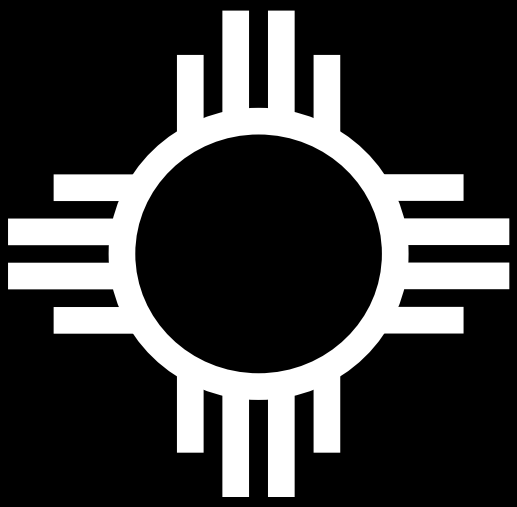
# NEW MEXICO REGISTER



Volume XIX
Issue Number 19
October 15, 2008

# New Mexico Register

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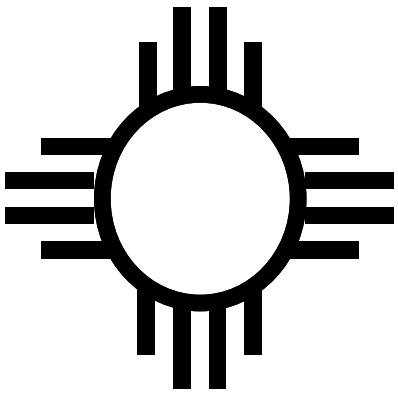

The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2008

# New Mexico Register

Volume XIX, Number 19
October 15, 2008

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### Adopted Rules

**Effective Date and Validity of Rule Filings**

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

**A=*Amended*, E=*Emergency*, N=*New*, R=*Repealed*, Rn=*Renumbered***

## Other Material Related to Administrative Law



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# Notices of Rulemaking and Proposed Rules

## NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Acupuncture and Oriental Medicine will hold a Rule Hearing on Friday, November 21, 2008. Following the Rule Hearing the New Mexico Board of Acupuncture and Oriental Medicine will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Acupuncture and Oriental Medicine Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.2.16 NMAC: Auricular Detoxification.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4630 after October 20, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than November 7, 2008. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4630 at least two weeks prior to the meeting or as soon as possible.

Martha L. Gallegos, Administrator
PO Box 25101- Santa Fe, New Mexico 87504

## NEW MEXICO MAIN STREET REVOLVING LOAN COMMITTEE

MAIN STREET REVOLVING LOAN COMMITTEE
STATE HISTORIC PRESERVATION DIVISION
NOTICE OF PROPOSED RULEMAKING

The Main Street Revolving Loan Committee will convene a public hearing on 19th day, November, 2008, on the proposed new rule under Title 12, Trade, Commerce and Banking, Chapter 21, Community Revitalization and Development, Part 3, Lending Procedures of the Main Street Revolving Loan Fund. The hearing will be held at 10:30 AM in the Secretary of Cultural Affairs Conference Room, Department of Cultural Affairs, Bataan Memorial Building, 407 Galisteo Street, Suite 260, Santa Fe, New Mexico.

Copies of the proposed rule 12.21.3 NMAC may be obtained by calling the Historic Preservation Division at (505) 827-6320 between 8:00 AM and 5:00 PM Monday through Friday, by email to dorothy.victor@state.nm.us, or from the HPD website (www.nmhistoricpreservation.org), Interested persons may testify at the hearing or submit written comments on the proposed amendments to the Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, New Mexico 87501, or via fax to (505) 827-6338. Written comments must be received by 5:00 PM on Monday, November 17, 2008; however, the submission of written comments as soon as possible is encouraged. Written comments will be given the same consideration as oral testimony at the public hearing. If you need a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing, please contact the Historic Preservation Division at (505) 827-6320 or dorothy.victor@state.nm.us at least 48 hours prior to the hearing.

## NEW MEXICO MEDICAL BOARD

NEW MEXICO MEDICAL BOARD

Notice

The New Mexico Medical Board will convene a regular Board Meeting on Thursday, November 13, 2008 at 8:00 a.m. and Friday, November 14, 2008 at 8:30 a.m. in the Conference Room, 2055 S. Pacheco, Building 400, Santa Fe, New Mexico. A Public Rule Hearing will be held on Friday, November 14, 2008 at 9:00 a.m. The Board will reconvene after the Hearing to take action on the proposed rules. The Board may enter into Executive Session during the meeting to discuss licensing or limited personnel issues.

The purpose of the Rule Hearing is to consider amending 16.10.5 NMAC (Disciplinary Power of the Board), 16.10.6 NMAC (Complaint Procedure & Institution of Disciplinary Action), 16.10.7 NMAC (License Expiration, Renewal, and Reinstatement), 16.10.9 NMAC (Fees), 16.10.15 NMAC (Physician Assistants: Licensure & Practice Requirements), 16.10.16 NMAC (Administering, Prescribing & Distribution of Medication) and 16.10.17 NMAC (Management of Medical Records). 16.10.21 NMAC (Genetic Counselors: Licensure & Practice Requirements) is a new rule.

Changes to Parts 5, 6, 7, 9, 15 and 16 will provide further clarification of summary suspension, licensure expiration dates, qualifications for licensure as a physician assistant, define physician-or physician assistant patient relationship and add information on Genetic Counselor and Polysomnographic Technologists. Changes to Part 17 will be revised to include electronic medical records and revise the subsections regarding closing, selling, relocating or leaving a practice. Part 21 is a new rule regarding Genetic Counselors.

Copies of the proposed rules will be available on October 13th on request from the Board office at the address listed above, by phone (505) 476-7220, or on the Internet at www.nmmb@state.nm.us.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m., November 7, 2008, to the board office, 2055 S. Pacheco, Building 400, Santa Fe, NM, 87505.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact Lynnelle Tipton, Administrative Assistant at 2055 S. Pacheco, Building 400, Santa Fe, NM at least one week prior to the meeting. Public documents, including the agenda and minutes, can be provided in various accessible formats.

# NEW MEXICO BOARD OF EXAMINERS IN OPTOMETRY

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Examiners in Optometry will hold a Rule Hearing on Monday, November 17, 2008. Following the Rule Hearing the New Mexico Board of Examiners in Optometry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Examiners in Optometry Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Regulation and Licensing Department, Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.16.18 NMAC: Authorized Minor Surgical Procedures and Injections.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4945 after October 16, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than November 3, 2008. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4945 at least two weeks prior to the meeting or as soon as possible.

Martha L. Gallegos, Administrator
PO Box 25101- Santa Fe, New Mexico 87504

# NEW MEXICO OSTEOPATHIC BOARD OF MEDICAL EXAMINERS

**NEW MEXICO**
**OSTEOPATHIC BOARD OF MEDICAL EXAMINERS**

**PUBLIC RULE HEARING**
**AND**
**REGULAR BOARD MEETING**
**NOTICE**

Notice is hereby given that the New Mexico Board of Osteopathic Medical Examiners will convene a Rule Hearing to consider for adoption the proposed amendments, repeals and/or replacements to the following rules and regulations:

| | |
|---|---|
| Title 16, Chapter 17, Part 1 | General Provisions |
| Title 16, Chapter 17, Part 2 | Application for Licensure |
| Title 16, Chapter 17, Part 3 | Licensure Procedure |
| Title 16, Chapter 17, Part 4 | Renewal Procedure\ |
| Title 16, Chapter 17, Part 5 | [Reserved] |
| Title 16, Chapter 17, Part 6 | Revocation or Refusal of Licensure |
| Title 16, Chapter 17, Part 7 | Reinstatement |

| | |
|---|---|
| Title 16, Chapter 18, Part 1 | General Provisions |
| Title 16, Chapter 18, Part 2 | Application Procedure Rule |
| Title 16, Chapter 18, Part 3 | Renewal of Certification Rule |
| Title 16, Chapter 18, Part 4 | Change of Employment Registration |
| Title 16, Chapter 18, Part 5 | [Reserved] |
| Title 16, Chapter 18, Part 6 | Supervision of Physician Assistants |
| Title 16, Chapter 18, Part 7 | Prescribing and Distribution of Controlled Substances |
| Title 16, Chapter 18, Part 8 | [Reserved] |
| Title 16, Chapter 18, Part 9 | Student Physician Assistants |

This Hearing will be held at the Grubb & Ellis Building AFG-1, 2400 Louisiana Blvd., Suite 300, Albuquerque, N.M., Friday, November 14, 2008 at 10:00 a.m.

Following the Rule Hearing the New Mexico Board of Osteopathic Medical Examiners will convene a regular meeting on November 14, 2008. The public portion of the meeting is anticipated to begin about 11:30 a.m.

Copies of the proposed rules will be available November 9, 2008 on request from the Board office, P. O. Box 25101, Santa Fe, New Mexico, 87504-5101, or phone (505) 476-4604. You may also access them on the Board's Website at www.rld.state.nm.us.

Anyone wishing to present their views on the proposed rules may appear in person at the Hearing, or may send written comments to the Board office. Written comments must be received by November 9, 2008 to allow time for distribution to the Board and Committee members. Individuals planning on testifying at the hearing must provide 10 copies of their testimony.

Final action on the proposed rules will be taken during the Board meeting. Portions of the committee and Board meeting may be closed to the public while the Board and Committee are in Executive Session to discuss licensing matters. Copies of the agenda will be available 24 hours in advance of the meeting from the Board office.

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

# NEW MEXICO REGULATION AND LICENSING DEPARTMENT

SECURITIES DIVISION

NOTICE OF RULEMAKING

The Director of the Securities Division of the New Mexico Regulation and Licensing

Department proposes to adopt the following new rule: 12.11.17 NMAC, Use of Senior-Specific Certifications and Professional Designations.

The Director of the Securities Division also proposes to amend the following existing Division rules: 12.11.4 NMAC, Broker-Dealer and Sales Representatives Rules of Conduct and Prohibited Business Practices, Sections 15 and 16 and 12.11.7 NMAC, NMAC Investment Advisors and Investment Advisor Representatives Rules of Conduct and Prohibited Practices, Section 13.

Interested parties may access the proposed amendments on the Division's website at http://www.rld.state.nm.us/Securities/index.html. Copies may also be obtained by contacting the Division at (505) 476-4580. Written comments regarding the proposed new rule and amendments to rules should be directed to Marianne Woodard, Attorney, Securities Division, New Mexico Regulation and Licensing Department, 2550 Cerrillos Rd., Toney Anaya Bldg 3rd floor, Santa Fe, New Mexico 87505, or faxed to (505) 984-0617. Comments must be received by 5:00 p.m. on November 14, 2008.

## NEW MEXICO BOARD OF SOCIAL WORK EXAMINERS

LEGAL NOTICE

Public Rule Hearing and Regular Board Meeting

The New Mexico Board of Social Work Examiners will hold a Rule Hearing on November 14, 2008. Following the Rule Hearing the New Mexico Board of Social Work Examiners will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Social Work Examiners Rule Hearing will begin at 9:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held at the Toney Anaya Building, West Capitol Complex, 2550 Cerrillos Road, Santa Fe, NM in the Rio Grande Room, 2nd Floor.

The purpose of the rule hearing is to consider adoption of proposed amendments and additions to the following Board Rules and Regulations in 16.63 NMAC: Part 1 General Provisions, Part 3 Application for Licensure, Part 6 Licensure by Credentials, Part 7 Provisional License, Part 8 Fees, Part 9 Baccalaureate Social Worker, Part 10 Master Social Worker, Part 11 Independent Social Worker, Part 12 Continuing Education, and Part 16 Code of Conduct.

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at the West Capitol Complex, 2550 Cerrillos Road in Santa Fe, New Mexico 87504, or call (505) 476-4890 after October 14, 2008. In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than October 30, 2008. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4890 at least two weeks prior to the meeting or as soon as possible.

Vadra Baca, Administrator
PO Box 25101- Santa Fe, New Mexico 87504

## NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

LABOR RELATIONS DIVISION

**NOTICE OF PUBLIC HEARING**

The New Mexico Department of Workforce Solutions, Labor Relations Division, will conduct a rule making hearing to consider the regulations regarding the employment of day laborers.

Written or verbal input from all interested parties will be received at the hearing. The hearing will be recorded and transcribed. Interested parties may contact Francie Cordova, Director or Gloria Garcia, Administrative Assistant at (505) 841-4400 prior to the meeting to secure copies of the agenda, rule changes, or to request a reasonable accommodation pursuant to the Americans with Disabilities Act. Proposed regulation changes can be viewed on-line at: http://www.dws.state.nm.us

DATE: October 30, 2008

TIME: 9:30 am till 12:00 pm

SUBJECT: Day Laborers 11.6.3 NMAC

LOCATION: Silver Square Building
The Large Conference Room
625 Silver Ave SW 1st Floor
Albuquerque, NM 87102

## End of Notices and Proposed Rules Section

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# Adopted Rules

## NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

JUVENILE JUSTICE DIVISION

8.14.11 NMAC, Contracted Facility: Camp Sierra Blanca, filed August 15, 2005 is repealed effective October 15, 2008. 8.14.11 NMAC was replaced by 8.14.5 NMAC, Facility Operations, filed July 24, 2008.

## NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

**TITLE 2 PUBLIC FINANCE**
**CHAPTER 61 STATE INDEBTEDNESS AND SECURITIES**
**PART 3 DEDICATION OF A PORTION OF THE STATE'S GROSS RECEIPTS TAX INCREMENT**

**2.61.3.1 ISSUING AGENCY:** State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM.
[2.61.3.1 NMAC - N, 10/15/08]

**2.61.3.2 SCOPE:** Tax increment development districts formed pursuant to the Tax Increment for Development Act with respect to the state's dedication of a portion of its gross receipts tax increment.
[2.61.3.2 NMAC - N, 10/15/08]

**2.61.3.3 STATUTORY AUTHORITY:** Section 5-15-2 (A) NMSA 1978 states that the purpose of the Tax Increment for Development Act is to create a mechanism for providing gross receipts tax financing and property tax financing for public infrastructure for the purpose of supporting economic development and job creation. Section 5-15-15 (F) NMSA 1978 provides that the state board of finance, upon review of the applicable tax increment development plan, may find that dedication of a portion of the gross receipts tax increment for the purpose of securing gross receipts tax increment bonds is reasonable and in the best interest of the state and that the use of the state gross receipts tax is likely to stimulate the creation of jobs, economic opportunities and general revenue for the state through the addition of new businesses to the state and the expansion of existing businesses within the state. Section 5-15-15 (F) NMSA 1978 limits the dedication to not more than seventy-five percent (75%) of the gross receipts tax increment attributable to the imposition of the state gross receipts tax within the district.
[2.61.3.3 NMAC - N, 10/15/08]

**2.61.3.4 DURATION:** Permanent.
[2.61.3.4 NMAC - N, 10/15/08]

**2.61.3.5 EFFECTIVE DATE:** October 15, 2008, unless a later date is cited at the end of a section.
[2.61.3.5 NMAC - N, 10/15/08]

**2.61.3.6 OBJECTIVE:** To establish rules and regulations governing the dedication of a portion of the state's gross receipts tax increment provided for by the Tax Increment for Development Act (Sections 5-15-1 through 5-15-28 NMSA 1978); to provide guidance as to board evaluation of district requests by defining terms setting forth the bases upon which the required findings are to be made, and outlining the methodological framework to be used; to set forth procedures for submittals of applications for a dedication; and to establish reporting requirements.
[2.61.3.6 NMAC - N, 10/15/08]

**2.61.3.7 DEFINITIONS:**

A. "Act" means the Tax Increment for Development Act, NMSA 1978, Sections 5-15-1 through 5-15-28 (2006), as it may be amended.

B. "Application" means the submittal by the district, or, if the district is not yet formed, the owners of at least fifty percent (50%) of real property located within the boundaries of the area proposed for inclusion within the district, containing the information and materials required by this rule seeking a dedication by the board of a portion of the state's increment.

C. "Base gross receipts taxes" means:

(1) the total amount of gross receipts taxes collected within a tax increment development district, as estimated by the governing body that adopted a resolution to form that district, in consultation with the taxation and revenue department, in the calendar year preceding the formation of the tax increment development district or, when an area is added to an existing district, the amount of gross receipts taxes collected in the calendar year preceding the effective date of the modification of the tax increment development plan and designated by the governing body to be available as part of the gross receipts tax increment; and

(2) any amount of gross receipts taxes that would have been collected in such year if any applicable additional gross receipts taxes imposed after that year had been imposed in that year.

D. "Board" means the state board of finance.

E. "Bonds" means the gross receipts tax increment bonds for which a portion of the state's increment is to be pledged.

F. "District" means a tax increment development district formed pursuant to the act.

G. "Direct job" or "direct effect" means employment, economic output and personal income attributable to economic activity within the boundaries of a district. A direct job may include an economic base job, an indirect job or an induced job if these jobs or this economic activity occurs within the boundaries of a district.

H. "District board" means a board formed in accordance with the provisions of the act to govern a district.

I. "Economic base job" means employment within the district with an employer engaged primarily in creating goods and services that are exported out of the state.

J. "Economic output" means the contribution to gross domestic product by state as measured by the bureau of economic analysis of the U.S. department of commerce. At minimum, economic output is the sum of wages and salaries paid workers in the district, profits of firms engaged in economic activity in the district and interest and dividends paid to investors on loans and investments in the district.

K. "Governing body" means the city council or city commission of a city, the board of trustees or council of a town or village or the board of county comissioners of a county.

L. "Gross receipts tax increment" means the gross receipts taxes collected within a district in excess of the base gross receipts taxes collected for the duration of the existence of a district and distributed to the district in the same manner as distributions are made under the provisions of the Tax Administration Act [7-1-1 NMSA 1978].

M. "Improvement district" means a district composed of all or a portion of a district wherein a property tax has been imposed pursuant to the provisions of 3-33-2E NMSA 1978.

N. "Indirect job" or "indirect effect" means employment, economic output and personal income attributable to economic activity of suppliers to economic base businesses located within the district. These indirect jobs or activity may be located within or outside the district.

O. "Induced job" or "induced effect" means employment, eco-

nomic output and personal income attributable to household spending by employees of all companies directly or indirectly affected by the project. These indirect jobs or activity may be located within or outside the district.

P. "Project" means a tax increment development project.

Q. "State's increment" means the state's portion of the gross receipts tax increment.

R. "Sustainable development" means land and other developments that achieve sustainable economic and social goals in ways that can be supported for the long term by conserving resources, protecting the environment and ensuring human health and welfare using mixed-use, pedestrian-oriented, multimodal planning.

S. "Workforce housing" means decent, safe and sanitary dwellings, apartments, single-family dwellings or other living accommodations that are affordable for persons or families earning less than eighty percent (80%) of the median income within the county in which the tax increment development project is located; provided that an owner-occupied housing unit is affordable to a household if the expected sales price is reasonably anticipated to result in monthly housing costs that do not exceed thirty-three percent (33%) of the household's gross monthly income; provided that:

(1) determination of mortgage amounts and payments are to be based on down payment rates and interest rates generally available to lower- and moderate-income households; and

(2) a renter-occupied housing unit is affordable to a household if the unit's monthly housing costs, including rent and basic utility and energy costs, do not exceed thirty-three percent (33%) of the household's gross monthly income.

[2.61.3.7 NMAC - N, 10/15/08]

**2.61.3.8 BASES FOR DEDICATION OF A PORTION OF THE STATE'S INCREMENT:** In determining whether it can make the findings required for dedication of a portion of the state's increment and what percentage of the state's increment may be dedicated the board will:

A. evaluate whether the project can occur in substantially the same form if the state's increment is not obtained;

B. determine that the following additional criteria are met:

(1) the project is expected to have a positive net revenue impact on the state general fund over a period of time approximately equal to the life of the bonds when calculated as described in this rule;

(2) the project is expected to generate new jobs and economic opportunities;

(3) the project incorporates adequate planning and resource allocation for workforce housing and schools;

(4) the portion of the state's increment requested is reasonable and fully justified by the analysis; and

(5) the developer has a proven record for success with similar developments; and

C. consider these additional factors as part of the determination whether the use of the state's increment is "reasonable and in the best interests of the state":

(1) the type of development (e.g. greenfield, revitalization, or within recognized public policy priority);

(2) the anticipated increase in general fund tax revenue and employment within the district as a result of companies moving into the state (companies new to New Mexico);

(3) the anticipated increase in general fund tax revenue and employment within the district as a result of growth of firms currently doing business in New Mexico;

(4) the attributes of employment generated within the district, the nature of the industry, and benefits to the community and the state;

(5) the ratio of local government to state government contribution, expressed both in terms of absolute dollars contributed toward infrastructure and in terms of the relative percentage of available gross receipts and property tax revenues dedicated to bond repayment;

(6) the impacts on surrounding or non-participating government entities;

(7) the ratio of private to public investment;

(8) the use of innovative planning and development techniques;

(9) the application of environmentally protective technologies, energy and water efficiencies and sustainable development elements in the project, including all residential, commercial, industrial and government structures;

(10) the maximum maturity of the bonds is reasonable and fully justified by the analysis;

(11) the availability of water and water rights to support the planned community;

(12) the proposed governance structure of the district, including the composition of the board and the method of selection; and

(13) the provision of community facilities, such as senior centers, and non traditional housing to address various social needs such as homelessness and domestic violence and other community benefits.

[2.61.3.8 NMAC - N, 10/15/08]

**2.61.3.9 APPLICATION SUBMITTAL, PROCESSING, EVALUATION METHODOLOGY, AND EFFECTIVE DATE AND DURATION OF DEDICATION:**

A. Contents of application. A district requesting a dedication of a portion of the state's increment shall submit an application that includes:

(1) a conceptual site plan for the project;

(2) the tax increment development plan approved by the governing body that includes:

(a) a map depicting the geographical boundaries of the area proposed for inclusion within the district; this map should indicate any existing infrastructure and residential, commercial and industrial structures and development;

(b) the estimated time necessary to complete the tax increment development project;

(c) a description and the estimated cost of all public improvements proposed for the project;

(d) whether it is proposed to use gross receipts increment bonds or property tax increment bonds or both to finance all or part of the public improvements;

(e) the estimated annual gross receipts tax increment to be generated by the project and the portion of that gross receipts tax increment to be allocated during the time necessary to complete the payment of the project;

(f) the estimated annual property tax increment to be generated by the project and the portion of that property tax increment to be allocated during the time necessary to complete the payment of the project;

(g) the general proposed land uses for the project;

(h) the number of jobs by type expected to be created by the project;

(i) the amount and characteristics of workforce housing expected to be created by the project;

(j) the location and characteristics of public school facilities expected to be created, improved, rehabilitated or constructed by the tax increment development project;

(k) a description of innovative planning techniques, including mixed-use transit-oriented development, traditional neighborhood design or sustainable development techniques, that are deemed by the governing body to be beneficial and that will be incorporated into the tax increment development project; and

(l) the amount and type of private investment in each tax increment development project;

(3) information on the availability of other public and private funds for the project, including:

(a) whether it is proposed to

finance any portion of the infrastructure using the provisions of 5-15-13 NMSA 1978 which permits the property owners within a tax increment development district to impose a property tax rate of up to $5 per $1,000 of net taxable value for a period of up to four (4) years; and

(b) whether it is proposed to establish an improvement district and finance any portion of the infrastructure using the provisions of 3-33-1 through 43 NMSA 1978, as it may be amended, and whether the bonds sold through this mechanism conform to the limit of twenty-five percent (25%) of total property value established in 3-33-14 NMSA 1978;

(4) an economic development plan, including an industrial cluster analysis if appropriate, for attracting businesses to the district;

(5) market feasibility study that includes:

(a) the number of residential (single family and multi-family) units and the square footage of commercial, retail and industrial space to be built by calendar year;

(b) the average price per square foot or by unit by type;

(c) the market supply (or availability) and the value of each property type in the area and surrounding areas with reference to any other planned development in the surrounding areas; and

(d) market demand (or absorption rates) for each property type in the area and surrounding areas with reference to any other planned development in the surrounding areas;

(6) economic analysis to include:

(a) employment and salary projections by industry in the district by calendar year, and whether the jobs are temporary (i.e., construction) or permanent employment;

(b) population projections by calendar year;

(c) housing unit projections and type by calendar year;

(d) economic output from direct and indirect impacts within the district with temporary construction activity listed separately; separate listing of economic base employment within the district, indirect and induced employment within the district and in surrounding areas is optional, but encouraged;

(e) the anticipated net revenue impact on the state general fund shall be calculated as follows:

(i) the sum of all general fund revenues generated by economic activity within the district by type of revenue (e.g. gross receipts tax from retail sales, gross receipts tax from services provided to New Mexico businesses, personal income tax, etc.) less: 1) the sum of all general fund costs to the state associated with the provision of services to individuals and businesses (e.g. public schools); 2) the estimated amount of tax incentives provided to promote economic development within the district under current law; 3) the amount of the state's increment requested by the district; and 4) the total amount of capital outlay appropriated for use in the district under current law;

(ii) the net revenue impact on the state general fund must be expressed in constant dollar terms; and

(iii) the net present value of general fund revenues less general fund costs over the life of the bonds shall be submitted; a discount rate equal to five percent (5%) shall be used in this calculation;

(7) letter from governing body verifying its ability to pay for operations and maintenance of public infrastructure created by the district and provide basic services such as law enforcement and public health and safety within the district;

(8) a detailed timeline of project completion, including public infrastructure expenditures;

(9) a financing plan to include:

(a) information supporting why tax increment financing is needed;

(b) debt structure and terms, including maturity and estimated interest rates;

(c) pro-forma for all bonds to be issued for the project (including property tax increment bonds, if proposed); and

(d) projected coverage ratios for all bonds;

(10) developer information to include:

(a) organizational chart;

(b) experience in developing similar projects and utilizing tax increment financing;

(c) audited financial statements for the past three (3) years; and

(d) identify past and pending administrative actions and litigation in which the developer is involved that could impact the current financial viability of the developer; briefly describe the nature of the proceedings and current status or final result;

(11) any other information regarding the economic benefits to the project's community and to the state or which the district believes will aid the board in considering the request for the dedication;

(12) enacted resolution of governing body approving the plan;

(13) enacted resolution of governing body forming the district;

(14) enacted resolution of each governing body dedicating a portion of its share of the applicable tax increments;

(15) approved master development agreement with governing body; and

(16) form of board resolution approving the dedication of a portion of the state's increment.

B. Timeline and submittal requirements. Any application shall be considered by the board at its regular meeting in December or July of each year. For consideration at the December 2008 meeting, a complete application must be submitted no later than August 30, 2008; thereafter, a complete application must be submitted no later than the preceding January 1 for consideration at the board's July meeting, or by July 1 for consideration at the board's December meeting. All required materials must be submitted electronically and tables must be submitted as Microsoft excel files with access to all data, including assumptions and formulae. If a district has not been formed by the submittal deadline, please submit all of the documents listed in Paragraphs (1) through (12) and (16) of Subsection A of 2.61.3.9 NMAC in the initial application, and provide Paragraphs (13), (14) and (15) of Subsection A within five (5) calendar days of adoption or twenty-one (21) calendar days prior to the meeting at which the board is to consider the application, whichever occurs first. If a governing body has not adopted a resolution pledging a portion of its gross receipts tax increment or its property tax increment or both by this deadline, that resolution shall be provided immediately upon its adoption and, if the adoption does not occur prior to the meeting at which the board is to consider the application, the board may take any action it deems appropriate, such as imposing a condition requiring such dedication or deferring action until a dedication is made. In addition, the board may require informational presentations at the meeting prior to the meeting at which the application is to be considered. Upon request, the board, in its discretion, may waive provision of any information otherwise required by this rule provided that the requesting party can demonstrate that other documents that are provided are equivalent to or satisfy the rationale for submitting the item and that the state's interest will continue to be sufficiently protected.

(1) In addition to submitting an application to the board, additional copies of an application must be submitted to the department of finance and administration economic analysis unit, the New Mexico finance authority, the taxation and revenue department office of the secretary, and legislative finance committee staff at their respective offices. The board may require the submission of supplemental information during its review process. All information submitted pursuant to this rule will be publicly available.

(2) Prior to initiating the preparation of an application, a developer is encouraged to schedule a "pre-application"

conference to discuss the project and proposed methodology with board staff and the economic analysis unit of the department of finance and administration.

(3) The board, in its discretion, may waive certain requirements included in the rule when the application demonstrates why it is in the best interest of the state to do so.

C. Staff methodology. The board will evaluate the project as a whole and evaluate each district on a stand alone basis. The board will utilize the services of the department of finance and administration economic analysis unit and may seek the assistance of an independent economic consultant to evaluate each request. The district is encouraged to submit any additional data that may be helpful for use in this review. The department of finance and administration economic analysis unit or the independent economic consultant will use the following methodology in evaluating each request:

(1) validation of any economic impact models using standard economic impact tools;

(2) determination of the viability of the project under the following scenarios:

(a) requested tax increment is approved;

(b) requested tax increment is not approved;

(c) some portion of the requested tax increment is approved or increment for less than all districts if multi-district project;

(d) under different assumptions about the relocation of existing businesses within New Mexico, and economic factors such as inflation and economic growth;

(3) evaluation of the project recognizing other economic development efforts by other economic development entities including other districts;

(4) assessment of impact on surrounding communities and non-participating governments;

(5) determination of the ratio of public to private capital contributions and the ratio of state contributions compared to local contributions; and

(6) validation of the finance plan; the board will seek input from New Mexico finance authority staff regarding interest rates, coverage ratios and other bond financing features to ensure that they are reasonable and appropriate.

D. Board approval, effective date and duration. The board's approval of the dedication of a portion of the state's increment shall be effective January 1 or July 1 following legislative and, if required, department of finance and administration approval of the bonds, whichever date next succeeds the last approval to be obtained. Any substantive change to the tax increment development plan after a dedication has been made will require board approval. A dedication shall terminate upon full payment or early defeasance of the bonds in full.

[2.61.3.9 NMAC - N, 10/15/08]

**2.61.3.10 REPORTING REQUIREMENTS:**

A. Within fourteen (14) business days after a district issues any bonds, the district shall advise the board by letter of the date of issuance, the interest rate, and the total aggregate amount of each issue.

B. On or before June 1 of each year following the issuance of the bonds, a district that has received a dedication of a portion of the state's increment shall provide to the board employment reports, as available, setting forth in reasonable detail the numbers and types of jobs created within the district on a full-time equivalent basis during the preceding twelve (12) month period and the availability of workforce housing.

C. Within thirty (30) days of submitting any report or data required by the governing body, the district shall transmit copies of these reports or data to the board of finance and the economic analysis unit of the department of finance.

D. Within thirty (30) days of submitting any report or data required by the New Mexico finance authority, the legislature, or any legislative committee, the district shall transmit copies of these reports or data to the board of finance and the economic analysis unit of the department of finance.

E. At the board's regularly scheduled meeting, each November, a district that has received a dedication of a portion of the state's gross receipts tax increment will report updates on the district, including but not limited to information on the infrastructure build-out, jobs created, employers, revenues and expenses, total debt outstanding, a status report of the district's achievements with respect to public facilities and community benefits, such as the provision of schools and workforce housing in the district, and any other information the applicant believes may be useful for the board.

F. A district must report any significant changes to the plan to the board director that occur after the dedication of a portion of the state's increment.

G. Subsections A through F of 2.61.3.10 NMAC apply to all districts that have received the state's gross receipts tax increment since the adoption of the Tax Increment for Finance Act in 2006.

[2.61.3.10 NMAC - N, 10/15/08]

**HISTORY OF 2.61.3 NMAC:**

[RESERVED]

# NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

## BOARD OF FINANCE

This is an amendment to 2.61.4 NMAC, Sections 7, 8, and 9, effective 10/15/08.

**2.61.4.7 DEFINITIONS:**

A. "Allocation" means an allocation of the state ceiling issued by the board to an issuing authority to issue private activity bonds.

B. "Board" means the state board of finance.

C. "Bond counsel" means an attorney or a firm of attorneys listed in the most recently available "directory of municipal bond dealers of the United States", published by the bond buyer and commonly known as the "red book", in the section listing municipal bond attorneys of the United States or the successor publication thereto.

D. "Code" means the internal revenue code of 1986, as amended.

[~~D.~~] E. "Issuing authority" means the state, state agencies, counties and incorporated municipalities.

[~~E.~~] F. "Mortgage credit certificate election" means an election pursuant to Section 25(c)(2)(A)(ii) of the code, by an issuing authority not to issue qualified mortgage bonds which the issuing authority is otherwise authorized to issue, in exchange for the authority under Section 25 of the code to issue mortgage credit certificates in connection with a qualified mortgage credit certificate within the meaning of Section 25(c)(2) of the code.

[~~F.~~] G. "Private activity bond" means any bond or other obligation which is a qualified bond under Section 141 of the code which is not excluded by Section 146(g),(h) and (i) of the code, or a bond or other obligation issued under Section 1312 or 1313 of the Tax Reform Act of 1986; and the private activity portion of government use bonds allocated by an issuing authority to an issue under Section 141(b)(5) of the code.

[~~G.~~] H. "State agency" means the New Mexico finance authority, the New Mexico educational assistance foundation, the New Mexico mortgage finance authority and any other agency, authority, instrumentality, corporation or body, now existing or hereafter created, which under state law can issue private activity bonds on behalf of the state.

[~~H.~~] I. "State ceiling" means, for any calendar year, the amount as provided by Section 146(d) of the code.

[2/29/96; 11/29/97; 2.61.4.7 NMAC - Rn &

A, 2 NMAC 61.4.7, 01/01/06; A, 10/15/08]

**2.61.4.8 DISTRIBUTION OF PRIVATE ACTIVITY BOND ALLOCATIONS:**

A. Capitalized terms.

(1) Single family housing purpose bonds shall mean private activity bonds issued pursuant to Section 143 of the code or mortgage credit certificates issued pursuant to Section 25(c)(2) of the code.

(2) Multifamily housing purpose bonds shall mean private activity bonds issued pursuant to Section 142(a)(7) of the code.

(3) Housing purpose bonds shall mean single family housing purpose bonds and multifamily housing purpose bonds.

(4) Education purpose bonds shall mean private activity bonds issued pursuant to Section 144(b) of the code.

(5) Small issue economic development purpose bonds shall mean private activity bonds issued pursuant to Section 144(a) of the code.

(6) Exempt facility purpose bonds shall mean private activity bonds requiring an allocation of the state ceiling under the code other than education purpose bonds, housing purpose bonds and small issue economic development purpose bonds.

(7) Other purpose bonds shall mean small issue economic development purpose bonds and exempt facility purpose bonds.

(8) Single family housing purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for single family housing purpose bonds.

(9) Multifamily housing purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for multifamily housing purpose bonds.

(10) Education purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for education purpose bonds.

(11) Other purpose allocation percentage shall mean the percentage, determined annually by the board, of the state ceiling that the board finds appropriate to reserve in a calendar year for other purpose bonds.

(12) Single family housing purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the single family housing purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to single family housing purpose bonds.

(13) Multifamily housing purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the multifamily housing purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to multifamily housing purpose bonds.

(14) Education purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the education purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to education purpose bonds.

(15) Other purpose carryforward allocation percentage shall mean the percentage (which need not be the same as the other purpose allocation percentage), determined annually by the board no later than the December meeting of the board, of the balance of the state ceiling that can be the subject of a carryforward election allocation that the board finds appropriate to allocate for carryforward purposes relating to other purpose bonds.

(16) Allocation percentage means single family housing purpose allocation percentage, multifamily housing purpose allocation percentage, education purpose allocation percentage and other purpose allocation percentage, respectively.

(17) Carryforward allocation percentage means single family housing purpose carryforward allocation percentage, multifamily housing purpose carryforward allocation percentage, housing purpose carryforward allocation percentage, education purpose carryforward allocation percentage and other purpose carryforward allocation percentage, respectively.

B. Issuing authorities requesting at any time during the year distributions of allocations or carryforward election allocations shall submit the following.

(1) For all requests:

(a) a letter from the issuing authority setting forth the amount of the state ceiling requested, the actual or expected date of adoption of the bond resolution or similar documentation by the issuing authority, the expected date of the sale of the bonds, the expected date of closing of the bonds, a statement of any significant conditions that need to be satisfied before the bonds can be issued, and a statement categorizing the private activity bonds as education purpose bonds, single family housing purpose bonds, multifamily housing purpose bonds, small issue economic development purpose bonds or exempt facility purpose bonds, in accordance with the definitions contained in this part, which categorization is subject to board review and recategorization, if appropriate;

(b) a letter from bond counsel for the issuing authority or the user, with supporting citations to state statutes, stating that the private activity bonds can validly be issued under state law by the issuing authority, which the board may refer to its bond counsel or to the state's attorney general for review and comment; if the board is advised by its bond counsel or the attorney general that the opinion of the issuing authority's bond counsel is incorrect, the board may refuse to issue the allocation requested;

(c) a letter from bond counsel for the issuing authority or the user, with supporting citations to the code and the regulations, stating that the bonds are private activity bonds requiring an allocation of the state ceiling; and

(d) a letter from the issuing authority or the user stating why the public purpose to be served by the issuance of the private activity bonds could not be as economically or effectively served by a means not involving an allocation of the state ceiling;

(e) any fees required by Section 2.61.4.9 NMAC.

(2) For all requests not involving a project, i.e., for single family housing purpose bonds and education purpose bonds, a letter from the issuing authority setting forth the following:

(a) a general description of the location of the proposed borrowers;

(b) experience of the issuing authority in utilizing allocations of the state ceiling.

(3) For all requests involving a project, a letter from the issuing authority or the user including the following:

(a) a copy of the inducement resolution, certified by an official of the issuing authority;

(b) a description of the user, the project and the project's specific location;

(c) the estimated number and types of jobs, both construction and permanent, indicating which are expected to be filled by persons who are residents of the state at the time of submission of the request for allocation and which are expected to be filled by persons who are non-residents at the time of submission of the request for allocation; and a representation that the issuing authority, if it receives an allocation of the state ceiling for the project and issues

the related bonds, will provide to the board annually, for four (4) years following the issuance of the bonds, on or before June 1, and after that period upon request of the board, employment reports on a form prescribed by the board setting forth in reasonable detail the numbers and types of workers, and their residency, employed at the project on a full-time equivalent basis during the preceding 12 month period;

(d) the present use or conditions of the project site and evidence that the proposed user of the project has obtained a legally enforceable right to acquire the project site; evidence of approved zoning of the proposed site must be submitted; this requires that project types for which the cap is being requested are not prohibited by the existing zoning of the proposed site;

(e) the maximum amount of the private activity bonds and other obligations to be issued;

(f) a proposed starting date and estimated completion date of the construction of the project, if applicable;

(g) information relating to the feasibility of the proposed project showing that the project or the user will generate revenues and cash flow sufficient to make payments to pay debt service on the bonds, if applicable;

(h) the amount and source of private capital which will be used for the project in addition to bond financing, as well as a brief table showing estimated sources and uses of funds;

(i) conceptual site plans for the project and a map locating the project area;

(j) in the case of multifamily housing purpose bonds, an explanation of why the housing needs of individuals whose income will make them eligible under Section 142(d) of the code are not being met by existing multifamily housing; information as to the number and percentage of units set aside for households at various income levels or with special needs; the legal mechanisms to monitor and enforce compliance with the set-aside provisions and the experience of the monitoring entity with respect to similar projects; a representation that the issuing authority, if it receives an allocation of the state ceiling for the project and issues the related bonds, will provide to the board annually, for four (4) years following the issuance of the bonds, on or before June 1, and after that period upon request of the board, occupancy reports on a form prescribed by the board setting forth in reasonable detail information as to the occupancy of the rental units by category of household; and the duration of the set-aside provisions;

(k) information relating to the feasibility and proposed utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices;

[~~(k)~~] (l) any other information regarding the economic benefits to the project's community and to the state or which the user believes will aid the board in considering the request for allocation; and

[~~(l)~~] (m) a commitment letter or letter of intent, which may be subject to common contingencies or closing conditions, from the proposed underwriter, placement agent or bond purchaser to underwrite, place or purchase the bonds.

(4) For all requests for an allocation for single family housing purpose bonds where the issuing authority seeks an allocation to be used by the issuing authority for mortgage credit certificates or, in its discretion, for either qualified mortgage bonds or mortgage credit certificates, a letter from the issuing authority stating that a qualified mortgage credit certificate program has been adopted by the issuing authority and a description of how the issuing authority is proposing to use the mortgage credit certificates.

(5) For all requests for an allocation for multifamily housing purpose bonds, the board may condition any allocation on the agreement, on behalf of the issuer or the user of the project or projects, to set aside a specified minimum number of units for households at certain income levels or with special needs.

(6) The board or its staff may ask for additional supplemental information from the issuing authority to aid the board in considering the request, including information as to the readiness of the issuer to issue the private activity bonds.

C. Within seven business days after an issuing authority issues any private activity bonds or makes a mortgage credit certificate election, the issuing authority or, in the case of a project, bond counsel for the issuing authority or the user or users, shall advise the board by letter of the date the bonds were issued and the total aggregate amount of the issue, or in the case of a mortgage credit certificate election, the date and the amount of the election, referencing in that letter how the applicable allocations and carryforward allocations issued by the board were used for that issue.

D. The authority of the board to issue, on behalf of the governor (as provided in Section 6-20-11 NMSA 1978), the certification required by the code or the regulations, is hereby delegated to the director of the board. The board interprets its authority to issue the certification, on behalf of the governor, as permissive, and not in substitution of the authority of the governor to issue the certification, on the governor's own behalf.

E. The board shall establish the bond issuance expiration date, pursuant to Section 6-20-2A(5) NMSA 1978, on or before the regularly scheduled meeting of the board in November of that year, except as otherwise provided in Paragraph (2) of Subsection K of 2.61.4.8 NMAC.

F. Issuing authorities shall comply with the following restrictions.

(1) Any issuing authority desiring to make a request to the board for an allocation or a carryforward election allocation must comply with established board rules for inclusion on the board's agenda. In order to be considered for inclusion on the agenda, all materials required to be submitted to the board must be submitted by the established time period prior to the meeting date. The board publishes to interested parties notice of the deadline for submission of complete materials prior to each meeting. It is an issuing authority's responsibility to ascertain that deadline and comply with it. All requests for allocations of the state ceiling appearing on the board's agenda for a particular meeting will be deemed to have been received simultaneously.

(2) An issuing authority or the user shall advise the board in writing of any unusable allocation of the state ceiling promptly after it becomes aware the allocation will not be used in full prior to the allocation expiration date. After being advised of a return of an allocation of the state ceiling, the board shall make an announcement of the amount of the return at its next board meeting. The board shall not consider any requests for allocation of the state ceiling relating to the amount of any returned allocation until the meeting following the announcement of the return. The board may waive this waiting-period requirement for returns of allocations on or after November 1 of any calendar year.

(3) The board will not consider a request for a new allocation of the state ceiling for a project whose previous allocation has expired or was voluntarily returned until the issuing authority has resubmitted all of the information required by Subsection B of 2.61.4.8 NMAC. Such request for a new allocation will not be given a priority over other requests for allocations.

G. The board may require annually, to be presented at the board's regularly scheduled meeting in November, a report from state agencies issuing housing purpose bonds or education purpose bonds of the projected need of those state agencies for allocations of the state ceiling for the remainder of the calendar year and the next three calendar years.

H. At any time during a calendar year, the board may revise current year allocation percentages and carryforward allocation percentages.

I. Whenever the board has on its agenda requests for allocations exceeding the remaining applicable amount of an allocation percentage or carryforward

allocation percentage, the board will prioritize requests, as applicable:

(1) by giving preference to small issue economic development purpose bonds over exempt facility purpose bonds;

(2) with respect to small issue economic development purpose bonds, by considering factors such as employment, geographic location, nature and number of jobs created for residents and non-residents, nature of the industry, the utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices, and economic benefits to the community and the state;

(3) with respect to multifamily housing purpose bonds, by considering factors such as percentage of units devoted to persons of low income, services to special needs groups, percentage of financing provided by equity and other financing not requiring an allocation, geographic location, [~~and~~] the experience of the agency charged with monitoring compliance with persons of low income requirements, and the utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices;

(4) with respect to single family housing purpose bonds, by considering factors such as targeting to persons of low income, geographic location, and experience of the issuing authority in utilizing allocations of the state ceiling;

(5) with respect to exempt facility bonds, by considering factors such as employment, geographic location, nature of jobs created, nature of the industry, the utilization of environmentally protective technologies, energy and water efficiencies, and sustainable development practices, and economic benefits to the community and the state; and

(6) with respect to education purpose bonds, by considering the geographic location of the prospective borrowers.

J. Pre-July 1 allocations:

(1) The act provides, in Section 6-20-3A and B NMSA 1978, that until July 1 in any calendar year, the state ceiling for the calendar year shall be allocated forty percent to state agencies as a group and sixty percent to issuing authorities, as a group, that are not state agencies; provided, however, that such allocation shall be made in accordance with directives, rules or regulations governing the distribution of allocations to be established by the board. This part is such a directive, rule or regulation of the board.

(2) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3A NMSA 1978 are directed to be utilized so that no single state agency may issue more than fifty percent of the allocation to state agencies as a group, except that the board may exceed that amount if the board determines it is not aware of any planned or pending requests for allocations by any state agency prior to July 1 of any year that could not be approved as a result of granting an allocation of more than fifty percent.

(3) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3B NMSA 1978 are directed to be utilized so that no single issuing authority that is not a state agency may issue more than twenty percent of the allocation to issuing authorities that are not state agencies as a group, except that the board may exceed that amount if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority, which is not a state agency, prior to July 1 of any year that could not be approved as a result of granting an allocation of more than twenty percent.

(4) From January 1 until July 1 of any calendar year, allocations of the state ceiling made pursuant to Sections 6-20-3A and [~~3B~~] B NMSA 1978 are directed to be utilized so that no more than the single family housing purpose allocation percentage of the state ceiling may be allocated to single family housing purpose bonds, no more than the multifamily housing purpose allocation percentage of the state ceiling may be allocated to multifamily housing purpose bonds, no more than the education purpose allocation percentage of the state ceiling may be allocated to education purpose bonds and no more than the other purpose allocation percentage of the state ceiling may be allocated to other purpose bonds except that the board may exceed an allocation percentage if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority that could not be approved as a result of granting an allocation in excess of the applicable allocation percentage.

(5) The allocation expiration date for any allocation issued by the board prior to July 1 in any calendar year shall be July 1, subject to automatic and discretionary extension pursuant to Section 6-20-10 NMSA 1978, [~~but any discretionary extension granted by the board will be for 30 days or less~~] and the board may condition [~~the~~] any discretionary extension or extensions on the completion of both a sale and issuance of the private activity bonds within the extension period.

K. Allocations on or after July 1 until November 1:

(1) On or after July 1 until November 1 of any calendar year, allocations of the state ceiling made pursuant to Section 6-20-3D are directed to be utilized so that, after taking into account any allocations still outstanding for or previously used by any issuing authority in that calendar year, no more than the education purpose allocation percentage of the state ceiling may be allocated to education purpose bonds, no more than the single family housing purpose allocation percentage of the state ceiling may be allocated to single family housing purpose bonds, no more than the multifamily housing purpose allocation percentage of the state ceiling may be allocated to multifamily housing purpose bonds, and no more than the other purpose allocation percentage of the state ceiling may be allocated to other purpose bonds except that the board may exceed an allocation percentage if the board determines it is not aware of any planned or pending requests for allocation by any issuing authority prior to November 1 of any year that could not be approved as a result of granting an allocation in excess of the applicable allocation percentage.

(2) The allocation expiration date for any allocation issued by the board on or after July 1 and prior to November 1 of any calendar year shall be the earlier of 120 days from the date of issuance by the board of the allocation or the date of the board's regularly scheduled meeting in December of that year, subject to automatic or discretionary extension pursuant to Section 6-20-10 NMSA 1978, but any discretionary extension granted by the board will be for 30 days or less and the board may condition the discretionary extension on the completion of both a sale and issuance of the private activity bonds within the extension period. For purposes of this part, the board hereby establishes the date of the board's regularly scheduled meeting in December, as that date may be set by the board annually, as the bond issuance expiration date for private activity bonds that receive an allocation on or after July 1 and prior to November 1.

L. Allocations on or after November 1:

(1) On or after November 1 of any calendar year, no allocations of the state ceiling will be made by the board, unless the board in its discretion deems it advisable. In determining whether it may be advisable, the board may consider, among other factors, the ability of the issuing authority seeking the allocation to issue the private activity bonds prior to the bond issuance expiration date and whether the allocation will further the board's policy to share the state ceiling among single family housing purpose bonds, multifamily housing purpose bonds, education purpose bonds and other purpose bonds in accordance with their respective allocation percentages.

(2) The allocation expiration date for any allocation issued by the board on or after November 1 of any calendar year shall be the bond issuance expiration date estab-

lished by the board annually pursuant to Subsection E of 2.61.4.8 NMAC.

M. Carryforward election allocations:

(1) Requests for carryforward election allocations may be made by any issuing authority for any carryforward purpose to the board at its regularly scheduled meeting in December of the calendar year, and shall be accompanied by any fees that may be required pursuant to Section 2.61.4.9 NMAC.

(2) If and to the extent requested by issuing authorities, carryforward election allocations of the state ceiling made pursuant to Section 6-20-7 NMSA 1978 are directed to be utilized so that of the balance of any state ceiling remaining unused after the bond issuance expiration date no more than the single family housing purpose carryforward allocation percentage will be allocated to single family housing purpose bonds, no more than the multifamily housing purpose carryforward allocation percentage will be allocated to multifamily housing purpose bonds, no more than the education purpose carryforward allocation percentage will be allocated to education purpose bonds and no more than the other purpose carryforward allocation percentage will be allocated to exempt facility purpose bonds. In determining the carryforward election allocation among housing purpose bonds, the board may give first preference to qualified mortgage bonds, next preference to issuances of mortgage credit certificates and final preference to multifamily housing purpose bonds. The board may also take into account, if in its discretion it so determines, allocations used in that calendar year for housing purpose bonds, education purpose bonds and exempt facility bonds. If the board does not receive sufficient carryforward election allocation requests for any category of carryforward purpose such that issuing authorities have not requested at least the applicable carryforward allocation percentage of the balance of the state ceiling, the board may in its discretion determine, to the extent requested by issuing authorities, to exceed the applicable carryforward allocation percentage for any category of carryforward purpose.

[2/29/96; 11/30/96; 11/29/97; 2.61.4.8 NMAC - Rn & A, 2.61.4.8 NMAC, 01/01/06; A, 10/15/08]

**2.61.4.9 PRIVATE ACTIVITY BOND FEES CHARGED:** The act provides, in Section 6-20-11C NMSA 1978, that the board may require a reasonable application fee, allocation deposit and extension fee to be paid by the issuing authority. Application and extension fees collected by the board shall be deposited in the general fund. Allocation [~~fees~~] deposits shall be deposited into a suspense account and after a determination has been made that the allocation has been used for the intended purpose, the board [~~can~~] may direct the staff to refund in whole or in part the [~~applicant~~] allocation deposit without interest. Otherwise, the allocation deposit shall be deposited in the general fund.

A. All fees shall be paid by bank cashier's check, certified check, money order, or by wire transfer in US funds.

B. An issuing authority will be required to pay an application fee, an allocation [~~fee~~] deposit, and an extension fee. The board shall charge the following fees:

(1) application fee for allocations valued at $15,000,000.00 or less: $750.00

(2) application fee for allocations valued at an amount greater than $15,000,000.00 and up to $30,000,000.00: $1,500.00

(3) application fee for allocations valued at an amount greater than $30,000,000.00: $3,000.00

(4) allocation [~~fee~~] deposit: $250.00 per million allocated

(5) extension fee: $750.00 if approved

C. Application and extension fees are due on the [~~request deadline date~~] date a request to appear on the board's agenda is due; allocation [~~fees~~] deposits are due 7 business days following board approval of the allocation [~~; and extension fees are due upon extension request to the board~~]. If required fees are not paid within the time specified, the allocation will become void.

[2.61.4.9 NMAC - N, 01/01/06; A, 10/15/08]

## NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

This is an amendment to 2.70.4 NMAC, Sections 3, 8, 9 and 10, effective 10/15/08.

**2.70.4.3 STATUTORY AUTHORITY:** Section 21-1-21, NMSA 1978, as amended, which requires prior approval by the higher education department and state board of finance of any expenditure by any state educational institution confirmed by Article 12, Section 11 of the state constitution for the purchase of real property or construction of buildings or other major structures or major remodeling projects. Section 21-1-21.1, NMSA 1978, as amended, which requires evidence of adequate parking. Executive Order 2006-001, which establishes energy efficiency green building standards for state of New Mexico executive buildings, including the higher education department.

[2.70.4.3 NMAC - N, 2/1/07; A, 10/15/08]

**2.70.4.8 PROJECTS REQUIRING REVIEW:**

A. All projects [~~which~~] that fall under the following categories must be submitted for review by the state board of finance:

(1) any purchase of real property;

(2) any construction of a new building;

(3) any project involving a bond issue which requires state board of finance approval;

(4) any other major project, including construction of facilities such as parking lots or radio towers; site improvements or landscaping; and remodeling or non-emergency repair of an existing building, but not demolition unless part of a larger project that requires approval.

B. In-house labor applied to a project must be included as part of the cost of the project. Projects may not be artificially segmented or phased in a manner designed to avoid review by the state board of finance.

[2.70.4.8 NMAC - Rn, Directive 89-4, 2/1/07; A, 10/15/08]

**2.70.4.9 INFORMATION REQUIRED FOR SUBMISSION FOR PURCHASE OF REAL PROPERTY:**

A. To ensure that the state board of finance will have sufficient information to review capital outlay expenditures at New Mexico's educational institutions, the following information will be required to be submitted to the board after the higher education department has approved the request:

(1) legal description of the property;

(2) a copy of the appraisal and concurrence therewith, if performed by an independent appraiser, by the property tax division of the taxation and revenue department;

(3) a site improvement survey to verify the legal description and to uncover the existence of recorded and unrecorded easements and encroachments;

(4) a description of the use to which the property will be placed;

(5) the source of funds for the purchase to include citation of the relevant section of the law when source of funds is legislative appropriation and in the case of bond funding, representation that bond proceeds are available;

(6) current title binder evidencing clear title with no non-standard exceptions, and agreement by the title company that it will delete general exceptions 1 through 6 and the first two-thirds of 7;

(7) merchantable fee simple title by warranty deed, except if the seller is a public entity;

(8) phase I of an environmental assessment to verify prior use of the land with regard to possible environmental hazards;

(9) a copy of the purchase agreement, which should contain a provision making the acquisition subject to the approval of higher education department and the state board of finance; and

(10) evidence of approval of acquisition by applicable board of regents and higher education department.

B. Waivers of certain provisions may be granted at the discretion of the board of finance, on a case by case basis, until patterns develop that can be worked into the policy. Additionally, requirements affecting bond approvals are set forth in 2.61.5 NMAC.

[2.70.4.9 NMAC - Rn, Directive 89-4 & A, 2/1/07; A, 10/15/08]

**2.70.4.10 INFORMATION REQUIRED FOR SUBMISSION FOR CONSTRUCTION OF BUILDINGS OR OTHER FACILITIES; MAJOR REMODELING OR REPAIRS:**

A. To ensure that the state board of finance will have sufficient information to review capital outlay expenditures at New Mexico's educational institutions, the following information will be required to be submitted to the board after the higher education department has approved the request:

(1) a description of the facility to be constructed or repaired, including the types of space to be included, the function of the facility, and the relationship of the project to the institution's five-year master plan;

(2) the total square footage of the facility, both net assignable square feet and gross square feet;

(3) the cost per square foot for the construction or repair of the facility and the cost per square foot for the total project;

(4) a budget for the project, including architects and engineering fees and contingencies;

(5) source of funds to include citation of the relevant section of the law when source of funds is legislative appropriation [~~;~~] and in the case of bond funding, representation that bond proceeds are available;

(6) certificate of adequate parking as required in Section 21-1-21.1, NMSA 1978, as amended;

[~~(6)~~] (7) evidence of approval of expenditure by applicable board of regents and higher education department;

(8) evidence of approval by higher education department of the following criteria as it may be amended by higher education department from time to time:

(a) if the facility is less than or equal to 5,000 square feet, evidence of energy efficient measures;

(b) if the facility is greater than 5,000 square feet and less than or equal to 15,000 square feet, evidence of fifty percent reduction in energy use compared to existing facilities of similar type as defined by the United States department of energy; or

(c) if the facility is greater than 15,000 square feet, evidence of fifty percent reduction in energy use compared to existing facilities of similar type as defined by the United States department of energy and the achievement of a LEED silver rating or better.

B. Waivers of certain provisions may be granted at the discretion of the board of finance, on a case by case basis, until patterns develop that can be worked into the policy. Additionally, requirements affecting bond approvals are set forth in 2.61.5 NMAC.

[2.70.4.10 NMAC - Rn, Directive 89-4 & A, 2/1/07; A, 10/15/08]

## NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

BOARD OF FINANCE

This is an amendment to 2.70.5 NMAC, Sections 2, 3, 4 and 7 through 11, effective 10/15/08. This rule was also renumbered and reformatted from SBOF Policy 94-5 to comply with current NMAC requirements.

**2.70.5.2 SCOPE:** Property control division of the general services department and all other agencies that own or use capitol buildings.

[2.70.5.2 NMAC - N, 10/15/08]

**2.70.5.3 STATUTORY AUTHORITY:** Section [~~15-3-24~~] 15-3B-17, NMSA 1978, as amended, which establishes the capitol buildings repair fund and limitations on the use of money in the fund. Executive Order 2006-001, which establishes energy efficiency green building standards for state of New Mexico executive buildings.

[12/5/94; 2.70.5.3 NMAC - Rn, SBOF Policy 94-5, Section 1 & A, 10/15/08]

**2.70.5.4 DURATION:** Permanent.

[2.70.5.4 NMAC - N, 10/15/08]

**2.70.5.7 DEFINITIONS (as used in this policy):**

A. "Capitol building" is any building, located in Santa Fe, New Mexico, owned by the executive, legislative or judicial [~~branches~~] branch of state government [~~which~~] that is not an income beneficiary from a specific grant of land from the United States congress in the state's enabling act.

B. "Capitol buildings repair fund" is a fund [~~which~~] that may be used to repair, remodel and equip capitol buildings and adjacent lands, to repair or replace building machinery and building equipment located in capitol buildings. Fund monies cannot be utilized for acquisition of furniture.

[12/5/94; 2.70.5.7 NMAC - Rn, SBOF Policy 94-5, Section 3 & A, 10/15/08]

**2.70.5.8 POLICY:**

A. The capitol buildings repair fund will only be utilized when the property control division director, upon approval of the state board of finance, determines:

(1) that an immediate need or emergency exists or that the expenditure is consistent with an approved schedule of repairs; and

(2) that no other sources of funding are readily available; it is not the intent of this policy to fund new capital outlay projects or agency personnel costs.

B. Priority will be given to projects [~~which~~] that achieve:

(1) correction of code violations or any other applicable codes; compliance with ADA requirements or any other applicable laws; structural repairs including repairs to roofs, supporting walls and foundations; repairs of electrical and mechanical systems; or increased energy efficiency with a payback of five years or less; or

(2) projects that are consistent with an approved schedule of repairs.

[12/5/94; 2.70.5.8 NMAC - Rn, SBOF Policy 94-5, Section 4 & A, 10/15/08]

**2.70.5.9 REPORTS:**

A. Property control division will report semi-annually to the state board of finance regarding:

(1) updated inventory of buildings including an approved check list of conditions;

(2) status report of approved projects;

(3) proposed schedules of repairs;

(4) evidence that projects in the proposed schedule of repairs complies with Executive Order 2006-001 as it may be amended from time to time, with respect to the following criteria:

(a) if the facility is greater than 15,000 square feet or uses over 50 kilowatt peak electrical demand and the project comprises upgrades or replacement of two of the

three major systems (HVAC, lighting, and plumbing), evidence of a minimum rating of "LEED" silver and a minimum delivered energy performance standard of one half the U.S. energy consumption for that building type as defined by the United States department of energy; and

(b) if the facility is greater than 5,000 square feet and less than or equal to 15,000 square feet, evidence of achieving a minimum delivered energy performance standard of one half the U.S. energy consumption for that building type as defined by the United States department of energy; or

(c) for all other projects, evidence of the use of cost-effective, energy-efficient, green building practices to the maximum extent possible; and

[~~(4)~~] (5) financial projections for the capitol buildings repair fund.

B. Property control division shall report monthly to the state board of finance on monthly and year-to-date revenues and expenses on an accrual basis.

[12/5/94; 2.70.5.9 NMAC - Rn, SBOF Policy 94-5, Section 5 & A, 10/15/08]

**2.70.5.10 PROCEDURES AND REVISED PROJECTS:**

A. All requests for capitol buildings repair funds shall be made to the director, property control division, general services department, 1100 St. Francis Drive, Santa Fe, New Mexico [~~87502~~] 87501, telephone (505) 827-2141.

B. The state board of finance director shall review and recommend action to the state board of finance. No money shall be expended from the capitol buildings repair fund without authorization of the state board of finance.

C. To ensure that projects requested from the capitol buildings repair fund approved by the state board of finance will be completed in substantially the same form as approved, any change in a project resulting in a change in the project's budget of more than 10 percent will require separate review and approval by the state board of finance. The same information will be required for such changes as is required for the original submission of the project.

D. Any additional information that can help in evaluating a proposed project can be requested by the state board of finance prior to final approval.

[12/5/94; 2.70.5.10 NMAC - Rn, SBOF Policy 94-5, Section 6 & A, 10/15/08]

**2.70.5.11 OTHER USES FOR CAPITOL BUILDINGS REPAIR FUND:**

A. The capitol buildings repair fund may also be used:

(1) to contract for options to purchase real estate, such real estate, if purchased, to be put to state use; provided that no more than ten thousand dollars ($10,000) shall be expended for any single option; any money used for consideration in acquiring an option to purchase real estate shall be applied against the purchase price of the real estate if the option is exercised;

(2) in the event any capital outlay project exceeds authorized project cost by no more than five percent, the state board of finance may authorize the property control division to supplement the authorized cost by an allocation not to exceed five percent of the authorized cost from the capitol buildings repair fund to the extent of the unencumbered and unexpended balance of the fund.

B. The director of the property control division may expend funds for emergency repairs during a specified period and up to a maximum amount determined, from time to time, by the state board of finance. Such expenditures can only be used for the purposes established in [~~Section 4.2a~~] Paragraph (1) of Subsection B of 2.70.5.8 NMAC and shall be reported to the state board of finance at its next regular meeting for review and approval.

[12/5/94; 2.70.5.11 NMAC - Rn, SBOF Policy 94-5, Section 7 & A, 10/15/08]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.1 NMAC Section 7, effective 10-15-08, adopted by the State Personnel Board at a meeting on 9-22-08.**

**1.7.1.7 DEFINITIONS:**

**A.** "Agency" means any state department, 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 director shall resolve disputes over how an anniversary date is derived.

**C.** "Applicant" means any person, who has applied for a position in the classified service.

**D.** "Board" means the personnel board.

**E.** "Break in employment" means any period of separation of at least one workday of not being in the classified service.

**F.** "Candidate" means any person who is on the employment list for a position.

**G.** "Classified service" means all positions in the executive branch of state government which are not exempt by law.

**H.** "Classification" means a job that is occupationally and quantifiably distinct.

**I.** "Compa-ratio" means pay expressed as a percentage of the midpoint of a pay band.

**J.** "Demotion" means an involuntary downward change for disciplinary reasons with a reduction in pay within an employee's pay band or from a classified position in one pay band to a classified position in a lower pay band with a reduction in pay, and/or removal of supervisory responsibilities and pay for disciplinary reasons.

**K.** "Director" means the state personnel director.

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

**M.** "Diversity in the workplace" means an acknowledgment of all people equally, regardless of their differences. Agencies' management of diversity will ensure that efforts are made to adapt to and accept the importance of all individuals who fall within a group identified for protection under equal employment laws and regulations.

**N.** "Employee" means a person in a position in the classified service. [note: For purposes of brevity and consistency, this definition differs from *NMSA 1978, Section 10-9-3-(I)* but in no way confers a greater right on certain persons than contemplated by *Section 10-9-3(I)*].

**O.** "Employer" means any authority having power to fill positions in an agency.

**P.** "Employment list" means the list of names, certified by the director, from which a candidate may be selected for appointment.

**Q.** "Established requirements" means a position's individual job related qualification standards established by the agency and the office in accordance with the specific requirements and/or needs of the position and are subject to review by the director.

**R.** "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

**S.** "Exempt service" means all positions in the executive branch of state government exempt from the classified service by law.

**T.** "Filed" means received by the office.

**U.** "First line supervisor" means an employee in a [~~technical occupation group~~] non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the inter-

est of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

**V.** "Involuntary separation" means involuntary removal of an employee from the classified service without prejudice as provided for in ***1.7.10.13 NMAC***.

**W.** "Line authority" means the assignment of activities and/or approval authority in a manner that does not relinquish the director's administrative oversight or authority.

**X.** "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. 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.

**Y.** "Midpoint" means the salary midway between the minimum and maximum pay rates of a pay band or pay opportunity 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% percent.

**Z.** "Minimum qualifications" means statutory requirements as required by law, which shall be used to reject applicants.

**AA.** "Office" means the state personnel office.

**BB.** "Pay band" means the range of pay rates, from minimum to maximum.

**CC.** "Probationer" means an employee in the classified service who has not completed the one-year probationary period.

**DD.** "Promotion" means the change of an employee from a classified position in one pay band to a classified position in a higher pay band.

**EE.** "Reduction" means a voluntary change without prejudice, within an employee's pay band, or from a classified position in one pay band to a classified position in a lower pay band, or voluntary removal of supervisory or leadworker responsibilities and pay.

**FF.** "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.

**GG.** "Resignation" means the voluntary separation of an employee from the classified service.

**HH.** "Rules" means the rules and regulations of the personnel board.

**II.** "Status" means all of the rights and privileges of an appointment.

**JJ.** "Suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed 30 calendar days.

**KK.** "Transfer" means the movement of an employee from one position to another in the same pay band without a break in employment.

**LL.** "Without prejudice" means a declaration that no rights or privileges of the employee concerned are to be considered as thereby waived or lost except in so far as may be expressly conceded or decided.

**MM.** "Writing or written" means in the written form and/or an alternative format, where deemed appropriate, and when requested.

[1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 07/07/01; A, 11/14/02; A 10/30/03; A, 7-15-05; A, 12-30-05; A/E, 1-30-06; A, 3-31-06; A, 10-15-08]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.2 NMAC Section 13, effective 10-15-08, adopted by the State Personnel Board at a meeting on 9-22-08.**

**1.7.2.13 EXPIRATION OF APPOINTMENT:** The expiration of a term, probationary, emergency or temporary appointment shall not be considered to be a layoff within the meaning of ***1.7.10.9 NMAC*** or a dismissal within the meaning of ***Subsection [~~M~~] L of 1.7.1.7 NMAC***.

[1.7.2.13 NMAC - Rp, 1 NMAC 7.2.13, 07/07/01; A, 11/14/02; A, 10-15-08]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.3 NMAC Section 9, effective 10-15-08, adopted by the State Personnel Board at a meeting on 9-22-08.**

**1.7.3.9 POSITION ASSIGNMENT:**

**A.** The director, in conjunction with state agencies, shall ensure that each position in the classified service is assigned to the classification that best represents the duties assigned by the employer and performed by the employee.

**B.** When a filled position is assigned a classification with a lower pay band, in accordance with the provisions ***Subsection A of 1.7.3.9 NMAC***, the employee may elect to take a reduction in accordance with ***Subsection [~~H~~] EE of 1.7.1.7 NMAC***, or overfill the position in their current classification.

**C.** A position assignment decision may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's decision is final and binding.

[1.7.3.9 NMAC - Rp, 1 NMAC 7.3.9, 07/07/01; A, 11/14/02; A, 7-15-05; A, 12-30-05; A, 10-15-08]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.4 NMAC Section 10, effective 10-15-08, adopted by the State Personnel Board at a meeting on 9-22-08.**

**1.7.4.10 ASSIGNMENT OF ALTERNATIVE PAY BANDS:**

**A.** The director shall recommend to the board the assignment of an alternative pay band(s).

**(1)** Alternative pay band(s) will be utilized to address compensation related to recruitment and retention issues.

**(2)** All jobs in an alternative pay band have the same range of pay: minimum, maximum and midpoint pay.

**B.** Requests for alternative pay bands must meet criteria established in the pay plan.

**C.** The board shall assign alternative pay bands based on the director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.

**D.** The assignments to alternative pay bands shall be reviewed annually to determine their appropriateness. The director shall recommend to the board the continuation or removal of the alternative pay band assignments. The salary of affected employees shall be governed by ***Subsection [~~I.~~] H. of 1.7.4.12 NMAC***.

[1.7.4.10 NMAC - N, 11/14/02; Repealed, 12-30-05; 1.7.4.10 NMAC - Rn, 1.7.4.11 NMAC & A, 12-30-05; A, 10-15-08]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.7 NMAC Sections 12 and 17, effective 10-15-08, adopted by the State Personnel Board at a meeting on 9-22-08.**

**1.7.7.12 FAMILY AND MEDICAL LEAVE:**

**A.** In addition to other leave provided for in ***1.7.7 NMAC*** eligible employees are entitled to leave in accordance with the ***Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.]***. Employees who have been in the classified service for at least 12 months (which need not be consecutive) and who have worked, as defined by ***Section 7 of the Fair Labor Standards Act [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, shall count as classified 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 servicemember 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 servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12 month period is calculated forward from the date an employee's first FMLA leave begins.

**[C]D.** An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, or donated leave for any part of unpaid FMLA leave.

**[D]E.** Compensatory time and paid holidays shall not count towards the 12 weeks entitled by FMLA.

**[E]F.** Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

**[F]G.** Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with ***1.7.1.12 NMAC***.

**[G]H.** Disputes over the administration of this rule shall be forwarded to the director for resolution.

[1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 07/07/01; A, 11/14/02; A, 6-30-06; A, 10-15-08]

**1.7.7.17 PERSONAL LEAVE DAY:**

**A.** Employees in career status are entitled to 1 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 [~~the end of the last pay period beginning in~~] 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 classified service.

[1.7.7.17 NMAC - Rp, 1 NMAC 7.7.17, 07/07/01; A, 11/14/02; A, 10-15-08]

## NEW MEXICO STATE PERSONNEL BOARD

**This is an amendment to 1.7.12 NMAC Sections 10 and 23, effective 10-15-08, adopted by the State Personnel Board at a meeting on 9-22-08.**

**1.7.12.10 HEARING OFFICER:**

**A.** The hearing officer shall not participate in any adjudicatory proceeding if, for any reason, the hearing officer cannot afford a fair and impartial hearing to either party. Either party may ask to disqualify the designated hearing officer for cause by filing an affidavit of disqualification within 14 calendar days of the order. The affidavit must state the particular grounds for disqualification. The designated hearing officer shall rule on motions for disqualification and an appeal of the ruling may be made to the board within 14 calendar days of the hearing officer's ruling.

[~~**B.** Appeals from employees of the office shall be heard by the board or a member of the board designated as hearing officer.~~]

**B.** If an appeal is filed by an employee of the office, or if for any other reason a designated hearing officer within the office cannot or does not hear an appeal, the personnel board may designate a qualified state employee to hear the appeal. The personnel board may also decline to designate a qualified state employee to hear the appeal and instead, designate a member or members of the personnel board to serve as hearing officer and prepare a recommended decision. The personnel board member or members hearing the appeal, if less than a quorum, shall not take part in discussion or deliberation which leads to a final decision by a quorum of the personnel board.

**C.** No person shall [~~discuss~~] communicate concerning the merits of any pending adjudicatory proceeding with the designated hearing officer or member of the board unless both parties or their representatives are present.

**D.** The hearing officer may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the hearing officer or upon the filing of a motion to withdraw the appeal at any time [~~before the deadline for the completion of discovery~~].

**E.** The hearing officer may dismiss an appeal with prejudice upon the filing of a motion to withdraw the appeal after the deadline for the completion of discovery upon such terms and conditions as the hearing officer deems proper[~~, up to and including the assessment of costs~~].

[1.7.12.10 NMAC - Rp, 1 NMAC 7.12.10, 07/07/01; 1.7.12.10 NMAC - Rn, 1.7.12.9 NMAC, 7-15-05; A, 10-15-08]

**1.7.12.23 REINSTATEMENT:**

**A.** The board may order agencies to reinstate appellants with back pay and benefits. Such appellants shall be reinstated to their former position, or to a position of like status and pay, that they occupied at the time of the disciplinary actions.

**B.** In the event the board's order includes any back pay, the appellant shall provide the agency with a sworn statement of gross earnings and unemployment compensation since the effective date of the disciplinary action. The agency shall be entitled to offset earnings and unemployment compensation received during the period covered by the back pay award against the back pay due. The hearing officer shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay.

[1.7.12.23 NMAC - Rp, 1 NMAC 7.12.23, 07/07/01; 1.7.12.23 NMAC - Rn, 1.7.12.22 NMAC, 7-15-05; A, 10-15-08]

## NEW MEXICO PUBLIC REGULATION COMMISSION
TRANSPORTATION DIVISION

This is an amendment to 18.3.14 NMAC Sections 7 and 9, effective 10-15-08.

**18.3.14.7 DEFINITIONS:** In addition to the definitions in NMSA 1978 Sections 24-10B-3 and 65-6-2, and 18.3.1 and 7.27.2 NMAC, as used in this rule:

**A. advanced levels** means emergency medical services above the EMT basic level, including EMT intermediate, EMT paramedic, and special skills which include enhanced emergency medical services and critical care transport;

**B. critical care transport (CCT)** means inter-facility critical patient care and treatment used to transport intensive care patients, that exceeds the EMT paramedic level of care and is a special skill;

**C. emergency medical services basic (EMT basic)** means the pre-hospital and inter-facility care and treatment prescribed in 7.27.2 NMAC, Certification and Licensing for EMS Personnel, that can be performed by all licensed emergency medical technicians;

**D. emergency medical services intermediate (EMT intermediate)** means certain advanced pre-hospital and inter-facility care and treatment prescribed in 7.27.2 NMAC, Certification and Licensing for EMS Personnel, including EMT basic, that may be performed only by a person licensed by the EMS bureau as an EMT intermediate and only under medical direction;

**E. emergency medical services paramedic (EMT paramedic)** means advanced pre-hospital assessment, and inter-facility care and treatment prescribed in 7.27.2 NMAC, Certification and Licensing for EMS Personnel, including EMT basic and EMT intermediate, that may be performed only by a person licensed by the EMS bureau as an EMT paramedic and only under medical direction;

**F. emergency** means the sudden onset of what reasonably appears to be a medical condition that manifests itself by symptoms of sufficient severity, which may include severe pain, that the absence of immediate medical attention could reasonably be expected by a lay person to result in:

**(1)** jeopardy of the person's health;

**(2)** serious impairment of bodily functions;

**(3)** serious dysfunction of any bodily organ or part; or

**(4)** disfigurement to the person.

**G. EMS** means emergency medical services;

**H. enhanced emergency medical service (E-EMS)** means out-of-hospital care and treatment utilized in underserved areas that have a need for medical assessment, treatment, or referral, or alternate modes of transportation, for patients by specially trained, advanced level EMS providers that exceeds the EMT paramedic level of care and is a special skill;

**I. GSA standards** means the minimum standards and specifications for ambulances contained in U.S. general services administration standard KKK-A-1822-D;

**J. inter-facility transfer** means the transportation of a person between health care facilities with the concurrence of a sending and a receiving physician;

**K. mutual aid** means a written agreement between one municipality, county or emergency medical service and other municipalities, counties or emergency medical services for the purpose of ensuring that adequate emergency medical services, and non-emergency medical transportation services when local resources are exhausted, exist throughout the state;

**L. patient catchment area** means an area outside the territory authorized by the operating authority issued by the commission that an ambulance service is permitted to serve in emergencies or pursuant to mutual aid agreements;

**M. pre-hospital response times** means the period of time from the time a dispatch agency dispatches an ambulance service until the time an EMS crew arrives at the scene of the emergency;

**N. special event EMS** means an ambulance with two (2) licensed EMTs in stand-by status at a special event such as a football game or county fair.

[18.3.14.7 NMAC - Rp, 18 NMAC 4.2.7, 1-1-05; A, 10-15-08]

**18.3.14.9 MUTUAL AID:** Ambulance services shall develop mutual aid plans with [~~all~~] appropriate entities that may be implemented any time an ambulance service cannot respond to a call [~~or if a disaster or emergency occurs~~] for service. Mutual aid may be provided:

**A.** in [~~an emergency~~] a mass casualty or disaster situation when requested by state or local authorities;

**B.** when requested by another EMS service, an EMT, or health-care facility during an emergency and in accordance with established mutual aid agreements;

**C.** when requested by a law enforcement agency or officer; [~~or~~]

**D.** when requested by an executive official of a political subdivision of the state[~~.~~]; or

**E.** in a non-emergency when the responsible local provider's resources are exhausted, pursuant to arrangements made by the responsible local provider for, and its coordination of, such necessary mutual aid.

[18.3.14.9 NMAC - Rp, 18 NMAC 4.2.84, 1-1-05; A, 10-15-08]

## NEW MEXICO PUBLIC REGULATION COMMISSION
UTILITY DIVISION

The New Mexico Public Regulation Commission, repeals its rule 17 NMAC 10.571 (filed September 17, 1999) and entitled Net Metering Of Customer-Owned Qualifying Facilities Of 10kW Or Smaller, effective October 15, 2008.

The New Mexico Public Regulation Commission, repeals its rule entitled Governing Cogeneration and Small Power Production, 17.9.570 NMAC (filed March 16, 2007) and replaces it with the new rule 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective October 15, 2008.

The New Mexico Public Regulation Commission, repeals its rule17.9.591 NMAC (filed May 15, 2000) and entitled Standard Offer Service Under The Restructuring Act, effective October 15, 2008.

The New Mexico Public Regulation Commission, repeals its rule 17.9.594 NMAC (filed April 17, 2000) and entitled Code Of Conduct For Public Utilities And Affiliates Under The Restructuring Act, effective October 15, 2008.

## NEW MEXICO PUBLIC REGULATION COMMISSION
UTILITY DIVISION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**
**CHAPTER 9 ELECTRIC SERVICES**
**PART 568 INTERCONNECTION OF GENERATING FACILITIES WITH A RATED CAPACITY UP TO AND INCLUDING 10 MW CONNECTING TO A UTILITY SYSTEM**

**17.9.568.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.

[17.9.568.1 NMAC - N, 10/15/08]

**17.9.568.2 SCOPE:**

A. This rule, and the definitions, standards, procedures and screening processes described in the New Mexico *interconnection manual*, separately published and incorporated into this rule by reference, apply to every electric utility including rural electric cooperatives and investor-owned utilities operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission. These standards and procedures apply to both qualifying and non-qualifying facilities.

B. The standards and procedures described in this rule (17.9.568 NMAC) and the **manual** apply only to the interconnection of generating facilities with a rated capacity up to and including 10 MW. The standards and procedures described in 17.9.569 NMAC apply to the interconnection of generating facilities with a rated capacity greater than 10 MW.

C. All interconnection contracts between a utility and an interconnection customer existing at the time 17.9.568 NMAC is adopted shall automatically continue in full force and effect. Any changes made to existing interconnection contracts shall conform to the provisions of 17.9.568 NMAC

[17.9.568.2 NMAC - N, 10/15/08]

**17.9.568.3 STATUTORY AUTHORITY:** This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-1 et seq. and the Public Utility Act, NMSA 1978, Section 62-3-1 et seq.

[17.9.568.3 NMAC - N, 10/15/08]

**17.9.568.4 DURATION:** Permanent.

[17.9.568.4 NMAC - N, 10/15/08]

**17.9.568.5 EFFECTIVE DATE:** October 15, 2008, unless a later date is cited at the end of a section

[17.9.568.5 NMAC - N, 10/15/08]

**17.9.568.6 OBJECTIVE:** The purpose of this rule and the **manual** is to set forth common interconnection requirements and a common interconnection process based on a common screening process for utilities and interconnection customers to expeditiously interconnect generating facilities with a rated capacity up to and including 10 MW in a safe and reliable manner. The parties shall use the procedures and forms set forth in this rule 17.9.568 NMAC and the **manual** for the interconnection of generating facilities with a rated capacity up to and including 10kW. The parties shall use the procedures and forms in this rule 17.9.568 NMAC and the **manual** for the interconnection of generating facilities with a rated capacity greater than 10 kW and up to and including 10 MW unless they mutually agree to other procedures or forms that are consistent with the Public Utility Act.

[17.9.568.6 NMAC - N, 10/15/08]

**17.9.568.7 DEFINITIONS:** Terms used in this rule 17.9.568 NMAC shall have the following meanings.

**A.** Business day means Monday through Friday, excluding holidays observed by the utility.

**B.** Certified equipment package means interconnection equipment that has been tested and listed by a nationally recognized testing and certification laboratory (NRTL) for continuous interactive operation with a utility grid and meets the definition for certification under order 2006, issued by the federal energy regulatory commission on May 12, 2005, in docket no. RM02-12-000. The extent of the equipment package is defined by the type of test performed to certify the package under IEEE 1547.1.

**C.** Certified inverter means an inverter that has been tested and listed by a nationally recognized testing and certification laboratory (NRTL) for continuous interactive operation with a utility grid and meets the definition for certification under order 2006, issued by the federal energy regulatory commission on May 12, 2005, in docket no. RM02-12-000.

**D.** Distribution system means the utility's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

**E.** Distribution upgrade means the additions, modifications, and upgrades to the utility's distribution system at or beyond the point of common coupling to facilitate interconnection of the generating facility and render the service necessary to effect the interconnection customer's operation of on-site generation. Distribution upgrades do not include interconnection facilities.

**F.** Facilities study means the study that specifies and estimates the cost of the equipment, engineering, procurement, and construction work (including overhead costs) needed to implement the conclusions of the system impact study.

**G.** Feasibility study means the study that identifies any potential adverse system impacts that would result from the interconnection of the generating facility.

**H.** Generating facility means the interconnection customer's device for the production of electricity identified in the interconnection application, including all generators, electrical wires, equipment, and other facilities owned or provided by the interconnection customer for the purpose of producing electric power.

**I.** Grid network means a secondary network system with geographically separated network units where the network-side terminals of the network protectors are interconnected by low-voltage cables that span the distance between sites. The low-voltage cable circuits of grid networks are typically highly meshed and supplied by numerous network units. Grid network is also commonly referred to as area network or street network.

**J.** Highly seasonal circuit means a circuit with a ratio of annual peak load to the lowest monthly peak load greater than six (6).

**K.** Impact study means a study that identifies and details the electric system impacts that would result if the proposed generating facility were interconnected without project modifications or electric system modifications, focusing on the adverse system impacts identified in the feasibility study, or to study potential impacts, including but not limited to those identified in the scoping meeting. An impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

**L.** Interconnection application means the request by an interconnection customer to interconnect a new generating facility, or to increase the capacity or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the utility's system.

**M.** Interconnection customer means any person that proposes to interconnect its generating facility with the utility's system.

**N.** Interconnection facilities means the utility's interconnection facilities and the interconnection customer's interconnection facilities. Collectively, interconnection facilities include all facilities and equipment between the generating facility and the point of common coupling, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the generating facility to the utility's system. Interconnection facilities are sole use facilities and shall not include distribution upgrades.

**O.** Line section means that portion of a utility's electric system connected to a customer bounded by automatic sectionalizing devices or the end of the distribution line.

**P.** Manual means the New

Mexico *interconnection manual* and its exhibits separately published and incorporated into this rule by reference.

**Q.** Network system means a collection of spot networks, secondary networks, or combinations of such networks on a primary network feeder or primary network feeders that supply them. This may also consist of primary feeders networked ("tied together") to supply connected loads.

**R.** Network transformer means a transformer designed for use in a vault to feed a variable capacity system of interconnected secondaries.

**S.** Party means the utility and the interconnection customer separately or in combination.

**T.** Person, for purposes of this rule, means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the rural electric cooperative act, corporation or lessee, trustee or receiver appointed by any court.

**U.** Point of common coupling means the point where the interconnection facilities connect with the utility's system.

**V.** Primary network feeder means a feeder that supplies energy to a network system or the combination of a network system and other radial loads. Dedicated primary network feeders are feeders that supply only network transformers for the grid network, the spot network, or both. Non-dedicated primary network feeders, sometimes called combination feeders, are feeders that supply both network transformers and non-network load.

**W.** Power conversion unit (PCU) means an inverter or AC generator, not including the energy source.

**X.** Qualifying facility means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203.

**Y.** Rated capacity means the total AC nameplate rating of the power conversion unit(s) at the point of common coupling.

**Z.** Secondary network system means an AC power distribution system in which customers are served from three-phase, four-wire low-voltage circuits supplied by two or more network transformers whose low-voltage terminals are connected to the low-voltage circuits through network protectors. The secondary network system has two or more high-voltage primary feeders, with each primary feeder typically supplying multiple network transformers, depending on network size and design. The secondary network system includes automatic protective devices intended to isolate faulted primary feeders, network transformers, or low-voltage cable sections while maintaining service to the customers served from the low-voltage circuits.

**AA.** Small utility means a utility that serves less than 50,000 customers.

**BB.** Spot network means a secondary network system consisting of two or more network units at a single site. The low-voltage network side terminals of these network units are connected together with bus or cable. The resulting interconnection structure is commonly referred to as the "paralleling bus" or "collector bus." In spot networks, the paralleling bus does not have low-voltage ties to adjacent or nearby secondary network systems. Such spot networks are sometimes called isolated spot networks to emphasize that there are no low-voltage connections to network units at other sites.

**CC.** Study process means the procedure for evaluating an interconnection application that includes the scoping meeting, feasibility study, impact study, and facilities study.

**DD.** System means the facilities owned, controlled, or operated by the utility that are used to provide electric service under a utility's tariff.

**EE.** System emergency means a condition on a utility system that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

**FF.** Upgrade means the required additions and modifications to the utility's system at or beyond the point of common coupling. Upgrades do not include interconnection facilities.

**GG.** Utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customers subject to the jurisdiction of the commission.

[17.9.568.7 NMAC - N, 10/15/08]

**17.9.568.8 APPLICABLE CODES AND STANDARDS:**

**A.** The interconnection customer shall install, operate, and maintain the generating facility and the interconnection equipment in a safe manner in accordance with the rules for safety and reliability set forth in the latest editions of the *national electrical code*, other applicable local, state, and federal electrical codes, and prudent electrical practices.

**B.** In order to qualify for any interconnection procedures, each generating facility generator shall be in conformance with the following codes and standards as applicable:

**(1)** IEEE 1547 standard for interconnecting distributed resources with electric power systems or equivalent IEEE 1547.1;

**(2)** IEEE standard conformance test procedures for equipment interconnecting distributed resources with electric power systems or equivalent; and

**(3)** UL 1741 Inverters, converters and controllers for use in independent power systems or equivalent.

**C.** The interconnection equipment package shall be considered certified for interconnected operation if the equipment package has been tested and listed by a nationally recognized testing and certification laboratory (NRTL) for continuous interactive operation with a utility grid and meets the definition for certification under order 2006, issued by the federal energy regulatory commission on May 12, 2005, in docket no. RM02-12-000.

**D.** The generating facility shall be designed to conform with all of the applicable requirements in the **manual**.

[17.9.568.8 NMAC - N, 10/15/08]

**17.9.568.9 INTERCONNECTION APPLICATION:**

**A.** An interconnection customer shall submit its interconnection application to the utility using **manual** exhibit 1A or 1B as applicable, together with the fees specified in 17.9.568.12 NMAC. The utility shall record the date and time on the face of the interconnection application upon receipt by the utility. The original date and time recorded by the utility on the interconnection application at the time of its original submission shall be accepted as the date and time on which the interconnection application was received for the purposes of any timetable established in this rule or the **manual**. Following submission of the interconnection application, the parties will follow the procedures and time requirements described in the **manual**.

**B.** The utility shall place interconnection applications in the order they are received. The order of each interconnection application will be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection. At the utility's option, interconnection applications may be studied serially or in clusters for the purpose of the system impact study.

[17.9.568.9 NMAC - N, 10/15/08]

**17.9.568.10 INTERCONNECTION APPLICATION REVIEW PROCESS:** The utility shall utilize the interconnection screening process and the screen criteria described in the **manual**. That screening process results in the application of one of the three general review paths described as follows:

**A.** simplified interconnection: for certified inverter-based facilities with a power rating of 10 kilowatts (kW) or less on radial or network systems under certain conditions;

**B.** fast track: for certified

generating facilities that pass certain specified screens; or

**C.** full interconnection study: for generating facilities that have a power rating of 10 megawatts (MW) or less and do not qualify for the screens under the simplified interconnection process or fast track process.

[17.9.568.10 NMAC - N, 10/15/08]

**17.9.568.11 INTERCONNECTION APPLICATION REVIEW FLOW CHART AND SCREEN CRITERIA:** Utilities shall use the screen criteria described in the **manual** to evaluate all interconnection applications.

[17.9.568.11 NMAC - N, 10/15/08]

**17.9.568.12 GENERAL PROVISIONS APPLICABLE TO INTERCONNECTION APPLICATIONS:**

**A.** An interconnection customer shall pay the following application fee to the utility at the time it delivers its interconnection application to the utility:

**(1)** $50 if the proposed generating facilities will have a rated capacity less than or equal to 10 kW;

**(2)** $100 if the proposed generating facilities will have a rated capacity greater than 10 kW and less than or equal to 100 kW; or

**(3)** $100 + $1 per kW if the proposed generating facilities will have a rated capacity greater than 100 kW.

**B.** In addition to the fees authorized by this rule, a small utility may collect from the interconnection customer the reasonable costs incurred to obtain necessary expertise from consultants to review interconnection applications for generating facilities with rated capacities greater than 10 kW. A small utility shall provide a good faith estimate of the costs of such consultants to an interconnection customer within ten (10) business days of the date the interconnection application is delivered to the utility.

**C.** Commissioning tests of the interconnection customer's installed equipment shall be performed pursuant to applicable codes and standards, including IEEE 1547.1 "IEEE standard conformance test procedures for equipment interconnecting distributed resources with electric power systems." A utility must be given at least five (5) business days written notice of the tests, or as otherwise mutually agreed to by the parties, and may be present to witness the commissioning tests. An interconnection customer shall reimburse a utility for its costs associated with witnessing commissioning tests performed pursuant to the **manual** except that a utility may not charge a fee in addition to the application fee for the cost of witnessing commissioning tests for inverter-based generating facilities that have rated capacities that are less than or equal to 25 kW.

**D.** If an interconnection customer requests an increase in capacity for an existing generating facility, the interconnection application shall be evaluated on the basis of the new total capacity of the generating facility. If an interconnection customer requests interconnection of a generating facility that includes multiple energy production devices at a site for which the interconnection customer seeks a single point of common coupling, the interconnection application shall be evaluated on the basis of the aggregate capacity of the multiple devices.

**F.** All interconnection applications shall be evaluated using the maximum rated capacity of the proposed generating facility.

**G.** The commission may designate a facilitator to assist the parties in resolving disputes related to this rule and the **manual**. The parties to a dispute will be responsible for the costs of dispute resolution, if any, as determined by the facilitator subject to review by the commission.

**H.** Confidential information shall remain confidential unless otherwise ordered by the commission. Confidential information shall mean any confidential and proprietary information provided by one party to the other party that is clearly marked or otherwise designated "confidential".

[17.9.568.12 NMAC - N, 10/15/08]

**17.9.568.13 GENERAL PROVISIONS APPLICABLE TO UTILITIES:**

**A.** A utility shall interconnect any interconnection customer that meets the interconnection criteria set forth in this rule and in the **manual**. A utility shall make reasonable efforts to keep the interconnection customer informed of the status and progress.

**B.** Utilities shall reasonably endeavor to aid and assist interconnection customers to insure that a proposed generating facility's interconnection design, operation, and maintenance are appropriate for connection to the utility's system. This may include consultations with the interconnection customer and its engineering and other representatives.

**C.** Utilities shall make reasonable efforts to meet all time frames provided for in this rule unless a utility and an interconnection customer agree to a different schedule. If a utility cannot meet a deadline provided herein, it shall notify the interconnection customer, explain the reason for its inability to meet the deadline, and provide an estimated time by which it will complete its activity.

**D.** Utilities shall use the same reasonable efforts in processing and analyzing interconnection applications from all interconnection customers, whether the generating facility is owned or operated by the utility, its subsidiaries or affiliates, or others.

**E.** Utilities shall maintain records for three years of each interconnection application received, the times required to complete each interconnection application approval or disapproval, and justification for the utility's disapproval of any interconnection application.

**F.** Utilities shall maintain current, clear and concise information regarding this rule including the name, telephone number, and email address of contact persons. The information shall be easily accessible on the utility's website beginning within one month of the effective date of this rule, or the information may be provided in bill inserts or separate mailings sent no later than one month after the effective date of this rule and no less often than once each year thereafter. Each utility shall maintain a copy of this rule and the **manual** at its principal office and make the same available for public inspection and copying during regular business hours.

**G.** A small utility that uses a consultant to review a proposal to interconnect a generating facility with the small utility's system may extend each of the time deadlines for review of the fast track process by a period not to exceed twenty (20) business days provided that the small utility shall make a good faith effort to complete the review sooner.

**H.** Compliance with this interconnection process does not constitute a request for, nor provision of any transmission delivery service, or any local distribution delivery service. Interconnection under this rule does not constitute an agreement by the utility to purchase or pay for any energy, inadvertently or intentionally exported.

[17.9.568.13 NMAC - N, 10/15/08]

**17.9.568.14 GENERAL PROVISIONS APPLICABLE TO INTERCONNECTION CUSTOMERS:**

**A.** The cost of utility system modifications required pursuant to the fast track process or the full interconnection study process shall be borne by the interconnection customer unless otherwise agreed by the parties.

**B.** An interconnection customer shall have thirty (30) business days (or other mutually agreeable period) following receipt of an interconnection agreement to execute the agreement and return it to the utility. If the interconnection customer does not execute the interconnection agreement and return it to the utility within the applicable period, the interconnection application shall be deemed withdrawn. After all

parties execute an interconnection agreement, interconnection of the generating facility shall proceed under the provisions of the interconnection agreement.

**C.** An interconnection customer is responsible for the prudent maintenance and upkeep of its interconnection equipment.

**D.** Upon the petition of a utility, for good cause shown, the commission may require a customer with a generating facility with a rated capacity of 250 kW or less to obtain general liability insurance prior to connecting with a public utility. A utility may require that an interconnection customer proposing to connect a generating facility with a rated capacity greater than 250 kW provide proof of insurance with reasonable limits not to exceed $1,000,000 or other reasonable evidence of financial responsibility.

[17.9.568.14 NMAC - N, 10/15/08]

**17.9.568.15 SAFETY PROVISIONS:**

**A.** An interconnection customer shall separate from the utility system in the event of any one or more of the following conditions:

**(1)** a fault on the generating facility's system; or

**(2)** a generating facility contribution to a utility system emergency; or

**(3)** abnormal frequency or voltage conditions on the utility's system; or

**(4)** any occurrence or condition that will endanger utility employees or customers; or

**(5)** a generating facility condition that would otherwise interfere with a utility's ability to provide safe and reliable electric service to other customers; or

**(6)** the sudden loss of the utility system power.

**B.** A visible-open, load break disconnect switch between the generating facility and the utility system that is visibly marked "generating facility generation disconnect" and is accessible to and lockable by the utility is required for all generating facilities except for those generating facilities with a maximum capacity rating of 10 kW or less that use a certified inverter including a self-contained renewable energy certificate (REC) meter and either:

**(1)** a utility accessible AC load break disconnect; or

**(2)** a utility accessible DC load break disconnect where there is no other source of generated or stored energy connected to the system.

**C.** Interconnection customers shall post a permanent and weather proof one-line electrical diagram of the generating facility located at the point of service connection to the utility. Generating facilities where the disconnect switch required by Subsection B of 17.9.568.15 NMAC is not located in close proximity to the utility meter must post a permanent and weather proof map showing the location of all major equipment including the utility meter point, the generating facility generation disconnect, and the generating facility generation breaker. Non-residential generating facilities larger than 10 kW shall include with or attached to the map the names and current telephone numbers of at least two persons authorized to provide access to the generating facility and who have authority to make decisions regarding the generating facility interconnection and operation.

**D.** If the generating facility interconnection equipment package is not certified or if a certified equipment package has been modified, the generating facility interconnection equipment package shall be reviewed and approved by a professional electrical engineer, registered in the state of New Mexico.

[17.9.568.15 NMAC - N, 10/15/08]

**17.9.568.16 VARIANCES:** A party may file a request for a variance from the requirements of this rule. Such application shall describe the reasons for the variance; set out the effect of complying with this rule on the parties and the utility's customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.9.568.16 NMAC - N, 10/15/08]

**HISTORY OF 17.9.568 NMAC:** [RESERVED]

## NEW MEXICO PUBLIC REGULATION COMMISSION

UTILITY DIVISION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**
**CHAPTER 9 ELECTRIC SERVICES**
**PART 569 INTERCONNECTION OF GENERATING FACILITIES WITH A RATED CAPACITY GREATER THAN 10 MW CONNECTING TO A UTILITY SYSTEM**

**17.9.569.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.

[17.9.569.1 NMAC - N, 10/15/08]

**17.9.569.2 SCOPE:**

**A.** This rule applies to every electric utility including rural electric cooperatives and investor-owned utilities operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission. These standards and procedures apply to both qualifying and non-qualifying facilities.

**B.** The standards and procedures described in this rule 17.9.569 NMAC apply only to the interconnection of generating facilities with a rated capacity greater than 10 MW. The standards and procedures described in 17.9.568 NMAC apply to the interconnection of generating facilities with a rated capacity up to and including 10 MW.

[17.9.569.2 NMAC - N, 10/15/2008]

**17.9.569.3 STATUTORY AUTHORITY:** This rule is adopted under the authority vested in this commission by the New Mexico Public Regulation Commission Act, NMSA 1978, Section 8-8-1 et seq. and the Public Utility Act, NMSA 1978, Section 62-3-1 et seq.

[17.9.569.3 NMAC - N, 10/15/2008]

**17.9.569.4 DURATION:** Permanent.

[17.9.569.4 NMAC - N, 10/15/2008]

**17.9.569.5 EFFECTIVE DATE:** October 15, 2008. All interconnection contracts between a utility and an interconnection customer existing at the time 17.9.569 NMAC is adopted shall automatically continue in full force and effect. Any changes made to existing interconnection contracts shall conform to the provisions of 17.9.569 NMAC.

[17.9.569.5 NMAC - N, 10/15/2008]

**17.9.569.6 OBJECTIVE:** The purpose of this rule is to set forth common interconnection requirements for the interconnection of generating facilities with a rated capacity greater than 10 MW in a safe and reliable manner.

[17.9.569.6 NMAC - N, 10/15/2008]

**17.9.569.7 DEFINITIONS:** Terms used in this rule 17.9.569 NMAC shall have the following meanings.

**A.** Business day means Monday through Friday, excluding holidays observed by the utility.

**B.** Generating facility means the interconnection customer's device for the production of electricity identified in the interconnection application,

including all generators, electrical wires, equipment, and other facilities owned or provided by the interconnection customer for the purpose of producing electric power.

**C.** Interconnection application means the request by an interconnection customer to interconnect a new generating facility, or to increase the capacity or make a material modification to the operating characteristics of an existing generating facility that is interconnected with the utility's system.

**D.** Interconnection customer means any person that proposes to interconnect its generating facility with the utility's system.

**E.** Party means the utility and the interconnection customer separately or in combination.

**F.** Person, for purposes of this rule, means an individual, firm, partnership, company, rural electric cooperative organized under Laws 1937, Chapter 100 or the Rural Electric Cooperative Act, corporation or lessee, trustee or receiver appointed by any court.

**G.** Point of common coupling (PCC) means the point where the interconnection facilities connect with the utility's system.

**H.** Power conversion unit (PCU) means an inverter or AC generator, not including the energy source.

**I.** Qualifying facility means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203.

**J.** Rated capacity means the total AC nameplate rating of the power conversion unit(s) at the point of common coupling.

**K.** System means the facilities owned, controlled, or operated by the utility that are used to provide electric service under a utility's tariff.

**L.** Utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customers subject to the jurisdiction of the commission.

[17.9.569.7 NMAC - N, 10/15/2008]

**17.9.569.8 GENERAL PROVISIONS FOR INTERCONNECTION APPLICATIONS FOR FACILITES WITH RATED CAPACITIES GREATER THAN 10 MW:**

**A.** A utility shall interconnect with any interconnection customer that:

(1) is in its service area;

(2) qualifies for the interconnection procedures in this rule 17.9.569 NMAC;

(3) files an interconnection application in accordance with Subsection B of 17.9.569.8 NMAC;

(4) meets the utility's system safety standards;

(5) has paid the estimated costs of interconnection (if applicable);

(6) has entered into a contract with the utility pursuant to 17.9.569 NMAC;

(7) has substantially completed a generating facility that is capable of operating safely and commencing the delivery of power into the utility system; and

(8) has provided a statement from a licensed professional electrical engineer certifying that the design of the generating facility and its interconnection equipment comply with utility requirements and with reasonable interconnection safety and design standards and prudent electrical practices.

**B.** An interconnection customer subject to this rule 17.9.569 NMAC shall make its application for interconnection to a utility using the interconnection application form provided in the *interconnection manual* and its exhibits, incorporated by reference in 17.9.568 NMAC.

**C.** Unless a longer period of time is agreed to in writing by the interconnection customer, within 30 business days of receipt of an interconnection application on the prescribed form, a utility shall furnish to the interconnection customer a good faith, detailed list of required interconnection equipment and an itemized estimate of the costs that the proposed interconnection customer will have to pay to the utility to complete the interconnection. The list of required interconnection equipment shall not change substantially other than in response to changes in design, location of equipment, and/or intended operation of the equipment of the generating facility.

**D.** If an interconnection application fails to comply with the requirements of this rule 17.9.569 NMAC or is otherwise insufficient, the utility shall attempt to obtain the required information to complete the interconnection application by telephone. If the utility cannot so obtain complete information, the utility shall within 15 business days of receipt of the interconnection application notify the interconnection customer specifying the deficiencies in the interconnection application.

**E.** If the interconnection customer disagrees with the utility's determination that the interconnection application is insufficient, it may within 15 business days of its receipt of the utility's notification initiate a proceeding before the commission pursuant to the complaint process of 17.9.570 NMAC. In such a proceeding, the utility shall have the burden to establish that the rejection was justified.

**F.** The interconnection customer shall give the utility at least 60 days written advance notice to interconnect. Such notice shall specify the date the generating facility will be ready for interconnection, the date the generating facility will be able to commence testing, and the anticipated date of operation after testing. The interconnection customer shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay an interconnection customer for any energy produced during testing of the generating facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

**G.** If the utility determines that it cannot interconnect the generating facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within 15 business days of receipt of the notice to interconnect, notify the interconnection customer specifying the reasons it cannot interconnect as requested by the interconnection customer and specifying the date interconnection can be made. If the interconnection customer objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the interconnection customer may initiate a proceeding before the commission pursuant to the complaint process of 17.9.570 NMAC.

**H.** Payment for all costs of interconnection shall be the responsibility of the interconnection customer. If the utility incurs any of the costs of interconnection, the interconnection customer shall reimburse the utility for such costs. The estimated costs for interconnection described in this rule 17.9.569 NMAC shall be paid prior to interconnection. Upon completion of the interconnection the actual costs of interconnection shall be determined in a verifiable form by the utility, and any actual costs in excess of the estimated costs shall be paid by the interconnection customer to the utility within 30 days. If the estimated costs exceed actual costs the utility shall refund the difference to the interconnection customer within 30 days.

**I.** Each utility shall develop and file with the commission proposed general safety standards governing the installation, operation, and maintenance of the protective equipment required to integrate generating facilities subject to this rule 17.9.569 NMAC into the utility's electric system (if any such equipment is required). These general safety standards may contain reasonable provisions for case-by-case standards for certain generation facilities based on their size or location. These standards shall be reasonable and nondiscriminatory and shall be designed to assure system and personnel safety.

**J.** The generating facili-

ty's output to the utility will meet the following interconnection standards.

(1) The voltage will be that voltage normally available on the utility system at the generator's site or such other standard voltage to which the parties may agree.

(2) The frequency will be 60 hertz.

(3) The number of phases of the produced voltage will be compatible with the phases available on the utility system at the generator site. Normally the number of phases shall be the same as those of the utility system.

(4) The protective devices connected between the output of the generating facility and the utility system must be rated for the maximum available fault current that the utility's system may be capable of developing at the point of interconnection. Such devices shall disconnect the generating facility's generation from the utility's system in the event of a fault on the generating facility system in order to maintain continuity of service to other customers connected to the secondary of the distribution transformer or other portions of the utility's system.

(5) The generating facility's output shall not affect the utility's distribution system. This includes but is not limited to:

(a) overload of distribution equipment;

(b) abnormal harmonic currents or voltages;

(c) interference with automatic voltage regulation equipment; and

(d) electronic noise that would interfere with communications.

(6) The generating facility shall be capable of protecting itself from damage resulting from impact loading and/or overloading under both normal operating conditions and emergency conditions.

**K.** Interconnection and safety requirements shall include the ability to synchronize on connecting to the utility system to avoid voltage decay or out-of-phase connection. The generating facility's controls shall be capable of disconnecting the generation output to the utility or otherwise limiting the generating facility's input to avoid overload of any of the utility system components or undesirable transient voltage or frequency fluctuations in the event of a fault on the utility's system or under conditions of large motor start or capacitor switching operations on the utility system to which the generating facility is interconnected. These devices must be coordinated with the utility's protective system. The generating facility must meet the following safety standards.

(1) The generating facility's interconnection must meet the requirements of the latest editions of the national electrical safety code, national electrical code, and the state of New Mexico electrical code.

(2) The generating facility's interconnection must automatically disconnect from the utility's system if the utility service is interrupted. The generating facility will coordinate automatic reenergization in the utility's system with the utility's standard protection practices. The utility may discontinue service to or from a generating facility if it has been determined that continuation of service would contribute to such emergency.

(3) There must be a three-phase load break disconnect between the generating facility's interconnection and the utility that can be controlled and operated by the utility.

(a) Where the generating facility is a customer of the utility, the disconnect or disconnects shall disconnect the generating facility's output without interrupting utility service to the customer's other load unless otherwise agreed.

(b) The disconnect must provide a visible air gap which will assure disconnection of the generating facility before a utility employee does any work on the circuit or circuits to which the interconnection is made.

(c) The meter socket or secondary connection compartment or bus compartment may be provided by the utility or provision may be required of the interconnection customer as is presently provided for in the case of each component by the rules and regulations filed with the commission in the case of the specific utility.

(d) In any event the capacity and the connection arrangements of the specific device must be approved by the utility if the generating facility is required to provide the device.

**L.** A utility may require that an interconnection customer provide proof of insurance or other evidence of financial responsibility in an amount reasonably related to the risks involved.

[17.9.569.8 NMAC - N, 10/15/2008]

**17.9.569.9 VARIANCES:** A party may file a request for a variance from the requirements of this rule. Such application shall describe the reasons for the variance; set out the effect of complying with this rule on the parties and the utility's customers if the variance is not granted; identify the section(s) of this rule for which the variance is requested; describe the expected result which the request will have if granted; and state how the variance will aid in achieving the purposes of this rule. The commission may grant a request for a procedural variance through an order issued by the chairman, a commissioner or a designated hearing examiner. Other variances shall be presented to the commission as a body for determination.

[17.9.569.9 NMAC - N, 10/15/2008]

**HISTORY OF 17.9.569 NMAC:** [RESERVED]

# NEW MEXICO PUBLIC REGULATION COMMISSION

UTILITY DIVISION

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**
**CHAPTER 9 ELECTRIC SERVICES**
**PART 570 GOVERNING COGENERATION AND SMALL POWER PRODUCTION**

**17.9.570.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.

[17.9.570.1 NMAC - Rp, 17.9.570.1 NMAC, 10-15-08]

**17.9.570.2 SCOPE:**

**A.** 17.9.570 NMAC applies to every electric utility (investor-owned, rural electric cooperative, municipal, or an entity providing wholesale rates and service) operating within the state of New Mexico that is subject to the jurisdiction of the New Mexico public regulation commission as provided by law.

**B.** It is intended that the obligations of utilities provided for in 17.9.570 NMAC shall extend to both production and consumption functions of qualifying facilities irrespective of whether the production and consumption functions are singly or separately owned. In situations where the production and consumption functions are separately owned, the qualifying facility or its operator may elect to enter into the contract with the utility.

**C.** All interconnection contracts between utilities and qualifying facilities existing at the time 17.9.570 NMAC is adopted shall automatically continue in full force and effect with no change in rates for the purchase of power from the qualifying facilities. Any changes made to the existing interconnection contracts shall be made by mutual agreement and shall conform to the provisions of 17.9.570 NMAC.

**D.** Variances which have been granted by the commission from earlier versions of general order no. 37 and under NMPSC rule 570 shall continue in full force and effect unless the commission specifically rescinds any such variance.

[17.9.570.2 NMAC - Rp, 17.9.570.2 NMAC, 10-15-08]

**17.9.570.3 STATUTORY AUTHORITY:** NMSA 1978, Sections 8-

8-15, 62-6-4, 62-6-19, 62-6-24, and 62-8-2, and 16 USCA Section 2621.
[17.9.570.3 NMAC - Rp, 17.9.570.3 NMAC, 10-15-08]

**17.9.570.4 DURATION:** Permanent.
[17.9.570.4 NMAC - Rp, 17.9.570.4 NMAC, 10-15-08]

**17.9.570.5 EFFECTIVE DATE:** October 15, 2008, unless a later date is cited at the end of a section. Applications filed prior to this effective date shall be governed by the specific orders related to those applications.
[17.9.570.5 NMAC - Rp, 17.9.570.5 NMAC, 10-15-08]

**17.9.570.6 OBJECTIVE:**

**A.** 17.9.570 NMAC is to govern the purchase of power from and sale of power to qualifying facilities by:

**(1)** enabling the development of a market for the power produced by qualifying facilities;

**(2)** establishing guidelines for the calculation of utilities' avoided costs, and

**(3)** providing meaningful access to critical cost information from utilities.

**B.** 17.9.570.14 NMAC is intended to simplify the metering procedures for qualifying facilities up to and including 10kW and encourage the use of small-scale customer-owned renewable or alternative energy resources in recognition of the beneficial effects the development of such resources will have on the environment of New Mexico.

**C.** 17.9.570 NMAC is intended to implement regulations of the federal energy regulatory commission, 18 C.F.R. Section 292, promulgated pursuant to the Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended starting at 16 U.S.C. Section 824) and the New Mexico Public Utility Act, NMSA 1978, Sections 62-3-1 et. seq., as amended.

**D.** The standards and procedures for the interconnection of generating facilities with rated capacities up to and including 10 MW are set forth in 17.9.568 NMAC. The standards and procedures for the interconnection of generating facilities with rated capacities greater than 10 MW are set forth in 17.9.569 NMAC.
[17.9.570.6 NMAC - Rp, 17.9.570.6 NMAC, 10-15-08]

**17.9.570.7 DEFINITIONS:** When used in 17.9.570 NMAC unless otherwise specified the following definitions will apply:

**A.** avoided costs means the incremental costs to the electric utility of electric energy or capacity or both which, but for the purchase from the qualifying facility or qualifying facilities, the utility would generate itself or purchase from another source; avoided costs are the costs computed in accordance with Subsections B and C of 17.9.570.11 NMAC;

**B.** backup power means electric energy or capacity or both supplied by an electric utility during an unscheduled outage of the qualifying facility to replace energy ordinarily supplied by a qualifying facility's own generation equipment;

**C.** interconnection costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administration incurred by the electric utility which are directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a qualifying facility to the extent such costs are in excess of the corresponding costs which the electric utility would have incurred if it had not engaged in interconnected operations but instead generated an equivalent amount of power itself or purchased an equivalent amount of power from other sources; interconnection costs do not include any costs included in the calculation of avoided costs;

**D.** design capacity means the total AC nameplate power rating of the power conversion unit(s) at the point of common coupling;

**E.** interruptible power means power supplied by an electric utility subject to interruption by the electric utility under specified conditions;

**F.** maintenance power means power supplied by an electric utility during scheduled outages of the qualifying facility;

**G.** net metering means the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation;

**H.** new capacity addition:

**(1)** new capacity addition means the capacity added to a utility's resource mix after the effective date of 17.9.570 NMAC through normal utility resource procurement activities which shall include but not necessarily be limited to:

**(a)** construction of or participation in new generating facilities;

**(b)** augmenting the capacity of or extending the life of existing generating facilities through capital improvements; or

**(c)** entering into new contracts or exercising options in existing contracts which will result in additional capacity;

**(2)** new capacity addition does not include the following:

**(a)** renegotiation of existing contracts for anything other than increasing capacity in the resource mix;

**(b)** renegotiation of existing full power requirements contract between a distribution cooperative and its full power requirements supplier; and

**(c)** seasonal uprating in capacity achieved without any capital improvements to existing generating facilities;

**I.** point of common coupling (PCC) means the point where the interconnection facilities connect with the utility's system;

**J.** power means electric energy or capacity or both;

**K.** power conversion unit (PCU) means an inverter or AC generator, not including the energy source;

**L.** qualifying facility means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203;

**M.** rate means any price, rate, charge, or classification made, demanded, observed, or received with respect to the sale by the utility of power or purchase of power from the qualifying facility;

**N.** supplementary power means power which is regularly used by a consumer, supplied by the electric utility, in addition to that power which may be supplied by a qualifying facility;

**O.** system emergency means a condition on a utility's system which is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property;

**P.** tariff means the document filed by a utility with the commission pursuant to 17.9.570 NMAC containing that utility's rules, rates, services and forms;

**Q.** utility means a utility or public utility as defined in NMSA 62-3-3 (G) serving electric customers subject to the jurisdiction of the commission.
[17.9.570.7 NMAC - Rp, 17.9.570.7 NMAC, 10-15-08]

**17.9.570.8** [RESERVED]

**17.9.570.9 OBLIGATION TO PURCHASE:**

**A.** Each utility shall purchase power from a qualifying facility from the date of interconnection at the utility's avoided cost. An electric utility is obligated to purchase power from a qualifying facility at the utility's avoided cost regardless of whether the electric utility making such purchase is simultaneously selling power to the qualifying facility.

**B.** The qualifying facility shall give the utility at least sixty (60) days written advance notice to interconnect. Such notice shall specify the date the quali-

fying facility will be ready for interconnection, the date the qualifying facility will be able to commence testing, and the anticipated date of operation after testing. The qualifying facility shall pay the estimated costs of interconnection in full at the time the notice to interconnect is given. The utility shall pay a qualifying facility for any energy produced during testing of the qualifying facility at the appropriate energy rate pursuant to Subsection B of 17.9.570.11 NMAC.

**C.** If the utility determines that it cannot interconnect the qualifying facility within the time set in the notice to interconnect because adequate interconnection facilities are not available, it shall, within fifteen (15) business days of receipt of the notice to interconnect, notify the qualifying facility specifying the reasons it cannot interconnect as requested by the qualifying facility and specifying the date interconnection can be made. If the qualifying facility objects to the date for interconnection specified by the utility, objects to the utility's determination that adequate interconnection facilities are not available, or disputes the good faith efforts of the utility to interconnect, the qualifying facility may initiate a proceeding before the commission pursuant to the complaint process of this 17.9.570 NMAC. If the commission finds that the utility's position on the time for interconnection or unavailability of interconnection facilities was not justified, the qualifying facility shall be deemed to have been interconnected and the qualifying facility shall be deemed to have otherwise complied with its contractual duties on the sixtieth (60th) day following the notice to interconnect and payments by the utility to the qualifying facility shall commence at the appropriate power rate which shall be applied to the amount of imputed or expected power as if the qualifying facility were producing, provided that the qualifying facility's power was available.

[17.9.570.9 NMAC - Rp, 17.9.570.9 NMAC, 10-15-08]

**17.9.570.10 METERING OPTIONS:**

**A.** General.

**(1)** A qualifying facility contracting to provide power may displace its own load. The utility may require appropriate metering. Billing for any power from the utility will be at the utility's approved rate applicable to the service provided to the qualifying facility in accordance with Subsections A - G of 17.9.570.12 NMAC.

**(2)** The tariff filed by each utility pursuant to Subsection H of 17.9.570.13 NMAC shall include the offer to any qualifying facility that has not contracted to receive capacity payments, the metering options in Subsections B, C and D of 17.9.570.10 NMAC.

**(3)** The options of Subsections B, C and D of 17.9.570.10 NMAC may involve time-of-day metering if the utility has in effect time-differentiated rates and metering for the class of customer to which the qualifying facility belongs or if the parties negotiate time-differentiated payments to the qualifying facility.

**B.** Load displacement option. If the qualifying facility wishes primarily to serve its own load, the utility shall agree to interconnect with a single meter or meter set measuring flow from the utility to the qualifying facility; billing for any power from the utility will be at the utility's approved tariff applicable to the service provided to the qualifying facility; there will be no additional customer charge and no payment by the utility for any excess energy which might be generated by the qualifying facility.

**C.** Net metering option.

**(1)** The utility shall install the metering necessary to determine the net energy delivered from the qualifying facility to the utility or from the utility to the qualifying facility for each time-of-use or single rate period, as applicable, during a billing period; the net energy delivered to either the qualifying facility or to the utility is the difference between the energy produced by the qualifying facility's generation and the energy that would have otherwise been supplied by the utility to the qualifying facility absent the qualifying facility's generation.

**(2)** The net energy delivered from the qualifying facility to the utility shall be purchased by the utility at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC; the qualifying facility shall be billed for the net energy delivered from the utility in accordance with the tariffs that are applicable to the qualifying facility absent the qualifying facility's generation; the qualifying facility shall also be billed for all demand and other charges in accordance with the applicable tariffs. At the end of the billing period the utility shall net all charges owed to the utility by the qualifying facility and all payments owed by the utility to the qualifying facility. If a net amount is owed to the qualifying facility for the billing period, and is less than $50, the payment amount may be carried over to the following billing period. If a net amount is owed to the qualifying facility and is $50 or more, the utility shall make payment to the qualifying facility prior to the end of the next billing period.

**(3)** If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, the qualifying facility shall pay all incremental costs associated with installing the more costly metering equipment and facilities. An additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

**D.** Separate load metering (simultaneous buy/sell) option. The utility shall install the metering necessary to determine separately 1) all the energy produced by the qualifying facility's generator and 2) all of the power consumed by the qualifying facility's loads; the utility shall purchase all energy produced by the qualifying facility's generator at the utility's applicable time-of-use or single period energy rate as described in Subsection B of 17.9.570.11 NMAC. The qualifying facility shall purchase all power consumed at its normally applicable rate; an additional customer charge to cover the added costs of billing and administration may be included in the tariff if supported with evidence of need for such charge.

**E.** Metering configurations. Metering configurations used to implement the provisions of 17.9.570 NMAC shall be reasonable, nondiscriminatory, and shall not discourage cogeneration or small power production.

[17.9.570.10 NMAC - Rp, 17.9.570.10 NMAC, 10-15-08]

**17.9.570.11 DETERMINATION OF RATES FOR PURCHASES FROM QUALIFYING FACILITIES:**

**A.** General. A utility shall pay a qualifying facility avoided costs for power purchased from the qualifying facility. Avoided costs are defined in Subsection A of 17.9.570.7 NMAC. The energy rate represents avoided energy costs for the purposes of 17.9.570 NMAC. The energy rate and the avoided capacity costs to be paid to the qualifying facility for the power it sells to the utility shall be developed pursuant to Subsections B and C of 17.9.570.11 NMAC, respectively.

**B.** Energy rate. The energy rate to be paid for the energy supplied by the qualifying facility in any month shall be that respective month's rate from the utility's current schedule on file with the commission. Each utility shall file with the commission its schedule containing monthly energy rates that will be applicable to the next twelve-month period. These monthly energy rates shall be listed for each voltage level of interconnection and shall be expressed in cents/kWh. Each month's energy rate contained in the schedule shall be the average of the economy energy purchases by the utility for the corresponding month of the immediately preceding twelve-month period. In the event a utility does not engage in economy energy purchases in any given month, the energy rate

to be included in its schedule for that month shall be either: the monthly average of hourly incremental energy costs including variable operation and maintenance expenses for generating utilities, or the energy charge of the highest energy cost contract as adjusted for appropriate retail fuel and purchase power pass through for nongenerating utilities.

**(1)** In addition to the schedule described above, those utilities with retail time-of-use rates on file with the commission shall file schedules reflecting monthly energy rates calculated for peak periods only and off-peak periods only which shall be applied to qualifying facilities whose generation is limited to peak periods only or off-peak periods only. Peak and off-peak periods shall be as defined in the utility's retail tariffs on file with the commission.

**(2)** Within sixty (60) days of the effective date of 17.9.570 NMAC each electric utility subject to the rule shall file with the commission the schedule containing rates to be offered along with detailed supporting workpapers showing the input data and calculations. After the first submittal each utility shall update its filing within thirty (30) days from the last day of its fiscal year.

**(3)** Variable operation and maintenance rates used for the above computations shall be the basis for requested variable operation and maintenance rates in the utility's future rate cases.

**(4)** The schedules containing energy rates developed pursuant to Subsections B and C of 17.9.570.11 NMAC shall be part of the tariff to be filed pursuant to Subsection H of 17.9.570.13 NMAC. The energy rate contained in the schedules shall include the savings attributable to the avoidance of losses due to transmission, distribution, and transformation as applicable for different voltage levels of interconnection. These transmission, distribution, and transformation loss avoidance savings for different voltage levels of interconnection shall be obtained from the utility's filing in the last commission-decided rate case, and those figures shall be shown in the utility's submittal.

**C.** Avoided capacity costs.

**(1)** A qualifying facility is entitled to receive payments for capacity when such capacity purchase by the utility from the qualifying facility enables the utility to avoid procurement of new capacity. The avoided capacity costs of a utility will be determined by the commission on a case-by-case basis based on the costs associated with a "new capacity addition" for the utility.

**(2)** Within sixty (60) days of the effective date of 17.9.570 NMAC each utility subject to the provisions of 17.9.570 NMAC shall file a schedule with the commission showing capacity, capital costs, and fixed operation, maintenance, and demand charges, as applicable, of the existing capacity resources by generating unit and by contract. After the first submittal each utility shall update its filing within thirty (30) days from the last day of every fiscal year. Utilities transferring their purchase obligation pursuant to Subsection F of 17.9.570.13 NMAC need not file this schedule. A utility which has obtained a limited variance from the provisions of Subsection F shall note that the variance obtained applies to qualifying facilities contracting to supply energy only. Each utility subject to the provisions of 17.9.570 NMAC shall notify the commission of any planned "new capacity addition" with relevant details on timing, size, capital costs, fixed operation and maintenance costs, property taxes, insurance, energy costs, variable operation and maintenance costs, and capital carrying costs if the "new capacity addition" is to be made by the utility's own generation. If the "new capacity addition" is made by a power sales agreement or other such agreement, the utility shall give the relevant details of the transaction such as demand and energy charges and term of the agreement. Notification to the commission shall be made as soon as possible after the utility's decision but in no case later than one (1) year prior to the date of a "new capacity addition". Failure to provide adequate notice may result in the utility being unable to recover the costs of the "new capacity addition" in rates even if such an addition meets all the other regulatory criteria for recoverability.

**(3)** Based on the information contained in the utility's notification and subject to a hearing thereon, the commission will determine the avoided capacity costs for that utility. The utility shall be obligated to make payments for capacity only up to the amount of capacity associated with the "new capacity addition".

**D.** Negotiations. Notwithstanding the provisions of 17.9.570 NMAC, a utility and qualifying facility may at the qualifying facility's option negotiate rates for the power to be supplied by the qualifying facility. Such negotiated rates shall be filed with the commission within thirty (30) days of the execution of the contract. The contract shall not contain any rate which is higher than the utility's avoided costs as defined in 17.9.570 NMAC.

[17.9.570.11 NMAC - Rp, 17.9.570.11 NMAC, 10-15-08]

**17.9.570.12 OBLIGATION TO SELL:**

**A.** Rates to be offered. Utilities are required to provide supplementary power, backup power, maintenance power, and interruptible power to qualifying facilities irrespective of whether the production and consumption functions of the qualifying facility are singly or separately owned. The rates for supplementary power, backup power, maintenance power, and interruptible power shall be calculated as provided for in this section (17.9.570.12 NMAC) and included in the tariff for each utility to be filed pursuant to 17.9.570 NMAC. Utilities may charge a facilities fee for equipment dedicated to the customer pursuant to the utility's rate schedules and rules governing the utility's practices for recovering such costs. The computation of the facilities fee shall take into account the costs of facilities already paid for by the customer before installing a qualifying facility.

**B.** Supplementary power.

**(1)** Qualifying facilities shall be entitled to supplementary power under the same retail rate schedules that would be applicable to those retail customers having power requirements equal to the supplementary power requirements of the qualifying facility. Any ratchet enforced through the "billing demand" provisions of such retail schedules shall also apply.

**(2)** To determine the amount of supplementary power required, supplementary power shall be measured to each qualifying facility through appropriate metering devices which are adequate to determine whether supplementary or backup power is being utilized. The demand interval used shall be the same as that contained in the applicable retail rate schedule.

**C.** Backup power.

**(1)** Qualifying facilities shall be entitled to backup power for forced outages under the same retail rate which would be applicable absent its qualifying facility generation. Rates for sale of backup power shall not contain demand charges in time periods when demand charges are not applicable to such retail rate schedule. Rates for backup power shall not contain demand ratchets or power factor penalties. If the utility can demonstrate that a particular qualifying facility has caused either a demand ratchet or a power factor penalty clause between the utility and its power supplier(s) to be invoked because of the qualifying facility's operation, the utility may petition the commission to allow the allocable charges resulting from the demand ratchet or power f actor penalty which has been invoked to be included in the rates for that particular qualifying facility.

**(2)** In the months that backup power is not utilized by the qualifying facility the rates for backup power may contain a monthly reservation fee which shall not exceed ten percent (10%) of the monthly demand charge contained in the retail rate schedule which would be applicable to the consumer absent its qualifying facility gen-

eration. Such a reservation fee shall not be charged while a qualifying facility is taking backup power or while charges resulting from a power factor penalty and/or demand ratchet have/has been imposed pursuant to Paragraph (1) of Subsection C of 17.9.570.12 NMAC.

**D.** Maintenance power.

**(1)** Maintenance power shall be provided to qualifying facilities for periods of maintenance scheduled in advance with the concurrence of' the utility. A qualifying facility shall schedule such maintenance with the utility by giving the utility advance notice dependent on the length of the outage as follows:

| Length of Outage* | Advance Notice* |
|---|---|
| 1 day | 5 days |
| 2 to 5 days | 30 days |
| 6 to 30 days | 90 days |
| *All days are calendar days. | |

**(2)** Maintenance power rates shall be the same as the retail rate which would be applicable to the qualifying facility absent its qualifying facility generation. The maintenance power demand charge shall be determined by multiplying the applicable retail demand charge by the ratio of the number of weekdays in which the maintenance power was taken to the number of weekdays in the month. No demand charge shall apply for maintenance power taken during off-peak hours as defined in the utility's retail tariffs. For those utilities which do not have time-of-use rates, off-peak hours are defined as 11:00 p.m. to 7:00 a.m. weekdays, twenty-four (24) hours per day on weekends and holidays.

**(3)** Maintenance power shall be available to qualifying facilities for a minimum period of thirty (30) days per year scheduled outside of the system peak period of the utility which is defined as the three-month period covering the peak month together with the preceding and succeeding months.

**E.** Interruptible power. All utilities shall file rates for interruptible power which shall be available to qualifying facilities. Rates for such interruptible power purchases shall reflect the lower costs, if any, which the utility incurs in order to provide interruptible power as opposed to what it would incur to provide firm power.

**F.** Customer charges. The customer charges from a utility for a qualifying facility shall be the same as the retail rate applicable to the customers in the same rate class absent its qualifying facility generation.

**G.** Exceptions. An electric utility shall not be required to provide supplementary power, backup power, maintenance power, or interruptible power to a qualifying facility if, after notice in the area served by the electric utility and after opportunity for public comment, the electric utility demonstrates and the commission finds that provision of such power would:

**(1)** impair the electric utility's ability to render adequate service to its customers; or

**(2)** place an undue burden on the utility.

[17.9.570.12 NMAC - Rp, 17.9.570.12 NMAC, 10-15-08]

**17.9.570.13 PERIODS WHEN PURCHASES AND SALES ARE NOT REQUIRED AND GENERAL PROVISIONS:**

**A.** System emergencies.

**(1)** During any system emergency a utility may discontinue on a nondiscriminatory basis:

**(a)** purchases from a qualifying facility if such purchases would contribute to such emergency, and

**(b)** sales to a qualifying facility provided that such discontinuance is on a previously established nondiscriminatory basis.

**(2)** A qualifying facility shall be required to provide power to a utility during a system emergency only to the extent:

**(a)** provided by agreement between the qualifying facility and the utility; or

**(b)** ordered pursuant to the provisions of the Federal Power Act, 16 U.S.C. Section 824a(c).

**B.** Operational circumstances. The utility may discontinue purchases from the qualifying facility during any period in which, due to operational circumstances, purchases from qualifying facilities will result in costs greater than those which the utility would incur if it did not make such purchases but instead generated an equivalent amount of energy itself; a claim by an electric utility that such a period has occurred or will occur is subject to verification by the commission; the utility shall maintain and make available sufficient documentation to aid the commission with verification proceedings.

**C.** Notification requirements. Any utility which disconnects and thereby discontinues purchases or sales from a qualifying facility for the reasons cited in Subsections A and B of 17.9.570.13 NMAC above shall notify the qualifying facility or facilities prior to the system emergency or operational circumstance if reasonably possible. If prior notice is not reasonably possible the utility shall notify the qualifying facility by telephone or personal contact within forty-eight (48) hours following the system emergency or operational circumstance followed by written communication if requested by the qualifying facility. Any notification shall include the specific reason for the system emergency or operational circumstance.

**D.** Penalty. Any utility which fails to comply with the notification requirements in Subsection C of 17.9.570.13 NMAC or fails to demonstrate the existence of a system emergency or operational circumstance which warrants the discontinuance of purchases shall pay for the qualifying facility's imputed or expected power at the applicable rate as if the system emergency or operational circumstance had not occurred. The utility may also be subject to a penalty under NMSA 1978, Section 62-12-4 as amended.

**E.** Wheeling of power. If the qualifying facility agrees, an electric utility which would otherwise be obligated to purchase power from the qualifying facility may transmit power to any other electric utility. Any electric utility to which power is transmitted shall purchase such power as if the qualifying facility were supplying power directly to such electric utility. The rate for purchase by the electric utility to which such power is transmitted shall be adjusted up or down to reflect line losses pursuant to 18 C.F.R. Section 292.304(e)(4) and shall not include any charges for transmission.

**F.** Distribution cooperatives.

**(1)** A distribution cooperative having a full power requirements contract with its supplier has the option of transferring the purchase obligation pursuant to Section 17.9.570.9 NMAC to its power supplier. The qualifying facility will be paid the capacity and energy payments, as applicable, by the supplier pursuant to Section 17.9.570.11 NMAC. A distribution cooperative that does not transfer the purchase obligation to its power supplier shall have the option to:

**(a)** pay qualifying facilities the energy and/or capacity charges including appropriate fuel and purchase power pass-throughs it pays to its power supplier, or

**(b)** pay the qualifying facility the energy and/or capacity charges which shall be determined in accordance with Section 17.9.570.11 NMAC.

**(2)** The obligation to interconnect and provide supplementary, backup, and maintenance power either on a firm or on an interruptible basis shall remain with the distribution cooperative.

**(3)** Any municipal electric utility that does not have generating capacity but is subject to the jurisdiction of the commission shall be considered a distribution cooperative for the purposes of 17.9.570 NMAC.

**G.** Requirements to file electric utility system data: not later than April 1 of each year each utility shall submit to the commission a report covering the pre-

vious calendar year which shall at a minimum provide:

**(1)** the name and address of each qualifying facility with which it is interconnected, with which it has a contract to interconnect, or with which it has concluded a wheeling agreement;

**(2)** annual purchases in kW and kWh from each qualifying facility with which it is interconnected and the amount of electricity wheeled on behalf of each qualifying facility;

**(3)** the price charged for any power wheeled on behalf of each qualifying facility;

**(4)** the methodology and assumptions used in the calculation of wheeling rates;

**(5)** amounts actually paid to each qualifying facility; and

**(6)** a list of all applications for interconnection which the utility has rejected or otherwise failed to approve together with the reasons therefor.

**H.** Filing of tariff.

**(1)** Within sixty (60) days of the adoption of this rule, each utility shall develop and file any changes to its tariffs on file with the commission needed to comply with the requirements set forth herein; such changes shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements of 17.1.210 NMAC, and shall become effective thirty (30) days after the filing thereof unless suspended by the commission pursuant to NMSA 1978, Section 62-8-7 as amended, or unless ordered effective at an earlier date by the commission.

**(2)** Within sixty (60) days of the adoption of the amendments to this rule, each utility shall develop and file tariffs for metering and billing consistent with this rule for generating facilities with rated capacities up to and including 10 kW; such tariffs shall comply with all tariff filing requirements of the commission; such tariffs shall conform to the requirements 17.1.210 NMAC, and shall become effective thirty (30) days after the filing thereof unless suspended by the commission pursuant to NMSA 1978, Section 62-8-7 as amended, or unless ordered effective at an earlier date by the commission.

**I.** Complaints and investigations. The procedures set forth in NMSA 1978, Sections 62-8-7 and 62-10-1 as amended, and the complaint provisions of 1.2.2 NMAC shall be applicable for the resolution of complaints and investigations arising out of the implementation and conduct of 17.9.570 NMAC.

**J.** Severability. If any part of 17.9.570 NMAC or any application thereof is held invalid, the remainder or the application thereof to other situations or persons shall not be affected.

**K.** Amendment. The adoption of 17.9.570 NMAC shall in no way preclude the commission, after notice and hearing, from altering or amending any provision hereof or from making any modification with respect to its application deemed necessary.

**L.** Exemption or variance.

**(1)** Any interested person may file an application for an exemption or a variance from the requirements of 17.9.570 NMAC. Such application shall:

**(a)** describe the situation which necessitates the exemption or variance;

**(b)** set out the effect of complying with 17.9.570 NMAC on the utility and its customers if the exemption or variance is not granted;

**(c)** identify the section(s) of 17.9.570 NMAC for which the exemption or variance is requested;

**(d)** define the result which the request will have if granted;

**(e)** state how the exemption or variance will promote the achievement of the purposes of 17.9.570 NMAC; and

**(f)** state why no other reasonable alternative is available.

**(2)** If the commission determines that the exemption or variance is consistent with the purposes of the rule as defined herein, the exemption or variance may be granted. The commission may at its option require an informal conference or formal evidentiary hearing prior to the granting of the variance.

**M.** Motion for stay pending amendment, exemption, or variance. An application for an amendment, exemption, or a variance may include a motion that the commission stay the application of the affected portion of 17.9.570 NMAC for the transaction specified in the motion.

[17.9.570.13 NMAC - Rp, 17.9.570.13 NMAC, 10-15-08]

**17.9.570.14 NET METERING OF CUSTOMER-SITED QUALIFYING FACILITIES WITH A DESIGN CAPACITY UP TO AND INCLUDING 10KW:**

**A.** Relationship to other commission rules. The standards and procedures for the interconnection of qualifying facilities subject to this section (17.9.570.14 NMAC) are set forth in 17.9.568 NMAC.

**B.** Use of a single meter. When the customer is billed under a rate structure that does not include time-of-use energy pricing, a single energy meter shall be used to implement net metering of a qualifying facility unless an alternate metering arrangement is agreed to by the customer and utility. If either the utility or the customer requests an alternate form of metering or additional metering that is not required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If the customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, the customer shall be required to pay the additional incremental cost of the required metering equipment. Within ten (10) days of receiving notification from the customer of the intent to interconnect, the utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by the customer, or arrangements for payment agreed to between the customer and utility, prior to the utility authorizing interconnected operation.

**C.** Net metering calculation. The utility shall calculate each customer's bill for the billing period using net metering and with the following conditions:

**(1)** Customers shall be billed for service in accordance with the rate structure and monthly charges that the customer would be assigned if the customer had not interconnected a qualifying facility. Net energy produced or consumed on a monthly basis shall be measured in accordance with standard metering practices.

**(2)** If electricity supplied by the utility exceeds electricity generated by the customer during a billing period, the customer shall be billed for the net energy supplied by the utility under the applicable rates.

**(3)** If electricity generated by the customer exceeds the electricity supplied by the grid during a billing period, the utility shall credit the customer on the next bill for the excess kilowatt-hours generated, by:

**(a)** crediting or paying the customer for the net energy supplied to the utility at the utility's energy rate pursuant to this 17.9.570 NMAC; or

**(b)** crediting the customer for the net kilowatt-hours of energy supplied to the utility. Unused credits shall be carried forward from month to month; provided that if a utility opts to credit customers and the customer leaves the system, customer's unused credits for excess kilowatt-hours generated shall be paid to the customer at the utility's energy rate pursuant to this 17.9.570 NMAC.

[17.9.570.14 NMAC - N, 10-15-08]

**17.9.570.15 STANDARD METERING AND BILLING AGREEMENT FOR QUALIFYING FACILITIES WITH A DESIGN CAPACITY OF GREATER THAN 10 KW AND LESS THAN OR EQUAL TO 10 MW:**

This AGREEMENT is made as of the_____ day of _____, 20____, by and between _____ ("customer") and_____ ("utility") also referred to collectively as "parties" and singularly as "party." Customer receives electric service from utility at _____ [location/address] under cccount _____. Customer has located at these premises a qualifying facility ("QF") as defined by 17.9.570 NMAC, having an installed capacity of greater than 10 kilowatts and up to and including 10 megawatts, which is interconnected to utility pursuant to an interconnection agreement, attached as Exhibit (1). For good and valuable consideration, customer desires to sell or provide electricity to utility from the QF and utility desires to purchase or accept all the energy produced by the QF that is not consumed by customer, and the parties agree to the following terms and conditions:

**A. DEFINITIONS.** Whenever used **in the agreement**, the following words and phrases shall have the following meanings:

**(1) agreement** shall mean this agreement and all schedules, tariffs, attachments, exhibits, and appendices attached hereto and incorporated herein by reference;

**(2) interconnection facilities** shall mean all machinery, equipment, and fixtures required to be installed solely to interconnect and deliver power from the QF to the utility's system, including, but not limited to, connection, transformation, switching, metering, relaying, line and safety equipment and shall include all necessary additions to, and reinforcements of, the utility's system;

**(3) prudent electrical practices** shall mean those practices, methods and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully, and with safety, dependability, efficiency and economy;

**(4) qualifying facility (QF)** means a cogeneration facility or a small power production facility which meets the criteria for qualification contained in 18 C.F.R. Section 292.203;

**(5) point of delivery** means the geographical and physical location described on exhibit B hereto; such exhibit depicts the location of the QF's side of interconnection facilities where customer is to (sell and) deliver electric energy pursuant to this agreement or pursuant to a separate wheeling agreement;

**(6) termination** means termination of this agreement and the rights and obligations of the parties under this agreement, except as otherwise provided for in this agreement;

**(7) suspension** means suspension of the obligation of the Utility to interconnect with and purchase electricity from the customer.

**B. TERM OF AGREEMENT.** The original term of this agreement shall be for a period of five (5) years from the date of the execution of this agreement and shall continue thereafter from year to year until terminated as herein provided.

**(1)** Termination by customer. Termination of this agreement during and after the original term requires written notice to utility that this agreement will terminate in ninety (90) days. Customer may terminate this agreement without showing good cause.

**(2)** Termination by utility. Termination of this agreement during and after the original term requires written notice to customer that this agreement will terminate in ninety (90) days, unless otherwise provided. utility, in the exercise of this right, must show good cause for the termination.

**(3)** At any time the QF is sold, leased, assigned, or otherwise transferred, the seller or lessor of the QF shall notify utility and this agreement may be terminated at utility's option, for good cause, regardless of whether such transfer occurs during the original term or any renewal thereof. Such termination may be made with five (5) days written notice by utility.

**(4)** Should the customer default in the performance of any of the customer's obligations hereunder, utility may suspend interconnection, purchases, or both and if the default continues for more than 90 days after written notice by utility to Customer, utility may terminate this agreement. Termination or suspension shall not affect the obligation of utility to pay for energy already delivered or of customer to reimburse interconnection costs, or any cost then accrued. Upon termination, all amounts owed to the utility will become payable immediately.

**C. METER INSTALLATION, TESTING AND ACCESS TO PREMISES.** Customer will be metered by a meter or meters as determined by utility to which utility is granted reasonable access.

**(1)** Customer shall supply, at its own expense, a suitable location for all meters and associated equipment. Customer shall provide a clearly understandable sketch or one-line diagram showing the qualifying facility, the interconnection equipment, breaker panel(s), disconnect switches and metering, to be attached to this agreement. Such location must conform to utility's meter location policy. The following metering options will be offered by utility: _____. Customer shall provide and install a meter socket and any related interconnection equipment per utility's requirements.

**(2)** Customer shall deliver the as-available energy to utility at utility's meter.

**(3)** Utility shall furnish and install a standard kilowatt-hour meter. Utility may install, at its option and expense, magnetic tape recorders in order to obtain load research information. Utility may meter the customer's usage using two meters for measurement of energy flows in each direction at the point of delivery.

**(4)** If either utility or customer requests an alternate form of metering or additional metering that is not required to accomplish net metering or is for the convenience of the party, the party requesting the change in metering shall pay for the alternate or additional metering arrangement. If customer elects to take electric service under any rate structure, including time-of-use, that requires the use of metering apparatus or a metering arrangement that is more costly than would otherwise be necessary absent the requirement for net metering, customer shall be required to pay the additional incremental cost of the required metering equipment. Within ten (10) days of receiving notification from customer of the intent to interconnect, utility will notify the customer of any metering costs. Charges for special metering costs shall be paid by customer, or arrangements for payment agreed to between customer and utility, prior to utility authorizing interconnected operation.

**(5)** All meter standards and testing shall be in compliance with utility's rules and regulations as approved by the NMPRC. The metering configuration shall be one of utility's standard metering configurations as set out in Subsection D of 17.9.570.15 NMAC and mutually agreeable to the parties or any other metering configuration mutually agreeable to the parties. The agreed upon configuration is shown on exhibit (2). (Service by the distribution cooperative to customer shall be in accordance with the distribution cooperative's articles, bylaws and regulations and in accordance with its tariffs filed with the NMPRC, the terms and conditions of which shall be unaffected by this agreement). If the interconnection facilities have been modified pursuant to the interconnection agreement, customer shall permit utility, at any time, to install or modify any equipment, facility or apparatus necessary to protect the safety of its employees or to assure the accuracy of its metering equipment, the cost of which shall be borne by customer. Utility shall have the right to disconnect the QF if it has been modified without utility's authorization.

**(6)** Utility may enter customer's premises to inspect at all reasonable hours customer's protective devices and read or test meter; and pursuant to the interconnection agreement to disconnect, without

notice, the interconnection facilities if utility reasonably believes a hazardous condition exists and such immediate action is necessary to protect persons, or utility's facilities, or property of others from damage or interference caused by customer's facilities, or lack of properly operating protective devices.

**D. ENERGY PURCHASE PRICE AND METERING OPTION.** All electric energy delivered and service rendered hereunder shall be delivered and rendered in accordance with the applicable rate schedules and tariffs. Customer has selected the _____ metering option defined in this section. It is understood and agreed, however, that said rates are expressly subject to change by any regulatory body having jurisdiction over the subject matter of this agreement. If a new rate schedule or tariff is approved by the proper regulatory body, the new rate schedule or tariff shall be applicable to this agreement upon the effective date of such rate schedule or tariff.

**(1)** Load displacement option: Utility will interconnect with the customer using a single meter which will be ratcheted and would only measure the flow of energy to the customer. Billing to customer will be at utility's approved tariff rate applicable to the service provided to the QF. There will be no additional customer charge and no payment by utility for any excess power which might be generated by the QF.

**(2)** Net metering option.

**(a)** Utility shall install the metering necessary to determine the net energy delivered from customer to utility or the net energy delivered from utility to customer for each time-of-use or single rate period, as applicable, during a billing period. The net energy delivered to either the QF or to the utility is the difference between the energy produced by the QF generation and the energy that would have otherwise been supplied by the utility to the QF absent the QF generation.

**(b)** The net energy delivered from customer to utility shall be purchased by utility at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, and filed with the NMPRC. Customer shall be billed for all net energy delivered from utility in accordance with the tariff that is applicable to customer absent the QF generation. An additional customer charge to cover the added costs of billing and administration may be included in the tariff. At the end of the billing period, utility shall net all charges owed to utility by customer and all payments owed by utility to customer. If a net amount is owed to customer for the billing period, and is less than $50, the payment amount may be carried over to the following billing period. If a net amount is owed to customer and is $50 or more, utility shall make payment to customer prior to the end of the next billing period.

**(c)** If provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

**(3)** Simultaneous buy/sell option.

**(a)** Utility will install the metering necessary to determine separately 1) all of the energy produced by customer's generator and 2) all of the power consumed by customer's loads. Utility will purchase all energy produced at utility's applicable time-of-use or single period energy rate, as described in Subsection B of 17.9.570.11 NMAC, for such purchases, and as filed with and approved by the NMPRC. Customer shall purchase all power consumed at its normally applicable tariff rate. An additional customer charge to cover the added costs of billing and administration may be included.

**(b)** If provision of the simultaneous buy/sell option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for simultaneous buy/sell metering, customer shall pay all incremental costs associated with installing the more costly metering equipment and facilities.

**E. INTERRUPTION OR REDUCTION OF DELIVERIES.**

**(1)** Utility shall not be obligated to accept or pay for and may require customer to interrupt or reduce deliveries of available energy under the following circumstances:

**(a)** it is necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or part of its system or if it reasonably determines that curtailment, interruption, or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices; whenever possible, utility shall give customer reasonable notice of the possibility that interruption or reduction of deliveries may be required;

**(b)** there is evidence that customer's QF is interfering with service to other customers or interfering with the operation of Utility's equipment; customer may be reconnected by utility when customer makes the necessary changes to comply with the standards required by this agreement;

**(c)** it is necessary to assure safety of utility's personnel; notwithstanding any other provision of this agreement, if at any time utility reasonably determines that the facility may endanger utility personnel or other persons or property or the continued operation of customer's facility may endanger the integrity or safety of utility's electric system, utility shall have the right to disconnect and lock out customer's facility from utility's electric system; customer's facility shall remain disconnected until such time as utility is reasonably satisfied that the conditions referenced in this section have been corrected;

**(d)** there is a failure of customer to adhere to this agreement;

**(e)** if suspension of service is otherwise necessary and allowed under utility's rules and regulations as approved by the NMPRC.

**(2)** Customer shall cooperate with load management plans and techniques as ordered or approved by the NMPRC, and the service to be furnished by utility hereunder may be modified as required to conform thereto.

**F. FORCE MAJEURE.** Force majeure shall mean any cause beyond the control of the party affected, including, but not limited to, failure of or threat of failure of facilities, flood, earthquake, tornado, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, (labor dispute,) labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction, by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority, which by exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence, it shall be unable to overcome. If either party, because of force majeure, is rendered wholly or partly unable to perform its obligations under this agreement, except for the obligation to make payments of money, that party shall be excused from whatever performance is affected by the force majeure to the extent so affected, provided that:

**(1)** the nonperforming party, within a reasonable time after the occurrence of the force majeure, gives the other party written notice describing the particulars of the occurrence;

**(2)** the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure; and

**(3)** the nonperforming party uses its best efforts to remedy its inability to perform. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the party involved in the disputes.

**G. INDEMNITY.** Each party shall indemnify the other from liability, loss, costs, and expenses on account of death or injury to persons or damage or destruction of property occasioned by the negligence of the indemnifying party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof, except to the extent that such death, injury, damage, or destruction resulted from the negligence of the other party or its agents, officers, employees, contractors, licensees or invitees, or any combination thereof. Provided, however, that:

**(1)** each party shall be solely responsible for the claims or any payments to any employee or agent for injuries occurring in connection with their employment or arising out of any Workmen's Compensation Law or Occupational Disease Disablement Law;

**(2)** utility shall not be liable for any loss of earnings, revenues, indirect or consequential damages or injury which may occur to customer as a result of interruption or partial interruption (single-phasing) in delivery of service hereunder to customer or by failure to receive service from customer by reason of any cause whatsoever, including negligence; and

**(3)** the provisions of this subsection on indemnification shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of any valid insurance policy;

**(4)** the indemnifying party shall pay all costs and expenses incurred by the other party in enforcing the indemnity under this agreement including reasonable attorney fees.

**H. DEDICATION.** An undertaking by one party to another party under any provision of this agreement shall not constitute the dedication of such party's system or any portion thereof to the public or to the other party and any such undertaking shall cease upon termination of the party's obligations herein.

**I. STATUS OF CUSTOMER.** In performing under this agreement, customer shall operate as or have the status of an independent contractor and shall not act as or be an agent, servant, or employee of utility.

**J. AMENDMENT, MODIFICATIONS OR WAIVER.** Any amendments or modifications to this agreement shall be in writing and agreed to by both parties. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any party of the breach of any term or covenant contained in this agreement, whether by conduct or otherwise, shall be deemed to be construed as a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.

**K. ASSIGNMENT.** This agreement and all provisions hereof shall inure to and be binding upon the respective parties hereto, their personal representatives, heirs, successors, and assigns. Customer shall not assign this agreement or any part hereof without the prior written consent of utility, otherwise this agreement may be terminated pursuant to paragraph (3) of Subsection B of 17.9.570.15 NMAC.

**L. NOTICES.** Any payments, notices, demands or requests required or authorized by this agreement shall be deemed properly given if personally delivered or mailed postage prepaid to:
Customer: _____
New Mexico_____(zip code)
Utility_____.
The designation of the persons to be notified, or the address thereof, may be changed by notice in writing by one party to the other. Routine notices and notices during system emergency or operational circumstances may be made in person or by telephone. Customer's notices to utility pursuant to this agreement shall refer to the customer's electric service account number set forth in this agreement.

**M. MISCELLANEOUS.** This agreement and any amendments thereto, including any tariffs made a part hereof, shall at all times be subject to such changes or modifications as shall be ordered from time to time by any regulatory body or court having jurisdiction to require such changes or modification. This agreement (and any tariffs incorporated herein) contains all the agreements and representations of the parties relating to the interconnection and purchases contemplated and no other agreement, warranties, understandings or representations relating thereto shall be binding unless set forth in writing as an amendment hereto.

**N. GOVERNING LAW.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.

**O. ATTACHMENTS.** This agreement includes the following exhibits as labeled and incorporated herein by reference:

**(1)** interconnection agreement;

**(2)** customer's sketch or one line diagram and site drawing, and generation and protection equipment specifications.

In witness thereof, the parties have executed this agreement on the date set forth herein above.

Date:_____
CUSTOMER_____By:_____.
Date: _____
UTILITY _____By:_____.
[17.9.570.15 NMAC - Rp, 17.9.570.15 NMAC, 10-15-08]

**HISTORY OF 17.9.570 NMAC:**
**Pre-NMAC History:** The material in this part was derived from that previously filed with the commission of public records-state records center and archives.
PSC-GO 37 (General Order 37), Rules And Regulations Governing Cogeneration And Small Power Production filed 4/1/81.
First Revised General Order No. 37, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/30/82.
G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 12/3/86.
G.O. 37; General Order 37, Second Revised, Rules And Regulations Governing Cogeneration And Small Power Production filed 1/5/87.
G.O. 37; Second Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/3/87.
G.O. 37; Third Revised General Order 37, Governing Cogeneration And Small Power Production filed 3/11/88.
NMSPC Rule 570, Governing Cogeneration And Small Power Production filed 6/30/88.

**History of Repealed Material:**
NMPSC Rule 570, Governing Cogeneration and Small Power Production (filed 06-30-1988) repealed 3-30-07.
17 NMAC 10.571, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller (filed 09/17/1999) repealed 10-15-08.
17.9.570 NMAC, Governing Cogeneration and Small Power Production (filed 03-16-2007) repealed 10-15-08.

**Other History:**
NMPSC Rule 570, Governing Cogeneration and Small Power Production (filed 06-30-1988) was renumbered, reformatted and replaced by 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective 3-30-07.
Only those applicable portions of 17 NMAC 10.571, Net Metering of Customer-Owned Qualifying Facilities of 10kW or Smaller (filed 09/17/1999) and 17.9.570 NMAC, Governing Cogeneration and Small Power Production (filed 03-16-2007) were replaced by 17.9.570 NMAC, Governing Cogeneration and Small Power Production, effective 10-15-08.

# NEW MEXICO REGULATION AND LICENSING DEPARTMENT

## CONSTRUCTION INDUSTRIES DIVISION

**This is an amendment to 14.5.1 NMAC Sections 7 and 9, effective 10-24-08**.

**14.5.1.7 DEFINITIONS:** The definitions in this section are used throughout the CID rules contained in Chapters 5 through 10 of Title 14.

**A. Building official** means the bureau chief of each trade bureau of the division.

**B. CID** and **division** mean the construction industries division of the regulation and licensing department.

**C. CID rules** means the rules compiled in Title 14, Chapters 5 through 10 of the New Mexico administrative code.

**D. CILA** means the Construction Industries Licensing Act, NMSA 1978 Section 60-13-1 et seq.

**E. Commission** means the construction industries commission.

**F. Contracting** has the meaning given in NMSA 1978 Section 60-13-3.

**G. Director** has the meaning given it in NMSA 1978 Section 60-13-2.

**H. IBC** means the 2006 international building code.

**I. IFC** means the 2006 international fire code.

**J. IRC** means the 2006 international residential code.

**K. LPG Standards** means 19.15.40 NMSA, Liquefied Petroleum Gas Standards, and NMSA 1978 70-5-1 et seq., Liquefied and Compressed Gasses, collectively.

**L. New Mexico construction code(s)** means any of the rules compiled in Title 14, Chapters 7 through 10 of the New Mexico administrative code.

**M. NMBSS** means 14.7.5 NMAC, 2006 New Mexico Non-Load Bearing Baled Straw Construction Building Standards.

**N. NMCBC** means 14.7.2 NMAC, 2006 New Mexico Commercial Building Code, which adopts by reference and amends the 2006 international building code.

**O. NMEBC** means 14.7.7 NMAC, 2006 New Mexico Existing Building Code, which adopts by reference and amends the 2006 international existing building code.

**P. NMEBMC** means 14.7.4 NMAC, 2006 New Mexico Earthen Building Materials Code.

**Q. NMEC** means 14.10.4 NMAC, [~~2005~~] 2008 New Mexico Electrical Code, which adopts by reference and amends the [~~2005~~] 2008 national electrical code.

**R. NMECC** means 14.7.6 NMAC, 2006 New Mexico Energy Conservation Code, which adopts by reference and amends the 2006 international energy conservation code.

**S. NMESC** means 14.10.5 NMAC, [~~2002~~] 2007 New Mexico Electrical Safety Code, which adopts by reference and amends the [~~2002~~] 2007 national electrical safety code.

**T. NMMC** means 14.9.2 NMAC, 2006 New Mexico Mechanical Code, which adopts by reference and amends the 2006 uniform mechanical code.

**U. NMPC** means 14.8.2 NMAC, 2006 New Mexico Plumbing Code, which adopts by reference and amends the 2006 uniform plumbing code.

**V. NMRBC** means 14.7.3 NMAC, 2006 New Mexico Residential Building Code, which adopts by reference and amends the 2006 international residential code.

**W. NMSEC** means 14.9.6 NMAC, [~~2003~~] 2006 New Mexico Solar Energy Code, which adopts by reference and amends the [~~1997~~] 2006 uniform solar energy code.

**X. NMSPC** means 14.8.3 NMAC, [~~2003~~] 2006 New Mexico Swimming Pool, Spa, and Hot Tub Code, which adopts by reference and amends the [~~2000~~] 2006 uniform swimming pool, spa, and hot tub code.

**Y. Published code** means any code or standard published by an entity other than the state of New Mexico and adopted by reference, or referred to as a standard in the CID rules.

**Z. ULA** means NMSA 1978 Section 61-1-1 et seq., the Uniform Licensing Act.

[14.5.1.7 NMAC - Rp, 14.1.1.7 NMAC, 7-1-04; A, 1-1-08; A, 10-24-08]

**14.5.1.9 CONFLICTS:**

**A. Between current New Mexico construction codes.** When the provisions of one New Mexico construction code specifies different materials, methods, construction, or other requirements than the provisions [~~or~~] of other New Mexico construction codes, the general rule of interpretation to be applied is that the most restrictive provision shall apply, and the most specific provision shall govern more general provision~~s~~. If it is determined by the building officials responsible for enforcing the codes that the conflict between the provisions should be resolved by a different interpretation, the building officials' determinations shall control.

**B. With prior New Mexico construction codes.** The New Mexico construction codes shall not apply to require a change in any structure existing at the time such code(s) become effective provided that the structure was constructed and has been maintained in compliance with the laws and CID rules in effect at the time the existing structure was constructed or maintained; [~~and~~] provided that, if all or any part of the structure is determined to be unsafe, 14.5.1.12 NMAC will govern.

**C. With requirements of other agencies.** When a regulatory agency other than CID may or might have jurisdiction over certain aspects of a project, a person working on the project must cooperate with any such agency to ensure compliance with all applicable requirements of that agency. Such aspects may include, but are not limited to, compliance with fire code standards enforced by the state fire marshal, or any local fire code enforcement agency; or any other applicable code or standard enforced by the state environment department; the state health department, state human services department; the public regulation commission; the governor's committee on the concerns of the handicapped; and local zoning and historical authorities. From time to time, CID may, as permitted by law, enter into agreements with other regulatory agencies pursuant to which the other agency's requirements are made a prerequisite to a CID action. In such cases, satisfaction of such a prerequisite will not constitute full compliance with the other agency's requirements.

**D. With other laws.** The CID rules shall not be deemed to contravene or invalidate any other valid federal, state or local law.

**E. With referenced and incorporated codes and standards.** The provisions of any published code or standard referenced in the CID rules shall be deemed to be incorporated into and made part of the CID rules, to the extent that such reference requires, and with all such modifications and amendments as may be made to the provision. If the reference results in a conflict between the provision of the published code or standard and the CID rules, the CID rules shall govern.

[14.5.1.9 NMAC - Rp, 14.7.2.8 NMAC, 14 NMAC.9.2.8, 14NMAC.9.2. I.100, 14 NMAC 9.2.II.100 & 14.10.4.10 NMAC 7-1-04; A, 10-24-08]

## NEW MEXICO SECRETARY OF STATE

This is an emergency amendment to 1.10.12 NMAC, Sections 10 and 15, effective 9-30-08.

**1.10.12.10 ABSENTEE PAPER BALLOTS:** Except as otherwise provided in Section 1-6-4.1 NMSA 1978 and the Uniformed and Overseas Citizens Absentee Voting Act, 1 U.S.C. Sections 101 et seq., there shall be one uniform paper ballot. No distinction shall be made between absentee ballots, emergency paper ballots, alternative, provisional or fail-safe ballots [~~, except that the county clerk shall identify the type of ballot by checking the appropriate box when the ballot is issued~~]. Ballot stubs may be color coded to differentiate between political parties in a primary election or ballot combinations in other elections.

[1.10.12.10 NMAC - N, 3-31-2000; A, 7-15-03; A, 4-30-04; A, 9-15-08; A/E, 9-30-08]

**1.10.12.15 ABSENTEE PRECINCT BOARDS:**

**A.** On election day, or pursuant to Section 1-6-11 NMSA 1978, prior to 7:00 a.m., the county clerk shall issue a receipt for all voting machines and ballot boxes to a special deputy county clerk. The receipt shall indicate the date and time the machine was removed from the office of the county clerk or alternate location, by whom, the serial number of the machine and the number of votes recorded on the machine. At 7:00 a.m. on election day, or pursuant to Section 1-6-11 NMSA 1978, a special deputy county clerk shall deliver the electronic voting machines, all ballot boxes and the absentee ballot register to the absentee precinct board. The special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine, the number of votes recorded on the machine, the number of ballot boxes delivered and shall return such receipt to the county clerk for filing.

**B.** The county clerk shall issue red pencils to be used as writing instruments by the precinct board, except the presiding judge shall be issued an ink pen for the purpose of signing and filling out documents required by the Election Code. Precinct board members handling or counting ballots shall have no other writing or marking instruments.

**C.** If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, precinct board members shall count the ballot only if the voter has marked a cross (X) or a check (√) within the voting response area, circled the name of the candidate or both. [~~A ballot shall also be counted when the voter, attempting to complete the arrow, has marked an arrowhead on the tail portion of the arrow in the voting response area.~~] In no case, shall the precinct board mark or remark the ballot. In the instance of machine malfunction, the precinct board shall hand tally ballots.

**D.** Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or at an alternate location shall be counted by precinct.

**E.** Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period shall not be counted on the same voting system used for in-person voting at the office of the county clerk or on any voting system used at an alternate location.

**F.** The absentee precinct board shall tally alternative, replacement, presidential and federal ballots only after determination that the voter has not voted with an absentee ballot or in person as an early voter.

**G.** An absentee ballot without a signature on the outer envelope shall be rejected, pursuant to the provisions of the Election Code, however a signature shall not be rejected because it contains an abbreviated name, lack or middle initial or name, or lack of suffix, provided that the absentee precinct board can identify the voter with other information provided on the outer envelope.

[1.10.12.15 NMAC - N, 3-31-2000, A, 4-30-02; A, 7-15-03, A 4-30-04; A, 4-28-06; A, 9-15-08; A/E, 9-30-08]

## End of Adopted Rules Section

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# Other Material Related to Administrative Law

## NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

**New Mexico Board of Examiners for Architects**

PO Box 509
Santa Fe, NM
505-982-2869

**Regular Meeting**

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, November 14, 2008. The meeting will be held in the Conference Room of the Board office, #5 Calle Medico, Ste. C in Santa Fe beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 982-2869 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

## End of Other Related Material Section

# SUBMITTAL DEADLINES AND PUBLICATION DATES

## 2008

| Volume XIX | Submittal Deadline | Publication Date |
|---|---|---|
| Issue Number 20 | October 16 | October 30 |
| Issue Number 21 | October 31 | November 14 |
| Issue Number 22 | November 17 | December 1 |
| Issue Number 23 | December 2 | December 15 |
| Issue Number 24 | December 16 | December 31 |

## 2009

| Volume XX | Submittal Deadline | Publication Date |
|---|---|---|
| Issue Number 1 | January 2 | January 15 |
| Issue Number 2 | January 16 | January 30 |
| Issue Number 3 | February 2 | February 13 |
| Issue Number 4 | February 16 | February 27 |
| Issue Number 5 | March 2 | March 16 |
| Issue Number 6 | March 17 | March 31 |
| Issue Number 7 | April 1 | April 15 |
| Issue Number 8 | April 16 | April 30 |
| Issue Number 9 | May 1 | May 14 |
| Issue Number 10 | May 15 | May 29 |
| Issue Number 11 | June 1 | June 15 |
| Issue Number 12 | June 16 | June 30 |
| Issue Number 13 | July 1 | July 16 |
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| Issue Number 17 | September 1 | September 15 |
| Issue Number 18 | September 16 | September 30 |
| Issue Number 19 | October 1 | October 15 |
| Issue Number 20 | October 16 | October 30 |
| Issue Number 21 | November 2 | November 13 |
| Issue Number 22 | November 16 | December 1 |
| Issue Number 23 | December 2 | December 15 |
| Issue Number 24 | December 16 | December 31 |

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