaired, then the condition is non-disqualifying.

(b) Valvular heart disease - if the candidate's functional work capacity is unimpaired, then the condition is non-disqualifying.

(c) Coronary artery disease.

(d) ECG abnormalities (*if associated with organic heart disease*) including, but not limited to:

(i) Wolff-Parkinson-White (WPW) syndrome.

(ii) ST depression.

(iii) right or left bundle branch blocks.

(iv) 3 degree A-V block.

(v) Mobitz type ii A-V blocks.

(vi) Sinoatrial block or sick sinus syndrome.

(vii) Ventricular extrasystoles (*frequent - 20/minute with exercise, 10/minute without exercise*).

- (viii)** Ventricular tachycardia.
- (ix)** Atrial fibrillation or flutter.
- (x)** Symptomatic supraventricular tachycardia.

(e) Angina.

(f) Congestive heart failure.

(g) Cardiomyopathy.

(h) Active pericarditis, endocarditis, and myocarditis.

(6) Respiratory system - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Active pulmonary tuberculosis

(b) Chronic bronchitis.

(c) Active asthma - if satisfactorily treated, the condition is not disqualifying.

(d) Chronic obstructive pulmonary disease.

(e) Bronchiectasis and pneumothorax.

(f) Pneumonectomy.

(g) Acute/chronic mycotic diseases - Including, but not limited to, coccidioidomycosis and histoplasmosis.

(7) Gastrointestinal system - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Colitis - Including, but not limited to, Crohn's disease, ulcerative colitis, irritable bowel syndrome (symptomatic or needing medication), bacterial colitis. If satisfactorily treated, the condition is not disqualifying.

(b) Esophageal disorders - including, but not limited to, esophageal stricture, lower esophageal ring and esophageal spasm. If the candidate's condition is controlled, then the condition is non-disqualifying.

(c) Hemorrhoids - If the candidate's condition is controlled, then the condition is non-disqualifying.

(d) Pancreatitis.

(e) Gall bladder disorders.

(f) Active peptic ulcer disease.

(g) Symptomatic inguinal, umbilical, ventral, femoral, or incisional hernias.

(h) Malignant disease of the liver, gall bladder, pancreas, esophagus, stomach, small or large bowel, rectum or anus.

(i) Gastrointestinal bleeding - If condition is satisfactorily treated, then it is not disqualifying.

(j) Active or chronic hepatitis.

(k) Cirrhosis of the liver.

(8) Genitourinary system - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation. People with communicable diseases must be evaluated relevant to their ability to train for and perform essential tasks without posing a direct threat to the health and safety of themselves and others.

(a) Pregnancy - qualification of the candidate is dependent upon the stage of the pregnancy.

(b) Nephrectomy - If a candidate possesses this condition with normal renal functions, then the condition is non-disqualifying.

(c) Acute nephritis.

(d) Nephrotic syndrome.

(e) Acute renal/urinary calculi.

(f) Renal transplant.

(g) Renal failure.

(h) Hydrocele and varicocele (symptomatic).

(i) Malignant diseases of bladder, kidney, ureter, cervix, ovaries, breasts, prostate, etc.

(j) Active venereal diseases.

(k) Urinary tract infection.

(l) Polycystic kidney disease.

(m) Pelvic inflammatory disorders.

(n) Cervicitis.

(o) Endometriosis.

(p) Bartholin gland abscess.

(q) Vaginitis.

(r) Inflammatory disorders - including, but not limited to, prostatitis, orchitis, and epididymitis.

(s) Presence of illicit drugs.

(9) Endocrine and metabolic systems - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Untreated thyroid disease.

(b) Diabetes mellitus.

(c) Adrenal dysfunction - including, but not limited to, Addison's disease and Cushing's disease.

(d) Hypoglycemia.

(e) Pituitary dysfunction.

(f) Thyroid tumor.

(10) Skin and collagen diseases - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Serious dermatological disorders.

(b) Lupus erythematosus.

(c) Contact allergies (of a serious or relevant nature).

(11) Musculoskeletal system - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Disorders that limit motor performance.

(b) Cervical spine or lumbosacral fusion.

(c) Degenerative cervical or lumbar disc disease (if symptomatic).

(d) Extremity amputation.

(e) Osteomyelitis.

(f) Loss in motor ability from tendon or nerve injury/surgery.

(g) Arthritis - if a candidate possesses this condition with no functional impairment, then the condition is non-disqualifying.

(h) Joint conditions - any condition which negatively impacts the ability of the candidate to perform essential tasks should be noted for further evaluation.

(i) Coordinated balance.

(j) Herniated disc (symptomatic).

(k) Spinal deviations.

(l) Fracture deformities (symptomatic).

(12) Hematopoietic and lymphatic systems - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Anemia (all).

(b) Polycythemia.

(c) Sickle cell trait - sickle cell trait is a non-disqualifying condition.

(d) Sickle cell disease.

(e) Hematopoietic disorders (including malignancies).

(f) Hemophilia.

(13) Nervous system - The conditions which follow are not meant to be exclusive. If the examining physician feels (an) other unstated condition(s) may adversely impact the ability of the candidate to perform the essential tasks of the job, it (they) should be noted for further evaluation.

(a) Epilepsy.

(b) Cerebral palsy.

(c) Movement disorders.

(d) Cerebral aneurysms.

(e) Syncope.

(f) Progressive neurological diseases - including, but not limited to, multiple sclerosis and Huntington's chorea.

(g) Peripheral nerve disorder - including, but not limited to, polyneuritis, mononeuritis and neurofibromatosis.

(h) Narcolepsy.

(i) Cerebral vascular accident.

(j) Central nervous system infections.

[10.29.9.17 NMAC - Rp, 10.29.9.17 NMAC, 11/15/2016]

**10.29.9.18 LAW ENFORCEMENT OFFICER CERTIFICATION EXAMINATION;
TIME LIMITATIONS:**

A. Students who successfully complete a New Mexico law enforcement academy basic police training program will be allowed to take the law enforcement officer certification exam (LEOCE). Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director of the New Mexico law enforcement academy, will be administered the law enforcement officer certification exam.

(1) Students will be allowed two opportunities in which to pass the law enforcement officer certification exam within one year from the date of completion of the academy program. Students who fail the exam two times must attend the academic portion of the certification by waiver of previous training program prior to taking the exam a third time. Students who fail the test three times will be required to re-enroll and successfully complete the New Mexico law enforcement academy's basic police training program. Students will not be allowed to attend a regional/satellite program.

(2) Students who achieve a passing score on the law enforcement officer certification exam will be allowed one year from the date of the test in which to be eligible for certification. Certification can be granted only when the eligible student is hired by a recognized New Mexico law enforcement agency in a law enforcement position.

(3) If a student secures a law enforcement position after one year from the date of successful completion of the law enforcement officer certification exam, the student will be required to attend the certification by waiver of previous training program (short course) conducted by the New Mexico law enforcement academy.

(4) Students will be allowed three years from the date of successful completion of the law enforcement officer certification exam to secure a law enforcement position. After three years, they will be required to attend and successfully complete another basic police officer training program certified by the New Mexico law enforcement academy board.

B. Students who have successfully completed a New Mexico law enforcement academy basic police training program and passed the law enforcement officer certification exam will be provided a letter from the director of the New Mexico law enforcement academy attesting to the student's eligibility for certification as a police officer in New Mexico.

C. An application for certification and required supporting documentation must be submitted to the New Mexico law enforcement academy within 14 days of the student's employment as a police officer as required under New Mexico law enforcement academy board Rule 10.29.9.10 NMAC. Any officer (or department) not submitting the required documents is in violation of Section 29-7-1 et. al., NMSA 1978, (Repl. Pamp. 1994), and will be required to forfeit his position.

D. When all paperwork is completed to the satisfaction of the director of the New Mexico law enforcement academy for any student requesting certification by successful completion of a New Mexico law enforcement academy basic police training program, or any other previous comparable training, the request will be submitted to the New Mexico law enforcement academy board for final approval and award of certification under Section 29-7-1 et. al., NMSA 1978, (Repl. Pamp. 1994).

10.29.9.19 CONTINUATION OF CERTIFICATION AFTER SEPARATION:

A. Eligibility: In the event a New Mexico certified law enforcement officer, with five years or more of commissioned law enforcement employment, leaves his position in good standing; he will be eligible to continue his New Mexico certification status provided he complies with the procedures outlined below.

B. Procedure:

(1) Every eligible law enforcement officer separating from commissioned law enforcement service may continue their New Mexico certification by successfully completing each year and approved 20 hour in-service training program offered by the academy. This program will comply with the provisions of 10.29.7 NMAC In-Service Training Requirements and 10.29.9.14 NMAC Entry Level and Requalification Firearms Training.

(2) The officer must successfully complete the first approved training program within two years of separation and then once each year during the calendar year in subsequent years.

(3) The requirements of 10.29.9.16 NMAC - Renewal of Certification After Absence, will apply to those officers not in compliance with the provisions of this section.

[10.29.9.19 NMAC - Rp, 10.29.9.19 NMAC, 11/15/2016]

PART 10: PUBLIC SAFETY TELECOMMUNICATOR

10.29.10.1 ISSUING AGENCY:

New Mexico Law Enforcement Academy - Department of Public Safety, 4491 Cerrillos Road, Santa Fe, New Mexico 87507.

[10.29.10.1 NMAC - Rp, 10.29.10.1 NMAC, 06/27/17]

10.29.10.2 SCOPE:

All applicants and certified telecommunicators under the Public Safety Telecommunicator Training Act.

[10.29.10.2 NMAC - Rp, 10.29.10.2 NMAC, 06/27/17]

10.29.10.3 STATUTORY AUTHORITY:

Section 29-7C-1 to 29-7C-9 NMSA 1978.

[10.29.10.3 NMAC - Rp, 10.29.10.3 NMAC, 06/27/17]

10.29.10.4 DURATION:

Permanent.

[10.29.10.4 NMAC - Rp, 10.29.10.4 NMAC, 06/27/17]

10.29.10.5 EFFECTIVE DATE:

June 27, 2017

[10.29.10.5 NMAC - Rp, 10.29.10.5 NMAC, 06/27/17]

10.29.10.6 OBJECTIVE:

The purpose of Part 10 is to establish the minimum standards of training for public safety telecommunicators.

[10.29.10.6 NMAC - Rp, 10.29.10.6 NMAC, 06/27/17]

10.29.10.7 DEFINITIONS:

A. "Absence" means a break in employment with a public safety agency as a full time certified public safety telecommunicator.

B. "Academy" means the New Mexico law enforcement academy.

C. "Board" means the New Mexico law enforcement academy board.

D. "Certified" means meeting the training standards established by statute and rules as determined by the New Mexico law enforcement academy board, and fulfilling any in-service training requirements as set forth by the New Mexico law enforcement academy board.

E. "Decertified" means the removal of certification from an individual for failure to comply with the public safety telecommunicator training act and the rules set forth by the New Mexico law enforcement academy board.

F. "Director" means the director of the New Mexico law enforcement academy.

G. "FEMA" means federal emergency management agency.

H. "ICS" means incident command system,

I. "Public safety agency" means a unit of state or local government, a special purpose district or a private business that provides police, firefighting or emergency medical services.

J. "Telecommunicator" means an employee or volunteer of a public safety agency who:

(1) receives calls or dispatches the appropriate personnel or equipment in response to calls for police, fire or medical services; and

(2) makes decisions affecting the life, health or welfare of the public or public safety agency employees.

K. "Separation" means a break in employment with a public safety agency as a full time certified public safety telecommunicator after being employed for a minimum period of five years and having left the public safety agency in good standing.

[10.29.10.7 NMAC - Rp, 10.29.10.7 NMAC, 06/27/17]

10.29.10.8 PUBLIC SAFETY TELECOMMUNICATOR MINIMUM STANDARDS OF TRAINING:

The public safety telecommunicator (PST) certification course is a minimum of 130 hours of training in eight blocks of instruction. There will be 12 prerequisite distance learning training hours an applicant must complete prior to attendance at the public safety telecommunicator academy, for a minimum of 118 contact training hours during the course.

A. Block 1: Academy prerequisites - 12 total block hours - This block of instruction must be completed prior to the start of the academy and will establish a foundation for the critical incident management (CIM) and interdisciplinary incident command system (ICS) curriculum as outlined below.

(1) FEMA ICS 100.B: Introduction to incident command system - three hours;

(2) FEMA ICS 200.B: Incident command system for single resource and initial action incident - three hours;

(3) FEMA ICS 700.A: National incident management system, an introduction - three hours; and

(4) FEMA ICS 800.B: National response framework, an introduction - three hours.

B. Block 2: Academy administration - 30 total block hours - This block of instruction is for the administration of the basic public safety telecommunicator academy

training program. This includes examinations and reviews, practical exercise, discretionary training time and graduation. The subjects include:

- (1) orientation
- (2) administrative time
- (3) four block examinations;
 - (a) basic public safety telecommunicator skills;
 - (b) block legal and crisis intervention/management;
 - (c) national crime information center (NCIC); and
 - (d) fire/medical and critical incident management.
- (4) three practical exercises; and
 - (a) critical incident management;
 - (b) crisis intervention and management; and
 - (c) radio practices and procedures
- (5) New Mexico public safety telecommunicator certification examination

C. Block 3: Basic public safety telecommunicator skills - 40 total block hours - This block of instruction will provide the student with a basic understanding of the public safety telecommunications field, common procedures for call processing, applicable technology, and liability.

- (1) Introduction to your new career;
- (2) interpersonal communications;
- (3) telephone communications techniques: call processing;
- (4) telephony, traditional technology;
- (5) next generation 9-1-1;
- (6) telephony: teletypewriter (TTY);
- (7) telematics and collision notification systems;

- (8) computer-aided dispatch (CAD) and related technologies;
- (9) radio communications techniques;
- (10) radio technology;
- (11) call classification;
- (12) national incident management system (NIMS) incident command system;
- (13) liability issues; and
- (14) preparing for your new career.

D. Block 4: Law - 13 total block hours - This block of instruction will provide a basic understanding of the criminal justice systems at the municipal, county, state and federal levels and the telecommunicator's role and responsibilities in the criminal justice system. This block will also provide an overview of criminal offenses.

- (1) New Mexico administrative code (NMAC) requirements for public safety telecommunicators;
- (2) introduction to the criminal justice system;
- (3) criminal and traffic related offenses;
- (4) laws of arrest;
- (5) civil law and liability; and
- (6) courtroom testimony.

E. Block 5: Crisis intervention/management - eight total block hours - This block of instruction will provide the telecommunicator with a core understanding of interactions with individuals with mental impairments and crisis management.

- (1) People in crisis to include:
 - (a) mental illness;
 - (b) developmental disability;
 - (c) posttraumatic stress disorder;
 - (d) dual diagnosis;

- (e) autism;
 - (f) youth in crisis;
 - (g) traumatic brain injury; and
 - (h) excited delirium.
- (2) identifying a crisis;
 - (3) crisis bill of rights;
 - (4) crisis listening;
 - (5) behavior and crisis management;
 - (6) suicide awareness;
 - (7) barricaded subjects;
 - (8) hostage situations;
 - (9) kidnapping; and
 - (10) domestic violence.

F. Block 6: National crime information center (NCIC) operations - eight total block hours - This block of instruction will provide the student with a basic understanding of the national crime information center (NCIC) system.

- (1) 21 NCIC files
 - (a) stolen articles;
 - (b) boats;
 - (c) guns;
 - (d) license plates;
 - (e) parts;
 - (f) securities;
 - (g) vehicles;

- (h) supervised release;
- (i) national sex offender registry;
- (j) foreign fugitive;
- (k) immigration violator;
- (l) missing person;
- (m) protection order;
- (n) unidentified person;
- (o) protective interest;
- (p) gang;
- (q) known or appropriately suspected terrorist;
- (r) wanted person;
- (s) identity theft;
- (t) violent person; and
- (u) national instant criminal background check system (NICS) denied transaction

(2) federal regulations

G. Block 7: Fire and medical communications - 10 total block hours - This block of instruction will provide a basic overview of fire and medical communications to include: common terminology, apparatus and equipment, and general protocols.

- (1) fire and emergency medical services (EMS) terminology
- (2) jurisdictional limitations and allowances
- (3) fire and EMS call taking and additional considerations
- (4) health insurance portability and accountability act (HIPAA)
- (5) radio communications
 - (a) dispatch;

- (b) arrival;
 - (c) structural fire;
 - (d) wildland fire; and
 - (e) apparatus
- (6) personnel safety
 - (7) liability
 - (8) restrictions
- (a) New Mexico medical board; and
 - (b) separate licensing requirements for emergency medical dispatchers

H. Block 8: Critical incident management (CIM) and interdisciplinary incident command system (ICS) - Nine total block hours - This block will cover CIM awareness and the interdisciplinary incident command system.

- (1) CIM awareness
- (2) hazardous materials awareness
- (3) critical incident stress debriefing

[10.29.10.8 NMAC - Rp, 10.29.10.8 NMAC, 06/27/17]

10.29.10.9 STUDENT HANDBOOK, PROCEDURES, AND REGULATIONS:

Due to the need to insure that students attending the academy comply with rules and regulations, the director is hereby instructed to prepare a handbook covering student rules and regulations, policies and procedures. Such handbook shall be updated as necessary and when applicable, changes shall be reported to the New Mexico law enforcement academy board at their next regularly scheduled meeting.

[10.29.10.9 NMAC - Rp, 10.29.10.9 NMAC, 06/27/17]

10.29.10.10 PUBLIC SAFETY TELECOMMUNICATOR REGISTRY REPORTING AND APPLICATIONS FOR ADMISSION/CERTIFICATION:

A. Reporting requirements

(1) Employment, termination, resignation, or upon receipt of notice of conviction of any felony charge or violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude of all public safety telecommunicators in the state of New Mexico must be reported to the academy within 30 days of such action.

(2) Required reporting forms shall be established by the director.

(3) All public safety agencies who do not comply with the requirement of submitting to the academy status reports on their employees will not be eligible for training funds or attendance at basic or in-service/advanced training classes until the registry is made current. Repeated failures to maintain the registry shall result in a period of suspension of training eligibility to be set by the director.

B. Application requirements

(1) An applicant for training or for certification, or their agency, must submit the initial application for admission/certification and all necessary paperwork within 30 days of the initial hire date.

(2) Non-compliance with the 30 day application requirement will result in assignment to an academy class after completion of all other requirements herein on a space available basis only -- no special consideration will be given to the applicant, and the applicant must complete their application and initial certification requirements within one year from initial hire date.

(3) No applicant shall be admitted to the academy after one year of initial hire date unless the applicant and the applicant's chief, sheriff, or agency head certify:

(a) that the applicant was removed from duty as a telecommunicator; and

(b) that the agency will reinstate the telecommunicator based upon the applicant's successful completion of the basic public safety telecommunicator training course and certification by the board.

(4) The academy shall be notified of any change in the medical or psychological condition of an applicant prior to the applicant's admission or certification.

(5) Applicants who falsify any information on their application for admission or certification will not be considered for admission or certification.

[10.29.10.10 NMAC - Rp, 10.29.10.10 NMAC, 06/27/17]

10.29.10.11 FINGERPRINT CLEARANCE FOR ADMISSION/CERTIFICATION:

Due to the fact that the academy is not recognized by federal regulations as a duly authorized law enforcement agency and therefore cannot be issued an originating agency identification "ORI" to send or receive fingerprint clearances through the federal bureau of investigation, the previous procedures established by the law enforcement academy are repealed and are replaced by the following procedures:

A. All New Mexico public safety telecommunicator applicants for certification must receive a fingerprint clearance from the department of public safety technical and emergency support division and the federal bureau of investigation. No telecommunicator applying for telecommunicator certification is allowed to receive an original appointment on a permanent basis in New Mexico if the telecommunicator has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under dishonorable conditions from any of the armed forces of the United States, Section 29-7C-3 NMSA 1978.

B. One set (two cards) of telecommunicator applicant fingerprint cards will be thoroughly completed by the hiring public safety agency and forwarded to the department of public safety technical and emergency support division. The department of public safety technical and emergency support division will use one fingerprint card for a records check with their agency and will forward the card back to the hiring agency and will forward the second completed card to the federal bureau of investigation identification section for a records check. The department of public safety technical and emergency support division will not log in the fingerprint cards received from the various law enforcement agencies and will not accept inquiries on the status of the fingerprint clearance either for department of public safety technical and emergency support division or the federal bureau of investigation. Department of public safety technical and emergency support division will forward applicant fingerprint requests to the federal bureau of investigation within three days upon receipt of the cards. Incomplete fingerprint cards or cards not properly completed will be returned by the department of public safety technical and emergency support division to the requesting agency.

C. All fingerprint clearances will be forwarded from department of public safety technical and emergency support division and the federal bureau of investigation back to the initiating agency. If the "ORI" label on the fingerprint card is different than that of the hiring agency, the hiring agency requesting the clearance must print their agency's address below the address located on the fingerprint card.

D. Upon receipt of clearance from both the department of public safety technical and emergency support division and the federal bureau of investigation, "no record", the hiring agency will be required to complete NMLEA Form LEA-5, certified by the department head's signature, and forward this form to the academy stating that the telecommunicator is in compliance with Subsection C of Section 29-7-3 NMSA 1978.

E. Upon receipt of information from the department of public safety technical and emergency support division and the federal bureau of investigation that the applicant for certification has a criminal conviction for a felony crime or crime involving moral turpitude, it will be the agency's responsibility to terminate the telecommunicator. If there is not adequate information, i.e., no disposition, listed on the "rap sheet" it is the agency's responsibility to determine the disposition of the case prior to requesting certification of the telecommunicator and certifying that the telecommunicator has no record of arrest under the provisions of the Public Safety Telecommunicator Training Act. In situations in which the agency is unable to determine the disposition of an arrest/conviction, the agency should consult the attorney general's office for assistance. For guidance in determining whether misdemeanor convictions are crimes specifically involving moral turpitude, departments should request the assistance of the attorney general's office.

F. No telecommunicator may be certified through the academy who has been convicted of or pled guilty to or entered a plea of nolo contendere to any felony charge or, within the three-year period immediately preceding their application, to any violation of any federal or state law or local ordinance relating to aggravated assault, theft, driving while intoxicated, controlled substances or other crime involving moral turpitude and have not been released or discharged under dishonorable conditions from any of the armed forces of the United States. Any department head certifying that an officer has "no arrest" for the above and information to the contrary is received by the academy or the attorney general's office, decertification procedures will be immediately initiated and the public safety agency's chief/sheriff or department head notified as well as the attorney general's office and the board.

[10.29.10.11 NMAC - Rp, 10.29.10.11 NMAC, 06/27/17]

10.29.10.12 TEMPORARY AND/OR EMERGENCY CERTIFICATION:

A. Procedure

(1) The director may, at his discretion, grant a temporary certification in order to avoid hardships or prevent conflicts within a department arising solely from technical non-compliance with academy board rules.

(2) Said temporary certificate shall be granted only for good cause, proved to the satisfaction of the director, and shall be granted only to persons who have met the minimum standards of training prescribed by the board as well as all other state requirements.

(3) Grounds for granting such temporary certification shall include, but not be limited to the following: a person qualifying for certification by waiver during a period between board meetings.

(4) A temporary certification must be approved and made permanent no later than the next scheduled board meeting.

(5) In the event said certification is not approved and made permanent by the board, the certification shall expire and be of no further force or effect whatsoever.

B. [RESERVED]

[10.29.10.12 NMAC - Rp, 10.29.10.12 NMAC, 06/27/17]

10.29.10.13 PUBLIC SAFETY TELECOMMUNICATOR CERTIFICATION EXAMINATION; TIME LIMITATIONS:

A. Students who successfully complete a New Mexico law enforcement academy public safety telecommunicator training program will be allowed to take the public safety telecommunicator certification examination. Only those students who have successfully completed all requirements under the minimum standards of training, as determined by the director, will be administered the public safety telecommunicator certification examination.

B. Students will be allowed two opportunities in which to pass the public safety telecommunicator certification examination within one year from the date of completion of a New Mexico law enforcement academy public safety telecommunicator training program. Students who fail the test two times will be required to re-enroll and successfully complete the academy's public safety telecommunicator training program. Students will not be allowed to attend a regional/satellite program.

C. Students who achieve a passing score on the public safety telecommunicator certification examination will be allowed one year from the date of the test in which to be eligible for certification. Certification can be granted only when the eligible student is hired by a recognized New Mexico public safety agency in a telecommunicator position.

D. If a student secures a public safety telecommunicator position after two years from the completion of the public safety telecommunicator certification examination, they will be required to attend and successfully complete another public safety telecommunicator training program certified by the board.

E. Students who have successfully completed a New Mexico law enforcement academy public safety telecommunicator training program and passed the public safety telecommunicator certification examination will be provided a letter from the director attesting to the student's eligibility for certification as a public safety telecommunicator in New Mexico.

F. When all paperwork is completed to the satisfaction of the director for any student requesting certification by successful completion of a New Mexico law enforcement academy public safety telecommunicator program, or any other previous

comparable training, the request will be submitted to the board for final approval and award of certification under Subsection C of Section 29-7-1 et. al. NMSA 1978.

[10.29.10.13 NMAC - Rp, 10.29.10.13 NMAC, 06/27/17]

10.29.10.14 RENEWAL OF CERTIFICATION AFTER ABSENCE:

A. Break in telecommunicator employment

(1) In the event a certified telecommunicator in the state of New Mexico leaves his position for any reason and is not employed as a full-time telecommunicator for a period of more than two years, but less than four years, such telecommunicator will be considered to be decertified, and will be required to meet all current certification requirements of the academy and successfully complete the certification by waiver of previous training program conducted by the academy.

(2) In the event a certified telecommunicator in the state of New Mexico leaves their position for any reason and is not employed as a full-time telecommunicator for a period in excess of four years, such telecommunicator will be considered to be decertified and will be required to meet all current certification requirements and successfully complete the basic public safety telecommunicator training program.

(3) Those persons who hold a valid New Mexico public safety telecommunicator certification and are employed in an administrative capacity as a full-time telecommunicator educator or trainer shall not be deemed to have left their position as a telecommunicator and shall not be required to reapply for certification as specified herein.

(4) The director shall have the authority to determine those positions as administrators or trainers that meet the requirements of 10.29.10 NMAC above.

B. Minimum allowable employment for a break in service - A telecommunicator must show proof of having worked a minimum of six consecutive months during a break in service of two or less years as a full-time telecommunicator for a recognized public safety agency of this or another state to retain their certification.

[10.29.10.14 NMAC - Rp, 10.29.10.14 NMAC, 06/27/17]

10.29.10.15 CONTINUATION OF CERTIFICATION AFTER SEPARATION:

A. Eligibility: In the event a New Mexico certified telecommunicator, with five years or more of certified telecommunicator employment, leaves their position in good standing, the telecommunicator will be eligible to continue their New Mexico certification status provided the telecommunicator complies with the procedures outlined below.

B. Procedure:

(1) Every eligible telecommunicator separating from public safety service may continue their New Mexico certification by successfully completing each year an approved 10 hour in-service training program approved by the academy and meeting the statutory mandate of at least two hours in academy accredited interaction with persons with mental impairments training pursuant to Subsection C of Section 29-7-7.5 NMSA 1978. This program will comply with the provisions of 10.29.7 NMAC In-Service Training Requirements.

(2) The telecommunicator must successfully complete the first approved 10 hour in-service training program within two years of separation. Following the initial reporting period, the telecommunicator must report by January 15 of each calendar year the approved 10 hour in-service training program by use of the LEA-85B form.

(3) The requirements of 10.29.10 NMAC, Renewal of Certification After Absence will apply to those telecommunicators not in compliance with the provisions of this section.

[10.29.10.15 NMAC - Rp, 10.29.10.15 NMAC, 06/27/17]

CHAPTER 30: MILITARY AFFAIRS [REPEALED]

PART 1: GENERAL PROVISIONS [RESERVED]

PART 2: ORDER PRESCRIBING REGULATIONS UNDER THE CODE OF MILITARY JUSTICE [REPEALED]

[This part was repealed on June 1, 2017]

CHAPTER 31-39: [RESERVED]

CHAPTER 40: CRIME VICTIMS

PART 1: GENERAL PROVISIONS

10.40.1.1 ISSUING AGENCY:

Crime Victims Reparation Commission.

[4/30/97; Recompiled 11/30/01]

10.40.1.2 SCOPE:

Provisions for Part 1 of Chapter 40 [now 10.40.1 NMAC] apply to the operation of the crime victims reparation commission.

[4/30/97; Recompiled 11/30/01]

10.40.1.3 STATUTORY AUTHORITY:

Authority for Part 1 of Chapter 40 [now 10.40.1 NMAC] is the Crime Victims Reparation Act, Sections 31-22-1 through 31-22-24, NMSA 1978.

[4/30/97; Recompiled 11/30/01]

10.40.1.4 DURATION:

Permanent.

[4/30/97; Recompiled 11/30/01]

10.40.1.5 EFFECTIVE DATE:

March 14, 1998, unless different date is cited at the end of a section or paragraph.

[4/30/97, 3/14/98; 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.]

10.40.1.6 OBJECTIVE:

The crime victims reparation commission hereby promulgates these regulations to provide for the orderly conduct of commission business; to assure full compliance with the requirements of the Crime Victims Reparation Act; and to enable the commission to promote a stronger and more effective criminal justice system by encouraging all citizens to cooperate with law enforcement efforts.

[4/30/97; Recompiled 11/30/01]

10.40.1.7 DEFINITIONS:

[RESERVED]

[4/30/97; Recompiled 11/30/01]

10.40.1.8 DUTIES OF THE COMMISSION BOARD:

A. The commission board shall annually elect from its membership a chairman and vice chairman. The vice chairman shall act as chairman if the chairman is absent.

B. A majority of the members of the commission board shall constitute a quorum for the conduct of commission business. The transaction of commission business shall be by majority vote of members present at the meeting.

C. The commission board shall annually adopt an open meetings resolution in compliance with the New Mexico Open Meetings Act.

D. The commission board shall adhere to the following when entering executive session for the purpose of discussing claims:

(1) A motion shall be made to enter executive session for the purpose of discussing claims which contain confidential medical and police information.

(2) The motion is to be seconded.

(3) The chairman shall request that the secretary poll the members.

(4) The secretary shall poll each member individually and record their vote.

(5) If the motion passes, the chairman will announce that the board is in closed session and ask visitors to leave and secure the doors.

E. The commission board shall adopt a code of conduct pursuant to Section 10-16-11 NMSA 1978. The code of conduct shall be reviewed annually by the commission board to determine whether any amendments should be made thereto.

F. The commission board shall hire a director, and other staff as required, pursuant to Section 31-22-4 NMSA 1978. The commission board shall set the salary of each staff member in compliance with all applicable laws and regulations of the state of New Mexico.

G. If prior to the commencement of a commission board meeting, the chairman learns that a quorum of the members of the commission board will not be able to attend the meeting, the chairman may cancel the meeting. In this event, the director is instructed to attempt to give notice of the cancellation of the meeting to all commissioners, interested citizens known to the director, and the entities entitled to notice of meetings under the commission board's open meetings resolution.

H. In the event a question as to the proper method of procedure arises during any meeting, the chairman is vested with authority to resolve such question, and his decision shall be final.

I. Meetings shall be called to order and business of the meeting conducted by the chairman of the commission board, or in his absence, the vice chairman. Should both the chairman and the vice chairman be absent from the meeting, if a quorum is present,

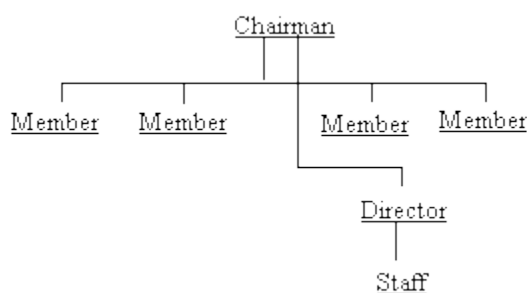
the commission board shall designate one of its members to assume the responsibilities of the chairman for that meeting.

J. The director is responsible for the preparation of the minutes of the commission board meetings. The minutes of each commission board meeting shall contain the name of each commission board member present at the meeting, the names of all other individuals in attendance at the meeting, a general description of the subject matter of the items discussed by the commission board, the wording of all motions before the commission board and the votes of the commission board on every item of business dispensed with by vote. The director and his staff shall compile the minutes of the meeting. The approved minutes of the meeting shall constitute the official record of business transacted at the meeting. The approved minutes of each board meeting shall be kept in the commission office and shall be available for public inspection during normal working hours.

K. If a member is absent from four consecutive meetings, or from six out of any twelve consecutive meetings, the commission board shall recommend to the governor that such member be removed and replaced. However, such member may file a request with the commission board, at or before the next regular meeting following the fourth consecutive absence or sixth absence out of twelve consecutive meetings, setting forth the reasons for the absences and requesting that the recommendation not be made. The commission board by vote with all commissioners in attendance participating, may choose to grant the request.

L. The commission board shall hold no fewer than ten meetings during each fiscal year.

M. The chain of command between the chairman, members of the commission board, director and staff shall be as follows:



(1)

(2) The director will report to the chairman who, in turn, will keep the commission board members informed. Any questions the commission board members have of the director or staff shall be directed to the chairman who in turn will contact the director. Staff questions will be directed to the director who will then contact the chairman. The only exception to this policy will be the discussion of applications which will be between the assigned commission board member of a case and the assigned investigator of that case.

[1/20/89, 11/7/91, 3/14/98; Recompiled 11/30/01]

10.40.1.9 FINANCES AND EMPLOYMENT:

A. The director shall present the commission board with a detailed financial summary of income and expenses at each regular meeting. The financial reports shall cover all funds appropriated to, or administered, earned or expended by the commission from any source whatsoever, including federal, state and local funds. The financial reports shall specifically detail the status of the crime victims reparation fund.

B. The director shall hire staff, or change the salary of existing staff, within department of finance and administration and state personnel office guidelines. The commission board shall consider such hiring and salary changes other than legislative mandated changes at its next regular meeting. The commission board shall approve or disapprove the director's actions.

C. The director shall develop the budget and necessary appropriations request needed to fund that budget for the fiscal year. The director shall submit the proposed budget and appropriations request to the commission board for their review. The commission board shall review the budget and appropriations request and shall either approve it as submitted or make adjustments for final approval.

D. The commission may provide copies of documents to individuals requesting copies in accordance with Section 31-22-18 NMSA 1978. The procedure for providing copies is as follows:

(1) a written request on the form prescribed by the commission stating exactly what document is requested;

(2) a fee of twenty-five cents per page may be charged for copying;

(3) the copies will be provided within five working days unless the records have been placed in archive, in which case the copies will be provided as soon as practicable.

[11/7/91, 3/14/98; Recompiled 11/30/01]

10.40.1.10 RULEMAKING:

A. The purpose of this regulation is to establish a rulemaking procedure which will enable the commission to secure the views and statements of all interested persons concerning rules and regulations adopted pursuant to the Crime Victims Reparation Act.

B. Prior to the adoption, amendment or repeal of any rule, the commission shall, at least thirty days prior to its proposed action:

(1) Publish notice of its proposed action in a newspaper of general circulation in the state of New Mexico. Notify any person or group filing a written request for such notification to the crime victims reparation commission, notification being by mail to the last address specified by the person or group. Request from such persons or groups shall be renewed in January of each year.

(2) The notice of the proposed action shall:

(a) give the date, time and place of any public hearing and state the manner in which comments may be submitted to the commission by interested persons;

(b) describe the subject matter of the proposed regulation;

(c) describe the action proposed to be taken;

(d) state a location where the proposed rule may be obtained, or a written address from which the proposed rule may be procured by mail; and

(e) include reference to the statutory authority under which the rule is proposed.

C. All interested persons shall be afforded a reasonable opportunity to submit written data, views or arguments in support of, or in opposition to, a proposed rule. Any interested person seeking to modify in any way a proposed rule must submit a proposed rule modification in writing to the commission within twenty-one calendar days after notice is mailed, along with views or arguments in support of the modification. If the commission board finds after review of the written data, views or arguments in support of the proposed modification that further comments are necessary, it may take such statements at the public rulemaking hearing. The commission board shall consider fully all comments regarding the proposed rule prior to a final decision. Written data, views, or arguments shall be legible (not less than elite typeface), not to exceed a width of 8-1/2 inches and a length of 13 inches.

D. The rulemaking hearings shall be conducted as follows:

(1) The rules of civil procedure and the rules of evidence shall not apply.

(2) Unless the circumstances otherwise justify, the order of appearance will be as follows:

(a) comments of commission staff;

(b) comments of each proponent;

(c) comments of each opponent;

(d) comments of other interested persons.

E. The commission board may appoint a hearing officer to conduct the hearing and receive evidence. He will be authorized to make all rulings in the conduct of the proceedings and in the receipt of statements and supporting data.

F. A record shall be made by a certified court reporter at each rulemaking hearing, the cost of which shall be borne by the commission. Interested persons may request a copy of a hearing record, and shall pay the cost of copying the record.

G. The court reporter shall provide an index of each transcript which states:

- (1) the name of each individual present at the hearing;
- (2) the pages at which an individual's statement appears;
- (3) identification of supporting data; and,
- (4) the pages at which supporting data was introduced, entered and appears in the transcript.

H. At the conclusion of the hearing, the commission board or hearing officer may request participants to submit prepared comments or other pertinent supporting information.

I. The record shall be closed at the conclusion of the hearing, unless the commission board or hearing officer holds it open for no longer than thirty days for the purpose of receiving additional written supporting data. Additional written supporting data shall be limited to those matters for which permission was expressly granted and the commission board or hearing officer may make provisions for response to the written supporting data by those persons who participated in the proceeding.

J. Each rule, amendment or repeal thereof adopted by the commission board shall be filed with the state records center and the New Mexico state registry, in accordance with Section 14-4-3 NMSA 1978.

K. In construing rules adopted by the commission board, words importing the masculine gender shall include the feminine gender.

[1/20/89, 11/7/91, 3/14/98; Recompiled 11/30/01]

10.40.1.11 DUTIES OF THE ATTORNEY GENERAL:

The attorney general shall represent the commission in all litigation to which the commission is a party or in which the commission has an interest. The attorney general shall serve as legal advisor to the commission.

[11/7/91; Recompiled 11/30/01]

PART 2: COMPENSATION

10.40.2.1 ISSUING AGENCY:

Crime Victims Reparation Commission

[4/30/97; 10.40.2.1 NMAC - Rn, 10 NMAC 40.2.1, 08/31/06]

10.40.2.2 SCOPE:

Provisions for Part 2 of Chapter 40 apply to the administration of the filing for reparation payments.

[4/30/97; 10.40.2.2 NMAC - Rn, 10 NMAC 40.2.2, 08/31/06]

10.40.2.3 STATUTORY AUTHORITY:

Authority for Part 2 of Chapter 40 is the Crime Victims Reparation Act, Sections 31-22-1 through 31-22-24 NMSA 1978.

[4/30/97; 10.40.2.3 NMAC - Rn, 10 NMAC 40.2.3, 08/31/06]

10.40.2.4 DURATION:

Permanent.

[4/30/97; 10.40.2.4 NMAC - Rn, 10 NMAC 40.2.4, 08/31/06]

10.40.2.5 EFFECTIVE DATE:

March 14, 1998, unless a later date is cited at the end of a section..

[4/30/97, 3/14/98; 10.40.2.5 NMAC - Rn & A, 10 NMAC 40.2.5, 08/31/06]

10.40.2.6 OBJECTIVE:

The objective of Part 2 of Chapter 40 is to establish clearly the application procedures, eligibility, and processing required for victims to receive compensation.

[4/30/97; 10.40.2.6 NMAC - Rn, 10 NMAC 40.2.6, 08/31/06]

10.40.2.7 DEFINITIONS:

[RESERVED]

10.40.2.8 APPLICATIONS FOR REPARATION:

A. Applications shall be filed on forms provided by the commission.

B. Application for reparation must be made to the crime victims reparation commission within two years of the date of the incident giving rise to the application. Filing of the application provided by the commission shall be considered received when the application is postmarked delivered or faxed within the two year time limit to the commission's offices. However, upon approval by the director, the director may find, in his discretion, that the application was received upon oral contact with the commission, or its employees, within two years of the date of the incident.

C. Application for reparation must be made directly to employees of the commission. Only the commission's employees are authorized to accept applications.

D. In no event shall reparation be given unless application has been made within two years after the injury or death except for minors as described in Subsection A of 10.40.2.9 NMAC of these regulations.

E. The word "eligible", as stated in Section 31-22-3 H (2) NMSA 1978, includes Victims of Crime Act eligible programs.

F. **[RESERVED]**

G. After receipt of the application, the commission's staff may request additional information or documentation. If the victim/claimant fails to respond to any request of the commission's staff for additional documents or information, the victim's application may be presented to the commission board for denial.

[1/20/89, 11/7/91; 3/14/98; 10.40.2.8 NMAC - Rn & A, 10 NMAC 40.2.8, 08/31/06]

10.40.2.9 DATE OF INCIDENT:

A. For all purposes of administering applications, the date of the injury or death shall be the date of incident. The only exception to this is when the victim is a minor and the application is for an alleged violation of Section 30-6-1 NMSA 1978, Abandonment or Abuse of a Child, Section 30-9-11 NMSA 1978, Criminal Sexual Penetration or Section 30-9-13 NMSA 1978, Criminal Sexual Contact of a Minor when the injury or death was reported to law enforcement after July 1, 1991. The date of incident for these violations shall be the first day the victim attains the age of eighteen or the date the violation is reported to a law enforcement agency, whichever occurs first. The victim must report the crime to a law enforcement agency within thirty days of attaining the age of eighteen. However, in cases of domestic violence or sexual assault, the victim must report to law enforcement within 180 days of occurrence of the crime or in the case of a victim who is a minor of criminal sexual penetration or criminal sexual contact of a

minor, the victim must report to law enforcement within 180 days of their eighteenth birthday.

B. Effective date of statutes: The effective date of statute changes shall be that which is prescribed by the constitution of the state of New Mexico.

C. The date of incident as stated in Subsection A of 10.40.2.9 NMAC of these regulations shall determine which statutes govern administering and payment of the application. No changes in statute shall affect an application unless the date of incident occurs on or after the effective date of the statute.

[11/7/91, 3/14/98; 10.40.2.9 NMAC - Rn & A, 10 NMAC 40.2.9, 08/31/06]

10.40.2.10 LIMITATIONS:

A. If expenses incurred by any victim/claimant exceed the maximum amount allowed by statute on the date of incident, the commission board shall decide the most appropriate method of distribution of reparations awarded, pursuant to the following guidelines.

B. A victims/claimant may shall be compensated in full, to the greatest extent possible, for debts for which they have expended personal funds, and reasonable compensation for lost wages unless requested otherwise by the victim/claimant. Unpaid service providers may receive a pro-rata distribution of any funds remaining after victims/claimant have been compensated in full for personal expenditures. The commission board may in its sole discretion determine that fair reparation has been paid to any service provider.

C. All victims/claimants should provide all necessary documentation to commission staff for the verification of all reimbursable expenses. This documentation must provide the name of payee, the name of payer, the amount paid, date of services, and indicate what service was provided. This documentation may include invoices, receipts and canceled checks. Affidavits and letters shall not be considered proper documentation.

D. Restitution and civil judgments may be considered a collateral source only when there is verification of payment by the offender or responsible party.

E. The commission may award reparation for funeral related expenses occasioned by an act or omission which includes a crime enumerated in Section 31-22-8 A NMSA 1978. Awards for funeral expenses shall not exceed six thousand dollars (\$6,000.00). Items not to be included for reimbursement are: food, clothing, items of value such as jewelry, saddles, etc. At the board's discretion, a restricted item may be waived.

F. The commission may award reparation for the loss of eyeglasses or contact lenses damaged as a result of an act or omission which includes a crime enumerated in

Section 31-22-8 A NMSA 1978. Awards for eyeglasses or contact lenses shall not exceed three hundred fifty dollars (\$350.00).

G. Loss of wages shall not be paid pursuant to this section unless the individual requesting loss of wages is employed at the time of the incident. A victim may be paid loss of wages for the time he/she is unable to work due to his/her injuries as certified by a licensed physician, psychologist, psychiatrist, dentist, master level therapist, nurse practitioner or physician's assistant. A victim or if the victim is a minor, loss of wages may be paid to a victim, parent, guardian, etc., who must take time off from their employment to transport himself or the victim to a physician, dentist, counselor or therapist or for investigative interviews and criminal justice proceedings. Loss of wages may be paid to the victim, claimant, and/or, in the case of a minor victim, guardian, for up to fourteen calendar days after the crime for a recovery period. Also, in the case of a deceased victim, up to fourteen calendar days will be allowed for the individual responsible for making funeral arrangements. No certification from a physician will be required for this period of time. Relatives, as defined in Section 31-22-3 G, of a homicide victim are eligible for loss of wages for a recovery period of up to fourteen calendar days following the date of incident. An individual who assumes the duties of providing home health care to the victim, when this care is required by physician order, may be considered for loss of wages. In all instances of payment of loss of wages, Paragraph (1) of Subsection G of 10.40.2.10 NMAC of these regulations must be followed. The board may consider special circumstances when payment of loss of wages will be in the best interest of the victim and/or claimant. Loss of wages may also be considered for the parent or guardian or caregiver of a minor if the board determines that it is in the best interest of the victim. If loss of wages are claimed, the following must be submitted for verification.

(1) Except as indicated above, a copy of a doctor's statement certifying that the victim is unable to work; or a doctor's statement included in a medical document, or medical documentation showing the inability of the victim to work. Hospitalization shall constitute grounds for paying loss of wages.

(2) a statement from the employer providing:

(a) the dates of work missed due to the incident;

(b) hourly wage;

(c) the average number of hours worked weekly; and

(d) any type of compensation received, such as sick leave, annual leave, unemployment, etc.; or

(3) if self-employed, or in the opinion of the commission staff, additional verification is required, the individual requesting loss of wages may sign a request for

federal income tax account information to be sent directly to the agency; this request form will be provided by the crime victims reparation commission.

H. When any award of reparation is made by the commission, and said award is less than the maximum amount allowed by statute on the date of incident, the director may award additional reparation. Any additional reparation so awarded shall stem from the offense for which the original award was given. The commission board shall be informed of any additional reparation granted pursuant to this subsection at the next regular meeting.

I. Any victim/claimant that incurs expenses that are covered by a collateral source(s) as defined in Section 31-22-3 B NMSA 1978 including but not limited to automobile insurance, home owners/rental insurance, health insurance, indigent funds, medicaid, medicare or veterans administration shall submit covered expenses to the source(s) for payment. Only those expenses not covered by the collateral source(s) will be considered for reparation.

J. Mental health counseling and care means the assessment, diagnosis, and treatment of an individual's mental and emotional functioning that is actually and reasonably incurred as a result of the victim's injury or death. Evaluation and counseling shall be performed by a provider licensed in accordance with the New Mexico Counseling and Therapy Practice Act or licensed to practice in the state where treatment is being provided. Those providers awaiting licensure approval must be under the direct supervision of a licensed professional. This requirement may be waived at the discretion of the commission board. If it is apparent that treatment is addressing issues not related to the crime, the commission may pay for only that percentage of treatment which is addressing the victimization.

(1) All counselors shall provide the commission staff with the following:

(a) detailed patient evaluation describing the effect of the victimization;

(b) presentation of complaints: functional impairment, i.e., employment, school, interpersonal relationships, emotional/behavioral, etc.;

(c) pre-existing conditions: a diagnosis of any pre-existing conditions and their potential effect on the condition resulting from the incident;

(d) treatment goal (PLAN): describe in measurable behavioral terms the goals of treatment as they relate to the functional impairment of the victim; that is, describe the specific behavioral, emotional, and/or interpersonal changes to be achieved as the criteria for termination of treatment; note: treatment plans must be fully documented in a "problem" and "intervention" type of format; detail must be provided for both symptoms and intervention; incomplete treatment plans may delay review and payment until additional and/or correct information is received;

(e) method of accomplishing treatment goals: for each treatment goal, please explain the therapeutic approach(es) you anticipate using;

(f) medication prescribed and reason;

(g) treatment sessions: estimated length of treatment, (number, frequency and duration of treatment sessions to achieve treatment goals;

(h) explanation of what percentage of treatment is related to the victimization;

(i) itemized statement for services (including a copy of your agency's sliding fee scale evaluation);

(j) state license number;

(k) the commission may waive any of the above in the interest of the victim.

(2) When the victim is a minor, a therapist shall be prohibited from receiving reparation if entering into a dual relationship whereby they are providing treatment to the minor victim as well as to the offender.

(3) Inpatient hospitalization may be considered in life-threatening situations when the treatment has been recommended, in writing, by the victim's physician or mental health provider.

(4) The commission shall not consider payment to health providers for the following: missed appointments, report writing, telephone consultation, court appearance, therapist travel time costs, interest charged, telephone calls to the crime victims reparation commission office, or sessions which include the offender.

(5) At any time during treatment, the commission may require a follow-up report or prognosis notes from the provider detailing the results of the treatment and stating any need for additional therapy. The commission shall approve up to thirty sessions per person deemed eligible under the application submitted unless approval for additional therapy has been granted by the commission. The provider shall furnish the commission with a detailed report stating that continuing treatment is necessary due to problems created as a direct result of the victimization. The commission may at any time request an independent evaluation.

K. The commission may consider payment of Native American medicine man treatment fees.

(1) Since a reasonable and customary schedule of charges has not been established, the commission may require that the following be submitted:

(a) a written description of each procedure, function, and/or activity performed and its benefit to the victim;

(b) a written description of charges and dates for each procedure, function, and/or activity;

(c) the location that each procedure, function, and/or activity was performed;

(d) the time involved to perform such services;

(e) a summary outlining the qualifications and experiences which allows the service provider to perform the services of a medicine man;

(f) a detailed list of materials used in the ceremonies and an explanation as to the use of those materials.

(2) In all cases of medicine man care, the commission board shall only approve up to \$3,000.00 per application unless prior approval has been granted by the commission board for additional treatment.

L. The provisions of Section 31-22-10 A NMSA, 1978, prohibit reparation if the victim is a member of the offender's family relationship group where payment would unjustly enrich the offender. Unjust enrichment shall be when the offender benefits from payments by either personally receiving compensation or by having compensation reduce the offender's financial obligation of medical payment, funeral expense, or other expenses incurred as a result of the crime. Payments to victims which benefits offenders in only a minimal or inconsequential manner would not be considered unjust enrichment. The victim and/or claimant must cooperate with law enforcement in the prosecution of the offender.

M. Gas expenses to transport the victim to a health provider may be considered if the travel is over thirty miles one way from the victim's residence. This travel shall be verified by the health provider's billing and reports for the travel requested. The gas will be reimbursed at the rate of twenty cents per mile.

N. Gas expenses to transport the victim to a law enforcement agency for the purpose of official business relating to the incident for which the application is filed may be considered. The distance traveled shall be more than thirty miles one way from the victim's residence and the gas will be reimbursed at the rate of twenty cents per mile.

O. The commission board may consider travel expenses related to the identification of the deceased victim by an individual who has assumed responsibility for making arrangements for the deceased.

P. The following expenses shall not be considered for reimbursement:

- (1) phone bills;
- (2) copying fees;
- (3) postage costs.

Q. If a victim is transported to a medical facility due to the severity of the victim's injuries, gas expenses may be considered for reimbursement at the rate of twenty cents per mile for relatives, a member of the victim's family relationship group, or a dependent of the victim. Lodging and meal expenses for these individuals may also be considered at the reimbursement rate consistent with DFA rules in effect at the time of the travel. A car rental at a reasonable rate may also be considered for reimbursement. These expenses shall only be considered while the victim is at a medical facility and the distance must be more than fifty miles one way from the victim's residence.

[11/7/91, 3/14/98; 10.40.2.10 NMAC - Rn & A, 10 NMAC 40.2.10, 08/31/06]

10.40.2.11 REDUCTIONS AND DENIALS:

A. The commission board shall consider that the purpose of the New Mexico Crime Victims Reparation Act, as stated in Section 31-22-2 NMSA 1978, is to promote cooperation with law enforcement efforts and promote the public health, welfare, and safety of the citizens of New Mexico. In accordance with Section 31-22-7 C NMSA 1978, the commission board in determining whether to make an award may consider any circumstances it determines to be relevant.

(1) Also, as required by the statute, the commission board shall consider the behavior of the victim. This shall be applied equally and consistently to all persons. In considering the behavior of the victim, the commission board may reduce or deny an application under any relevant circumstances, including, but not limited to the following:

(a) knowing or willing involvement in the commission of a crime as defined in Section 30-1-4 NMSA 1978 at the time of incident;

(b) behavior constituting provocation or incitement;

(c) illegal drug use;

(d) gang-related crime or activity;

(e) knowingly or willingly riding in a vehicle operated by a person who is under the influence of alcohol or a controlled substance;

(f) operating a vehicle while legally intoxicated;

(g) failure to wear a seat belt as required by statute;

- (h) victim/claimant knowingly falsifying application;
- (i) intoxication where the judgment of a person would be impaired; or
- (j) knowingly engaging in a physical altercation.

(2) In cases where the victim is under eighteen years of age or the victim is mentally or physically incapable of adhering to these requirements, the commission board may waive the above. In addition, the board may waive any of the above in the case of intimidation.

B. In accordance with the Crime Victims Reparation Act, Section 31-22-7 D (3) NMSA 1978, the commission, upon finding that a claimant or victim has not cooperated with law enforcement agencies or with investigators, agents, or representatives of the commission, may deny reparation.

(1) The claimant or victim may be considered uncooperative based on, but not limited to, the following acts:

- (a) refusal to discuss the crime with the investigating police agencies;
- (b) refusal to respond to questions posed by the investigating police agency regarding the crime on which the application is based;
- (c) withholding or secreting information from the agency investigating the crime regarding the description, the identity, or the whereabouts of the offender; or refusal to act as a witness before a court with respect to the crime on which the application is based;
- (d) refusal to prosecute the alleged suspect or pursue charges against the suspect of the crime on which the application is based;
- (e) refusal or neglect to provide the information required by the commission to determine the validity of an application;
- (f) impeding the progress of a criminal investigation of the crime on which the application is based; or
- (g) advising other persons to refuse to cooperate with law enforcement agencies or with the commission in the conduct of their investigations.

(2) In cases where the victim is under eighteen years of age or the victim is mentally or physically incapable of adhering to these requirements, the commission board may waive the above.

C. Any application that has been denied by the commission may be reopened at the discretion of the commission.

[11/7/91, 3/14/98; 10.40.2.11 NMAC - Rn & A, 10 NMAC 40.2.11, 08/31/06]

10.40.2.12 APPEAL PROCEDURE:

If a victim/claimant feels that the commission board's decision on their application is incorrect, they may file an appeal with the agency. The appeal procedure is as follows:

A. The victim/claimant shall write a letter to the director requesting the director to review the commission board's decision. Any new or additional relevant information should be provided at this time. The director shall review the application file and additional information submitted and make a determination as to whether or not reconsideration of the original decision by the commission board is warranted. If the director feels the commission board should reconsider, the director shall present the application to the commission board and request a review of the decision. If the director concurs with the commission board, the director shall notify the victim/claimant of the decision.

B. The victim/claimant may request in writing a meeting between the victim/claimant and the director, staff to whom the application is assigned, and an independent victim advocate to discuss the issues. The director, staff to whom the application is assigned, and advocate shall then make a recommendation to the commission board.

C. If the victim/claimant disagrees with the results of steps one and two of the appeal procedure, then he/she may request in writing an appearance before the commission board. The director shall schedule the appearance before the commission board for the appeal. The victim/claimant may present any information he/she thinks is relevant. The commission board shall review the information presented and make a determination on the application. The decision of the commission board is final.

[11/7/91; 11/7/97; 3/14/98; 10.40.2.12 NMAC - Rn & A, 10 NMAC 40.2.12, 08/31/06]

10.40.2.13 SECURITY OF APPLICATION FILES:

A. After office hours, all application files shall be secured in a locked area.

B. A sign out sheet in the crime victims reparation commission office will be maintained for all files leaving the crime victims reparation commission office. No application files will be signed out unless adequate security for those files can be guaranteed.

[3/14/98; 10.40.2.13 NMAC - Rn, 10 NMAC 40.2.13, 08/31/06]

10.40.2.14 CONFIDENTIALITY:

Application files which contain confidential medical and police records shall be considered confidential. No public disclosure of the information contained within shall be made. All commission board members and staff shall be responsible to maintain this confidentiality.

[3/14/98; 10.40.2.14 NMAC - Rn, 10 NMAC 40.2.14, 08/31/06]

PART 3: FEDERAL GRANT PROGRAMS

10.40.3.1 ISSUING AGENCY:

Crime Victims Reparation Commission.

[4/30/97; Recompiled 11/30/01]

10.40.3.2 SCOPE:

Provisions of Part 3 of Chapter 40 [now 10.40.3 NMAC] provide for the administering of the federal grant programs.

[4/30/97; Recompiled 11/30/01]

10.40.3.3 STATUTORY AUTHORITY:

Victims of Crime Act, 44 U.S.C. 10601, et seq.

[4/30/97; Recompiled 11/30/01]

10.40.3.4 DURATION:

Permanent.

[4/30/97; Recompiled 11/30/01]

10.40.3.5 EFFECTIVE DATE:

March 14, 1998, unless a different date is cited at the end of a section or paragraph.

[4/30/97, 3/14/98; 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.]

10.40.3.6 OBJECTIVE:

The objective of Part 3 of Chapter 40 [now 10.40.3 NMAC] is to provide guidance in the grant process for the federal grants.

[4/30/97; Recompiled 11/30/01]

10.40.3.7 DEFINITIONS:

[RESERVED]

10.40.3.8 VICTIMS OF CRIME ACT (VOCA) ASSISTANCE GRANT:

A. The New Mexico crime victims reparation commission applies for and receives a Victims Of Crime Act (VOCA) grant each year. These funds are to be sub granted to public and non-profit agencies which provide a direct service to victims of crime. The New Mexico crime victims reparation commission shall publish a notice of grant availability in a newspaper of general circulation in the state of New Mexico. This notice shall contain the following:

- (1) the amount of the award;
- (2) the purpose of the award;
- (3) general eligibility requirements;
- (4) application deadline; and
- (5) where additional information may be obtained.

(6) The VOCA grant provides for administrative cost to the CVRC. These funds may be used to pay salary, equipment, travel or other operating expenses. The grant also provides for funds to be used for training purposes.

B. The commission shall utilize a review committee to evaluate the proposals. The review committee shall be appointed by the commission board. The VOCA program grant manager shall facilitate the review committee meetings. The review committee will then submit recommendations to the commission board. The board then makes preliminary approval of awards.

C. Victim assistance sub-recipient applicants dissatisfied with the preliminary award decision of the commission board may request an appeal before the commission board. The appeal process is as follows:

- (1) A request for an appeal must be made within ten days of preliminary notification of grant awards and/or denials.

(2) This request for an appeal must be made in writing and shall be submitted to the director of the crime victims reparation commission.

(3) The director shall notify the chairman of the appeal request and a hearing will be held at the next scheduled commission board meeting. The chairman may call a special meeting at his discretion.

(4) At such hearings the interested party may state their concerns or comments to the commission board.

(5) Within ten days after the hearing, the commission board shall make a determination as to the appeal and the director will notify the applicant as to the outcome.

D. Upon completion of the appeal process the commission board shall approve final awards. The director shall send a contract to all successful applicants. The applicants shall sign the contract. A revised budget reflecting the approved amount shall be returned to the director with the signed contract.

E. All victim assistance subgrant final award contracts must be signed by the chairman of the commission board and the director.

F. A monthly financial report must be presented to the commission board at its regular meetings. The report shall include the following:

- (1) draw-downs from the United States treasury;
- (2) disbursements of funds to subgrantees;
- (3) notice indicating submission of federal reports.

G. Funds which cannot be spent in the grant period by subgrantees may be redistributed at the discretion of the director of the agency. Redistributed funds will only go to a subgrantee based on a subgrantee's need for additional funds and their ability to properly obligate or spend the additional money within the allowable time restrictions.

H. All subgrantees shall submit a timely, complete and accurate quarterly financial report. Additional cash advances or reimbursements shall not be processed or authorized if the subgrantee fails to submit these reports.

I. Suspension or termination of funding to a subgrantee may be initiated by the director but must, at the next regular commission board meeting, be approved by the commission board.

J. Additional requirements of subgrantees or restrictions on the use of VOCA funds may be made as deemed necessary by the crime victims reparation commission as

allowed by the Victims of Crime Act and the most recent final program guidelines as published in the federal register.

[11/7/91, 3/14/98; Recompiled 11/30/01]

10.40.3.9 VOCA - VICTIM COMPENSATION:

A. Applications/proposals to the federal government for victim compensation funds will be presented to the commission board for approval prior to the submission of said application/proposal. If that is not feasible, then the application will be presented at the next regular meeting.

B. Victim compensation funds will be spent according to applicable state guidelines regarding compensation benefits.

C. Financial information regarding the status of victim compensation funds will be included in the agency financial report.

[11/7/91, 3/14/98; Recompiled 11/30/01]

10.40.3.10 S.T.O.P. VIOLENCE AGAINST WOMEN ACT (VAWA) GRANT PROGRAM:

A. The New Mexico crime victims reparation commission applies for and receives Violence Against Women Act (VAWA) funds each year. The VAWA grant provides for administrative costs to the CVRC. These funds may be used to pay salary, equipment, travel, or other operating expenses. The director will appoint a steering committee to assist in developing the implementation plan for each year of funding. This committee will assist in establishing the types of projects that may be funded. The commission board will review and either approve or disapprove this recommendation at the board meeting.

B. [RESERVED]

C. Victim assistance or discretionary sub-recipient applicants dissatisfied with the preliminary award decision of the commission board may request an appeal before the commission. The appeal process is as follows:

(1) A request for an appeal must be made within ten days of preliminary notification of grant awards and/or denials.

(2) This request for an appeal must be made in writing and shall be submitted to the director of the crime victims reparation commission.

(3) The director shall notify the chairman of the appeal request and a hearing will be held at the next scheduled commission board meeting. The chairman may call a special meeting at his discretion.

(4) At such hearings the interested party may state their concerns or comments to the commission board. The commission board may set appeal hearing guidelines as needed. These may include, but not be limited to, time limits on presenters and public comments.

(5) Within ten days after the hearing, the commission board shall make a determination as to the appeal and the director will notify the applicant as to the outcome.

D. Upon completion of the appeal process the commission board shall approve final awards. The director shall send a contract to all successful applicants. The applicants shall sign the contract. A revised budget reflecting the approved amount shall be returned to the director with the signed contract.

E. All subgrant final award contracts must be signed by the chairman of the commission board and the director.

F. A monthly financial report must be presented to the commission board at its regular meetings. The report shall include the following:

- (1) draw-downs from the United States treasury;
- (2) disbursements of funds to subgrantees;
- (3) notice indicating submission of federal reports.

G. Funds which cannot be spent in the grant period by subgrantees may be redistributed at the discretion of the director of the agency. Redistributed funds will only go to a subgrantee based on a subgrantees need for additional funds and their ability to properly obligate or spend the additional money within the allowable time restrictions.

H. All subgrantees shall submit a timely, complete and accurate quarterly financial report. Additional cash advances or reimbursements shall not be processed or authorized if the subgrantee fails to submit these reports.

I. Suspension or termination of funding to a subgrantee may be initiated by the director but must, at the next regular commission board meeting, be approved by the commission board.

J. Additional requirements of subgrantees or restrictions on the use of VAWA funds may be made as deemed necessary by the crime victims reparation commission as

allowed by VAWA and the most recent final program guidelines as published in the federal register and/or policy stated as included in the VAWA application packet.

[3/14/98; Recompiled 11/30/01]