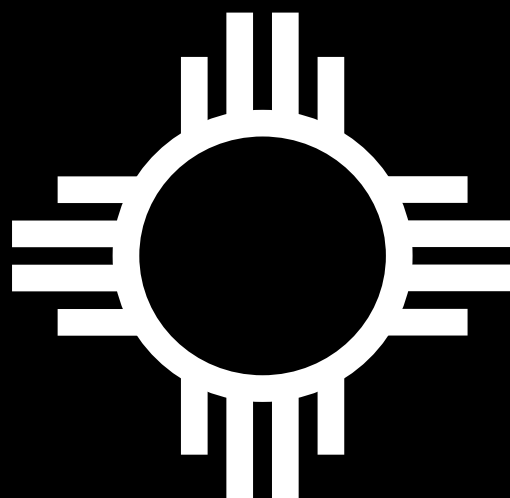


# **NEW MEXICO REGISTER**

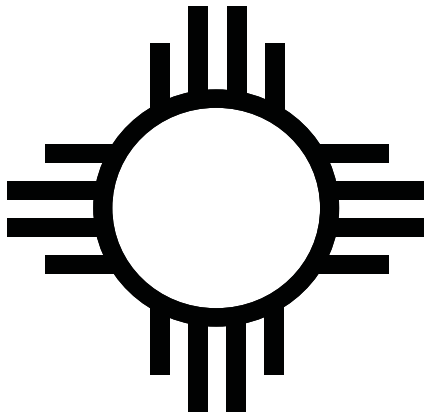


Volume XXV  
Issue Number 12  
June 30, 2014



# **New Mexico Register**

**Volume XXV, Issue Number 12**  
**June 30, 2014**



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  
2014

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# New Mexico Register

Volume XXV, Number 12

June 30, 2014

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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.

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# Notices of Rulemaking and Proposed Rules

## NEW MEXICO PUBLIC ACCOUNTANCY BOARD

Public Accountancy Board  
Notice of Proposed Rulemaking

The New Mexico Public Accountancy Board ("Board") will convene a public hearing and regular Board meeting on Tuesday, August 12, 2014. The hearing and meeting will be held at 9:00 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules.

The Board's Rules Committee will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions
16.60.2 NMAC	Certified Public Accountant (CPA) Examination Requirements
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at [www.rld.state.nm.us/accountancy](http://www.rld.state.nm.us/accountancy). Copies may also be obtained by contacting the Board office at (505) 222-9853. Written comments regarding the proposed amendments should be directed to Ms. Marie Aragon, Licensing Manager, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113; faxed to (505) 222-9855; or sent via e-mail to [Juanita.Aragon@state.nm.us](mailto:Juanita.Aragon@state.nm.us). Comments must be received by 5:00 p.m. on Friday, August 1, 2014; however the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on Friday, August 1, 2014.

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT NOTICE OF PROPOSED RULEMAKING

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on Thursday, July 31, 2014, from 10:00 a.m. to noon. The purpose of the public hearing will be to obtain input on the proposed amendments to 6.29.5 NMAC (English Language Development).

Interested individuals may provide comments at the public hearing and/ or submit written comments to Dr. Icela

Pelayo, Director, Bilingual Multicultural Education Bureau, via email at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), fax (505) 827-6725, or directed to Dr. Icela Pelayo, Director, Bilingual Multicultural Education Bureau, Public Education Department, Jerry Apodaca Public Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained from Dr. Sandra Rodriguez, Bilingual Multicultural Education Specialist, by calling (505) 827-6505.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend

or participate in the public hearing are asked to contact Dr. Sandra Rodriguez at (505) 827-6505 as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

## NEW MEXICO RACING COMMISSION

### NEW MEXICO RACING COMMISSION NOTICE OF RULEMAKING AND PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on July 17, 2014. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be

held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.1 NMAC and 15.2.6.NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from Vince Mares, Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the commission of such needs at least five days prior to the meeting.

---

Vince Mares  
Executive Director

Dated: June 12, 2014

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**End of Notices and Proposed  
Rules Section**

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## Adopted Rules

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

New Mexico Economic Development Department repeals its rule 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 5-28-2008 effective 6-30-14 and replaces it with 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, effective 6-30-14.

### NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

#### TITLE 5 POST-SECONDARY EDUCATION CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS PART 51 DEVELOPMENT EMPLOYMENT FUNDING FOR FILM AND MULTIMEDIA PRODUCTION COMPANIES

**5.5.51.1 ISSUING AGENCY:**  
New Mexico Economic Development  
Department  
[5.5.51.1 NMAC - Rp, 5.5.51.1 NMAC,  
6-30-2014]

**5.5.51.2 SCOPE:** Film and  
multimedia production companies and New  
Mexico residents in film and multimedia  
crew professions.  
[5.5.51.2 NMAC - Rp, 5.5.51.2 NMAC,  
6-30-2014]

**5.5.51.3 STATUTORY  
AUTHORITY:** Section 21-19-7.1 NMSA  
1978, established in 2003, directs the  
industrial training board, also referred to as  
the job training incentive program (JTIP)  
board, to consult with the New Mexico  
film division of the New Mexico economic  
development department to create and  
adopt rules for development funding for  
film and multimedia production companies.  
The program is administered by the New  
Mexico film division of the New Mexico  
economic development department and  
the training reimbursement of fifty percent  
(50%) of salaries (wages) of qualified  
participants shall be made by the New  
Mexico film division without further action  
or approval of the industrial training board.  
[5.5.51.3 NMAC - Rp, 5.5.51.3 NMAC,  
6-30-2014]

**5.5.51.4 DURATION:**  
Permanent.  
[5.5.51.4 NMAC - Rp, 5.5.51.4 NMAC,  
6-30-2014]

**5.5.51.5 EFFECTIVE DATE:**  
6-30-2014, unless a later date is cited at the  
end of a section.  
[5.5.51.5 NMAC - Rp, 5.5.51.5 NMAC,  
6-30-2014]

**5.5.51.6 OBJECTIVE:** The  
object of this rule is to establish standards  
for an on-the-job development training  
programs for film and multimedia  
production companies in New Mexico.  
These programs include: the film crew  
advancement program (**FCAP**) for  
**physical production**, intended to assist the  
development of New Mexico's economy  
by providing reimbursement funds to film  
and multimedia production companies  
for the training of New Mexico residents  
working primarily in below-the-line job  
positions for the preparation of continual  
employment in the industry; and for **FCAP**  
**for qualifying permanent companies**  
**and qualifying permanent emerging**  
**media companies**, intended to assist the  
development of New Mexico's economy  
by providing reimbursement funds to  
permanent companies that provide training  
opportunities, similar to internships, to New  
Mexico residents. To the extent possible,  
training will be customized to meet the  
particular company's needs, provide New  
Mexico residents with improved economic  
status through employment, and provide  
measurable growth to the economic base of  
New Mexico.  
[5.5.51.6 NMAC - Rp, 5.5.51.6 NMAC,  
6-30-2014]

**5.5.51.7 DEFINITIONS:** For  
use in this part, the following definitions  
apply.

**A. "Above-the-line"** is a  
film and television industry term derived  
from where the money is budgeted for  
creative talent, writers, directors and  
producers. This term means job positions  
that are associated with the creative or  
financial control of a film or multimedia  
project, generally not the technical aspects.

**B. "Below-the-line"** is a  
film and television industry term derived  
from where the money is budgeted for  
technical crew that shall work on a film  
or multimedia project as well as for costs  
related to the studio, equipment, travel, and  
location. In regards to job positions, this  
term means technical crew that does not  
have direct creative or financial control of  
the project nor receive residuals.

**C. "Company"** means the  
company for FCAP for physical production  
and is either a temporary film or multimedia  
production company that was created to  
produce (one) film or multimedia product  
or a company that is permanently based in  
New Mexico with full-time employees and  
creates film or multimedia products.

**D. "Craft"** means the  
specialized area or department in which a  
film technician works.

**E. "Crew"** means the  
employees hired by a company to complete  
a film or multimedia project(s).

**F. "Deal memo"** means  
the film industry contract that defines  
the exact terms of a crew member's  
employment including but not limited to  
position title and pay rate.

**G. "Emerging Media"**  
refers to most digital technologies,  
interactive software, mobile applications,  
post-production, video games and new  
technology intended for commercial use and  
exploitation and is related to entertainment  
or entertainment-related industries, as  
approved by the New Mexico film division.

**H. "FCAP"** means film  
crew advancement program.

**I. "Film or television  
credit"** for this program means work on a  
film or television production for more than  
one week which was not a student film,  
internship, unpaid position, documentary,  
commercial, nor on a project where the  
budget was under five hundred thousand  
dollars (\$500,000.00) and the company did  
not participate in this program.

**J. "Film technician"**  
means a crew member working in a below-  
the-line job position who often is a member  
of an international alliance of theater and  
stage employee (IATSE) film union or  
guild.

**K. "General safety  
certified"** means a crew member has  
completed a class or course that meets  
OSHA standards for general safety  
associated with working on a film and  
multimedia project.

**L. "JTIP"** means job  
training incentive program.

**M. "Non-union"** means  
the job position is not in the contractual  
jurisdiction of a film union or film guild.

**N. "Mentor"** means the  
go-to person for questions and direction or  
the supervisor of a program participant and  
has a stronger skill set in relation to the job  
position in which that participant was hired.

**O. "NM"** means New  
Mexican.

**P. "Open hours"** means  
a trainee that qualified for FCAP during

a production did not use all one thousand and forty (1040) hours available. Hours that remain are considered "open" and may be used for that job position on another production upon qualification.

**Q. "On-the-job training"**

means gaining experience in a hired position increasing job opportunities for continual employment in the film and multimedia industry.

**R. "Payroll report"**

means the report generated from a payroll company hired by the company to act as the crew's payment agent for the film and multimedia project.

**S. "Physical production"**

means companies that produce a project or series on location or at a temporary location.

**T. "Principal**

**photography"** means the cameras have started filming and the majority of preparation for a film and multimedia project has been completed; call sheets are now issued to crew members and production reports are completed daily.

**U. "Production"**

means the film or multimedia project preparation, principal photography and set break down periods while creating a film or television project.

**V. "Reserve Component**

**Members"** refers to a New Mexico member who served in the army, naval, marine corps, air force and coast guard reserves and the national and air national guard of the United States.

**W. "Resident"**

means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

**X. "Salaries"**

means wages or the hourly pay rate for hours physically worked by trainee during a production.

**Y. "Trainee"**

means the crew member that shall be learning a new skill set or graduating to a higher job classification through the FCAP and is synonymous with the terms program participant or applicant.

**Z. "Veterans"**

means a New Mexico resident who served in the active military, naval, or air service and who was discharged or released under conditions other than dishonorable.

**AA. "Wages"**

means the hourly pay rate for hours physically worked by trainee during production. It

does not include film payments to trainees such as kit rental, holiday pay, travel time, mileage reimbursements, or any payment to employee due to penalties incurred by company during production of the project. [5.5.51.7 NMAC - Rp, 5.5.51.7 NMAC, 6-30-2014]

**5.5.51.8 PROGRAM  
OUTLINE:**

**A.** The following is the program outline for all participating companies:

(1) The applicable hours of the qualifying trainees shall only be for the hired position as approved by the New Mexico film division and as noted on the FCAP application and the responsibilities for the qualifying position shall meet the industry standards for that position.

(2) Trainee's pay rate shall be consistent with trainee's job position per this crew member's contract with company and trainee's pay rate shall be higher than the positions in the lower tier of positions under trainee, or per union contractual agreement where applicable.

(3) Any requests for a different job position or mentor to qualify for the program shall be considered by the New Mexico film division, and if approve noted in file.

**B.** The following is in addition to the program outline in Subsection "A" and shall apply to FCAP for physical production:

(1) Each trainee qualifies for a maximum of one thousand and forty (1040) hours. As the trainee works on a film or television project, the hours shall be deducted accordingly.

(2) Trainees shall work at least 80 hours in their hired position in order to qualify.

(3) Trainees may qualify for an additional one thousand and forty (1040) hours if the training received through this program is used to progress from their current job to a higher job classification or to move laterally into a new skill set and the individual meets program qualifications.

(4) Qualifying participants may apply any unused hours to future on-the-job training work opportunities in the specified job position until the one thousand and forty (1040) hours are exhausted.

(5) Unused training hours in a lower level position are forfeited once a trainee moves to a higher level within that skill set and that department.

(6) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for individual projects produced by temporary companies.

(7) The number of film and television production credits and the amount

of experience required for a participant to qualify shall be determined by the New Mexico film division based on the total budget of the project and the extent to which the participant is adding to their skill set.

(8) The number of trainees allowed to participate in each craft department shall be determined by the New Mexico film division based on the total budget of the project, department crew size and the company location.

**C.** The following are in addition to the program outline in Subsection "A" and shall apply to FCAP for qualifying permanent companies:

(1) Trainees shall complete the one thousand and forty (1040) hours to qualify.

(2) Qualifying job positions shall be technical and directly contribute to the creation of a product as determined by the New Mexico film division and shall not relate to distribution of end product(s).

(3) Qualifying trainees shall work in standard industry job positions as listed in the New Mexico film division FCAP job titles list for permanent companies creating products.

(4) Qualifying participants may only participate one time in the program as an employee of this company; however, where the trainee has completed all one thousand and forty (1040) hours in the original hired position, requests to participate again will be considered upon written documentation submitted by the employer and by the trainee that verifies the trainee will be advancing to a higher job classification.

**D.** The programs outlined in Subsections "A" and "C" shall apply to FCAP for qualifying permanent emerging media companies. The New Mexico film division of the New Mexico economic development department shall contract qualified companies to provide training opportunities, similar to internships, to residents currently enrolled in a New Mexico higher education institution or who have recently graduated within one (1) year from a New Mexico higher education institution that relates to digital or post-production technology (emerging media) for the multi-media and entertainment-related industries as approved by the New Mexico film division.

[5.5.51.8 NMAC - Rp, 5.5.51.8 NMAC, 6-30-2014]

**5.5.51.9 TRAINEE  
ELIGIBILITY:**

**A.** The following is the program outline for all participating companies:

(1) Training applicants shall be certified as a film and multimedia trainee by

the New Mexico film division.

(2) Trainee applicants shall be New Mexico residents.

(3) Trainee applicants shall be at least eighteen (18) years of age.

(4) Qualifying trainees shall not be permitted to participate in JTIP manufacturing.

**B.** The following is in addition to the program outline in Subsection "A" and shall apply to FCAP for physical production:

(1) Trainee applicants shall raise their film or television position to a higher classification or add a completely new skill set.

(2) Applicants shall not have a film or television credit as defined by this program in a higher position in that department to qualify for a maximum one thousand and forty (1040) training hours for that position. However, exceptions may be considered by the New Mexico film division if the participant's credits are from a project's budget that did not exceed two million dollars (\$2,000,000.00) and the participant is applying to the program again on a qualifying production with a larger total budget and a higher degree of complexity.

(3) Trainee shall not be a mentor simultaneously on a production on projects produced by temporary companies.

(4) Additional positions are available for veterans and or reserve component members.

**C.** The following are in addition to the program outline in Subsection "A" and shall apply to FCAP for qualifying permanent emerging media companies:

(1) Company shall ensure all trainees have resided in the state of New Mexico for a minimum of one (1) continuous year at any time before beginning training or qualified for in-state tuition by their higher educational institution during at least two (2) of their most recent semesters in which they were enrolled in the emerging media-related program.

(2) Qualifying trainees shall be approved as such by the New Mexico film division.  
[5.5.51.9 NMAC - Rp, 5.5.51.9 NMAC, 6-30-2014]

#### **5.5.51.10 MENTOR ELIGIBILITY AND QUALIFICATIONS:**

**A.** Mentors shall be certified as a film and multimedia mentor by the New Mexico film division.

**B.** Any requests for mentors who are not NM residents shall be considered by the New Mexico film division and if approved, noted in file.

**C.** A mentor shall not be a trainee simultaneously during a production on projects produced by temporary companies.

**D.** Mentor shall work in the same or directly related department with the trainees that they supervise for this program.  
[5.5.51.10 NMAC - Rp, 5.5.51.10 NMAC, 6-30-2014]

#### **5.5.51.11 COMPANY ELIGIBILITY AND ADMINISTRATIVE REQUIREMENTS:**

**A.** The following is the program outline for all participating companies:

(1) Company shall submit the JTIP for film & multimedia application part one for FCAP prior to when training begins.

(2) Company shall enter into a contract as outlined by the New Mexico film division of the New Mexico economic development department; the term of the contract shall be based on a time period which shall allow the contractor (company) to complete its obligation to hire and provide on-the-job training opportunities for the qualified individuals and complete paperwork involved.

(3) The approval of this contractual agreement from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.

(4) Company shall have a local office where claims and paperwork shall be processed or a designee shall be available to conduct the appropriate paperwork.

(5) The company shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.

(6) Company entering into a contractual agreement with the New Mexico film division of the New Mexico economic development department shall return the program contractual agreement and program application to the New Mexico film division. This contract will be requested by the New Mexico film division prior to principal photography.

(7) Completed FCAP trainee applications shall be submitted to the New Mexico film division by the company.

(8) Company is subject to compliance reviews throughout the term of the contract; the compliance review shall consist of program and fiscal surveys.

(9) Company reimbursement shall not exceed fifty percent (50%) of the trainees' rates for up to one thousand and forty (1040) hours per participant.

(10) Company shall submit time records and reimbursement invoices

as established by the New Mexico film division of the New Mexico economic development department, which is the payment agent.

(11) The participating company shall submit forms and reports as established by the New Mexico film division of the New Mexico economic development department which may include:

(a) JTIP for film & multimedia application part one for FCAP; and

(b) department of finance and administration (DFA) tax information form; and

(c) JTIP for film & multimedia application part two for FCAP; and

(d) JTIP for film & multimedia agreement for FCAP; and

(e) industry top sheet of budget; and

(f) FCAP participants' applications; and

(g) production's final crew list or equivalent as determined by the New Mexico film division; and

(h) a minimum of one call sheet or production report or equivalent as determined by the New Mexico film division; and

(i) payroll reports for each qualified trainee that verify hours worked and all rates per hours; and

(j) a notarized invoice.

(12) All paperwork and forms shall be submitted to the development training program administrator or manager of the New Mexico film division.

(13) Companies that fail to comply with all established operating requirements and closeout procedures are not eligible for funding and may not be eligible to apply for future participation.

(14) The mailing address to submit paperwork including the invoice is to the development training program administrator or manager, New Mexico Film Division of the Economic Development Department, 1100 St. Francis Drive, Suite 1213, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600.

**B.** Companies who meet one of the following requirements in addition to the program outline in Subsection "A" and shall apply to FCAP for physical production:

(1) Total project budget shall be equal to or greater than two-hundred thousand dollars (\$200,000.00) but shall not exceed two million dollars (\$2,000,000.00); or

(2) Where the total project budget exceeds two million dollars (\$2,000,000.00), companies shall employ eight (8) New Mexican residents in first



level or key job positions or higher level job positions in a minimum of six (6) different craft departments.

**C.** The following are in addition to the program outline in Subsection "A" and shall apply to FCAP for qualifying permanent companies: Each trainee shall complete the one thousand and forty (1040) hours to qualify.

**D.** The following are in addition to the program outline in Subsections "A" and "C" shall apply to FCAP for qualifying permanent emerging media companies:

(1) Qualifying companies must be creating new jobs as a result of expansion, startup or relocation to the state of New Mexico. The company shall be financially stable to ensure training opportunities as determined by the New Mexico film division.

(2) An approved company may participate more than once in this program if the company is able to show expansion of employees or has hired a recent participating trainee.

(3) Company shall ensure that trainee's pay rate shall be consistent throughout training and meet New Mexico minimum wage ordinance.

(4) Company shall qualify trainees based on additional criteria required by the company

(5) Number of trainees permissible;

(a) companies with fifteen (15) or fewer full-time employees may train two (2) participants for a maximum of one thousand and forty (1040) hours for up to sixteen (16) weeks or one (1) school semester;

(b) companies with fifteen (15) or more full-time employees, may train four (4) participants for a maximum of one thousand and forty (1040) hours for up to for up to sixteen (16) weeks or one (1) school semester;

(6) Training of each participant shall not exceed one (1) semester or sixteen (16) weeks.

(7) Company shall only allow trainee to participate one (1) time in the program. A trainee who has participated in the program previously for any company shall not be approved.

(8) Companies approved for reimbursement though this program shall not be approved for any other JTIP for film and multimedia programs; however, they may apply to JTIP manufacturing if they meet that program's requirements. [5.5.51.11 NMAC - Rp, 5.5.51.11 NMAC, 6-30-2014]

#### **5.5.51.12 REIMBURSEMENT OF TRAINING COSTS:**

**A.** Reimbursement shall be made to the participating company in

accordance with the terms of JTIP for film & multimedia agreement for FCAP.

**B.** Failure to fully and accurately complete administrative requirements may require sending the invoice back to company for correction and this process shall delay reimbursement payment.

**C.** The invoice or claim for reimbursement may be submitted during the contract period, when trainees complete the number of contracted hours.

**D.** Trainee wages shall be reimbursed upon completion of the training project, not to exceed one thousand and forty (1040) hours, and the conclusion of the production in New Mexico.

**E.** Reimbursement from the state shall be based on the contractual agreement.

**F.** Reimbursements shall be based upon the number of trainees who have qualified for the training program.

**G.** Reimbursement shall not exceed fifty percent (50%) of the trainees' rates.

**H.** Training costs shall be reimbursed to the company based on the number of qualified employees, their wages from hours physically worked.

**I.** The contract amount established in the contract shall remain the same for the length of the agreement.

**J.** Trainee wages shall be reimbursed upon completion of training with the company which shall not exceed one thousand and forty (1040) hours per trainee at the conclusion of training in New Mexico and when company qualifications and requirements have been met.

**K.** The New Mexico film division shall make arrangements to have an audit at the end of the contract that may be facilitated by and completed at the New Mexico film division to verify program compliance by either an independent accountant or a representative of the New Mexico film division.

**L.** In the case where overpayment has been made by the state of New Mexico to the company, the company shall refund the department the difference of the correct reimbursement payment from the paid reimbursement amount. [5.5.51.12 NMAC - Rp, 5.5.51.12 NMAC, 6-30-2014]

#### **HISTORY OF 5.5.51 NMAC:**

History of Repeal Material: 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 5-28-2008 is repealed effective 4-30-2009 and replaced by 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, effective 4-30-2009 and replaced by 5.5.51 NMAC,

Development Employment Funding for Film and Multimedia Production Companies, effective 6-30-2014.

#### **History of Repealed Material:**

5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 5-28-2008 is repealed effective 4-30-2009. 5.5.51 NMAC, Development Employment Funding for Film and Multimedia Production Companies, filed 4-30-2009 - Repealed effective 6-30-2014.

### **NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

This is an amendment to 5.5.50 NMAC, Sections 6 and 8 through 15, effective 06-30-2014.

**5.5.50.6 OBJECTIVE:** The Job Training Incentive Program (JTIP) supports economic development in New Mexico by reimbursing qualified companies for a significant portion of training costs associated with newly created jobs. The JTIP program, also known as the industrial training development program or "in plant training," strengthens New Mexico's economy by providing financial incentives to companies that create new economic-based jobs in New Mexico. Training funded by JTIP also elevates the skill level of the New Mexico residents who fill funded positions. ~~[Since the program's inception in 1972, more than 1,000 companies and over 50,000 New Mexico workers have benefited from the program.]~~ Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves. ~~[Eligibility requirements, which are highlighted below, are explained in more detail in the body of this manual. Reference can also be made to the enabling legislation (Section 21-19-7, NMSA 1978 and subsequent amendments).]~~

**A. Company eligibility:** Several categories of companies are eligible to be considered for JTIP funds. The first category is companies which manufacture a product in New Mexico. Renewable power generators, film digital production, and post-production companies are eligible under the manufacturing category. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico unless the company is considered a green industry. To be considered for JTIP, non-retail service companies must export a service remotely

rather than deliver service via face to face interaction. The third category -film production companies - are regulated elsewhere. The company must be creating new jobs as a result of expansion, startup, or relocation to the state of New Mexico. Companies that have been funded previously by JTIP must have at least as many total employees as when they last expanded under JTIP. ~~[For a more complete explanation of expansion requirements, refer to "company qualifications and requirements" in 5.5.50.8 NMAC.]~~ Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP participants.

**B. Job eligibility:** Jobs eligible for funding through JTIP must be newly created jobs, full-time (minimum of 32 hours/week), and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of the training program. Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. In addition, other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to ~~[10]~~ 20% of the total number of jobs applied for in the proposal, and may include non-executive, professional support positions. Jobs must also meet a wage requirement to be eligible for funding. For contract-based call centers, the position must meet or exceed at least ~~[90% of the county median wage to qualify in urban locations and \$10.00 per hour in rural locations.]~~ the local entry wage for the industry according to the most current occupational employment statistics wage data available through the NM department of workforce solutions economic research and analysis bureau. ~~[For intern positions, the company must pay at least twice the NM minimum wage per hour in urban locations and at least \$10.00 per hour in rural locations.]~~ The entry level wage requirements for JTIP eligibility are specified in the chart on Paragraph (2) of Subsection D of 5.5.50.10 NMAC. To attract the best candidates and reduce turnover, companies are encouraged to set wages at levels eligible for the high wage job tax credit, and utilize the WorkKeys® program as part of the hiring process. An additional incentive may be offered for these jobs. In urban areas, companies which apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least 50% of the premium for employees who elect coverage.

**C. Trainee eligibility:** To be eligible for JTIP, trainees must be new hires to the company, must have been

residents of the state of New Mexico for at least one continuous year at any time prior to employment in an eligible position, must be domiciled in New Mexico (domicile is your permanent home; it is a place to which a person returns after a temporary absence) during employment, and must be of legal status for employment. Trainees must not have left a public school program in the three months prior to employment, unless they graduated or completed a GED.

**D. Reimbursable training costs:** Training funded through JTIP can be custom classroom training at a New Mexico post-secondary public educational institution, structured on-the-job training at the company (OJT), or a combination of the two. Training should be customized to the specific needs of the company and provide "quick response" training for employees.

(1) The following expenses are eligible for reimbursement through JTIP:

(a) A portion of trainee wages up to 75% for up to six months of initial training.

(b) A portion of the cost of providing customized classroom training at a New Mexico post-secondary public educational institution.

(c) A portion of approved travel expenses up to 75% with a cap of 5% of total funding for wages may be available.

(2) Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit may be eligible for an additional 5% wage reimbursement above the standard rates.

(3) Companies which utilize the WorkKeys® program as part of their hiring process may be eligible for an additional 5% wage reimbursement above the standard rates.

(4) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed 100%.

**E. Program management and administration:** General management of the job training incentive program is the responsibility of the job training incentive program board as prescribed by governing legislation (Section 21-19-7, NMSA 1978 and subsequent amendments). The board is responsible for establishing policies and guidelines related to the program's management and operation. The board shall provide review and oversight to assure that funds expended will generate business activity and give measurable growth to the economic base of New Mexico throughout the year. The board has the authority to make funding decisions based on the availability of funds, sufficient appropriations, and the board's determination of the qualifications of the business. The board has adopted ~~[this policy manual]~~ rules to ensure the program

supports the development of New Mexico's economy as intended by the governing legislation. Policies and procedures for the New Mexico enhanced skilled training program, STEP UP, are outlined in a separate document. The JTIP board meets the second Friday of every month to consider proposals for funding. The third Friday of the month serves as an alternate date when required. Administration of the job training incentive program is the responsibility of the JTIP staff in the New Mexico economic development department. ~~[One copy of a proposal for funding is due to the JTIP staff one month before the board meeting at which the proposal will be considered. Once staff has reviewed the proposal for accuracy and completeness, ten copies will be requested for distribution to the board approximately two weeks prior to the meeting.]~~

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-14]

#### **5.5.50.7 DEFINITIONS: [RESERVED]**

#### **5.5.50.8 QUALIFICATIONS AND REQUIREMENTS:**

**A. Company qualifications and requirements:** The following requirements have been instituted to ensure that companies applying for JTIP funds meet the qualifications established by legislation.

(1) Two categories of companies are eligible to be considered for JTIP funds: companies which manufacture a product in New Mexico and certain non-retail service providers. The first category is companies which manufacture a product in New Mexico. Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production, in which raw materials are transformed into finished goods on a large scale, is one example. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. Assembly and installation on the customer premises is excluded, unless the company and jobs exist for the sole purpose of producing or installing environmentally sustainable products (see green industries definition). Manufacturing businesses are typically included in Sectors 31-33 of the North

American industry classification system (NAICS). Renewable power generators, film digital production companies such as animation and video game production, and film post production companies are eligible under the manufacturing category. A company whose employees are compensated solely on piecework is also not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. Non-retail service businesses are only eligible when they export a product or service remotely rather than provide the service directly to a customer via face to face interaction. Companies that derive their revenues from within New Mexico or via face-to-face customer interaction at the company site or customer site are only eligible if they exist for the sole purpose of producing, installing or integrating environmentally sustainable products. Corporate, international, national, regional and divisional headquarters located in New Mexico may qualify for JTIP provided at least 50% of the company's revenues are derived from operations outside New Mexico. Service companies which contract with government agencies outside the state may be considered provided they can demonstrate that they are bringing new revenues and new jobs into the state through contracts which support national or multi-state entities. Major United States research labs or companies which operate major United States research and development national laboratories are not eligible. JTIP will not consider contractors which rely on income that is already in the state of New Mexico [e.g.,] through national laboratories already existing in New Mexico. One category of non-retail service providers is customer support centers. To be eligible for JTIP funding, the customer support center must service a customer who is not physically present at the facility, with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions which require outbound sales, solicitation, collections or telemarketing are not eligible for JTIP funds, unless they are in response to inbound requests and existing clients or business to business. Contract-based call centers have special wage requirements. Contract-based call centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based call centers do not have a core expertise; rather they communicate information provided to them by their clients. For contract-based call centers, the positions must meet or

exceed at least [90% of the county median to qualify in urban locations and pay at least \$10.00 per hour in rural areas.] the local entry wage for the industry according to the most current occupational employment statistics wage data available through the NM department of workforce solutions economic research and analysis bureau. Contract-based customer support centers must provide evidence of a minimum 5-year lease or purchase of a facility in NM. Contract-based customer support centers must offer employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage. Another category of non-retail business service providers is shared services centers that solely serve regional or national divisions. Distribution is another category of non-retail business service providers. A distributor is the middleman between the manufacturer and the retailers. After a product is manufactured, it may be warehoused or shipped to the next echelon in the supply chain, typically either a distributor, retailer, or customer. Distributors qualify for JTIP as service providers if at least 50% of the customer base is located outside of New Mexico. Aviation maintenance, repair and overhaul (MRO) operations with a minimum of 50% of revenue coming from a customer base outside the state of New Mexico are eligible; a contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service. Businesses which are not eligible include but are not limited to retail, construction, mining, health care, casinos, and tourism-based businesses (hotels, restaurants, etc.). The board uses the North American industry classification system (NAICS) as a general guideline to establish industry classification.

(2) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. Manufacturers which perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere are eligible. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board. An expanding company is defined as an existing business which requires additional employees or workforce due to a market or product expansion. For first-time applicants,

eligibility as an expanding company is determined by peak employment over the two prior years. The company must meet or exceed the average employment level for the past two years in order to be considered an expanding company and eligible for JTIP. For companies which have been funded by the program within the past two years, the number of employees at the time of previous funding application and the number funded by JTIP are also taken into consideration. The company must be expanding beyond the peak employment count achieved with previous JTIP funds. New Mexico unemployment insurance (UI) reports are used to determine employment levels. A company may be allowed to exclude JTIP intern positions when calculating the two-year average headcount.

(3) If a company hires twenty or more trainees in a municipality with a population of more than forty thousand according to the most recent decennial census or in a class A county (Los Alamos), the company must offer its employees and their dependents health insurance coverage that is in compliance with the NM Insurance Code (Chapter 59 A). In addition, the company must contribute at least fifty percent of the premium for health insurance for those employees who choose to enroll. The fifty percent employer contribution is not a requirement for dependent coverage.

(4) Companies are required to submit three years of financial statements (profit and loss, balance sheets, statements of cash flow, and financing term sheets) as part of the application process. Year-to-date financials may also be requested. Start-up companies which do not have three years of financials must submit financials for the period for which they are available, tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, or pro forma financial statements which would substantiate their business expansion. Start-ups and early stage manufacturing companies may be eligible. The company must be adequately capitalized to reach first production and able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(5) Training programs for the production of Native American crafts or imitation Native American crafts are only eligible when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other



measures.

(6) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within 1 year of the completion of training, the JTIP board will require the refund of the funds associated with any JTIP trainee(s) which were claimed and subsequently laid-off. The board will require a refund of funds from companies whose JTIP reimbursement exceeds \$100,000. The board will require a refund of funds within 90 days of notification.

(7) Layoff is defined as a strategic and organized event of separation of employees from an establishment that is initiated by the employer as a result of market forces or other factors not related to employee performance.

(8) If a JTIP eligible trainee is laid-off during the training period and is subsequently rehired, within four months by the same employer, the trainee can be treated as a new hire and thus remains eligible for the remaining training hours.

**B. Position qualifications and requirements:** The following qualifications have been established to ensure that the positions for which funding is requested meet legislative requirements.

(1) Positions must be full-time (at least 32 hours/week) and year-round. Trainees must be guaranteed full-time employment with the company upon successful completion of training. Contract positions are not eligible for JTIP funds.

(2) Trainer wages are not eligible for JTIP funds.

(3) To attract the best candidates and reduce turnover, companies are encouraged to set wages at a level which qualifies for the high wage job tax credit. These levels are \$40,000 in a municipality with a population of 40,000 or more as of the last decennial census and \$28,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Farmington, Las Cruces, Rio Rancho, Roswell, and Santa Fe. Los Alamos is also treated as an urban community.

(4) Eligible positions include those directly related to the creation of the product or service provided by the company to its customers. Positions eligible under JTIP must directly support the primary mission of the business. In addition, other newly created positions may be funded up to a maximum of [10] 20% of the total number of jobs for which funding is requested, and may include non-executive, professional support positions. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions may only include professional support, ~~not~~ non-executive positions.

(5) Intern positions may be eligible provided the trainee is enrolled

in, or has graduated within the past twelve months from, a post-secondary training or academic program and meets JTIP eligibility requirements. Intern positions may be part-time ([20-40] less than 32 hours per week). The intern position must be relevant to the post-secondary training or academic program in which the trainee is enrolled, or from which the trainee has graduated, but is not required to be production or service related. Companies will be reimbursed upon evidence of direct full-time employment offered and accepted within 90 days of completion of the internship and graduation from the post-secondary training or education program, or within 90 days of completion of the internship by a recent graduate.

#### C. Trainee qualifications

**and requirements:** The company has the exclusive decision in the selection of trainees. Trainees are expected to meet company standards on attendance, performance, and other personnel policies. All trainees must be hired within six months of the contract start date. The following qualifications have been established to ensure that the trainees for which funding is requested meet legislative requirements.

(1) Trainees must be new hires. No retraining of current company employees is allowed under the JTIP program. Individuals who have been previously employed by or have worked as contractors to the company are not eligible to be hired under JTIP in the same or similar position as the one previously occupied or contracted. Individuals who have been employed temporarily in a position classified as intern in order to gain practical training that connects an academic pathway into work based or relevant business experience may be eligible. Current company employees may be eligible for training under the New Mexico enhanced skills training program, STEP UP.

(2) Trainees must have resided in the state of New Mexico for a minimum of one continuous year at any time before beginning training.

(3) Trainees must be of legal status for employment.

(4) Trainees shall not have terminated a public school program except by graduation or GED certification within the three months prior to beginning training.

(5) Trainees who have participated in a previous JTIP or industrial development training program are not eligible to participate again with the same company, unless the trainee has participated in the JTIP internship program.

(6) Trainees who are majority owners or relatives of majority owners of the company are not eligible to participate in JTIP.

(7) Trainee job classifications

should remain fixed during the program. However, promotions may be allowed during the training period to another position in the contract as long as the pay remains at least equal to the previous job. JTIP staff should be notified within 15 days of the promotion if the company wishes to be reimbursed for the employee's training.

(8) Trainees' start dates must occur after the actual contract date.

(9) Employees hired through a temporary agency may be eligible for funding provided the following conditions are met.

(a) The trainee must be hired by the company as a regular/permanent full-time employee before the end of the JTIP contract period.

(b) The trainee must receive the same wages and major medical benefits while working as a temporary employee that permanent employees of the company receive.

(c) The staffing agency must disclose wages paid to the temporary employee to the company.

(d) The amount of reimbursement during the temporary period will be the actual wage paid to the employee and will not include extra fees paid to the staffing agency.

(e) Companies are reimbursed for wages as each trainee completes the approved training hours and after s/he has been converted to a regular/permanent full-time employee of the JTIP contracted company.

(10) Companies are reimbursed for wages as each trainee completes the approved training hours.

(11) If a trainee leaves the company before completing training, the company is not eligible for any reimbursement for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-14]

#### 5.5.50.9 ELIGIBLE TRAINING PROGRAMS:

**A.** The authorizing legislation establishes the following criteria for training.

(1) Training projects shall, to the extent possible, be customized to meet the company's specific needs.

(2) Training projects shall provide quick-response classroom and on the job training.

(3) Training shall provide New

Mexico residents with improved economic status through employment.

(4) Training shall provide measurable growth to the economic base of New Mexico.

**B.** The types of training projects eligible under the job training incentive program are:

(1) structured on-the-job training (OJT) and "hands on" skill development at the company's facility;

(2) custom classroom training provided by a New Mexico post-secondary public educational institution;

(3) a combination of classroom and OJT as described above.

**C. On-the-job training:**

Training is conducted at the participating company's facility and generally involves structured on-the-job training (OJT) or "hands-on" skill development. Although certain modules may be conducted in a classroom setting at the company location, the training is still considered OJT. The training must be customized to develop essential skills particular to the company's needs.

(1) A comprehensive training plan is required as part of the proposal for funding. The training plan must include the company job description, O\*NET job description, and training units. Each unit will include core content or objectives, methods and materials, methods of evaluation and requested hours. The training plan must cover the entire period for which reimbursement is requested. A more detailed description of the training plan requirements is included in the *JTIP online proposal guide*.

(2) The participating company is responsible for providing the necessary facilities, equipment, materials and training staff. Trainer's wages are not eligible for funding through JTIP.

(3) The executed contract will comply with governing legislation. [Please refer to the sample contract in the appendix.]

**D. Custom training provided by a New Mexico post-secondary public educational institution:**

Training is conducted by a New Mexico post-secondary public educational institution in a classroom setting either on campus or at the work site. This type of training is typically coordinated through the institution's workforce training center. At least three trainees must participate in classroom training, which should be customized to meet the specific needs of the company. Only JTIP participants are eligible to attend the training at JTIP's expense. If appropriate training opportunities are not available through public institutions, private institutions may be considered. The educational institution

must provide a separate proposal to the JTIP board. The custom training outlined in this proposal must be integrated with the proposal submitted by the company for trainee wages.

(1) The contracted institution or the participating company will work with the economic development department to establish the contract, its content, scope, and training standards to ensure that the program meets or exceeds the company's requirements.

(2) The contracted custom training will be integrated into the training plans submitted by the company in the coordinating JTIP proposal.

(3) The contracted custom training will be conducted within the initial training period approved by the JTIP board.

(4) Payment for classroom training services shall be made only for a qualified and approved program. Reimbursement for classroom training will be at a maximum rate of \$35 per hour of training per trainee with a cap of \$1,000 per employee. Tuition reimbursement and industry certification programs are not eligible for JTIP funding.

(5) Facilities rental outside a public educational institution and equipment rental or purchase are not eligible for JTIP funds unless facilities are not available at the company or the educational institution.

(6) The executed contract shall comply with the governing legislation. [5.5.50.9 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2011; A, 06-30-14]

#### **5.5.50.10 REIMBURSABLE EXPENSES:**

**A.** The following expenses may be eligible for reimbursement through JTIP

(1) A percentage of trainee wages for up to six months of initial training.

(2) A percentage of travel expenses associated with training.

(3) Cost of providing custom classroom training at a New Mexico post-secondary public educational institution at a maximum of \$35 per hour of training per trainee and a cap of \$1,000 per employee.

(4) A percentage of intern wages [at a minimum of twice the NM minimum wage per hour in urban locations and a minimum of \$10.00 per hour in rural locations, and a cap of \$5,000 per intern.] for up to 640 training hours.

**B.** Standard reimbursement rates for wages and travel range up to 75%. Positions which meet the JTIP requirements and meet the criteria of the high wage job tax credit may be also eligible for an additional 5% wage reimbursement. If a company is participating in other job reimbursement training programs such as

the Workforce Investment Act (WIA), the combined reimbursement to the company may not exceed 100%.

**C.** The job training incentive program allows for reimbursement only at the completion of training. If an employee does not complete the training period, no funds can be claimed for that employee. If another trainee can be hired in that position within the six month hiring period and complete training before the contract end date, a claim can be submitted for the successful trainee.

#### **D. Wage reimbursement:**

(1) Trainee wages are generally the largest expense associated with training. JTIP reimburses the company for a significant portion of trainee wages during the initial training period. The percentage of reimbursement ranges up to 75%, depending on the business location. An additional 5% may be awarded for jobs which also qualify for the high wage job tax credit.

(2) The number of hours eligible for reimbursement varies by position, up to 1040 hours (six months). The number of hours eligible for reimbursement for each position is based on the O\*NET (occupational information network) job zone classification for the O\*NET position which most closely matches the company's job description and the wage paid the trainee at the point of hire. The O\*NET system, sponsored by the US department of labor, is available at <http://onetcenter.org>. Each job in the O\*NET system is assigned to one of five job zones, with recommended training hours for each zone. The number of recommended hours is included in the table below.

[Please see table on page 311]



General Guideline for Duration of Reimbursable Training Time/Wages							
Job Zone	Definitions	SVP Range/Conversions	Hours	Min. Wage @ Hiring - Urban	Min. Wage @ Hiring - Rural	Days	Weeks
1	Little or no preparation needed	Below 4.0	160	9.00	8.00	20	4
1a	Little or no preparation needed	Below 4.0	320	10.00	8.50	40	8
2	Some preparation needed	4.0 to < 6.0	480	11.50	9.00	60	12
2a	Some preparation needed	4.0 to < 6.0	640	13.00	9.50	80	16
3	Medium preparation needed	6.0 to < 7.0	800	14.50	11.00	100	20
3a	Medium preparation needed	6.0 to < 7.0	960	16.00	12.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1040	19.00	13.00	130	26
	Align with HWJTC	Additional 5%	1040	[ <del>19.25</del> ] 19.23	[ <del>13.50</del> ] 13.46	130	26

(3) The JTIP staff will ensure that the O\*NET occupations match the company job description for the requested position and that training hours requested do not exceed the O\*NET guideline. The board will also review the company's educational and experience requirements of the applicants to determine the degree of match with the company's job descriptions. The JTIP board may award training hours based on the O\*NET guideline unless the company clearly substantiates that additional hours are required. In determining the appropriate number of training hours, the board considers the training plan, the training objectives, and the hourly wage at point of hire associated with the position.

(4) The board has also adopted a wage requirement for JTIP participation. The wage requirement varies by job zone and company location (rural/urban). These requirements are listed in the table above. If a company establishes a wage range which includes wages below the minimum wage recommended for that position and job zone, the number of hours eligible for reimbursement may be reduced from the O\*NET recommended hours. Generally, the hours are reduced to the hours allowed for the next lower job zone. The reimbursement percentages may be adjusted at the discretion of the board based on availability of funds or sufficient appropriations.

(5) The percentage of wages reimbursed depends primarily on the business location. The categories for location are urban, rural, frontier, economically distressed, and Native American land.

(a) Businesses in urban locations (cities with population above 40,000 in the most recent decennial census) and Class A counties (i.e., Los Alamos) are reimbursed at up to 50% for all eligible training hours. Urban communities are: Albuquerque (545,852), Farmington (45,877), Las Cruces (97,618), Rio Rancho (87,521), Roswell (48,366), and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to 65% for all eligible training hours.

(c) Companies located in frontier areas (communities with a population of 15,000 or fewer and outside an MSA) are reimbursed at up to 75% for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to 75% reimbursement. To receive up to 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or down-sizing, a decline in population, loss of gross receipts or other factors.

(e) Companies located on Native American reservations are eligible for up to 75% reimbursement.

(6) JTIP eligible positions which meet the requirements of the high wage job tax credit may be eligible for an additional 5% reimbursement. These requirements are a hiring salary of \$40,000 or higher in an urban or class A county and a hiring salary of \$28,000 or higher in a rural location or economically disadvantaged area. Trainee requirements (New Mexico residency for one year, new hire status, etc.) are still factors for JTIP eligibility.

(7) Companies that utilize the WorkKeys® program as part of their hiring process may be eligible for an additional 5% reimbursement.

(8) Additional guidelines for wage reimbursement:

(a) Eligible trainee hours shall not exceed one thousand and forty (1,040) hours per trainee (six months) based on the company's scheduled workweek, not to exceed forty (40) hours per week.

(b) Reimbursement is calculated on base pay only. Bonus pay, overtime, and stock options are not eligible for reimbursement.

(c) If the company compensates the trainee for annual, holiday or sick leave during the approved training period, those hours are included in the approved training hours at the base rate.

(d) Any training hours that exceed the contracted amount are the responsibility of the company.

(e) If a company is participating in other job reimbursement training programs such as WIA, the combined reimbursement to the company may not exceed 100%.

**E. Reimbursement for custom classroom training:** Payment for custom classroom training services provided by public post-secondary educational institutions is restricted to instructional costs. The rate of reimbursement to the institution is at a maximum of \$35 per hour per trainee with a cap of \$1,000 per trainee. Instructional costs for classroom training conducted by an educational institution may include course development, instructional salaries, fringe benefits, relevant supplies and materials, expendable tools, accounting services, and other costs associated with conducting the training program. *No training equipment may be purchased or rented using JTIP funds.*

**F. Travel cost and reimbursement for trainees and trainers:** Trainee travel may be included in the proposal when trainees are required to travel to a different location for training. Travel expenses may also be included if a trainer is required to travel to New Mexico to conduct training. Reimbursement for travel deemed reasonable and necessary will be consistent with the rates as designated by location. Total travel cost is not to exceed five (5%) of the amount requested for wages.

[5.5.50.10 NMAC - Rp, 5.5.50.10 & 11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2011; A, 06-30-2012; A, 06-28-2013; A, 06-30-14]

#### 5.5.50.11 REQUIREMENTS FOR FUNDING REQUEST:

**A.** A company must submit a written proposal to the JTIP staff one month before the board meeting to be considered for funding. The JTIP online application and supporting documentation are what make up the complete proposal. Information and documentation which must be included in the proposal is explained in detail in the *JTIP online proposal guide*, which describes the requirements for initial applications for funding and for companies which are submitting subsequent requests. The proposal is an important document not only in establishing the company's eligibility for JTIP funding, but also its viability as a business and the relationship of the newly created jobs to

business expansion. A detailed training plan is required to ensure the success of the trainees, the training program, and ultimately the business.

**B.** The board considers a number of factors when evaluating proposals. These include:

(1) being a corporate or established industry leader;

(2) quality of jobs with respect to wages and benefits; companies are encouraged to pay at levels which qualify for the high wage job tax credit (\$40,000 in urban locations and \$28,000 in other locations);

(3) return on investment, including impact on local and state economies; factors include number of jobs, impact on average wage and household earnings; increase in per capita income; annual local purchases impacting local/state sales taxes; dollar amount of new construction; environmental impact; and overall economic support to the community;

(4) the company's financial strength should indicate a capacity for long-term employment for JTIP participants;

(5) charitable and community contributions;

(6) current on NM CRS-1 and UI reporting and payment obligations.

[5.5.50.11 NMAC - Rp, 5.5.50.8 NMAC, 03-15-2006; A, 06-30-2011; A, 6-30-14]

#### 5.5.50.12 PROCEDURAL OVERVIEW:

The procedure for completing a funding proposal is explained in detail in the *JTIP online proposal guide*. The procedure for program participation once funding is approved is described in the *JTIP [program-guide] orientation for program administration*. This summary is intended to provide a general overview of the process. Please refer to the appropriate guide when completing a proposal for funding and administering the program once it is funded. JTIP staff is available for assistance with these processes.

**A.** Proposals and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding. Early submission is required to allow JTIP staff and board members to review the materials and request clarification or additional information if needed. ~~[Ten copies of the proposal will be requested once the proposal has been reviewed by staff and refined, if necessary].~~

**B.** Board meetings are generally held on the second Friday of each month. The alternate date, which is used when a meeting on the second Friday is not viable (a quorum cannot be achieved, holiday, etc.) is the third Friday of the

month.

**C.** The contract start date is the date of the board meeting at which funding was approved. The contract ~~[end-date is one year after the start date]~~ shall terminate upon notice by the economic development department to the company that the department has paid the final claim for reimbursement due under the contract and that the company has satisfied its obligations regarding contract compliance. All claims for reimbursement must be submitted and the ~~[final audit]~~ agreed upon procedure must be completed within 30 days of the ~~[contract end-date]~~ completion of training.

**D.** The contractual agreement will be prepared and ~~[mailed out]~~ sent to the company within 15 working days after the board approval date. A sample contract is ~~[included as an appendix to this manual]~~ available within the online JTIP application. Companies are encouraged to review the contract before applying for funding, as the contract cannot be edited.

**E.** The company must return the signed contractual agreement to the economic development department within 15 business days from the issue date.

**F.** Eligible job openings must be registered with the New Mexico workforce connection. The company is also encouraged to advertise through the placement office at local post-secondary educational institutions. A list of all post-secondary, public and proprietary institutions is available from the New Mexico higher education department (<http://hed.state.nm.us>).

**G.** The company must hire trainees within ~~[four]~~ six months of the contract start date. ~~[The JTIP staff may extend the hiring period up to six months from the contract start date.]~~ This timing ensures that trainees who are eligible for six months of training will complete the program ~~[before the contract end date]~~ within one year of the contract start date.

**H.** The company must ~~[provide the JTIP staff with a roster of new hires]~~ submit an online hiring report at the end of the ~~[four]~~ six month hiring period. When the company submits the list, the allocation of funds for their contract will be adjusted to reflect the number of people hired. The board will not entertain extensions to the contract.

**I.** Claims for reimbursement should be submitted as participant's complete training.

**J.** Each project is subject to compliance reviews throughout the term of the contract. The compliance review includes program and fiscal surveys.

**K.** The company must arrange for an agreed upon procedure in accordance with generally accepted

standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training. The agreed upon procedure requirement does not apply to contracts for custom training at New Mexico higher educational institutions. These institutions must meet all other program requirements and are subject to a compliance review by JTIP staff. The agreed upon procedure requirement may be waived at the discretion of the JTIP program manager for projects with total claims for reimbursement under \$10,000 or for one trainee. In these instances, the company must have been in good standing with the program throughout the contract period and completed a compliance review with no findings. In the event that the company submits more than one claim for reimbursement, a second and final compliance review must be completed with no findings.

**L.** The final claim for reimbursement should be submitted with the completed agreed upon procedures report. The final wage claim will be paid once the agreed upon procedures report has been received and approved favorably.

**M.** Yearly follow-ups [are] may be conducted to show effectiveness of the program, including surveys to address company retention and wage rates of program participants by the economic development department and the department of workforce solutions.

**N.** Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP. [5.5.50.12 NMAC - N, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2010; A, 06-30-2011; A, 06-28-2013; A, 6-30-14]

#### **5.5.50.13 AMENDMENTS:**

**A.** Amendments to the contract may be allowed in special circumstances. Amendments may be required by administrative changes (such as job classification changes, company name change, etc.) and changes to the number of participants funded. Companies must submit an online amendment request, along with supporting documentation to justify the amendment to the job training incentive program board. All amendment requests must include 1) a letter describing the change requested and the reason for the change, 2) a completed amendment form, and in some cases a current financial statement. [A copy of the] The amendment [form] application is [included] available in the [JTIP program guide] JTIP online application. Amendments to add new types of positions not already a part of the

contract must be approved by the JTIP board before the participants are hired. Amendments which increase the number of participants in approved positions and increase the budget by more than \$10,000 must also be approved by the board prior to participants being hired. Amendment requests which are administrative in nature and do not increase the original budget amount by more than \$10,000 may be executed by JTIP staff. Examples include job classification changes, company name change, and changes to wage ranges. Amendments to decrease the number of positions in the contract, including the release of funds for positions not filled within the hiring period, may also be executed by JTIP staff without board approval. The program manager and division director or his/her designee will approve all staff executed contract changes. Otherwise, the JTIP board must approve all contract amendments. If a company requests an amendment increasing the original contract by more than 50% or \$100,000, whichever is the lesser amount of the two, a new proposal must be submitted. However, if the company submits a new proposal within six months of the original proposal which is for an amount greater than would normally be allowed for amendment, the company may submit a shorter modified proposal.

**B.** All project amendment requests must be submitted in writing through the JTIP online application one month prior to the board meeting. The board meetings are held on the second Friday of every month, with the third Friday occasionally used as an alternate. [5.5.50.13 NMAC - Rp, 5.5.50.11 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 06-30-2011; A, 6-30-14]

#### **5.5.50.14 CONTACTING JTIP STAFF:**

JTIP staff can be contacted at the New Mexico economic development department in Santa Fe. The general phone numbers for the department are (505) 827-0300 or (800) 374-3061.

**A.** The mailing address for all JTIP [reimbursement forms] correspondence is: Job Training Incentive Program, Program Administrator, New Mexico Economic Development Department, P.O. Box 20003, Santa Fe, NM 87504-5003.

**B.** The physical address to be used for courier services such as federal express, UPS or special handling packages is: Job Training Incentive Program, Program Administrator, New Mexico Economic Development Department, Joseph M. Montoya Bldg., Suite 1060, 1100 St. Francis Drive, Santa Fe, NM 87505-4147. [5.5.50.14 NMAC - Rp, 5.5.50.11 NMAC,

03-15-2006; A, 07-16-2009; A, 6-30-14]

#### **5.5.50.15 GLOSSARY:**

**A. Agriculture/mining/ extractive industries:** Companies classified in agriculture, mining, and extractive by the North American industry classification system (NAICS) are not eligible for JTIP.

**B. Company:** A company is a corporation, or less commonly, an association partnership or union that carries on a commercial or industrial enterprise. Generally, a company may be a corporation, partnership, association, joint-stock company, or organized group of persons, whether incorporated or not, and (in an official capacity), legally recognized organizational entity designed to provide goods or services to consumers or corporate entities such as governments, charities, or other businesses.

**C. Economically distressed areas:** Companies located in an economically distressed area in New Mexico are eligible for 75% reimbursement. To receive a 75% reimbursement, a company must be located in a county with an unemployment rate significantly higher than the state unemployment rate. However, the JTIP board may entertain an exception to this policy when a company is located in a community experiencing a combination of other distressed economic conditions such as recent significant job losses due to business closures or downsizing, a decline in population, loss of gross receipts or other factors.

**D. Expanding company:** An expanding company is an existing business which requires additional employees or workforce due to a market or product expansion. A company which buys out an existing company is not considered a new company. Eligibility as an expanding company is determined by average employment over the two prior years. (Refer to "peak employment.")

**E. Film and multimedia post production:** Film digital production and post-production companies are considered manufacturing provided the company operates year round and is primarily engaged in any of the following: animation, editing, Foley recording, automatic dialogue replacement, sound editing, special effects (including computer generated imagery or other effects), scoring, and music editing, beginning and end credits, negative cutting, soundtrack production, dubbing, subtitling, or addition of sound or visual effects. Production jobs must be full-time and qualifying trainees must be employed year round. Position must not require trainee to complete product on filming location. Trainee may not be directly employed by the client company at

any time.

**F. Frontier:** A frontier area is any community with a population of less than 15,000 based on the most recent decennial census and outside a designated MSA.

**G. Green industries:** Those that exist for the sole purpose of contributing directly to preserving or enhancing environmental quality by reducing waste and pollution or by producing sustainable products using sustainable processes and materials. Green industries may include: energy system retrofits to increase energy efficiency and conservation; production and distribution of biofuels and vehicle retrofits for biofuels; building design and construction that meet the equivalent of best available technology in energy and environmental design standards; organic and community food production; manufacture of products from non-toxic, environmentally certified or recycled materials; manufacture and production of sustainable technologies, including solar panels, wind turbines and fuel cells; solar technology installation and maintenance; recycling, green composting and large-scale reuse of construction and demolition materials and debris; and water system retrofits to increase water efficiency and conservation.

**H. High wage job tax credit:** The high wage job tax credit provides a tax credit of 10% of the wages and benefits paid for each new economic-based job created on or after July 1, 2004 and before July 1, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$28,000/year in a community with a population of less than 40,000 and \$40,000/year in a community with a population of 40,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee.

**I. Manufacturing:** Manufacturing includes all intermediate processes required for the production and integration of a product's components. Industrial production in which raw materials are transformed into finished goods on a large scale is one example. Assembly and installation on the premises of the customer is not included as manufacturing. Manufacturing businesses are typically included in Sectors 31-33 of NAICS. Manufacturing is defined at Section 7-4-10B NMSA 1978 as "combining or processing components or materials to increase their value for sale in the ordinary course of business but does not include: (1) construction; (2) farming; (3) power generation, except for electricity generation at a facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or

operation of the facility, pursuant to the Public Utility Act and the Electric Utility Industry Restructuring Act of 1999; or (4) processing natural resources, including hydrocarbons."

**J. NAICS:** North American industry classification system (NAICS) is an industry classification system that groups establishments into industries based on the activities in which they are primarily engaged. This comprehensive system covers the entire field of economic activities, producing and non-producing. The NAICS system replaced the standard industrial classification (SIC) system. NAICS information is available at [[www.census.gov/epcd/naics02/naicod02.htm](http://www.census.gov/epcd/naics02/naicod02.htm)] [www.census.gov/cgi-bin/sssd/naics/naicsrch](http://www.census.gov/cgi-bin/sssd/naics/naicsrch).

**K. Native American crafts:** Contracts may be awarded for training programs involved in the production of Native American crafts or imitation Native American crafts only when a majority of trainees or company employees are of Native American descent. A clear distinction of products carrying names and sources suggesting products are of Native American origin must be made. Total compliance with the federal trade commission and the Indian arts and crafts board of the department of interior rules and regulations must be made in determining authentic Native American products using labels, trademarks and other measures.

**L. New company:** A new company is defined as a company not currently in operation in the state which shows evidence of intent to establish operations in New Mexico. The company must have a New Mexico tax ID and a New Mexico unemployment insurance ID when applying for JTIP funds.

**M. Non-retail service sector business:** To be considered for JTIP funding, the company must provide services which are not retail in nature and must export 50% of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies must export a service rather than import a customer.

**N. O\*NET:** The occupational information network - O\*NET database takes the place of the dictionary of occupational titles (DOT) as the nation's primary source of occupational information. The number of training hours for which a position is eligible for reimbursement through JTIP is based on the number of hours recommended for the position in O\*NET. The O\*NET database is available at [www.onetcenter.org](http://www.onetcenter.org).

**O. Peak employment:** First time JTIP applicants: Peak employment will be based on the employment average from two previous

years or the present employment level, whichever is higher. The board will utilize the state of New Mexico unemployment insurance (UI) reports to determine peak employment at the time of application to ensure an expansion is indeed occurring.

**P. Peak employment:** Previous JTIP participants: Peak employment for previous participants will be based on the employment level at the time of the award of the last JTIP contract plus the number of employees funded through that contract. In cases in which a number of years have passed since prior funding, the board may utilize the state of New Mexico unemployment insurance (UI) report for the last two years to determine peak employment at the time of reapplication to ensure an expansion is indeed occurring.

**Q. Retail trade:** Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise. Retailers operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers.

**R. Renewable energy:** is a source of power generated from resources which are naturally replenished, including but not limited to electricity or heat derived from solar, wind, tidal power, hydropower, biomass, geothermal resources and biofuels or hydrogen produced from renewable resources.

**S. Southwestern arts and crafts:** Refer to department of interior Indian arts and crafts board; Indian arts and crafts association; council of better business bureau; federal trade commission.

**T. Urban communities:** An urban community is defined as a municipality with a population of forty thousand or more according to the most recent federal decennial census. Those communities are: Albuquerque (545,852), Farmington (45,877), Las Cruces (97,618), Rio Rancho (87,521), Roswell (48,366), and Santa Fe (67,947). Class A counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

**U. Metropolitan statistical area:** An MSA is a statistical standard designated and defined by the U.S. department of commerce, office of federal statistical policy and standards (OFSPS). MSA's are designated so that governmental agencies will use a common geographical classification in the production of data on metropolitan areas in the nation. The general concept of an MSA is one of a large population nucleus, together with any adjacent communities which have a high degree of economic and social integration with that nucleus. In New Mexico there are four MSA's. Albuquerque MSA includes Bernalillo, Sandoval, Valencia, and



Torrance counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

**V. Rural:** Any area located outside communities defined as urban in the JTIP policy.  
[5.5.50.15 NMAC - Rp, 5.5.50.13 NMAC, 03-15-2006; A, 08-15-2007; A, 06-30-2008; A, 07-16-2009; A, 06-30-2010; A, 06-30-2011; A, 06-30-2012; A, 6-30-14]

#### **HISTORY OF 5.5.50 NMAC:**

**Pre-NMAC History:** [RESERVED]

#### **History of Repealed Material:**

5 NMAC 5.50, Industrial Development Training Program, filed 11-01-1999 - Repealed effective 04-30-2002.  
5.5.50 NMAC, Industrial Development Training Program - filed 04-16-2002 - Repealed effective 03-15-2006.

### **NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT**

This is an amendment to 5.5.52 NMAC, Sections 6, 7 and 10, effective 6-30-2014

**5.5.52.6 OBJECTIVE:** The object of this rule is to establish standards for pre-employment development training for New Mexican residents through the job training incentive program (JTIP) for film and multimedia production companies. Pre-employment training program (PETP) is intended to furnish qualified manpower resources for the film and multimedia industry. The intention of PETP **workshop training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors facilitating short-term intensive courses, workshops or lectures that primarily relate to below-the-line film and television job positions. The intention of PETP **project training** is to assist the development of New Mexico's economy by providing reimbursement funds to contractors directly related to a production company's project for training in and exposure to primarily above-the-line film and television job positions. [The intention of PETP **emerging media training** is to assist the development of NM's economy by providing reimbursement funds to companies that give training opportunities, similar to internships, to residents currently enrolled in or upon immediate graduation from a higher education program in New Mexico that relates to digital to post-production technology for the entertainment or entertainment-related industries. These programs shall increase the hirability of

~~New Mexico crew on film and television projects, increase economic status upon employment, and increase resident employee availability for productions. The PETP shall pertain to industry and production needs as determined by the New Mexico film division.]~~

[5.5.52.6 NMAC - Rp, 5.5.52.6 NMAC, 4-30-2009; A, 6-29-2012; A, 6-30-2014]

**5.5.52.7 DEFINITIONS:** For use in this part, the following definitions apply.

**A. "Above-the-line"** is a film and television industry term derived from where the money is budgeted for creative talent, writers, directors and producers. This term means job positions that are associated with the creative or financial control of a film or multimedia project, generally not the technical aspects.

**B. "Below-the-line"** is a film and television industry term derived from where the money is budgeted for technical crew that shall work on a film or multimedia project as well as for costs related to the studio, equipment, travel, and location. In regards to job positions, this term means technical crew working in temporary positions and these individuals do not have creative or financial control of the project nor receive residuals.

**C. "Craft"** means the specialized area or department in which a film technician works.

**D. "Credit"** means the employee hired by a production company is officially acknowledged by name by the company either on a final list of employees (crew list) or on the actual screen as having worked in the hired position on their film or multimedia project.

~~[E. "Emerging media" refers to digital technologies, interactive software, mobile applications, post production, video games and new technology intended for commercial usage and exploitation and is related to entertainment industries.]~~

**[F.] E. "Film technician"** means a crew member working in a below-the-line job position who often is a member of an international alliance of theater and stage employee (IATSE) film union or guild.

**[G.] E. "Hands-on classes"** mean classes or workshops where materials, tools or chemicals are utilized by participants.

**[H.] G. "JTIP"** means job training incentive program.

**[I.] H. "PETP"** means pre-employment training program.

**[J.] I. "Production company"** means the entity creating a film or television project, which includes film or multimedia project preparation, principal

photography and set break down periods.

~~[K.] J. "Resident"~~ means an individual who is domiciled in New Mexico. This domicile is the individual's permanent home; it is a place to which the individual intends to return after any temporary absence. An individual shall have only one domicile. A change in domicile is established only by establishing a physical presence in a new location with intent to abandon the old domicile and make a home in the new location permanently or indefinitely.

~~[L.] K. "Trainee"~~ means the attendee participating in the class, course, workshop, lecture or project available through this program and who will be trained, learning a new skill set or graduating to a higher job classification.

**[M.] L. "Turn-around-time"** means the time between leaving a project and returning to a project to continue training.

[5.5.52.7 NMAC - Rp, 5.5.52.7 NMAC, 4-30-2009, A, 6-29-2012; A, 6-30-2014]

#### **5.5.52.10 [PRE-EMPLOYMENT EMERGING MEDIA TRAINING PROGRAM OUTLINE:**

~~**A.** The New Mexico film division of the economic development department shall contract qualified companies to provide internship opportunities to residents who are currently enrolled in a New Mexico higher-ed program or who have recently graduated from a New Mexico higher-ed program that relates to digital or post production technology (emerging media) for the multimedia and entertainment industry.~~

~~**B.** Total reimbursement cost shall not exceed thirteen thousand, two hundred dollars (\$13,200) per participating company per semester.~~

~~**C.** The company (potential contractor shall provide a proposal and application to the New Mexico film division and the documents noted within to be considered for the training reimbursement.~~

~~**D.** Approved contractor shall enter into an agreement as outlined by the New Mexico economic development department.~~

~~**E.** The approval from the New Mexico film division and the chairperson of the job training incentive program (JTIP) board shall grant funding to the contractor for the purpose of conducting this training.~~

~~**F.** The term of the contract shall be based on a time period, which shall allow the contractor to complete its obligation to facilitate and provide training for the qualified individual and complete the paper-work involved.~~

~~**G.** Contractor shall ensure that all trainees are currently enrolled in~~

a New Mexico higher education program based in New Mexico that relates to the training or is a qualifying resident that participates in the training immediately upon graduation from said program. Qualifying higher-ed programs shall be approved as such by the New Mexico film division.

**H.** Contractor shall ensure all trainees are New Mexico residents and qualified for in-state tuition by their educational institution during at least two of their most recent semesters in which they were enrolled in the emerging media-related program.

**I.** Contractor shall ensure all trainees are at least eighteen (18) years of age.

**J.** Contractor shall qualify trainees based on additional criteria required by the company.

**K.** Number of trainees permissible;

**(1)** contractors where company has fourteen (14) or fewer full-time employees may train two (2) part-time participants for up to twenty-five (25) hours each, a week, or one (1) full-time participant up to fifty (50) hours a week;

**(2)** contractors where company has fifteen (15) or more full-time employees, may train one (1) full-time participant for up to fifty (50) hours a week and one (1) part-time participant for up to twenty-five (25) hours a week or three (3) part-time participants for up to twenty-five (25) hours each a week;

**L.** Contactor shall not be reimbursed for more than eleven dollars (\$11.00) per hour per participant.

**M.** Training of each participant shall not exceed one (1) semester or sixteen weeks (16);

**N.** Contractor shall only allow trainee to participate one (1) time in the program. A trainee who has participated in the program previously for any company shall not be approved.

**O.** Contractors approved for reimbursement though this program shall not be approved for any other JTIP for film and multimedia programs; however, they may apply for JTIP for manufacturing if they meet that program's requirements.

**P.** Qualifying trainees under PETP for emerging media shall not be permitted to participate in the job training incentive program under manufacturing.

**Q.** Contractors that fail to comply with all established operating requirements and closeout procedures may not be reimbursed.

**R.** The contractor is subject to compliance visits and program surveys at any time during the training by a representative of the New Mexico film division

**S.** Reimbursement amount shall be made to the participating contractor in accordance with the terms of the training contract. Funds from the state shall be based on the negotiated contractual agreement as outlined in the contract.

**T.** The following established documentation may be required by the New Mexico film division and is subject to review during compliance visits and program surveys;

**(1)** PETP emerging media pre-employment training program application and documents noted within; and

**(2)** applicable insurance certificate (s); and

**(3)** New Mexico tax information form or current state vendor number; and

**(4)** PETP emerging media pre-employment agreement; and

**(5)** PETP emerging media trainee forms when applicable; and

**(6)** documentation of wages and training hours for each participant; and

**(7)** evaluation forms when applicable; and

**(8)** invoice based on template per New Mexico film division

**U.** The mailing address to submit paperwork including the invoice is to the development training program administrator or manager, New Mexico film division of the economic development department, 1100 St. Francis Drive, Suite 1213, Joseph Montoya Building, Santa Fe, New Mexico, 87505, 505-476-5600.] [RESERVED]

[5.5.52.10 NMAC - Rp, 5.5.52.10 NMAC, 4-30-2009, A, 6-30-2011, 5.5.52.10 NMAC, N, 6-29-2012; A, 6-30-2014]

## NEW MEXICO DEPARTMENT OF HEALTH

7.1.13 NMAC, Incident Reporting, Intake, Processing and Training Requirements (filed 02/15/06) was repealed and replaced by 7.1.13 NMAC, Incident Reporting, Intake, Processing and Training Requirements, effective 07/01/14.

## NEW MEXICO DEPARTMENT OF HEALTH

### TITLE 7 HEALTH CHAPTER 1 HEALTH GENERAL PROVISIONS PART 13 INCIDENT REPORTING, INTAKE, PROCESSING AND TRAINING REQUIREMENTS

**7.1.13.1 ISSUING AGENCY:**  
New Mexico Department of Health.  
[7.1.13.1 NMAC - Rp, 7.1.13.1 NMAC, 7/1/14]

**7.1.13.2 SCOPE:** This rule is applicable to persons, organizations or legal entities to include each: adult day care center, adult day care home, adult assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded or the intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, and rural health clinic.

[7.1.13.2 NMAC - Rp, 7.1.13.2 NMAC, 7/1/14]

**7.1.13.3 STATUTORY AUTHORITY:** Department of Health Act, Subsection E of Section 9-7-6 NMSA 1978 and Subsection D of Section 24-1-2, Subsections I, L, O, T and U of Section 24-1-3, and 24-1-5 NMSA 1978, of the Public Health Act as amended.

[7.1.13.3 NMAC - Rp, 7.1.13.3 NMAC, 7/1/14]

**7.1.13.4 DURATION:**  
Permanent.

[7.1.13.4 NMAC - Rp, 7.1.13.4 NMAC, 7/1/14]

**7.1.13.5 EFFECTIVE DATE:**  
July 1, 2014, unless a later date is cited at the end of a section.

[7.1.13.5 NMAC - Rp, 7.1.13.5 NMAC, 7/1/14]

**7.1.13.6 OBJECTIVE:** This rule establishes standards for licensed health care facilities to institute and maintain an incident management system and employee training program for the reporting of abuse, neglect, exploitation injuries of unknown origin and other reportable incidents.

[7.1.13.6 NMAC - Rp, 7.1.13.6 NMAC, 7/1/14]

**7.1.13.7 DEFINITIONS:**

**A. "Abuse"** means:

**(1)** knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;

**(2)** the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person;

**(3)** sexual abuse, including criminal sexual contact, incest and criminal sexual penetration; or

**(4)** verbal abuse, including profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.

**B. "Bureau"** means the department of health, division of health

improvement, health facility licensing and certification bureau.

**C. “Case manager”** means the staff person designated to coordinate and monitor the individual service plan for persons receiving services.

**D. “Complaint”** means any report, assertion, or allegation of abuse, neglect, or exploitation of, or injuries of unknown origin to, a consumer made by a reporter to the incident management system, and includes any reportable incident that a licensed health care facility is required to report under applicable law.

**E. “CMS”** means the centers for medicare and medicaid services.

**F. “Consumer”** means any person who engages the professional services of a medical or other health professional on an inpatient or outpatient basis, or person requesting services from a hospital.

**G. “Department”** means the New Mexico department of health.

**H. “Division”** means the department of health, division of health improvement.

**I. “Employee”** means:  
(1) any person whose employment or contractual service with a licensed health care facility which includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility; or  
(2) any compensated persons such as employees, contractors and employees of contractors; or guardianship service providers or case management entities that provide services to people with developmental disabilities; or administrators or operators of facilities who are routinely on site.

**J. “Exploitation”** means an unjust or improper use of a person’s money or property for another person’s profit or advantage, financial or otherwise.

**K. “Immediate access”** means physical or in person direct and unobstructed access, to electronic or other access needed by employees, consumers, family members or legal guardian to the licensed health care facility’s incident management reporting procedures or access to the division’s incident report form.

**L. “Immediate reporting”** means reporting that is done as soon as practicable and no later than twenty-four (24) hours from knowledge of the incident.

**M. “Immediate jeopardy”** means a provider’s noncompliance with one (1) or more requirements of medicaid or medicare participation, which causes or is likely to cause, serious injury, harm, impairment, or death to a consumer.

**N. “Incident”** means any

known, alleged or suspected event of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

**O. “Incident management system”** means the written policies and procedures adopted or developed by the licensed health facility for reporting abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents.

**P. “Incident report form”** means the reporting format issued by the division for the reporting of incidents or complaints.

**Q. “ISP”** means a consumer’s individual service plan.

**R. “Licensed health care facilities”** means any organization licensed by the department for the following services: adult day care center, assisted living facility, ambulatory surgical center, diagnostic and treatment center, end stage renal disease facility, general, acute, special and limited service hospitals, home health agency, hospice facility, hospital infirmary, intermediate care facility for the mentally retarded or intellectually and developmentally disabled, limited diagnostic and treatment center, nursing facility, skilled nursing facility, rural health clinic.

**S. “Mental anguish”** means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these, and is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.

**T. “Neglect”** means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision and care for the physical and mental health of that person. Neglect causes, or is likely to cause, harm to a person.

**U. “Quality assurance”** means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative and clinical practices in meeting the needs of persons served as well as achieving the licensed health care facility’s mission, values and goals.

**V. “Quality improvement system”** means the adopted or developed licensed health care facility’s policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, injuries of unknown origin, or other reportable incidents for the continuous study and improvement of the efficiency and efficacy of organizational, administrative and preventative practices in employee training and reporting.

**W. “Reportable incident”** means possible abuse, neglect, exploitation,

injuries of unknown origin and other events including but not limited to falls which cause injury, unexpected death, elopement, medication error which causes or is likely to cause harm, failure to follow a doctor’s order or an ISP, or any other incident which may evidence abuse, neglect, or exploitation.

**X. “Reporter”** means any person who or any entity that reports possible abuse, neglect or exploitation to the division.

**Y. “Restraints”** means use of a mechanical device, or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer’s freedom of movement, performance of physical activity, or normal access to his body.

**Z. “Revocation”** means a type of sanction making a license null and void through its cancellation.

**AA. “Sanction”** means a measure imposed by the department on a licensed program, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

**BB. “Substantiated”** means the verification of a complaint based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

**CC. “Suspension”** means a temporary cancellation of a license pending an appeal, hearing or correction of the deficiency. During a suspension the provider’s medicare or medicaid agreement is not in effect.

**DD. “Training curriculum”** means the instruction manual or pamphlet adopted or developed by the licensed health facility containing policies and procedures for reporting abuse, neglect, misappropriation of consumers’ property or other reportable incidents.

**EE. “Unsubstantiated”** means that the complaint or incident could not be verified based upon a preponderance of reliable evidence obtained from an appropriate investigation of a complaint of abuse, neglect, or exploitation.

**FF. “Volunteer”** means any person who works without compensation for a licensed health care facility whose services includes direct care or routine and unsupervised physical or financial access to any care recipient serviced by that licensed health care facility.

[7.1.13.7 NMAC - Rp, 7.1.13.7 NMAC, 7/1/14]

#### **7.1.13.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR LICENSED HEALTH CARE**



**FACILITIES:****A. Duty to report:**

(1) All licensed health care facilities shall immediately report abuse, neglect or exploitation to the adult protective services division.

(2) All licensed health care facilities shall report abuse, neglect, exploitation, and injuries of unknown origin or other reportable incidents to the bureau within a twenty-four (24) hour period, or the next business day when the incident occurs on a weekend or holiday.

(3) All licensed health care facilities shall ensure that the reporter with direct knowledge of an incident has immediate access to the bureau incident report form to allow the reporter to respond to, report, and document incidents in a timely and accurate manner.

**B. Notification:**

(1) **Incident reporting:** Any person may report an incident to the bureau by utilizing the DHI toll free complaint hotline at 1-800-752-8649. Any consumer, employee, family member or legal guardian may also report an incident to the bureau directly or through the licensed health care facility by written correspondence or by utilizing the bureau's incident report form. The incident report form and instructions for the completion and filing are available at the division's website, at [https://dhi.health.state.nm.us/elibrary/ironline/hfrc\\_instructions.php](https://dhi.health.state.nm.us/elibrary/ironline/hfrc_instructions.php) or may be obtained from the department by calling the toll free number at 1-800-752-8649.

(2) **Division incident report form and notification by licensed health care facilities:** The licensed health care facility shall report incidents utilizing the division's incident report form consistent with the requirements of the division's incident management system guide and CMS regulations as applicable. The licensed health care facility shall ensure that all incident report forms alleging abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents are submitted by a reporter with direct knowledge of an incident, are completed on the bureau's incident report form and received by the division within twenty-four (24) hours of an incident or allegation of an incident or the next business day if the incident occurs on a weekend or a holiday. The licensed health care facility shall ensure that the reporter with the most direct knowledge of the incident assists with the preparation of the incident report form.

**C. Incident policies:** All licensed health care facilities shall maintain policies and procedures which describe the licensed health care facility's immediate response to all reported allegations of abuse, neglect, exploitation, injuries of unknown origin, and deaths, as applicable.

**D. Retaliation:** Any

individual who, without false intent, reports an incident or makes an allegation of abuse, neglect or exploitation will be free of any form of retaliation.

**E. Quality improvement system for licensed health care facilities:**

The licensed health care facility shall establish and implement a quality improvement system for reviewing alleged complaints and incidents. The incident management system shall include written documentation of corrective actions taken. The provider shall maintain documented evidence that all alleged violations are thoroughly investigated, and shall take all reasonable steps to prevent further incidents.

[7.1.13.8 NMAC - Rp, 7.1.13.8 NMAC, 7/1/14]

**7.1.13.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:**

**A. General:** All licensed health care facilities shall establish and maintain an incident management system, which emphasizes the principles of prevention and staff involvement. The licensed health care facility shall ensure that the incident management system policies and procedures requires all employees to be competently trained to respond to, report, and document reportable incidents in a timely and accurate manner.

**B. Training curriculum:**

Prior to working unsupervised with consumers, the licensed health care facility shall provide all employees and volunteers with a written training curriculum and shall train them on incident policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, injuries of unknown origin or other reportable incidents. Refresher training shall be provided at annual, not to exceed twelve (12) month, intervals. The training curriculum may include computer-based training. Reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the licensed health care facility. Training shall be conducted in a language that is understood by the employee and volunteer.

**C. Incident management system training curriculum requirements:**

(1) The licensed health care facility shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum that includes but is not limited to:

- (a) an overview of the potential risk of abuse, neglect, and exploitation;
- (b) informational procedures

for properly filing the division's incident management report form;

(c) specific instructions of the employees' legal responsibility to report an incident of abuse, neglect or exploitation;

(d) specific instructions on how to respond to abuse, neglect, and exploitation; and

(e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, or exploitation.

(2) All current employees and volunteers shall receive training within ninety (90) days of the effective date of this rule.

**D. Training**

**documentation:** All licensed health care facilities shall prepare training documentation for each employee to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The licensed health care facility shall maintain documentation of an employee's or volunteer's training for a period of at least twelve (12) months. Training curricula shall be kept on the premises and made available on request by the department. Training documentation shall be made available immediately upon a department representative's request. Failure to provide employee or volunteer training documentation shall subject the licensed health care facility to the penalties provided for in this rule.

**E. Consumer and guardian orientation packet:** Consumers, family members and legal guardians shall be made aware of and have available immediate accessibility to the licensed health care facility incident reporting processes. The licensed health care facility shall provide consumers, family members or legal guardians an orientation packet to include incident management systems policies and procedural information concerning the reporting of abuse, neglect or exploitation. The licensed health care facility shall include a signed statement indicating the date, time, and place they received their orientation packet to be contained in the consumer's file. The appropriate consumer, family member or legal guardian shall sign this at the time of orientation.

**F. Posting of incident management information poster:** All licensed health care facilities and shall post two (2) or more posters, to be furnished by the division, in a prominent public location which states all incident management reporting procedures, including contact numbers and internet addresses. All licensed health care facilities operating sixty (60) or more beds shall post at least three (3) or more posters, to be furnished by the



division, in a prominent public location which states all incident management reporting procedures, including contact numbers and internet addresses. The posters shall also be posted where employees report each day and from which the employees operate to carry out their activities. Each licensed health care facility shall take steps to ensure that the notices are not altered, defaced, removed, or covered by other material.

[7.1.13.9 NMAC - Rp, 7.1.13.10 NMAC, 7/1/14]

#### **7.1.13.10 ACCESS AND COOPERATION TO FACILITATE DEPARTMENT INCIDENT INVESTIGATIONS:**

**A.** The department will conduct incident investigations and periodic surveys of licensed health care facilities subject to these requirements. These reviews may be either announced or unannounced.

**B.** All licensed health care facilities shall facilitate immediate physical or in-person access to department personnel investigating incidents or conducting surveys:

(1) all records, regardless of media, including but not limited to, financial records, all client records, individual service plans, personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys and agency policy / procedures manuals;

(2) all necessary employees with direct knowledge of the incident;

(3) all necessary clients currently receiving services, guardians, representatives and family members with direct knowledge of the incident; and

(4) all administrative and service delivery sites.

**C.** All licensed health care facilities shall conduct a complete investigation and report the actions taken and conclusions reached by the facility within five (5) days of discovery of the incident.

[7.1.13.10 NMAC - Rp, 7.1.13.11 NMAC, 7/1/14]

#### **7.1.13.11 CONSEQUENCES OF LICENSED HEALTH CARE FACILITY NONCOMPLIANCE:**

**A.** The department or other governmental agency having regulatory enforcement authority over a licensed health care facility may sanction a licensed health care facility or in accordance with applicable law if the licensed health care facility fails to report incidents of abuse, neglect or exploitation or fails to provide or fails to maintain evidence of an existing incident management system and employee

training documentation as set forth by this rule, fails to take reasonable measures to protect consumers from abuse, neglect or exploitation, or any other violation of this rule.

**B.** Such sanctions may include revocation or suspension of license, directed plan of correction, intermediate sanctions or civil monetary penalty up to five thousand dollars (\$5,000) per instance.

**C.** All confirmed incident investigations conducted by the department hold the licensed health care facility responsible for the actions of the employee in their employment with the following exception: any employee found to have caused the abuse, neglect or exploitation shall be held accountable independent of the licensed health care facility when the facility has complied with all requirements of this rule and the employee acts outside of the provider's system. The employee shall be subject to the Employee Abuse Registry Act, or referred to the appropriate certification or licensing authority and reported to law enforcement agencies when appropriate.

[7.1.13.11 NMAC - Rp, 7.1.13.12 NMAC, 7/1/14]

#### **7.1.13.12 CONFIDENTIALITY:**

All consumer information reviewed or obtained in the course of a survey or investigation of a licensed health care facility is confidential in accordance with all applicable federal and state law and regulation. If a complaint is unsubstantiated, no information regarding the substance of the complaint or the alleged individual or provider perpetrator may be released publicly. If a complaint is substantiated, confidential information includes, but is not limited to: identity of the incident report form reporter if confidentiality has been requested, personnel records, dates of birth, drivers' license numbers, social security numbers, personal addresses and telephone numbers, the licensed health care facility's internal incident investigations, financial documents and proprietary business information.

[7.1.13.12 NMAC - Rp, 7.1.13.13 NMAC, 7/1/14]

#### **7.1.13.13 SEVERABILITY:**

If any provision or application of 7.1.13 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[7.1.13.13 NMAC - Rp, 7.1.13.14 NMAC, 7/1/14]

#### **HISTORY OF 7.1.13 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:** 7.14.3 NMAC, Incident Reporting and

Investigation Requirements for Providers of Community Based Services (filed 01/10/03) repealed 02/28/06.

7.1.13 NMAC, Incident Reporting, Intake, Processing and Training Requirements (filed 02/15/06) repealed 07/01/14.

#### **NMAC History:**

7.14.3 NMAC, Incident Reporting and Investigation Requirements for Providers of Community Based Services (filed 01/10/03) was renumbered and replaced by 7.1.13 NMAC, Incident Reporting, Intake, Processing and Training Requirements, effective 02/28/06.

7.1.13 NMAC, Incident Reporting, Intake, Processing and Training Requirements (filed 02/15/06) was repealed and replaced by 7.1.13 NMAC, Incident Reporting, Intake, Processing and Training Requirements, effective 07/01/14.

## **NEW MEXICO DEPARTMENT OF HEALTH**

### **TITLE 7 HEALTH CHAPTER 1 HEALTH GENERAL PROVISIONS**

### **PART 14 ABUSE, NEGLECT, EXPLOITATION, AND DEATH REPORTING, TRAINING AND RELATED REQUIREMENTS FOR COMMUNITY PROVIDERS**

#### **7.1.14.1 ISSUING AGENCY:**

Division of Health Improvement,  
Department of Health.

[7.1.14.1 NMAC - N, 07/01/14]

**7.1.14.2 SCOPE:** This rule is applicable to persons, organizations or legal entities receiving developmental disability waiver funds and developmental disability medically fragile waiver funds acting as community-based service providers as defined in this rule.

[7.1.14.2 NMAC - N, 07/01/14]

#### **7.1.14.3 STATUTORY**

**AUTHORITY:** Department of Health Act, Subsection E of Section 9-7-6, Subsection D of Section 24-1-2, Subsections I, L, O, T and U of Sections 24-1-3 and 24-1-5 NMSA 1978 of the Public Health Act as amended.

[7.1.14.3 NMAC - N, 07/01/14]

#### **7.1.14.4 DURATION:**

Permanent.

[7.1.14.4 NMAC - N, 07/01/14]

#### **7.1.14.5 EFFECTIVE DATE:**

July 1, 2014, unless a later date is cited at the end of a section.

[7.1.14.5 NMAC - N, 07/01/14]

**7.1.14.6 OBJECTIVE:** This rule establishes standards for community-based service providers to institute and maintain an incident management system and employee and volunteer training programs for the reporting of abuse, neglect, exploitation, suspicious injuries, environmentally hazardous conditions and death.

[7.1.14.6 NMAC - N, 07/01/14]

**7.1.14.7 DEFINITIONS:**

**A. "Abuse"** including verbal abuse, means:

(1) knowingly, intentionally, and without justifiable cause inflicting physical pain, injury or mental anguish;

(2) the intentional deprivation by a caretaker or other person of services necessary to maintain the mental and physical health of a person; or

(3) sexual abuse, including criminal sexual contact, incest, and criminal sexual penetration.

**B. "Abuse, neglect, exploitation, or report of death form"** means the reporting format issued by the division for the reporting of incidents which may relate to abuse, neglect, or exploitation of a consumer, including suspicious injuries, or for reporting any death.

**C. "Case manager"** means the staff person designated to coordinate and monitor the individual service plan for persons receiving community-based services.

**D. "Community-based service providers"** means any person, organization, or legal entity, including mi via consultants, providing the following services, and having any provider agreement with the department of health:

(1) **"developmental disability waiver services"** means a medicaid funded home or community-based services for persons with intellectual and developmental disabilities; and

(2) **"medically fragile waiver services"** means medicaid funded home or community-based services for persons with intellectual and developmental disabilities who are medically fragile.

**E. "Consultant"** means the person or entity supporting the mi via consumer to make informed choices among the services offered through the mi via waiver, develop service and support plans (SSP), and providing on-going assistance with SSP implementation.

**F. "Consumer"** means any recipient of services from a community-based service provider.

**G. "Department"** means the New Mexico department of health.

**H. "Division"** means the department of health, division of health improvement, incident management bureau.

**I. "Employee"** means any person whose employment or contractual service with a community-based service provider, or with a consumer, which includes direct care or routine and unsupervised physical or financial access to any care recipient served.

**J. "Environmental hazard"** means a condition in the physical environment which creates an immediate threat to health or safety of the individual.

**K. "Exploitation"** means an unjust or improper use of a person's money or property for another person's profit or advantage, financial, or otherwise.

**L. "Immediate access"** means physical or in-person direct and unobstructed access to electronic or other access needed by employees, consumers, family members, or legal guardians to the community-based service program's incident management reporting procedures or access to the division's abuse, neglect, exploitation or report of death form.

**M. "Immediate jeopardy"** means a provider's non-compliance with one or more requirements of medicaid participation or the provider agreement which causes, or is likely to cause, serious injury, harm, impairment, or death to a consumer.

**N. "Immediate reporting"** means reporting that is done immediately. A report may only be delayed while the provider is taking immediate action to prevent harm to a consumer.

**O. "Incident"** means any known, alleged, or suspected event of abuse, neglect, exploitation, suspicious injury, or any death.

**P. "Incident management system"** means the written policies and procedures adopted or developed by the community-based service provider for reporting abuse, neglect, exploitation, suspicious injuries, or for making a report of death as required in Subsection A of 7.1.14.8 NMAC.

**Q. "Mental anguish"** means a relatively high degree of mental pain and distress that is more than mere disappointment, anger, resentment, or embarrassment, although it may include all of these, and is objectively manifested by the recipient of care or services by significant behavioral or emotional changes or physical symptoms.

**R. "Natural support"** means an uncompensated person such as a family member, friend, or any person in a supportive relationship with the consumer.

**S. "Neglect"** means the failure of the caretaker to provide basic needs of a person, such as clothing, food, shelter, supervision, and care for the physical and mental health of that person. Neglect causes, or is likely to cause harm to

a person.

**T. "Non-responsible provider"** means any reporter who is reporting an incident of abuse, neglect, exploitation, suspicious injury or death in which they are not the responsible community-based service provider during the time of the incident.

**U. "Quality assurance"** means a systematic approach to the continuous study and improvement of the efficiency and efficacy of organizational, administrative, and clinical practices in meeting the needs of persons served as well as achieving the community-based service provider's mission, values and goals.

**V. "Quality improvement system"** means the community-based service provider's policies and procedures for reviewing and documenting all alleged incidents of abuse, neglect, exploitation, suspicious injuries, and all deaths for the continuous study and improvement of the efficiency and efficacy of organizational, administrative, and preventative practices in employee training and reporting.

**W. "Report"** means any assertion or allegation of abuse, neglect, exploitation, suspicious injuries, or report of death made by a reporter to the incident management bureau and includes any incident that a community-based service provider is required to report under applicable law.

**X. "Reporter"** means any person who, or any entity that, reports possible abuse, neglect, exploitation, suspicious injury, or makes a report of death to the department's incident management bureau.

**Y. "Restraints"** means use of a mechanical device or chemical restraints imposed, for the purposes of discipline or convenience, to physically restrict a consumer's freedom of movement, performance of physical activity, or normal access to his body.

**Z. "Sanction"** means a measure imposed by the department on a provider, pursuant to these requirements, in response to a finding of deficiency, with the intent of obtaining increased compliance with these requirements.

**AA. "Sexual abuse"** means the inappropriate touching of a recipient of care or services for sexual purpose or in a sexual manner, and includes kissing, touching the genitals, buttocks, or breasts, causing the recipient of care or services to touch another for sexual purpose, or promoting or observing for sexual purpose any activity or performance involving play, photography, filming, or depiction of acts considered pornographic. Sexual conduct engaged in by an employee with a person for whom they are providing care or services is sexual abuse per se.

**BB. "Substantiated"**  
means the verification of an allegation of abuse, neglect, or exploitation based upon a preponderance of reliable evidence obtained from an investigation of an allegation of abuse, neglect, or exploitation.

**CC. "Training curriculum"**  
means the instruction manual or pamphlet adopted or developed by the community-based service provider containing policies and procedures for reporting abuse, neglect, exploitation, suspicious injury, or any death.

**DD. "Unsubstantiated"**  
means that an allegation of abuse, neglect, and exploitation could not be verified based upon a preponderance of reliable evidence obtained from an investigation of a complaint of abuse, neglect, or exploitation.

**EE. "Verbal abuse"**  
means profane, threatening, derogatory, or demeaning language, spoken or conveyed with the intent to cause mental anguish.

**FF. "Volunteer"** means any person who is not a natural support who works without compensation for a community-based service provider and whose services includes direct care or routine physical or financial access to any consumer serviced by that community-based service provider.

[7.1.14.7 NMAC - N, 07/01/14]

#### **7.1.14.8 INCIDENT MANAGEMENT SYSTEM REPORTING REQUIREMENTS FOR COMMUNITY-BASED SERVICE PROVIDERS:**

##### **A. Duty to report:**

(1) All community-based providers shall immediately report alleged crimes to law enforcement or call for emergency medical services as appropriate to ensure the safety of consumers.

(2) All community-based service providers, their employees and volunteers shall immediately call the department of health improvement (DHI) hotline at 1-800-445-6242 to report abuse, neglect, exploitation, suspicious injuries or any death and also to report an environmentally hazardous condition which creates an immediate threat to health or safety.

**B. Reporter requirement.**  
All community-based service providers shall ensure that the employee or volunteer with knowledge of the alleged abuse, neglect, exploitation, suspicious injury, or death calls the division's hotline to report the incident.

**C. Initial reports, form of report, immediate action and safety planning, evidence preservation, required initial notifications:**

(1) **Abuse, neglect, and exploitation, suspicious injury or death reporting:** Any person may report an allegation of abuse, neglect, or exploitation,

suspicious injury or a death by calling the division's toll-free hotline number 1-800-445-6242. Any consumer, family member, or legal guardian may call the division's hotline to report an allegation of abuse, neglect, or exploitation, suspicious injury or death directly, or may report through the community-based service provider who, in addition to calling the hotline, must also utilize the division's abuse, neglect, and exploitation or report of death form. The abuse, neglect, and exploitation or report of death form and instructions for its completion and filing are available at the division's website, <http://dhi.health.state.nm.us>, or may be obtained from the department by calling the division's toll free hotline number, 1-800-445-6242.

(2) **Use of abuse, neglect, and exploitation or report of death form and notification by community-based service providers:** In addition to calling the division's hotline as required in Paragraph (2) of Subsection A of 7.1.14.8 NMAC, the community-based service provider shall also report the incident of abuse, neglect, exploitation, suspicious injury, or death utilizing the division's abuse, neglect, and exploitation or report of death form consistent with the requirements of the division's abuse, neglect, and exploitation reporting guide. The community-based service provider shall ensure all abuse, neglect, exploitation or death reports describing the alleged incident are completed on the division's abuse, neglect, and exploitation or report of death form and received by the division within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division's website at <http://dhi.health.state.nm.us>; otherwise it may be submitted via fax to 1-800-584-6057. The community-based service provider shall ensure that the reporter with the most direct knowledge of the incident participates in the preparation of the report form.

(3) **Limited provider investigation:** No investigation beyond that necessary in order to be able to report the abuse, neglect, or exploitation and ensure the safety of consumers is permitted until the division has completed its investigation.

(4) **Immediate action and safety planning:** Upon discovery of any alleged incident of abuse, neglect, or exploitation, the community-based service provider shall:

(a) develop and implement an immediate action and safety plan for any potentially endangered consumers, if applicable;

(b) be immediately prepared to report that immediate action and safety plan verbally, and revise the plan according to the division's direction, if necessary; and

(c) provide the accepted immediate action and safety plan in writing on the immediate action and safety plan form within 24 hours of the verbal report. If the provider has internet access, the report form shall be submitted via the division's website at <http://dhi.health.state.nm.us>; otherwise it may be submitted by faxing it to the division at 1-800-584-6057.

(5) **Evidence preservation:** The community-based service provider shall preserve evidence related to an alleged incident of abuse, neglect, or exploitation, including records, and do nothing to disturb the evidence. If physical evidence must be removed or affected, the provider shall take photographs or do whatever is reasonable to document the location and type of evidence found which appears related to the incident.

(6) **Legal guardian or parental notification:** The responsible community-based service provider shall ensure that the consumer's legal guardian or parent is notified of the alleged incident of abuse, neglect and exploitation within 24 hours of notice of the alleged incident unless the parent or legal guardian is suspected of committing the alleged abuse, neglect, or exploitation, in which case the community-based service provider shall leave notification to the division's investigative representative.

(7) **Case manager or consultant notification by community-based service providers:** The responsible community-based service provider shall notify the consumer's case manager or consultant within 24 hours that an alleged incident involving abuse, neglect, or exploitation has been reported to the division. Names of other consumers and employees may be redacted before any documentation is forwarded to a case manager or consultant.

(8) **Non-responsible reporter:** Providers who are reporting an incident in which they are not the responsible community-based service provider shall notify the responsible community-based service provider within 24 hours of an incident or allegation of an incident of abuse, neglect, and exploitation.

**D. Incident policies:** All community-based service providers shall maintain policies and procedures which describe the community-based service provider's immediate response, including development of an immediate action and safety plan acceptable to the division where appropriate, to all allegations of incidents involving abuse, neglect, or exploitation, suspicious injury as required in Paragraph (2) of Subsection A of 7.1.14.8 NMAC.

**E. Retaliation:** Any person, including but not limited to an employee, volunteer, consultant, contractor, consumer, or their family members, guardian, and another provider who,



without false intent, reports an incident or makes an allegation of abuse, neglect, or exploitation shall be free of any form of retaliation such as termination of contract or employment, nor may they be disciplined or discriminated against in any manner including, but not limited to, demotion, shift change, pay cuts, reduction in hours, room change, service reduction, or in any other manner without justifiable reason.

**F. Quality assurance/ quality improvement program for community-based service providers:**

The community-based service provider shall establish and implement a quality improvement program for reviewing alleged complaints and incidents of abuse, neglect, or exploitation against them as a provider after the division's investigation is complete. The incident management program shall include written documentation of corrective actions taken. The community-based service provider shall take all reasonable steps to prevent further incidents. The community-based service provider shall provide the following internal monitoring and facilitating quality improvement program:

(1) community-based service providers shall have current abuse, neglect, and exploitation management policy and procedures in place that comply with the department's requirements;

(2) community-based service providers providing intellectual and developmental disabilities services must have a designated incident management coordinator in place; and

(3) community-based service providers providing intellectual and developmental disabilities services must have an incident management committee to identify any deficiencies, trends, patterns, or concerns as well as opportunities for quality improvement, address internal and external incident reports for the purpose of examining internal root causes, and to take action on identified issues.

[7.1.14.8 NMAC - N, 07/01/14]

**7.1.14.9 INCIDENT MANAGEMENT SYSTEM REQUIREMENTS:**

**A. General:** All community-based service providers shall establish and maintain an incident management system, which emphasizes the principles of prevention and staff involvement. The community-based service provider shall ensure that the incident management system policies and procedures requires all employees and volunteers to be competently trained to respond to, report, and preserve evidence related to incidents in a timely and accurate manner.

**B. Training curriculum:**

Prior to an employee or volunteer's initial work with the community-based service provider, all employees and volunteers shall be trained on an applicable written training curriculum including incident policies and procedures for identification, and timely reporting of abuse, neglect, exploitation, suspicious injury, and all deaths as required in Subsection A of 7.1.14.8 NMAC. The trainings shall be reviewed at annual, not to exceed 12-month intervals. The training curriculum as set forth in Subsection C of 7.1.14.9 NMAC may include computer-based training. Periodic reviews shall include, at a minimum, review of the written training curriculum and site-specific issues pertaining to the community-based service provider's facility. Training shall be conducted in a language that is understood by the employee or volunteer.

**C. Incident management system training curriculum requirements:**

(1) The community-based service provider shall conduct training or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum provided electronically by the division that includes but is not limited to:

(a) an overview of the potential risk of abuse, neglect, or exploitation;

(b) informational procedures for properly filing the division's abuse, neglect, and exploitation or report of death form;

(c) specific instructions of the employees' legal responsibility to report an incident of abuse, neglect and exploitation, suspicious injury, and all deaths;

(d) specific instructions on how to respond to abuse, neglect, or exploitation;

(e) emergency action procedures to be followed in the event of an alleged incident or knowledge of abuse, neglect, exploitation, or suspicious injury.

(2) All current employees and volunteers shall receive training within 90 days of the effective date of this rule.

(3) All new employees and volunteers shall receive training prior to providing services to consumers.

**D. Training**

**documentation:** All community-based service providers shall prepare training documentation for each employee and volunteer to include a signed statement indicating the date, time, and place they received their incident management reporting instruction. The community-based service provider shall maintain documentation of an employee or volunteer's training for a period of at least three years, or six months after termination of an employee's employment or the volunteer's work. Training curricula shall be kept on the provider premises and made available upon request by the department. Training documentation shall

be made available immediately upon a division representative's request. Failure to provide employee and volunteer training documentation shall subject the community-based service provider to the penalties provided for in this rule.

**E. Consumer and guardian orientation packet:** Consumers, family members, and legal guardians shall be made aware of and have available immediate access to the community-based service provider incident reporting processes. The community-based service provider shall provide consumers, family members, or legal guardians an orientation packet to include incident management systems policies and procedural information concerning the reporting of abuse, neglect, exploitation, suspicious injury, or death. The community-based service provider shall include a signed statement indicating the date, time, and place they received their orientation packet to be contained in the consumer's file. The appropriate consumer, family member, or legal guardian shall sign this at the time of orientation.

**F. Availability of incident management and abuse, neglect, exploitation, suspicious injury, or report of death reporting information:** All community-based service providers shall provide written information to be furnished by the division at its website, which states all incident management reporting procedures, including contact numbers and internet addresses. The written information shall be on-site and available to staff. [7.1.14.9 NMAC - N, 07/01/14]

**7.1.14.10 ACCESS AND COOPERATION TO FACILITATE DEPARTMENT INCIDENT INVESTIGATIONS:**

**A.** The department will conduct incident investigations of community-based service providers subject to these requirements. These investigations may be either announced or unannounced.

**B.** All community-based service providers programs shall facilitate immediate physical or in-person access, and assist with scheduling of interviews, by department personnel investigating incidents to all of the providers:

(1) formal and informal records, regardless of media, including but not limited to, financial records, all consumer records, individual service plans, volunteer and personnel records, board and or committee minutes, incident reports, quality assurance activities, client satisfaction surveys, and agency policy and procedures manuals;

(2) employees and volunteers with knowledge of the incident;

(3) necessary clients

currently receiving services, guardians, representatives, and family members with knowledge of the incident; and

(4) administrative and service delivery sites.

[7.1.14.10 NMAC - N, 07/01/14]

#### **7.1.14.11 CONSEQUENCES OF COMMUNITY-BASED SERVICE PROVIDER NON-COMPLIANCE:**

**A.** The department may sanction a community-based service provider in accordance with applicable law if the community-based service provider fails to report incidents of abuse, neglect, exploitation, suspicious injury, or any death; fails to provide or maintain evidence of an existing incident management system and employee and volunteer training documentation as set forth by this rule; for any failure to adequately protect consumers from abuse, neglect or exploitation; or for any other violation of this rule.

**B.** Such sanctions may include a directed plan of correction, intermediate sanctions, or civil monetary penalty up to five thousand dollars (\$5,000) per instance, or high level sanctions up to and including termination or non-renewal of any provider agreement with the department or other governmental agency.

**C.** All substantiated incident investigations conducted by the department hold the community-based service provider responsible for the actions of the employee, volunteer, or contractor with the following exception: any employee, volunteer, or contractor found to have caused the abuse, neglect, or exploitation of a consumer shall be found individually responsible independent of the community-based service provider when the community-based service provider has complied with all requirements of this rule, and the employee acts outside of the provider's system. When this occurs, the individual shall be subject to the Employee Abuse Registry Act, Sections 29-27-1 through 29-27-8 NMSA 1978, or referred to the appropriate professional licensing board and law enforcement where appropriate.

[7.1.14.11 NMAC - N, 07/01/14]

#### **7.1.14.12 NOTIFICATION OF INVESTIGATION RESULTS:**

The division will inform the provider, the guardian, or alleged victim, the case manager or consultant, the developmental disabilities supports division regional office, and the reporter of the conclusion reached by the investigator(s) when the report is final. The responsible provider must notify the alleged perpetrator.

[7.1.14.12 NMAC - N, 07/01/14]

#### **7.1.14.13 INFORMAL RECONSIDERATION OF FINDINGS:**

**A.** An aggrieved person or provider agency may request an informal reconsideration of findings (IRF) of a decision made by the division regarding a substantiation of abuse, neglect, or exploitation in accordance with the provisions set forth in this section.

**B.** A request for an IRF must be submitted in writing along with all relevant evidence to be considered by the bureau within 10 calendar days of the date of the letter of substantiation. The bureau may reverse the substantiation at any time at or before the IRF review.

**C.** Informal reconsideration of findings process.

(1) The person conducting the review shall be neutral and have no direct involvement with the investigation or substantiation.

(2) The person conducting the IRF shall issue a written decision within 30 days of the review, giving the reason why the substantiation, by preponderance of evidence, is modified, affirmed, or reversed. The written decision will be mailed to the aggrieved party and placed in the case record no later than the 30<sup>th</sup> day after receipt of the request for the IRF.

(3) The decision by the person conducting the IRF is final and non-appealable except as otherwise provided for by law.

[7.1.14.13 NMAC - N, 07/01/14]

#### **7.1.14.14 CONFIDENTIALITY:**

**A.** In the case of substantiated cases of abuse, neglect, or exploitation, the written report may be shared publicly upon request and subject to all other applicable federal and state laws and regulations. Unsubstantiated incident investigation reports shall not be shared publicly in relation to any accused person or provider other than to confirm that an allegation of abuse, neglect, or exploitation was unsubstantiated.

**B.** All consumer information reviewed or obtained in the course of an investigation of a community-based service provider is confidential in accordance with all applicable federal and state laws and regulations and with all applicable contract provisions. If the consumer's identity may not be sufficiently de-identified even after redaction, then the report may not be released except upon the request of that consumer or their legally authorized representative.

**C.** Other confidential information includes, but is not limited to: identity of the reporter of the alleged abuse, neglect, and exploitation if confidentiality is requested, personnel records, dates of birth, driver's license numbers, social security numbers, personal addresses, and telephone numbers, the community-based service

provider's internal incident investigation, if any is received by the department, financial documents, and proprietary business information.

[7.1.14.14 NMAC - N, 07/01/14]

#### **7.1.14.15 SEVERABILITY:**

If any provision or application of 7.1.14 NMAC is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

[7.1.14.15 NMAC - N, 07/01/14]

#### **HISTORY OF 7.1.14 NMAC:**

[RESERVED]

[Continued on page 324]

**NEW MEXICO HUMAN SERVICES DEPARTMENT**  
**MEDICAL ASSISTANCE DIVISION**

This is an amendment to 8.200.510 NMAC, Section 12, effective July 1, 2014

**8.200.510.12 POST-ELIGIBILITY CALCULATION (MEDICAL CARE CREDIT):** Apply applicable deductions in the order listed below when determining the medical care credit for an institutionalized spouse.

<b>DEDUCTION</b>	<b>AMOUNT</b>
A. Personal needs allowance for institutionalized spouse	[ <del>\$67</del> ] <u>\$68</u>
B. Minimum monthly maintenance needs allowance (MMMNA)	[ <del>\$1,939</del> ] <u>\$1,967</u>
C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:	
(1) If allowable shelter expenses of the community spouse exceed [ <del>\$582</del> ] <u>\$590</u> deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.	
(2) Excess shelter allowance may not exceed a maximum of [ <del>\$992</del> ] <u>\$964</u> .	
D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.	
E. Dependent family member income allowance (if applicable) calculated as follows: 1/3 X MMMNA - dependent member's income).	
F. Non-covered medical expenses.	
G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed \$2,898.	

[1-1-95, 7-1-95, 3-30-96, 8-31-96, 4-1-97, 6-30-97, 4-30-98, 6-30-98, 1-1-99, 7-1-99, 7-1-00; 8.200.510.12 NMAC - Rn, 8 NMAC 4.MAD.510.2 & A, 1-1-01, 7-1-01; A, 1-1-02; A, 7-1-02; A, 1-1-03; A, 7-1-03; A, 1-1-04; A, 7-1-04; A, 1-1-05; A, 7-1-05; A, 1-1-06; A, 7-1-06; A, 1-1-07; A, 7-1-07; A, 1-1-08; A, 7-1-08, A, 1-1-09, A, 4-1-09; A, 7-1-09; A, 7-1-11; A, 1-1-12; A, 7-1-12; A, 7-1-13; A, 2-14-14; A, 4-1-14; A, 7-1-14]

**NEW MEXICO PUBLIC  
EMPLOYEES RETIREMENT  
ASSOCIATION**

**This is an emergency amendment to  
2.80.600 NMAC, amending Section 10,  
effective 6/9/14.**

**2.80.600.10 GENERAL  
PROVISIONS**

A. Service shall be credited to the nearest month.

(1) Members may receive one month of service credit for any calendar month in which the member becomes a member on or before the sixteenth day of that month, or for any calendar month in which the member leaves office or terminates employment on or after the fifteenth day of the month, provided that all other requirements for awarding service credit are met.

(2) A member who is a full-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member is paid 50% or more of his or her monthly salary as reported by the member's affiliated public employer.

(3) If a member who is a full-time employee of an affiliated public employer is paid less than 50% of the member's monthly salary as reported by the member's affiliated public employer, employer and member contributions shall be paid on any salary paid during that month, and the

member contributions shall be posted to the member's individual member contribution account, but no service credit shall be acquired for that month, even if unpaid leave was taken pursuant to the Family Medical Leave Act.

(4) [~~On and before June 30, 2014;~~] A member who is a part-time employee of an affiliated public employer shall acquire one month of service credit for every calendar month in which the member works twenty (20) or more hours per week, totaling forty (40) or more hours in an eighty (80) hour pay period as reported by the member's affiliated public employer. A part-time employee is an employee who works forty (40) or more hours but less than eighty (80) hours in an eighty (80) hour pay period or twenty (20) or more hours but less than forty (40) hours in a week. This amendment was adopted as an emergency rule to provide additional time for review and consideration of the manner in which service credit is awarded to PERA members who are employed part-time. Immediate adoption of this amendment is necessary for the general welfare of the association.

(a) Notwithstanding any other provision of 2.80.600.10 NMAC, part-time employees who normally work at least twenty (20) hours in a week and who were furloughed pursuant to executive order issued between July 1, 2009 and June 30, 2010 shall acquire one month of service credit for each month affected by a furlough day. This amendment was adopted as an emergency rule to allow part-time

employees to acquire service credit they would otherwise be eligible for absent the executive order. Immediate adoption of this amendment is necessary for the general welfare of the association.

(b) Notwithstanding any other provision of 2.80.600.10 NMAC, part-time employees who normally work at least twenty (20) hours in a week and who were furloughed in January and February, 2010 as a result of the second judicial district court's furlough plan shall acquire one month of service credit for each month affected by a furlough day.

(c) Notwithstanding any other provision of 2.80.600.10 NMAC, part-time employees who normally work at least twenty (20) hours in a week and who were furloughed in May and June, 2010 as a result of the city of Rio Rancho's resolution no. 43 furlough plan shall acquire one month of service credit for each month affected by a furlough day.

(5) [~~On and after July 1, 2014;~~ a member who is a part-time employee of an affiliated public employer shall acquire one (1) month of service credit for every calendar month in which the member works thirty two (32) or more hours per week, totaling sixty four (64) or more hours in an eighty (80) hour pay period as reported by the member's affiliated public employer. ~~On and after July 1, 2014, a member who is a part-time employee of an affiliated public employer shall acquire one (1) month of service credit for every two (2) calendar months in which the member works twenty~~

(20) or more, but less than thirty two (32) hours per week, totaling forty (40) or more hours in an eighty (80) hour pay period as reported by the member's affiliated public employer.] This amendment was adopted as an emergency rule to provide additional time for review and consideration of the manner in which service credit is awarded to PERA members who are employed part-time. Immediate adoption of this amendment is necessary for the general welfare of the association.

(6) If a member who is a part-time employee does not qualify for service credit, employer and member contributions shall be paid on any salary paid during that month, and the member contributions shall be posted to the member's individual member contribution account, but no service credit shall be acquired.

B. An employee who works fewer than forty (40) hours in an eighty (80) hour pay period or fewer than twenty (20) hours in a forty (40) hour week shall be exempt from membership by filing a PERA exclusion from membership form pursuant to 2.80.400.40 NMAC.

C. If a member has an incomplete contract to purchase service credit at the time of termination of employment, the contract must be paid in full within thirty (30) days of termination or the amount already paid under the contract will be refunded and no corresponding service credit will be granted.

D. Overlapping service credit.

(1) If a member has service credit for the same period of time for employment by public employers covered under different state systems, service credit may only be acquired under one state system for the period of overlapping service credit. In no case shall a member be credited with more than one month of service credit for all service in any calendar month.

(2) If a member accrues service credit under PERA and another state system for an overlapping period, the member shall be granted service credit for this overlapping period in accordance with all applicable statutes and rules that provide for the highest pension factor.

[10-15-97; 11-15-97; 12-15-99; 2.80.600.10 NMAC - Rn, 2 NMAC 80.600.10, 8-15-01; A, 9-30-03; A/E, 5-28-10; A, 9-30-10; A, 12-30-13; A/E, 6-9-14]

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**End of Adopted Rules Section**

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**Other Material Related to Administrative Law**

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**NEW MEXICO  
DEPARTMENT OF GAME  
AND FISH**

This is an emergency order to 19.31.4 NMAC, filed November 21, 2013, effective June 23, 2014.

**19.31.4.19            EMERGENCY  
ORDER FOR FISH SALVAGE:**

Under authority of 19.31.10.14 NMAC promulgated by the state game commission on April 1, 2010, I, Alexandra Sandoval, director of the department of game and fish, hereby declare that an emergency exists within the Santa Fe river in Santa Fe county from Paseo de Peralta to Camino Alire. The extent to which the fish life will be destroyed by drying of the river, bag limits on sport fish will be unlimited. Manner and method regulations also will be suspended. This relaxation will go into effect at 12:01 a.m., June 23, 2014, and will remain in effect through 11:59 p.m., June 30, 2014.  
[19.31.4.19 NMAC – A/E, 6-23-2014]

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**End of Other Related Material  
Section**

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## Submittal Deadlines and Publication Dates

### Volume XXV, Issues 1-24

### 2014

Volume XXV	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	January 31
Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
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 15
Issue Number 10	May 16	May 30
Issue Number 11	June 2	June 13
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 18	August 29
Issue Number 17	September 2	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	October 31	November 13
Issue Number 22	November 14	November 26
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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