

New Mexico Register

The official publication for all official notices of rulemaking
and filing of proposed, adopted and emergency rules.

Volume XXVIII - Issue 13 - July 11, 2017

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New Mexico Register

Volume XXVIII, Issue 13

July 11, 2017

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The New Mexico Register

Published by the Commission of Public Records,
Administrative Law Division

1205 Camino Carlos Rey, Santa Fe, NM 87507

The *New Mexico Register* is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00. Individual copies of any Register issue may be purchased for \$12.00.

Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

Telephone: (505) 476-7942; Fax: (505) 476-7910; E-mail: staterules@state.nm.us.

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Notices of Rulemaking and Proposed Rules

COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING

The New Mexico State Commission of Public Records ("Commission") has scheduled a regular meeting and rule hearing for Tuesday, August 29, 2017, at 10:00 A.M. at the New Mexico State Records Center and Archives, which is an accessible facility, at 1205 Camino Carlos Rey, Santa Fe, NM. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the meeting, please contact Melissa Salazar at 476-7926 or 476-7911 by August 15, 2017 or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats.

NOTICE OF RULEMAKING

The Commission of Public Records and State Records Administrator may consider the following items of rulemaking at the meeting:

Repeal

1.13.12 NMAC
Designation of Records Management Personnel [CPR]
1.13.30 NMAC Disposition of Public Records and Non-Records [Joint CPR & SRA]
1.24.20 NMAC Emergency Rules [CPR]

Amend

1.21.2 NMAC Retention and Disposition of Public Records [CPR]
1.13.5 NMAC New Mexico Historical Records Grant Program Guidelines [CPR]
1.13.4 NMAC Records Management Requirements for Electronic Messaging [Joint CPR & SRA]
1.13.10 NMAC Records Storage and Access [SRA Only]

Replacement

1.13.12 NMAC

Designation of Records Management Personnel [CPR]
1.13.30 NMAC Disposition of Public Records and Non-Records [Joint CPR & SRA]

SYNOPSIS: The repeal and replacement of 1.13.12 NMAC is to add designation language for records custodians, clarify the training requirements for designated personnel, and to renumber the part.

The proposed repeal of 1.24.20 NMAC is to acknowledge that the rule for emergency rule filing has been supplanted by the statutory changes made to the State Rules Act due to passage of HB 58 in the 2017 regular legislative session.

The proposed amendment of 1.21.2 NMAC consist of the follow modifications: Section 7 is being amended to clarify the definition of "transitory" and remove "transitory records" from the definition of "non-record"; Section 105, Correspondence - General, is being amended to add transitory records to the description; and Section 336, Case Files - Loans, and Section 337, Educational Financial Aid, are being amended to remove grant administration from the subcategory; grant files were moved to the Administration - general management category in November of 2016.

The proposed amendments to 1.13.5 NMAC consist of the following: Section 8 is being amended to clarify eligibility requirements for historical records grants; Section 9 is being amended to clarify the conditions for custody of historically significant records; and Section 10 is being amended to limit the types of projects that could be funded.

The proposed amendment of 1.13.4 NMAC is to amend Section 7 to clarify the definition of "transitory" and remove "transitory records" from the definition of "non-record".

The proposed repeal and replacement of 1.13.30 NMAC consist of the follow modifications: Section 2 is

being amended to widen the scope of the rule; Section 7 is being amended to clarify the definition of "inactive record" and the definition of "transitory" and remove "transitory records" from the definition of "non-record"; Section 10 is being amended to only transfer closed records to the state archives; Section 11 is be amended to add a designee of the state records administrator to inspect records for on-site records, add the requirement of a certificate of destruction, and add the qualification of a document destruction vendor; Section 12 is being amended to add a designee of the state records administrator to inspect records at the record centers; standardizing the dimensions of boxes brought in the destruction, and establish a fee for the services of document destruction for boxes delivered to the record centers; Section 13 is being amended to establish a fee for the services of document destruction for boxes stored in the record centers that have met their retention: Section 14 is being amended to require a standardized form and to correct a NMAC reference; and Section 16 is being amended to remove a unnecessary statutory reference and grammatical corrections.

The proposed amendment of 1.13.10 NMAC is to add the rejection of storage boxes that are less than three quarters full from being accepted to the record centers and to add a reference to the fee schedule for the storage of microfilm.

At the hearing the Commission and Administrator will take oral and written comments related to the rulemaking actions listed below and during the meeting consider approving these rulemaking actions.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at rmd.cpr@state.nm.us. Written comments must be received no later than 5 p.m. on August 15, 2017. If submitting written comments by email, please indicate in the subject

line the number of each rule(s) for which you are providing comments.

Persons offering written comments at the hearing must have eight (8) copies for the Commission and Administrator to review. Oral comments will also be accepted at the rule hearing, subject to time limitations.

The Commission may vote on the proposed rules during the meeting on August 29, 2017. The State Records Administrator may take action on those rules at the close of the public rulemaking hearing. A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the Commission's website (www.nmcpr.state.nm.us) or by contacting Melissa Salazar at Melissa.Salazar@state.nm.us, 1205 Camino Carlos Rey, Santa Fe, New Mexico 87505 or 476-7926 or 476-7911.

A copy of the agenda for the combined meeting and rule hearing is also available on the Commission website and at the office of the State Records Administrator located in the Santa Fe State Records Center and Archives at 1205 Camino Carlos Rey, Santa Fe, NM. The agenda is subject to change up to 72 hours prior to the meeting.

Legal authority for this rulemaking can be found in the Public Records Act, Section 14-3-1, et seq. and in the State Rules Act, Section 14-4-1, et seq. NMSA 1978.

EDUCATIONAL RETIREMENT BOARD

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the New Mexico Educational Retirement Board of Trustees (NMERB) will hold a public rulemaking hearing on August 25, 2017. The hearing will be held during the Board's regular business meeting at the ERB's Albuquerque office located at 6201 Uptown Boulevard

NE, Suite 203, Albuquerque, NM 87110 beginning at 9:00 a.m. The purpose of the rulemaking hearing is to take public comment regarding the following proposed rulemaking actions:

Amendment

2.82.1 NMAC, General Provisions
2.82.3 NMAC, Member and Administrative Unit Contributions
2.82.5 NMAC, Retirement Benefits
2.82.7 NMAC, Annuitants and Disability Recipients
2.82.11 NMAC, Administrative Appeals

Repeal and replace

2.82.2 NMAC, Membership
2.82.4 NMAC, Service Credit
2.82.6 NMAC, Disability Benefits

The purpose of the proposed rule changes are primarily to accommodate for changes that were made to the Educational Retirement Act due to passage of SB 28 in the 2017 regular legislative session. Accordingly, proposed amendments to or repeal and replacement of the above rules make numerous technical and clarifying changes. Specifically, the proposed rule changes delete most references to "provisional members"; change the rules to conform to current NMERB practice in regards to applications for disability benefits; and eliminate or change other miscellaneous outdated provisions as well as changing to gender neutral language.

In addition, the proposed amendments to or repeal and replacement of the above NMERB rules offer the following additional changes:

- Allow committee chairs to temporarily appoint members to the committee when necessary to achieve a quorum. 2.82.1.9 NMAC.
- Authorize the executive director to decide whether NMERB will seek lead plaintiff status in class action lawsuits. Such decisions need to be ratified by the board. 2.82.1.17 NMAC.
- Clarify the rule regarding

contributions for members whose salary is less than \$20,000.

Clarify situations in which an employee begins work with a salary level of less than \$20,000, but then during the year their salary level rises above \$20,000 due to increased hours or additional employment. If the member's total salary level rises above \$20,000 during the course of the year the member shall pay higher contributions beginning the first day of the month of the action that causes the change in salary. 2.82.3.8 NMAC.

- Set out standards for purchase of non-reported service due to the employer's failure to deduct member contributions. Require employers to remit both employer and employee contributions when non-reported service is to be purchased. 2.82.3.12 NMAC.
- Delete outdated provisions that applied to school bus owner-drivers. 2.82.6.8 NMAC. The current rule presumes school bus owner-drivers could be employees or independent contractors and still be NMERB members.
- Delete redundant provisions dealing with direct deposit of retiree payments. 2.82.7.8 NMAC.
- Specify that administrative hearings shall be held in Santa Fe. 2.82.11.8 NMAC.
- Clarify that parties at administrative hearings can be represented, but only by a New Mexico licensed attorney. 2.82.11.8 NMAC.
- Require that parties must appear in person at administrative hearings unless it is difficult or impossible for claimant to appear in person and the hearing officer approves. Allow witnesses to appear by phone or video conference with hearing officer approval. 2.82.11.8 NMAC.
- Written closing arguments may be filed at administrative hearings if permitted by hearing officer. Parties must file simultaneously. 2.82.11.8 NMAC.

Legal authority for this rulemaking can be found at Section 22-11-6

NMSA 1978.

The Board will vote on the proposed rules during the meeting on August 25, 2017. A summary of the proposed revisions and copies of the full text of the proposed rules may be accessed at the NMERB's website www.nmerb.org or by contacting Amanda Olsen at AmandaS.Olsen@state.nm.us, 701 Camino de los Marquez, Santa Fe, New Mexico 87505 or (505) 476-6133.

Interested persons may submit comments on the proposed rules at the rule hearing or may submit written comments via email at rule.change@state.nm.us. Written comments must be received no later than 5 p.m. on August 18, 2017. If submitting written comments by email, please indicate in the subject line the number of each rule(s) for which you are providing comments. Persons offering written comments at the rule hearing must have two copies for the hearing officer or agency representative who presides over the hearing. Oral comments will also be accepted at the rule hearing, subject to time limitations.

Any person with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or auxiliary aid or service to attend or participate in the hearing should contact Debbi Lucero at (505) 827-8030 one week prior to the meeting.

ENGINEER, OFFICE OF THE STATE

NOTICE OF PROPOSED RULES AND PUBLIC HEARING

The State Engineer has released proposed rules governing the Nambé-Pojoaque-Tesuque Water Master District: Active Water Resource Management pursuant to Subsection D of Sections 72-2-8 and 72-2-9.1 NMSA 1978, and 17.25.13 NMAC.

Purpose: The proposed Rules were developed to provide for and supervise the distribution and administration of the available water

supply and administrable water rights adjudicated in the general adjudication of all water rights in the Nambé – Pojoaque - Tesuque Stream System (*State of New Mexico ex rel. State Engineer v. Aamodt, et al.*, U.S. District Court No. 66cv6639); to implement the terms and conditions of the Settlement Agreement executed by the State of New Mexico, the Pueblos of Nambé, Tesuque, Pojoaque, and San Ildefonso, the County of Santa Fe, City of Santa Fe, and the United States on March 14, 2013; and to implement Active Water Resource Management for the Nambé-Pojoaque-Tesuque Water Master District.

Summary of the Full Text: The Rules set out the authority and duties of the district water master regarding the use and administration of groundwater and surface water (including changes in points of diversion, purpose or place of use) for both Pueblo and non-Pueblo water rights. The Rules provide for priority administration in the district, including alternative administration of the first priority of the Pueblos' water rights.

The Rules establish provisions for conveyance of groundwater rights and expedited permitting for changes in points of diversion and places of use to the County Water Utility and for new domestic well points of diversion, and provide for a connection fund for the costs of connecting to the County Water Utility.

The Rules govern the determination of interference and offsets by the water master resulting from the exercise of Pueblo water rights, and establish procedures for reimbursement from a mitigation fund for the effects of impairment to non-Pueblo groundwater rights determined by the water master.

Details for Obtaining Copy, Public Hearing and Comments: The proposed rules are available at the District Offices of the State Engineer in Santa Fe, Albuquerque, Las Cruces, Roswell, Deming, Aztec, and Cimarron. The proposed rules

are also posted on the office of the State Engineer website and may be accessed at <http://www.ose.state.nm.us/index.php> (click on the link under HOT TOPICS). To request that a copy of the proposed rules be sent to you by mail or e-mail, please contact Felicity Strachan (505) 827-3989.

A public hearing will be held at the Old Senate Chambers, Bataan Building, 400 Don Gaspar Ave, Santa Fe, New Mexico, on August 16, 2017, beginning at 2pm. Any person who is or may be affected by these proposed rules may appear and testify. Written comments may be submitted at the public hearing, or by e-mail to felicity.strachan@state.nm.us until 5:00 pm on August 16, 2017.

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

NOTICE OF PUBLIC COMMENT

The Human Services Department is required by the Federal Community Opportunity Accountability Training and Education Services (COATES) Reauthorization Act of 1998 to submit a State Plan to the U.S. Department of Health and Human Services, Office of Community Services in order to receive a grant or allotment for the (CSBG) program. The Department is required to offer a 30-day comment period for the CSBG State Plan prior to submittal.

The proposed CSBG State Plan is available on the Human Services Department website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-plans-and-reports.aspx>. If you do not have Internet access, a copy of the proposed State Plan may be requested by contacting the Income Support Division's Work and Family Support Bureau (WFSB) at 505-827-7251. The Department proposes to implement the plan effective October 1, 2017.

A public hearing will be held August 10, 2017, at 10:00 a.m. The hearing will be held in the Income Support

Division Conference Room, 2009 S. Pacheco St., Santa Fe, NM, 87505. Parking accessible for persons with physical impairments is available.

Individuals wishing to testify may contact the Income Support Division, P.O. Box 2348, Santa Fe, NM 87504-2348, or by calling 505-827-7251.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-7701 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Interested persons may address written or recorded comments to:

Human Services Department
Attn: CSBG Program Manager
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

Interested persons may also address comments via electronic mail to:
HSD-isdrules@state.nm.us

PUBLIC REGULATION COMMISSION

NOTICE OF PROPOSED RULEMAKING

The Public Regulation Commission (the "PRC") gives notice that in case number 17-00136-UT it has initiated a proposed rulemaking repealing and replacing 17.7.2 NMAC - Energy Efficiency (the "EE Rule"), specifically Sections 8, 12, 14 of the EE Rule, and possibly any other sections of the EE Rule, if any, that may be revised as a logical outgrowth of the noticed revisions or that may be revised for clarity or for other insubstantial reasons, with an effective date of September 26, 2017 or thereafter.

The following is a **Synopsis** of the proposed changes: Adding language to permit a public utility to periodically adjust its plan year expenditures, without commission approval, by an amount not greater than ten percent (10%) of the commission authorized funding if the adjustment will result in aligning plan year expenditures more closely with projected plan year collections under the utility's energy efficiency rider and requiring the public utility to file notice of the modification. Adding language stating that adjustments of more than ten percent (10%) of the commission authorized funding requires prior commission approval. Also, adding language to permit a utility to modify its plan year program by petitioning for approval of a new program. Finally, the addition, in the utility's annual report, of its estimates of program expenditures expected in the next year.

Copies of the Order Establishing Rulemaking Docket and Issuing Notice of Proposed Rulemaking containing additional information, a copy of the proposed rule changes, and filing instructions for written comments may be downloaded from the Proposed Rulemaking section of the PRC's website at <http://www.nmprc.state.nm.us> under Case No. 17-00136-UT or by calling the PRC's Records Management Bureau at (505) 827-6968 (Melanie Sandoval).

Written initial comments and written response comments shall be filed by the deadlines below with the NMPRC's Record's Management Bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the NMPRC Records Management Bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501 as follows: Written comments shall be filed not later than **August 11, 2017** and written responses not later than **August 21, 2017**. All written comments shall refer to Case No. 17-00136-UT.

A rulemaking public comment hearing will be held in this matter. The rulemaking public comment hearing will be held on Wednesday, **August 30, 2017, beginning at**

10:30 a.m. in Santa Fe at the offices of the Commission located in the 4th Floor Hearing Room of the old PERA Building, at 1120 Paseo de Peralta, in Santa Fe, NM 87501. The purpose of the rulemaking public comment hearing is to give interested individuals an opportunity to provide oral comments about the proposed rules. The PRC may limit the time for each comment to a consistent limited number of minutes per commenter. Only oral comments, but no testimony or other legally admissible evidence, shall be taken at the hearing because this docket is a rulemaking proceeding. The record of this case will close on **September 5, 2017**.

Interested persons should contact the PRC to confirm the date, time, and place of this public hearing because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Ms. Kathleen Segura at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

Statutory Authority: New Mexico Constitution, Article XI, Section 2; NMSA 1978, Paragraph 10 of Subsection B of Section 8-8-4 (1998), Section 8-8-15, and Section 62-17-8.

End Of Notices Of Rulemaking And Proposed Rules

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

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.2 NMAC, Section 20 and adding Section 21, effective 07/11/2017.

1.13.2.7 DEFINITIONS:

A. "Acid-free" means having a pH of 7.0 or greater.

B. "Administrator" means the state records administrator (Section 14-3-2 NMSA 1978).

C. "Administrative law division" means an organizational unit of the commission of public records and is under the control of the state records administrator.

D. "Archival" means the material properties inherent in any medium permitting its preservation under controlled conditions.

E. "Archives and historical services division" means an organizational unit of the commission of public records and is under the control of the state records administrator.

F. "Certified copy" means a reproduction of a public record expressly verified by the custodial agency as a true and accurate representation of the official copy of the record.

G. "Clip" means a selected part of a motion picture film.

H. "Commission" means the state commission of public records (Section 14-3-2 NMSA 1978).

I. "Digital restoration" means digitally improving the overall appearance of a scanned photograph by adjusting brightness or contrast or both, sharpening, adjusting overall color, cropping, etc.

J. "DVD" means digital video disc, an optical disc

storage medium.

K. "Enhancement" means digitally repairing a scanned photograph to remove signs of deterioration and damage (spots, tears, red eye, fold lines, etc.).

L. "Electronic media" means optical storage discs and magnetic tapes. Does not include hard drives.

[E.] M. "JPEG" means a compressed image file format, commonly used for the compression of photographic images, developed by the joint photograph experts group.

[M.] N. "MiniDV" means a video digital storage format available in small cassettes with high storage capacity.

[N.] O. "Oversized material" means maps, architectural drawings, books and textual and other documents larger than 12 inches by 16 inches.

[O.] P. "Record" means all books, papers, maps, photographs, recordings, tapes or other documentary materials, regardless of physical form or characteristics.

[P.] Q. "Requester" means any individual who is not a commercial-use requester. This term does not include requests citing the Inspection of Public Records Act, which are handled in accordance with the law and agency policy.

[Q.] R. "Records management division" means an organizational unit of the commission of public records and is under the control of the state records administrator.

[R.] S. "Rule" means any rule, regulation, order, standard or statement of policy, including amendments thereto or repeals thereof, issued or promulgated by an agency of state government and purporting to affect one or

more agencies besides the agency issuing the rule or to affect persons not members or employees of the issuing agency, and as further defined in ~~[subsection C of Subsection]~~ Subsection C of Section 14-4-2 NMSA 1978 and Attorney General Opinion No. 93-1, that is filed with the administrative law division.

[S.] T. "State records center" means the central records depository that is the principal state facility for the storage and disposition of inactive records of state agencies.

[T.] U. "TIFF" means tagged image file format, a bitmap image format used for storing images. [1.13.2.7 NMAC - N, 3/14/01; A, 7/15/03; A, 6/30/05; A, 6/1/06; A, 7/1/09; A, 7/31/12; A, 9/15/14; A, 07/11/2017]

1.13.2.20 RECORDS STORAGE SERVICES:

A. [State agency records, paper:

~~(1) Records that have not met their legal retention or that have been subpoenaed or are otherwise involved in on-going litigation or an active investigation - no charge~~

~~(2) Records that have met their legal retention and for which the records management division has issued a disposition notice - \$0.50 per month per box (see 1.13.10 NMAC)~~

~~**B.** Municipal and county records, paper - \$0.50 per box (either cubic-foot or maps and drawings box) per box, regardless of whether retention has been met (see 1.13.2 NMAC).~~

~~**C.** State agency records, microfilm:~~

~~(1) Records that have not met their legal retention or that have been subpoenaed or~~

are otherwise involved in on-going litigation or an active investigation – no charge

(2) Records that have met their legal retention and for which the records management division has issued a disposition notice – \$0.25 per 16mm roll equivalent per month (see 1.13.10 NMAC)

D. Inactive municipal and county records, microfilm – \$0.25 per 16mm roll equivalent per month, regardless of whether retention has been met (see 1.13.10 NMAC).]

Paper storage for state agencies:

(1) Records that have not met their legal retention – no charge.

(2) Records that have met their legal retention and for which the records management division has issued a disposition notice – \$0.50 per box, per month (see Section 1.13.10.11 NMAC).

B. Paper storage for municipalities, the judicial branch and counties – \$0.50 per box, per month, regardless of whether retention has been met.

C. Microfilm storage for state agencies:

(1) Records that have not met their legal retention – no charge.

(2) Records that have met their legal retention and for which the records management division has issued a disposition notice – \$0.25 per roll, per month (see Section 1.13.10.11 NMAC).

D. Microfilm storage for municipalities, the judicial branch and counties – \$0.25 per roll, per month, regardless of whether retention has been met.

[1.13.2.20 NMAC – N, 6/30/05; A, 7/1/09; A, 9/15/14; A, 07/11/2017]

1.13.2.21 RECORDS DESTRUCTION SERVICES:

A. Standard storage box equivalent (15" x 12" x 10") or smaller – \$0.50 per box.

B. Map box equivalent (10" x 10" x 38") or smaller – \$0.75 per box.

C. Microfilm – \$0.25

per roll.

D. Microfiche – \$14.00 per standard storage box equivalent (15" x 12" x 10") or smaller.

E. Electronic media – \$10.00 per standard storage box equivalent (15" x 12" x 10") or smaller.

[1.13.2.21 NMAC – N, 07/11/2017]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.13.10 NMAC, Sections 2, 7, 8, 11, and 14, and repealing Section 13, effective 07/11/2017.

1.13.10.2 SCOPE: [All agencies that utilize the records center services and state archives.] All state agencies and any public entity that use the state records center services. [1.13.10.2 NMAC – Rp, 1.13.10.2 NMAC, 11/30/2015; A, 07/11/2017]

1.13.10.7 DEFINITIONS:

A. "Chief records officer" means a person designated by an agency's records custodian to administrate the agency's records management program, refer to 1.13.12.9 NMAC.

B. "Custodial agency" means the agency responsible for the creation, maintenance, safekeeping and preservation of public records, regardless of physical location.

C. "Custody" means the guardianship of records, archives and manuscripts, which may include both physical possession (protective responsibility) and legal title (legal responsibility).

D. "Destruction" means the disposal of records of no further operational, legal, fiscal, or historical value by shredding, burial, pulping, electronic overwrite or some other process, resulting in the obliteration of information contained on the record.

E. "Disposition" means final action that puts into effect the results of an appraisal decision for a series of records (i.e., transfer to

archives or destruction).

F. "Functional records retention and disposition schedule" means a rule adopted by the commission pursuant to Section 14-3-6 NMSA 1978 describing the function of records, establishing a timetable for their life cycle and providing authorization for their disposition.

G. "Inactive record" [means a record where the retention trigger event has occurred and the record is closed.] means a record no longer needed to conduct current business but required to be maintained for operational, legal, fiscal or historical purposes until it meets its retention.

H. "Master microfilm" means the original microform produced from which duplicates or intermediates can be obtained.

I. "Microphotography" means the transfer of images onto film and electronic imaging or other information storage techniques that meet the performance guidelines for legal acceptance of public records provided by information system technology pursuant to rules adopted by the commission.

J. "Non-record" means extra copies of documents kept solely for convenience of reference, stocks of publications, [transitory records,] records not usually included within the scope of the official records of an agency or government entity and library material intended only for reference or exhibition. The following specific types of materials are non-records: materials neither made nor received in pursuance of statutory requirements nor in connection with the functional responsibility of the officer or agency, extra copies of correspondence, preliminary drafts, blank forms, transmittal letters or forms that do not add information, sample letters and informational files.

K. "Pending litigation" means threatened, pending or active proceedings in a court of law whose activity is in progress but not

yet completed.

L. “Pick-up only personnel” means personnel authorized by a records custodian, chief records officer or record liaison officer to only pick-up records from the records center.

M. “Records liaison officer” means a person designated by the records custodian to interact with the state commission of public records, refer to 1.13.12.10 NMAC.

N. “Retention” means the period of time during which records shall be maintained by an organization because they are needed for operational, legal, fiscal, historical or other purposes.

~~**O. “Transitory”** means messages which serve to convey information of temporary importance in lieu of oral communication. Transitory messages are only required for a limited time to ensure the completion of a routine action or the preparation of a subsequent record. Transitory messages are not required to control, support or to document the operations of government.]~~

[P:] Q. “Trigger event” means the closing event of a record which begins the retention period. [1.13.10.7 NMAC - Rp, 1.13.10.7 NMAC, 11/30/2015; A, 07/11/2017]

1.13.10.8 CUSTODY OF RECORDS: In accordance with the functional records retention and disposition schedule, agency records stored at the records center shall remain in the custody of the records custodian of the custodial agency until:

A. they are destroyed or transferred to archives with written approval from the administrator; and

B. the written consent of the records custodian or designated chief records officer of the custodial agency. [1.13.10.8 NMAC - Rp, 1.13.10.8 NMAC, 11/30/2015; A, 07/11/2017]

1.13.10.11 STORAGE OF RECORDS WITH A FINITE RETENTION AT THE RECORDS CENTER:

A. The records management division provides storage to agencies for inactive public records. Non-record materials shall not be submitted for storage in the records center.

B. Records involved in pending litigation, an audit or investigation are not eligible for transfer to the records center.

C. Agencies shall submit storage transmittal form(s) electronically using a form approved by the administrator.

D. Each storage transmittal form shall contain records of one media type and designate one storage location.

E. Records will not be accepted for storage whose retention will be met within 36 months.

F. Barcode labels provided by the records center staff shall be affixed to the records storage boxes prior to delivery. The labels shall be placed two to three-inches below the handle side of the storage box.

G. The records custodian, the chief records officer and the records liaison officer shall be notified by the records management division when records in storage have met the legal retention period and are eligible for destruction.

H. If an agency does not respond to the authorization to destroy records by the established deadline, the administrator shall charge the custodial agency a storage fee for the storage of records that are eligible for destruction. In addition, the return of withdrawn boxes, storage and disposition services will be suspended. For information on the fee schedule, refer to 1.13.2 NMAC.

I. ~~[Records currently stored requiring a legal hold must be identified by the custodial agency in writing on an annual basis and permanently removed from the records center if the legal hold lasts longer than five years. Agencies will be assessed a storage fee for all records with legal holds greater than five years. Records which are immediately affected by the provisions of this section shall~~

~~have until July 1, 2017 to resolve the issue by: removing the records from the records center, approving the destruction if the legal hold has been lifted or paying the storage fee assessed.] A storage fee shall be charged for records that are eligible for destruction but are not destroyed at the request of the custodial agency. For information on the fee schedule, refer to 1.13.2 NMAC. [1.13.10.11 NMAC - Rp, 1.13.10.13 NMAC, 11/30/2015; A, 07/11/2017]~~

1.13.10.13 [STORAGE OF ELECTRONIC MEDIA:

A. For storage requirements, refer to 1.13.10.11 or 1.13.10.12 NMAC.

B. An agency shall have an approved imaging plan on file with the administrator before electronic media can be stored at the records center. For imaging plan requirements, refer to 1.14.2 NMAC.]

[RESERVED]

[1.13.10.13 NMAC - Rp, 1.13.10.15 NMAC, 11/30/2015; Repealed, 07/11/2017]

1.13.10.14 STORAGE OF MICROFILM:

A. For storage requirements, refer to 1.13.10.11 and 1.13.10.12 NMAC.

B. ~~[An agency]~~ All state agencies and any public entity shall have an approved microphotography plan on file with the records management division before master microfilm can be stored. For microfilm plan requirements, refer to 1.14.2 NMAC.

C. Microfilm shall pass inspection before it is approved for storage.

[1.13.10.14 NMAC - Rp, 1.13.10.16 NMAC, 11/30/2015; A, 07/11/2017]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.24.10 NMAC, Sections 3, 10, 11, 15 through 17, effective 7/11/2017. These changes are to align the following rule to the 2017 statutory

amendments to the State Rules Act, Section 14-4-1 et seq.

1.24.10.3 STATUTORY

AUTHORITY: Section 14-4-7.2 NMSA 1978 directs the state records administrator to create and publish a New Mexico administrative code, and to adopt regulations setting forth procedures for compiling the code and prescribing the format and structure of the code. Section 14-4-3 NMSA 1978 directs that [“...each agency of the executive branch of state government promulgating any rule shall place the rule in the format and style required by rule of the records center and shall deliver one original paper copy and one electronic copy to the records center.”] promulgated rules shall be in style and format required by and delivered to the state records administrator together with a concise explanatory statement to be filed noting the date and hour of filing. [1.24.10.3 NMAC - Rp 1 NMAC 3.3.10.3, 2/29/2000; A, 7/11/2017]

1.24.10.10 ISSUING

AUTHORITY:

A. The issuing authority is responsible for ensuring compliance with the requirements set forth in this part.

B. Where delegation is authorized, the agency may, by rule or formal appointment, specify an issuing authority other than that named in statute. The agency shall forward, in writing, the title, name and signature of the designee to the state records administrator. The agency shall notify, in writing, the state records administrator of any change in the designation. Designation shall only be made by the issuing authority. Formally appointed designees are not allowed to appoint other designees.

C. The administrative law division shall not accept a rule filing or a concise explanatory statement signed by other than the issuing authority, or a formally appointed designee.

[1.24.10.10 NMAC - Rp 1 NMAC 3.3.10.9, 2/29/2000; A, 6/30/2004; A, 11/30/2015; A, 7/11/2017]

1.24.10.11 WHAT CONSTITUTES A RULE:

~~—A.—~~ Agency directives that affect persons outside the agency or have significant indirect effect upon such persons are rules.

~~—B.—~~ Manuals of procedure may contain material that affects other state agencies, the public or agency clients. Such material shall be filed as a rule. If it cannot be separated from other material, the entire manual shall be filed. Agencies are encouraged to separate rule material even if it is later included in a manual of procedure.

~~—C.—~~ Procedures for public hearings and open meetings shall be filed as a rule.

~~—D.—~~ Contracts, requests for proposals (RFPs) or requests for information (RFIs), including form contracts, are not rules; however, agencies may issue rules that require contractual terms.

~~—E.—~~ Materials specifically exempted by statute from the State Rules Act are not rules.

~~—F.—~~ Computations of annual assessments based on rule or statute are not rules - i.e., tax tables.

~~—G.—~~ Minutes of meetings are not rules.] “Rule” and “proposed rule” have been defined and set forth within statute (See Section 14-4-2 NMSA 1978).

[1.24.10.11 NMAC - N, 2/29/2000; A, 6/30/2004; A, 7/11/2017]

1.24.10.15 NMAC TRANSMITTAL FORM:

A. Each rule filing delivered to the records center shall be accompanied by a completed NMAC transmittal form in hard copy with an original signature in black ink or with a valid digital signature.

B. The administrative law division shall provide agencies with blank NMAC transmittal forms in electronic format.

C. The filing agency shall complete the NMAC transmittal form and submit to the administrative law division for review and approval prior to [filing] adoption of any rulemaking.

D. The NMAC

transmittal form shall not be handwritten and shall be suitable for reproduction.

E. The following shall appear on the NMAC transmittal form:

(1) issuing agency name and address;

(2) three digit DFA account code for the agency (if applicable);

(3) [issuing agency mailing address] volume, issue, publication date in register for rule filing;

(4) contact person’s name, phone number, and e-mail address;

(5) type of filing - i.e., new, amendment, renumber, repeal, repeal/replace or emergency filing;

(6) total number of pages;

(7) date(s) of any public hearing(s) on the proposed rule or amendment;

(8) effective date of the rule filing [(cannot precede publication in the New Mexico register unless it is an emergency rule)];

(9) NMAC title, chapter and part name and number;

(10) description of amendment (for amendment filing only, i.e. “amending two sections”);

(11) amendment’s NMAC citation (i.e. 1.24.10.15 and 16 NMAC);

(12) sequence number and most recent filing date of the part (if applicable and designated for administrative law division use only);

(13) declaration of incorporated material;

(14) if reference materials are attached and are protected by copyright:

(a) indication if copyright permission was obtained;

(b) the proof of permission; or

(c) material is within the definition of

public domain;

(15) ~~[legal citation(s) that grants]~~ specific statutory or other authority authorizing the rulemaking by the issuing agency [the authority] to promulgate rules [on the subject area; and];

(16) ~~[legal citation(s) that specifies who can authorize the rule in the agency]~~ any findings required by a provision of law for adoption of the rule;

(17) rule adoption date; and

(18) rule effective date.

F. Each rule filing shall bear the original signature of the issuing authority or authorized designee in black ink on the paper copy of the NMAC transmittal form. If authority is delegated, the box shall be checked.

G. Those portions of the transmittal form that are completed by the issuing agency under the concise explanatory statement heading shall be considered sufficient compliance with State Rules Act and shall be provided to the public at the time the issuing agency adopts any rule making.

[1.24.10.15 NMAC - Rp, 1 NMAC 3.3.10.11, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/11/2017]

1.24.10.16 FILING A RULE:

A. At the time of filing the filing agency shall present the following, which has been reviewed and pre-approved by administrative law division:

(1) one paper version of the completed NMAC transmittal form;

(2) one electronic version of the text of the rule or amendment;

(3) one electronic version of the integrated part (if filing an amendment); and

(4) one electronic version of the billing information sheet.

B. Other material to be published in the New Mexico register

in conjunction with promulgation of the rule or amendment shall be delivered to the administrative law division at the time of filing. Examples include synopses, short-form publication, conversion tables, any technical information relied upon in formulating the final rule, any comments or other material received by agency during rule hearing, and summaries of public comment.

C. At the time of filing, an agency may submit to the administrative law division an additional paper copy, for annotation on the first page of the rule with the date and hour of filing, to be returned to the agency (Section 14-4-3 NMSA 1978).

D. If a short-form publication or synopsis is made in accordance with the requirements of 1.24.15 NMAC, the full text of the rule shall be submitted as part of the rule filing. The full text shall be published in the NMAC at no additional cost to the agency.

E. No rule shall be valid and enforceable until it is filed with the administrative law division and published in the New Mexico register as provided by the State Rules Act. If properly submitted and not published as a result of error, the rule shall be deemed to have been published three weeks after filing with the records center (Sections 14-4-3 and 14-4-5 NMSA 1978).

F. A valid purchase order number must be included on the billing information sheet at the time of filing. A purchase order must be submitted to the records center by paper or electronic version at least one business day prior to the publication date.

[1.24.10.16 NMAC - Rp, 1 NMAC 3.3.10.10, 2/29/2000; A, 6/30/2004; A, 9/15/2014; A, 11/30/2015; A, 7/11/2017]

1.24.10.17 REJECTED RULE FILINGS:

A. The administrative law division shall refuse to file written material if it is not a rule as defined in [1.24.1.7 NMAC] the State Rules Act or if the materials submitted for

rule filing do not conform to the style and format requirements detailed in 1.24.10 NMAC.

(1) Materials that are not rules may be filed as a publication.

(2) Rule filings that do not conform to style and format requirements shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

(3) Rule filings that do not meet the minimum statutory time periods for notice of proposed rulemaking, public participation, and public comments shall be returned to the filing agency and shall not be filed or published in the New Mexico register.

B. The administrative law division shall identify material previously filed as a rule but not conforming to the definition of a rule. The material shall be removed from the rules collection and rule history database with 30 days written notice to the affected agency.

C. If an affected agency finds it previously filed material as a rule that does not conform to the definition of a rule, that agency shall notify the administrative law division in writing. If the administrative law division agrees the material does not conform to the definition of a rule, the material shall be removed from the rules collection and the rule history database within 30 days of receiving the notice.

[1.24.10.17 NMAC - N, 2/29/2000; A, 6/30/2004; A 9/15/2014; A, 11/30/2015; A, 7/11/2017]

COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.24.15 NMAC, Sections 3, 8, 9 and 13, effective 7/1/2017.

These changes are to align the following rule to the 2017 statutory amendments to the State Rules Act, Section 14-4-1 et seq.

1.24.15.3 STATUTORY

AUTHORITY: Subsection E of Section 14-4-7.1 NMSA 1978 directs the state records administrator to adopt and promulgate rules necessary for the implementation and administration of the New Mexico register.

[1.24.15.3 NMAC - Rp 1 NMAC 3.3.15.3, 2/29/2000; A, 7/1/2017]

1.24.15.8 REQUIREMENTS FOR AGENCIES RELATIVE TO PUBLISHING NOTICES AND RULES IN THE NEW MEXICO REGISTER:

A. Agencies shall publish in the New Mexico register:

(1) notices of rule-making; and

(2) adopted rules filed with the administrative law division of the state records center under the State Rules Act, either in full text, short-form publication or in synopsis; synopses shall have prior approval of the state records administrator and such approval shall also be published;

(3) emergency rules.

B. Agencies may publish other materials related to administrative law at their discretion.

C. History notes, histories of the part, and amendments to history notes need not be published in the New Mexico register.

[1.24.15.8 NMAC - Rp 1 NMAC 3.3.15.8, 2/29/2000; A, 7/15/2003; A, 9/15/2014; A, 11/30/2015; A, 7/1/2017]

1.24.15.9 REQUIREMENTS FOR NOTICES:

All notices submitted for filing must conform to the following requirements:

A. The content of any notice of proposed rulemaking must have at least the following:

(1) ~~name of agency holding the meeting;~~
(2) ~~where and when the meeting will be held, that includes the address, date and time;~~
(3) ~~where copies of the meeting agenda can be found;~~

(4) ~~where copies of the proposed rules can be found;~~

(5) ~~what accommodations are being made for individuals with disabilities; and~~

(6) ~~if public comment is allowed at the hearing, how and where to submit written or oral comments to the agency.]~~

(1) name of agency holding the hearing;

(2) a summary of or the actual full text of the proposed rule;

(3) a short explanation of the purpose of the proposed rule;

(4) a citation to specific legal authority authorizing the proposed rule and the adoption of the proposed rule;

(5) information on how a copy of full text of proposed rule may be obtained, if full text is not already included within the body of the notice;

(6) information on how a person may comment on proposed rule, where comments will be received and when comments are due;

(7) where and when the public rule hearing will be held, that includes the address, date and time and how a person may participate in the hearing;

(8) a citation to technical information, if any, that serves as a basis for the proposed rule and information on how the full text of the technical information may be obtained, if not already included within the body of the notice;

(9) an internet link providing free access to the full text of the proposed rule, if full text is not already included within the body of the notice.

B. The form of any notice must conform to the following:

(1) the notice heading shall be in bold or capital letters and be centered at top of page;

(2) the notice heading shall simply and accurately describe the rulemaking hearing;

(3) the text

of the notice shall be flush with the document's left margin; and,

(4) the use of legal, case, or other headings is discouraged.

C. ~~[If special or unique circumstances are requested by an agency for deviation from any of the above requirements, the state records administrator has the authority to grant an exception.]~~
The administrative law division, as designation by the state records administrator, shall not accept for publication any notice of proposed rulemaking that does not on its face meet the statutory 30 day minimum time periods for public rule hearing, public participation and public comments.

[1.24.15.9 NMAC - N, 11/30/2015; A, 7/1/2017]

1.24.15.13 CHARGES FOR PUBLISHING IN THE NEW MEXICO REGISTER:

There shall be a \$3.00 per column inch charge to agencies publishing material in the New Mexico register. All material shall be published in the New Mexico register shall use Word document Times New Roman, 10-point font.

[1.24.15.12 NMAC - Rp, 1 NMAC 3.3.15.10, 2/29/2000; A, 7/15/2003; A, 7/1/2009; A, 10/15/2014;

1.24.15.13 NMAC - Rn, 1.24.15.12 NMAC, 11/30/2015; A, 1/1/2017; A, 7/1/2017]

[Charges for publishing in the New Mexico register are also found in 1.13.2.18 NMAC.]

ECONOMIC DEVELOPMENT DEPARTMENT

This is an amendment to 5.5.50 NMAC, Sections 6, 8, 10 and 15, effective 7/11/2017.

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 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. Eligibility for JTIP funds depends on the company's business, the role of the newly created positions in that business, and the trainees themselves.

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 fifty percent 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. Financial strength is also a consideration in funding decisions. The company should be financially stable to ensure long-term employment for JTIP trainees.]~~ Companies that increase the economic base of New Mexico are eligible to be considered for JTIP funds. They are broken out into two broad categories: manufacturers and companies that provide services that are non-retail in nature and export at least fifty percent of the services to a customer base outside New Mexico. 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.

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 must directly support the primary mission of the business and include those directly related to the creation of the product or service provided by the company to its customers. ~~[In addition, other]~~ Other newly created jobs not directly related to production may be eligible. The number of these jobs is limited to twenty percent of the total number of jobs applied for in the proposal ~~[and may include non-executive, professional support positions].~~ Rural companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications. Jobs must also meet a wage requirement to be eligible for funding. 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] that apply for more than 20 positions must offer health insurance coverage to employees and their dependents and pay at least fifty percent 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] HSE (high-school equivalency). The one-year residency requirement may not apply to a trainee hired into an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company.

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 seventy-five percent 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.

(2)

Positions [which] that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the job zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC.

(3) Companies

[which] that utilize the WorkKeys®

program as part of their hiring process may be eligible for an additional five percent wage reimbursement above the standard rates.

(4) Companies ~~[which] that~~ hire trainees who have graduated within the past twelve months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent wage reimbursement above the standard rates.

(5) Companies ~~[which] that~~ hire trainees who are U.S. veterans may be eligible for an additional five percent wage reimbursement above the standard rates.

(6) Companies may combine the additional five percent wage reimbursement for high-wage jobs with any one of the conditions described in paragraphs (3), (4) or (5) above, for a total additional wage reimbursement not to exceed ten percent above the standard rates.

(7) If a company is participating in other job reimbursement training programs, the combined reimbursement to the company may not exceed one hundred percent.

E. Program management and administration: General management of the job training incentive program is the responsibility of the industrial training 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 may

elect to implement measures to conserve funds when available funds become limited. Such measures may include, but are not limited to considering applications from rural companies only, reducing the base reimbursement rates, eliminating reimbursement add-ons, reducing the number of eligible training hours and implementing funding caps. The board has adopted 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. [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, 06-30-2014; A, 06-30-2015; A, 06-30-16; A, 07-11-2017]

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. Non-traditional agricultural entities that provide unique export opportunities for industry that may not have otherwise existed in New Mexico may be eligible under the manufacturing category provided that the operation is a year-round, value-added production facility in a controlled and enclosed environment. Such operations may have mechanized processes, require a specialized workforce or may be involved with research and development or technology transfer. A company whose employees are compensated solely on piecework is not eligible. The second category is companies which provide a non-retail service to customers, with a minimum of fifty percent 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 fifty percent 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, multi-state, or commercial entities. Major United States research laboratories or companies which operate major United States research laboratories are not eligible. JTIP will not consider contractors which solely rely on income that is already in the state of New Mexico through national laboratories already existing in New Mexico. Eligible government contractors must generate at least fifty percent of revenues from a customer base outside the state of New Mexico, which may include other government contracts not related to national laboratories, or commercial contracts. 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 fifty percent 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 customer support centers have special eligibility requirements. Contract-based customer support centers are outsourcing vendors which provide information to customers of their clients on behalf of those clients. Contract-based customer

support centers do not have a core expertise; rather they communicate information provided to them by their clients. 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 fifty percent of the customer base is located outside of New Mexico. Aviation maintenance, repair and overhaul (MRO) operations with a minimum of fifty percent 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. Two categories of companies are eligible to be considered for JTIP funds: companies that manufacture a product in New Mexico and certain non-retail service providers. Manufacturing businesses are typically included in

sectors 31-33 of the North American industry classification system (NAICS). 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 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). A company whose employees are compensated solely on piecework is not eligible. Other types of companies that may be eligible under the manufacturing category are listed below:

(a)

Manufacturers that perform research and development and engineering functions for their own products in New Mexico but manufacture elsewhere. Start-ups and early-stage manufacturing companies. The company must be adequately capitalized to reach first production and be able to deliver service per criteria and procedures as set forth by and at the discretion of the JTIP board.

(b)

Renewable power generators.

(c)

Film post-production companies, and film digital production companies (such as animation and video game production companies).

(d)

Non-traditional agricultural entities that provide export opportunities for industry that may not have otherwise existed in New Mexico may be eligible under the manufacturing category provided that the operation is a year-round, value-added production facility in a controlled and enclosed environment. Such operations may have mechanized processes, require a specialized workforce or may be involved with research and development or technology transfer.

(e)

Manufacturers that perform research and development and engineering

functions for their own products in New Mexico but manufacture elsewhere are eligible.

(f)

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.

(2) Non-

retail service businesses provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public. Eligible non-retail service businesses must demonstrate that at least fifty percent of their revenues come from a customer base outside New Mexico. Businesses that may be eligible as non-retail service providers may include:

(a)

Companies that exist for the sole purpose of producing, installing, or integrating environmentally sustainable products (see definition of green industries in glossary). Companies that meet the green industry criteria are not required to generate out-of-state revenues.

(b)

Service companies that provide a non-retail service to government agencies may be eligible provided at least fifty percent of revenue is from a customer base outside New Mexico. Revenue derived from contracts with national research laboratories or military bases located in New Mexico is not considered out-of-state. National research laboratories in New Mexico or companies that operate national research laboratories in New Mexico are not eligible.

(c)

Logistics companies that provide inbound and outbound transportation management, fleet management, warehousing, materials handling, order fulfillment, logistics network design, inventory management, supply and demand planning, third-party logistics management, and

other support services. Logistics services are involved at all levels in the planning and execution of the movement of goods and information from point of origin to point of consumption for the purpose of conforming to customer requirements. Distribution and transloading services are included within the logistics category.

(d)

Aviation maintenance, repair and overhaul (MRO) operations may be eligible. MRO's provide airframe, engine and component services to the aviation industry, including aircraft such as planes, jets and helicopters in need of regular maintenance, repair and adjustments to keep in working order according to federal regulations. A contracted third-party or the owner of the aircraft may bring the aircraft to New Mexico for service.

(e)

Start-ups and early-stage 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.

(f)

Business operations that do not generate gross receipts within New Mexico may be eligible if at least fifty percent of the customer-base is outside New Mexico and service is provided to customers who are not physically present at the New Mexico facility. Companies in this category may be part of a multi-state entity or corporation that have a location in New Mexico and whose revenues flow to the New Mexico business operation, which in turn pay the wages of the New Mexico employees and contribute to the New Mexico tax base in the form of corporate and payroll taxes. Businesses that may be eligible under this category may include:

(i)

Headquarters operations: The center of operations of a business where corporate staff employees are physically employed; centralized functions are performed, including administrative, planning, managerial,

human resources, purchasing, information technology and accounting, but not including operating a call center; the function and purpose of which is to manage and direct most aspects and functions of the business operations within a subdivided area of the United States; from which final authority over regional or sub-regional offices, operating facilities and any other offices of the business are issued; and including national and regional headquarters if the national headquarters is subordinate only to the ownership of the business or its representatives and the regional headquarters is subordinate to the national headquarters.

(ii)

Shared services centers: The entity within a corporation responsible for the execution and the handling of specific operational tasks, such as accounting, human resources, payroll, IT, legal, compliance, purchasing, for a regional or national division.

(iii)

Customer support centers.

Customer support centers must service a customer who is not physically present at the facility. The customer support center must have a facility separate from other business operations (for example, a retail store). Positions that 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 customer support centers must meet special requirements. Contract-based customer support centers are outsourcing vendors that provide information to customers of their clients on behalf of those clients. Contract-based customer support centers do not have a core expertise; rather they communicate information provided to them by their clients. Contract-based customer support centers must provide evidence of a minimum five-year lease or purchase of a facility in New Mexico; offer employees and their dependents health insurance coverage; and

contribute at least fifty percent of the premium for healthcare insurance for those employees who choose to enroll.

[(2)] (3) 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] that 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] that 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)] (4) If a company hires twenty or more trainees in a municipality with a population of more than 40,000 according to the most recent decennial census or in a class [A] H 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)] (5) 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]~~ Start-ups and early-stage companies [which] that do not have three years of financials [must] are required to submit financials for the period for which they are available. Other documentation that may be requested may include but is not limited to tax returns, evidence of operating capital and investment funding, a business plan, evidence of signed contracts, pro forma financial statements and sales projections 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)] (6) 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)] (7) If a facility that received JTIP funds closes or if lay-offs of JTIP trainees occur within one year of the completion of training, the JTIP board will require the refund

of the funds associated with any JTIP trainee(s) [which] that 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)] (8) 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)] (9) 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.

(10) Businesses that are not eligible include but are not limited to retail, construction, traditional agriculture and farming, mining and extractive industries, 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 and eligibility.

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 may be eligible for the high wage job tax credit. These levels are \$60,000

in a municipality with a population of 40,000 or more as of the last decennial census and \$40,000 in other locations. Communities defined as urban for JTIP include Albuquerque, Las Cruces, Rio Rancho, 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 twenty percent of the total number of jobs for which funding is requested, and may include non-executive, professional support positions. Rural companies with fewer than 20 employees may include production-related jobs claimed on previous JTIP projects in the calculation when applying for non-production jobs on subsequent applications. For headquarter facilities as described under Paragraph (1) of Subsection A above, eligible positions may only include professional support, non-executive positions.

(5) Intern positions may be eligible provided the trainee is enrolled in, or has graduated within the past 12 months from, a post-secondary training or academic program and meets JTIP eligibility requirements. Intern positions may be part-time (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 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. The one-year residency requirement may not apply to a trainee hired in to an approved high-wage position provided the trainee meets all other JTIP eligibility requirements and moved to New Mexico with the intent of making New Mexico his/her permanent place of residence prior to beginning work with the participating company. All trainees must currently be domiciled in New Mexico.

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

(4) Trainees shall not have terminated a public school program except by graduation or [GED] HSE (high-school equivalency) 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) Employees hired by a company through a professional employer organization (PEO) may be eligible for funding provided the PEO agrees to comply with all JTIP requirements for the compliance and final auditor's reviews as outlined in Subsections J and K of 5.5.50.10 NMAC and in the JTIP project closeout guide.

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

(12) 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, 06-30-2014; A, 06-30-2015; A, 06-30-16; A, 07-11-2017]

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) 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.

(3) A percentage of intern wages for up to 640 training hours.

B. Standard reimbursement rates for wages range up to seventy-five percent. Positions [which] that meet the JTIP requirements with starting wages at levels eligible for the high wage job tax credit may be also eligible for an additional five percent wage

reimbursement. Positions filled by trainees who meet any of the three following criteria may be eligible for an additional five percent wage reimbursement above the standard rates if the approved entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4:

(1) Trainee has taken the WorkKeys® assessments as part of the hiring/recruitment process.

(2) Trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education.

(3) Trainee is a U.S. veteran.

Companies may combine any one of the three conditions above with the additional five percent wage reimbursement for high-wage positions, for a total additional wage reimbursement not to exceed ten percent above the standard rates. If a company is participating in other job reimbursement training programs such as the Workforce Innovation and Opportunity Act (WIOA), the combined reimbursement to the company may not exceed one hundred percent.

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 standard reimbursement ranges up to seventy-five percent, depending on the business location.

(2) The

number of hours eligible for reimbursement varies by position, up to 1,040 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://onetonline.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.

**Continued On The
Following Page**

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	320	11.00	9.50	40	8
2a	Some preparation needed	4.0 to < 6.0	480	12.50	10.00	60	12
2	Some preparation needed	4.0 to < 6.0	640	14.00	10.50	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	15.50	12.00	100	20
3	Medium preparation needed	6.0 to < 7.0	960	17.00	13.00	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	20.00	14.00	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

(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] Companies located in urban [~~locations~~] areas (cities with population above 60,000 in the most recent federal decennial census) and Class [A] H counties (i.e., Los Alamos) are reimbursed at up to fifty percent for all eligible training hours. Urban communities are: Albuquerque (545,852), Las Cruces (97,618), Rio Rancho (87,521), and Santa Fe (67,947).

(b) Companies located in rural areas, outside those listed above are reimbursed at up to sixty-five percent 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 seventy-five percent for all eligible training hours.

(d) Companies located in an economically distressed area in New Mexico are eligible for up to seventy-five percent reimbursement. To receive up to seventy-five percent 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 seventy-five percent reimbursement.

(f) Companies located in federally designated colonias in New Mexico are eligible

for up to seventy-five percent reimbursement for all eligible training hours.

(6) JTIP eligible positions with starting wages eligible for the high wage job tax credit may be eligible for an additional five percent reimbursement. These requirements are a hiring salary of \$60,000 or higher in an urban or class [A] H county and a hiring salary of \$40,000 or higher in a rural location or economically disadvantaged area. Trainee requirements are still factors for JTIP eligibility. The percentage of wages reimbursed for high-wage positions filled by trainees who do not meet the one-year residency requirement is unique and not subject to any additional wage reimbursement above the standard rate. Companies located in urban areas and Class H counties are reimbursed up to thirty percent for all eligible training hours. Companies located in rural areas are reimbursed up to forty percent for all eligible training hours. Companies located in frontier areas are reimbursed up to fifty percent for all eligible training hours.

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

(8) JTIP eligible positions filled by trainees who have graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education may be eligible for an additional five percent reimbursement.

(9) JTIP eligible positions filled by U.S. veterans may be eligible for an additional five percent reimbursement.

(10) Additional guidelines for wage reimbursement:

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

(b) Reimbursement is calculated on

base pay only. Bonus pay, overtime, commission 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 WIOA, the combined reimbursement to the company may not exceed one hundred percent.

(f) Additional wage reimbursement may not exceed ten percent above the standard rates. Companies may combine the additional five percent wage reimbursement for high-wage jobs with one of the three following conditions for an additional five percent wage reimbursement provided the entry wage is at least the minimum rate for the Job Zone as outlined in the JTIP wage chart on Paragraph (2) of Subsection D. of 5.5.50.10 NMAC for Zones 1, 2, 3 and 4: 1) the trainee [took] has taken the WorkKeys® assessments as part of the hiring process; 2) the trainee has graduated within the past 12 months from a post-secondary training or academic program at a New Mexico institution of higher education; 3) the trainee is a U.S. veteran.

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, 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.

[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, 06-30-2014; A, 06-30-2015; A, 06-30-16; A, 07-11-2017]

5.5.50.15 GLOSSARY:

A. Agriculture (traditional)/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. Distribution: 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.

[C-] D. Economically distressed areas: Companies located in an economically distressed area in New Mexico are eligible for seventy-five percent reimbursement. To receive a seventy-five percent 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.

[D-] E. 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-] 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-] G. 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-] H. 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-] I. High wage job tax

credit: The high wage job tax credit provides a tax credit of ten percent 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]~~ \$40,000 per year in a community with a population of less than 60,000 and ~~[\$40,000]~~ \$60,000 per year in a community with a population of 60,000 or more. Eligible jobs must also be occupied for at least 48 weeks by the employee. ~~[For each new economic-based job created on or after July 1, 2015, qualified jobs must pay at least \$40,000/year in a community with a population of less than 60,000 and \$60,000/year in a community with a population of 60,000 or more.]~~

[I-] J. 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 7-4-10D 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-] K. 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/cgi-bin/sssd/naics/naicsrch.

[K-] L. 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-] M. 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 when applying for JTIP funds.

[M-] N. 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 fifty percent of the services outside of New Mexico. To be considered for JTIP participation, non-retail service companies ~~[must export]~~ provide a specialized service that may be sold to another business and used by the business to develop products or deliver services. Non-retail service is not offered to the general public and is provided to customers who are not physically present at the New Mexico facility. [remotely rather than deliver a service via face to face interaction at the company site or customer site.] Non-retail service businesses which meet the JTIP criteria for green industry are exceptions to the requirement that at least fifty percent of the customer base be located outside New Mexico.

[N.] Q. 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 <http://onetonline.org>.

[O.] P. 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.] Q. 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.] R. 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.] S. 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.] T. 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.

U. Transloading

services: The process of transferring a shipment from one mode of transportation to another in order to have goods reach their final destination. It is most commonly employed when it is physically impossible or is not economically efficient to transport goods to a final destination using only one mode of transportation. Companies that ship goods internationally are likely to use multiple methods of transport, especially if both the shipping point and the destination are located inland.

[T.] V. Urban

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

[U.] W. 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 Tarrant counties. Santa Fe MSA includes Santa Fe county. Las Cruces MSA includes Dona Ana county and Farmington MSA includes San Juan county.

[V.] X. Rural: Any area located outside communities defined as urban in the JTIP policy.

[W.] Y. Veteran: A New Mexico resident who is registered with the New Mexico workforce connection, and who served in the active military, naval or air service and who was discharged or released under conditions other than dishonorable.
[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, 06-30-2014; A, 06-30-2015; A, 06-30-16; A, 07-11-2017]

GAME AND FISH, DEPARTMENT OF

On June 22, 2017, the State Game Commission repealed its rule entitled Natural Resources and Wildlife, Wildlife Administration, Aquatic Invasive Species, 19.30.14 NMAC (filed 2/12/16), and replaced it with, Natural Resources and Wildlife, Wildlife Administration, Aquatic Invasive Species, 19.30.14 NMAC, effective 7/11/17.

**GAME AND FISH,
DEPARTMENT OF**

**TITLE 19 NATURAL
RESOURCES AND WILDLIFE
CHAPTER 30 WILDLIFE
ADMINISTRATION
PART 14 AQUATIC
INVASIVE SPECIES**

19.30.14.1 ISSUING

AGENCY: New Mexico Department of Game and Fish.

[19.30.14.1 NMAC - Rp, 19.30.14.1 NMAC, 7-11-2017]

19.30.14.2 SCOPE: Providing for the control and prevention of the spread of aquatic invasive species in New Mexico.

[19.30.14.2 NMAC - Rp, 19.30.14.2 NMAC, 7-11-2017]

19.30.14.3 STATUTORY

AUTHORITY: Chapter 17, including 17-1-14 and 17-1-26 NMSA 1978 provide that the New Mexico state game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to aquatic invasive species.

[19.30.14.3 NMAC - Rp, 19.30.14.3 NMAC, 7-11-2017]

19.30.14.4 DURATION:

Permanent.

[19.30.14.4 NMAC - Rp, 19.30.14.4 NMAC, 7-11-2017]

19.30.14.5 EFFECTIVE

DATE: July 11, 2017, unless a later date is cited at the end of a section.

[19.30.14.5 NMAC - Rp, 19.30.14.5 NMAC, 7-11-2017]

19.30.14.6 OBJECTIVE: To

establish and define the procedures and restrictions for controlling or preventing aquatic invasive species.

[19.30.14.6 NMAC - Rp, 19.30.14.6 NMAC, 7-11-2017]

19.30.14.7 DEFINITIONS:

A. “Department”

shall mean the New Mexico department of game and fish.

B. “Director” shall

mean the director of the New Mexico department of game and fish.

C. “Warning tag” as

used herein, shall mean a document or tag issued by the department or other state or federal agency and affixed to a conveyance or equipment that prohibits a conveyance or equipment from entering into a water body until being properly decontaminated or otherwise approved for re-entry.

D. “Impound” shall

mean to detain or subject to temporary control of the state other than detention for purposes of inspection a conveyance or equipment until the owner or person in control thereof shall meet all conditions for release of such conveyance or equipment.

E. “Decontaminate”

shall mean to clean, drain, dry or otherwise treat a conveyance in accordance with guidelines established by the director, including minimum standards as described in the uniform minimum protocols and standards for watercraft inspection program for dreissenid mussels in the western United States (2012) or versions thereafter in order to remove or destroy an aquatic invasive species.

F. “Proof of

decontamination” shall mean verifiable documentary proof, official marking or tag affixed to the conveyance or equipment, or otherwise provided to the owner or person in control of a conveyance or equipment trained personnel to effect decontamination of the conveyance or equipment, or otherwise demonstrate compliance with the decontamination requirement established by the director; such certification shall be valid only until the conveyance or equipment re-enters a water body.

G. “Trained

personnel” means individuals who have successfully completed the United States fish and wildlife service’s aquatic invasive species watercraft inspection and decontamination training, level I, level II or an equivalent training recognized by the director.

H. “Watercraft inspection and decontamination

seal” shall mean a device issued by trained personnel that attaches the conveyance or equipment to the trailer to indicate that the conveyance or equipment has not been launched since it was last inspected or decontaminated, and is accompanied by a receipt.

[19.30.14.7 NMAC - Rp, 19.30.14.7 NMAC, 7-11-2017]

19.30.14.8 WARNING TAG:

The director shall prescribe and procure the printing of warning tags to be used for the state to identify any conveyance or equipment known or believed to contain an aquatic invasive species or a conveyance or equipment leaving an infested water body without being decontaminated.

A. Trained personnel may affix a warning tag to any conveyance or equipment known or believed to contain aquatic invasive species, based upon its point of origin or exposure to infested water, unless the person in control of such equipment or conveyance has proof of decontamination, or can otherwise demonstrate that the equipment or conveyance is not infested.

B. Trained personnel may affix a warning tag to a conveyance or equipment if they have reason to believe aquatic invasive species may be present and the person operating or in control of such conveyance or equipment refuses inspection.

C. Each warning tag shall be affixed on boats and other similar vessels within 12 inches of the boat number on the port (left) side, to the windshield of the conveyance or equipment, or in the case where a transport company is transferring the conveyance or equipment, via United States mail, electronic mail or hand delivery to both owner and transport company. In cases where no boat number is found the warning tag shall still be affixed in the same general location.

D. Each warning tag shall be individually affixed to all other conveyances and equipment in the most visible manner possible.

E. No warning tag

may be removed except by trained personnel or a person or entity certified by the director and only if the respective personnel, person or entity is acting in their official capacity and has inspected the conveyance or equipment, satisfied that proper decontamination or elimination of aquatic invasive species has occurred. [19.30.14.8 NMAC - Rp, 19.30.14.8 NMAC, 7-11-2017]

19.30.14.9 IMPOUNDMENT OF CONVEYANCE OR EQUIPMENT:

A. Any law enforcement officer may impound any conveyance or equipment if warning tagged and the conveyance or equipment is currently in or entering a water body.

B. Any law enforcement officer may impound any conveyance or equipment known or believed to contain aquatic invasive species if such conveyance or equipment is currently in a water body or the person operating or in control of such conveyance or equipment fails to follow the enforcement officer's command to immediately prevent such from entering or remaining in a water body.

C. A warning tag shall be immediately affixed to any conveyance or equipment impounded pursuant to Subsection B above.

D. Any impounded conveyance or equipment shall only be released from impoundment:

(1) upon receipt of satisfactory proof that decontamination requirements as prescribed by the director have been met; or

(2) upon receipt of a conditional release from the director wherein the owner or person responsible for the conveyance or equipment agrees to the specific terms and conditions that require immediate decontamination followed by an inspection to verify decontamination has occurred.

E. It shall be the responsibility of the owner of any impounded conveyance or equipment to pay all costs, including storage

fees, decontamination charges and towing associated with the impoundment and to reimburse any agency that incurs expenditures for the impoundment. [19.30.14.9 NMAC - Rp, 19.30.14.9 NMAC, 7-11-2017]

19.30.14.10 LIMITED

TRANSPORT: The department's employees, agents or designees, or employees of other state or federal agencies while acting in their official capacity may authorize an owner or person in control of a warning tagged conveyance or equipment to transport the conveyance or equipment to a location approved by the department or their designee.

[19.30.14.10 NMAC - Rp, 19.30.14.10 NMAC, 7-11-2017]

19.30.14.11 WAIVER AND

RELEASE OF LIABILITY: Prior to being eligible for decontamination by the state or its designee the owner or person in control of a warning tagged conveyance or equipment shall sign and deliver to the department a release of liability in a form approved by the director.

[19.30.14.11 NMAC - Rp, 19.30.14.11 NMAC, 7-11-2017]

19.30.14.12 INSPECTION AND DECONTAMINATION PROGRAM:

A. Trained personnel may establish check stations to inspect all conveyances or equipment prior to entering, being launched onto or being directly exposed to any water body of the state. It shall be unlawful for an owner or person in control of a conveyance(s) or equipment to knowingly avoid an established check station.

B. It shall be unlawful for an owner or person in control of conveyances or equipment transported into New Mexico or registered in a state other than New Mexico to knowingly introduce, launch or directly expose a conveyance(s) or equipment to any water body of the state without first receiving an inspection and/or decontamination by trained personnel. Proof of decontamination may be

used in lieu of an inspection at the discretion of trained personnel.

C. The owner of a conveyance or equipment that is greater than or equal to 26 feet in length and will be transported into or within New Mexico shall notify the department aquatic invasive species program coordinator at least 14 days prior to the anticipated date of transport.

D. Upon completion of any conveyance or equipment inspection, trained personnel may require decontamination, re-inspection and additional drying time prior to the conveyance or equipment entering any water body of the state.

E. Trained personnel may affix a watercraft inspection and decontamination seal to a conveyance or equipment to serve as proof of decontamination or inspection. Conveyances or equipment with an intact watercraft inspection and decontamination seal with accompanying receipt may be allowed to enter a water body of the state without further inspection or decontamination upon verification by trained personnel.

F. It shall be unlawful for the owner or person in control of a conveyance(s) or equipment transported on a public road in New Mexico to have any plug or other barrier in place that prevents water drainage from bilge lines, ballast tanks, motor cooling systems, live wells, compartments and equipment.

G. It shall be unlawful for the owner or person in control of a conveyance(s) or equipment to fail to take reasonable measures upon exiting a waterbody to decontaminate all equipment, compartments or spaces that are wet, hold water or could transfer AIS, including aquatic vegetation.

H. Trained personnel may not self-inspect, decontaminate or attach a seal to their own conveyance or equipment.

[19.30.14.12 NMAC - Rp, 19.30.14.12 NMAC, 7-11-2017]

HISTORY OF 19.30.14 NMAC:
History of Repealed Material:

19.30.14 NMAC, Aquatic Invasive Species, filed 5/29/2009, repealed effective 7/11/2017.

PHARMACY, BOARD OF

This is an amendment to 16.19.2 NMAC, Section 9, effective 06-23-2017.

16.19.2.9 EXAMINATION

REPEATS: A candidate who fails either the NAPLEX or MPJE may repeat that examination upon submittal of the proper application and fee. A candidate may not take either the NAPLEX or MPJE more than five consecutive times without passing. Failure to finish an examination is counted as an attempt. Candidates who fail or do not complete the NAPLEX shall wait a period of at least ~~[9]~~ 45 days prior to retaking the examination. Candidates who fail or do not complete the MPJE shall wait a period of at least 30 days prior to retaking the examination. [04-30-98; 16.19.2.9 NMAC - Rn, 16 NMAC 19.2.9, 03-30-02; A, 06-08-16; A, 06-23-17]

PHARMACY, BOARD OF

This is an amendment to 16.19.33 NMAC, Section 9, effective 06-23-2017.

16.19.33.9 OPERATIONS:

A. A remote tele-pharmacy shall comply with all standards of 16.19.6.8 NMAC governing the procedure for obtaining a license to operate a pharmacy in New Mexico.

(1) The license holder of the hub pharmacy must apply for a license to operate a remote tele-pharmacy. A remote tele-pharmacy license is established for the purpose of conducting a remote tele-pharmacy. The license is issued to a remote tele-pharmacy connected to a hub pharmacy via an electronic link. The initial licensure fee and subsequent license renewal fee are the same as those for retail pharmacies,

as required by Subsection E of 16.19.12.13 NMAC.

(2) A remote tele-pharmacy that operates under different ownership than the hub pharmacy to which it is attached; shall have a written contractual agreement outlining the responsibilities of each pharmacy. This written agreement shall be submitted with the initial licensure application for a remote tele-pharmacy. Any subsequent changes to that contractual agreement shall be submitted to the board's executive director for approval. The applicant must provide sufficient evidence that the addition of a tele-pharmacy will augment or expand the availability of pharmacy services and pharmacy access within the proposed area of location.

(3) A remote tele-pharmacy shall comply with all the applicable requirements for a pharmacy as contained in 16.19.6 NMAC, including the requirement that all medications are stored under proper conditions.

(4) A remote tele-pharmacy shall be connected to a hub pharmacy via ~~[an]~~ HIPAA-compliant electronic link. All links must be fully operational during all hours of operation of the remote tele-pharmacy. If the link malfunctions, the remote tele-pharmacy must be closed to the public unless a pharmacist is physically present at the remote tele-pharmacy site.

(a) Video equipment must be capable of providing ~~[an adequate number of simultaneous views]~~ not less than four simultaneous camera views of the pharmacy operation at the remote tele-pharmacy.

(b) The video equipment at the remote tele-pharmacy site must be capable of resolution sufficient to allow for pharmacist identification of medication dosage forms and the reading of bottle labels via video camera.

(c) The video equipment at the remote tele-pharmacy site must be capable of recording and maintaining at least

~~[one 180 days]~~ 90 days of video surveillance of the remote tele-pharmacy site and operations for future review.

(d) Only a remote tele-pharmacy technician designated for that site or a pharmacist who is physically present at the remote tele-pharmacy may access a remote tele-pharmacy site, linked to a hub pharmacy via an electronic link.

(e) The remote tele-pharmacy may only remain open to the public as long as the designated pharmacy technician is present in the remote tele-pharmacy and the hub pharmacist is ~~[present at the hub pharmacy or]~~ providing indirect supervision from the hub pharmacy or the hub pharmacist is physically present at the remote site.

(f) The name of each certified pharmacy technician that works at a remote tele-pharmacy shall be recorded with the ~~[New Mexico board of pharmacy]~~ board.

(5) ~~[The pharmacist in charge of the hub pharmacy shall produce a policy and procedure manual for the safe and effective operation of the remote tele-pharmacy and the oversight by the hub pharmacy. This manual shall be available for board inspection in both the remote tele-pharmacy and the hub pharmacy. The policy and procedure manual shall be reviewed by the pharmacist-in-charge annually and revised if necessary to promote improvements in safety and service at the remote tele-pharmacy. The annual review and any changes to the manual shall be documented.]~~ The remote tele-pharmacy shall utilize bar coding or similar technology that effectively recognizes the drug or device selected to fill the prescription is the same as indicated on the prescription label.

(6) ~~[The pharmacist-in-charge is responsible for an ongoing review of incident reports and outcomes, with appropriate corrective action taken.]~~ The hub pharmacy and hub pharmacist are responsible for ensuring fulfillment of all pharmacist

responsibilities in accordance with 16.19.4.16 NMAC.

(7) [The pharmacist employed by the hub pharmacy must visit and complete inspections of the remote tele-pharmacy according to the visitation requirements of Subsection H of 16.19.33.8 NMAC. A list of inspection criteria shall be included in the policy and procedure manual for the remote tele-pharmacy. The pharmacist's inspection shall include a determination of the average number of prescriptions filled per day. A copy of the inspection report shall be reviewed and signed by the pharmacist-in-charge of the hub pharmacy and a copy of the inspection report shall be maintained at both the remote tele-pharmacy and at the hub pharmacy for the board of pharmacy inspection.] Written policies and procedures must be submitted to the board prior to the issuance of any license. The pharmacist-in-charge is responsible for the development, implementation, maintenance, and review of written policies and procedures for the safe and effective operation of the remote tele-pharmacy and the oversight by the hub pharmacy. These policies and procedures shall comport with board regulations and laws and shall be available for board inspection in both the remote tele-pharmacy and the hub pharmacy. The policy and procedure manual shall be reviewed by the pharmacist-in-charge at least annually and revised if necessary to promote improvements in safety and service at the remote tele-pharmacy. The annual review and any changes to the manual shall be documented. The policy and procedure manual must address each of the following, at a minimum:

(a) standards and practices necessary to ensure safety, accuracy, security, and patient confidentiality;

(b) standards and practices necessary to ensure drugs and devices are procured, handled, stored, and dispensed or otherwise dispositioned in accordance with state and federal laws and regulations;

(c) identification of pharmacy personnel authorized to access drug storage and dispensing areas at the remote tele-pharmacy and to receive drugs delivered to the remote tele-pharmacy;

(d) standards and practices necessary to ensure all records are maintained in compliance with board laws and regulations;

(e) processes to assure the integrity, legitimacy and authenticity of prescriptions;

(f) criteria for monthly inspections conducted during pharmacist site visits and appropriate site visit documentations;

(g) medication error prevention;

(h) training standards and practices to ensure facility personnel are properly trained and comply with all applicable policies and procedures. Training shall be required for the remote tele-pharmacy technicians and pharmacists to ensure the competence and ability of each person that operates the electronic verification system, electronic record keeping, and communication systems. Technician training documentation shall be maintained in accordance with 16.19.22 NMAC.

(8) [The number of pharmacy technicians that a hub pharmacist shall oversee shall be limited according to 16.19.22.10 NMAC. Any pharmacy technicians on duty at the hub pharmacy site shall be taken into account along with any remote tele-pharmacy technicians working at remote tele-pharmacy sites, when computing the ratio of pharmacists to pharmacy technicians. Application for an increase in the ration of pharmacy technicians to pharmacists may be made in accordance with Subsection B of 16.19.22.10 NMAC.] The pharmacist-in-charge is responsible for an ongoing review of incident reports and outcomes, with appropriate corrective action taken

and documented.

(9) [A remote tele-pharmacy may have a dangerous drug inventory. Any controlled substances shall be kept at the remote site in accordance with 16.19.20 NMAC:

(a) If controlled substances are kept, the remote tele-pharmacy shall be registered with the drug enforcement administration and obtain a DEA number:

(b) If controlled substances are kept, the remote tele-pharmacy shall have a valid New Mexico controlled substance registration as required in 16.19.20 NMAC:

(c) All controlled substances kept in inventory by the remote tele-pharmacy shall be listed on a perpetual inventory log, which shall be updated upon the dispensing of each controlled substance prescription or other disposition:

(d) The pharmacist shall perform monthly audits of all controlled substances during regular inspection visits to the remote tele-pharmacy.] The pharmacist-in-charge must ensure each remote tele-pharmacy location records, for each prescription dispensed, the identification of each pharmacist who performed:

(a) order interpretation;

(b) order entry verification;

(c) prospective drug utilization review;

(d) final order verification;

(e) any intervention required; and

(f) patient counseling, when there are no other means of definitively determining the identity of the pharmacist who provided counseling.

(10) [Prescriptions may be received, entered and filled or re-filled by the hub pharmacy and sent to the remote tele-pharmacy for distribution to the patient during hours when the

technician is present in the remote tele-pharmacy. A pharmacist at the hub pharmacy must approve each prescription before it leaves the remote tele-pharmacy site.

(a)

The pharmacist's initials and the technician's initials shall be recorded.

(b)

The pharmacist shall compare the stock bottle, drug dispensed and drug strength. The entire prescription label must be checked for accuracy. All prescriptions distributed by the remote tele-pharmacy must have the label affixed to the prescription container prior to being inspected by the pharmacist via electronic link.] A hub pharmacist shall not provide direct or indirect supervision for more than four pharmacies.

(11) [Patient

counseling shall be done by a pharmacist via an electronic link. The pharmacist shall counsel the patient or the patient's agent on all new prescriptions and refills. All counseling, according to Subsection E of 16.19.4.16 NMAC, remains the responsibility of the pharmacist at the hub pharmacy via an electronic link.] The hub pharmacist must conduct pharmacist site visits and complete inspections of the remote tele-pharmacy at least once monthly. The pharmacist shall increase frequency of the monthly site visits if issues are identified, and additional pharmacist intervention shall be taken and documented until the issue is resolved. A list of inspection criteria shall be included in the policy and procedure manual for the remote tele-pharmacy. The pharmacist's inspection shall include a determination of the average number of prescriptions filled per day. A copy of the inspection report shall be reviewed and signed by the pharmacist-in-charge of the hub pharmacy and a copy of the inspection report shall be maintained at both the remote tele-pharmacy and at the hub pharmacy for the board of pharmacy inspection.

(12) The

number of pharmacy technicians that a hub pharmacist shall oversee shall

be limited according to 16.19.22.10 NMAC. Any pharmacy technician on duty at the hub pharmacy site shall be taken into account along with any remote tele-pharmacy technicians working at a remote tele-pharmacy site, when computing the ratio of pharmacists to pharmacy technicians.

(13)

A remote tele-pharmacy may have a dangerous drug inventory. Any controlled substances shall be kept at the remote site in accordance with 16.19.20 NMAC.

(a)

If controlled substances are kept, the remote tele-pharmacy shall be registered with the drug enforcement administration and obtain a DEA number.

(b)

If controlled substances are kept, the remote tele-pharmacy shall have a valid New Mexico controlled substance registration as required in 16.19.20 NMAC.

(c)

All controlled substances kept in inventory by the remote tele-pharmacy shall be listed on a perpetual inventory log, which shall be updated upon the dispensing of each controlled substance prescription or other disposition.

(d)

The pharmacist shall perform monthly inventory of all controlled substances during pharmacist site visits to the remote tele-pharmacy. If a perpetual reconciliation is not achieved through the use of technology, the pharmacist shall perform and document a complete monthly reconciliation.

(14)

Prescriptions may be received, entered and filled or re-filled by the hub pharmacy and sent to the remote tele-pharmacy for distribution to the patient during hours when the technician is present in the remote tele-pharmacy. A pharmacist at the hub pharmacy must complete a final check of each prescription before it leaves the remote tele-pharmacy site, in accordance with Subsection B of 16.19.4.16 NMAC.

(a)

The pharmacist's initials and the

technician's initials shall be recorded.

(b)

The pharmacist shall compare the stock bottle, drug dispensed and drug strength. The entire prescription label must be checked for accuracy. All prescriptions distributed by the remote tele-pharmacy must have the label affixed to the prescription container prior to being inspected by the pharmacist via electronic link.

(15) Patient

counseling shall be done by a hub pharmacist via patient-pharmacist audio-visual link in accordance with Subsection F of 16.19.4.16 NMAC.

(16)

A remote tele-pharmacy is limited to filling no more than 200 prescriptions per day. If filling more than 200 prescriptions per day, the remote tele-pharmacy shall be converted to a retail pharmacy and is subject to all applicable requirements of 16.19.6 NMAC.

(17)

No drug compounding shall occur at any remote tele-pharmacy.

(18)

All records required by this part shall be kept on-site at the tele-pharmacy for a period of at least three years and shall be readily retrievable for inspection by the board or the board's agent. [16.19.33.9 NMAC - N, 05-14-10; A, 06-09-17; A, 06-23-17]

PUBLIC REGULATION COMMISSION

This is an amendment to 17.7.2 NMAC, Sections 7 and 8, effective 7/11/2017.

17.7.2.7 DEFINITIONS:

In addition to the definitions used in Section 62-17-4 NMSA 1978, the following definitions apply to this rule:

A. application means [an annual utility] a utility application for commission approval of proposed energy efficiency measures or programs and load management measures or programs;

B. estimate or estimated means a projection or forecast utilizing

well known, commercially available or standard engineering, economic and financial calculations, ratings and simulations, or other reasonable means;

C. life-cycle basis

means utilizing the expected useful life of the energy efficiency and load management measures or programs and applying the net present value methodology in order to estimate the associated monetary costs and avoided monetary costs of the measure or program being evaluated;

D. low income

customer means a customer with an annual household income at or below [200%] two hundred percent of the federal poverty level, as published annually by the United States department of health and human services;

E. measure or

program means an energy efficiency measure or program or a load management measure or program;

F. measurement

and verification means an analysis performed by an independent evaluator that estimates, consistent with [17.7.2.7.B NMAC] Subsection B of 17.7.2 NMAC, reductions of energy usage or peak demand and determines any actual reduction of energy usage or peak demand that directly results from the utility's implementation of particular energy efficiency measures or programs or of particular load management measures or programs;

G. plan year

means the calendar year for which commission approval is being sought;

H. plan year overage

means the public utility's actual prior plan year expenditures that exceeded the same plan year's actual commission authorized funding;

I. plan year

underage means the public utility's actual prior plan year commission authorized funding that exceeded the same plan year's actual expenditures.

[17.7.2.7 NMAC - Rp. 17.7.2.7 NMAC, 1/1/2015; A, 7/11/2017]

**17.7.2.8 PUBLIC
UTILITY FILING
REQUIREMENTS FOR
[ANNUAL] APPLICATIONS
AND ANNUAL REPORTS:**

A. Timing. [Each-

year, each public utility and natural gas utility shall simultaneously file an annual application and annual report, in the same docket, with the commission's records' bureau. Public Service Company of New Mexico (and its successors) shall file its application and report annually on March 1, beginning in 2015. Southwestern Public Service Company (and its successors) shall file its application and report annually on May 1, beginning in 2015. El Paso Electric Company (and its successors) shall file its application and report annually on July 1, beginning in 2015. A natural gas utility shall file its application and report annually on January 1, beginning in 2015. If a specified filing date falls on a weekend or holiday, the public utility shall file on the next business day.] Beginning in the year specified below, each public utility shall file an application every three years:

**Continued On The
Following Page**

2018	2019	2020
<u>El Paso Electric Company (and its successors)</u>	<u>Southwest Public Service Company (and its successors)</u>	<u>Public Service Company of New Mexico (and its successors)</u>
<u>Zia Natural Gas Company (and its successors)</u>	<u>New Mexico Gas Company (and its successors)</u>	<u>Raton Natural Gas Company (and its successors)</u>
		<u>Any other public utility</u>

Each of the three years covered by an application shall, for the purposes of 17.7.2.7 NMAC, be treated as a plan year. Each public utility may, but is not required to, file an application prior to the year specified in this subsection. If a utility does not elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in the utility's last energy efficiency case shall continue in effect until modified or terminated. If a utility does elect to file an application prior to the year specified in this subsection, the measures, programs and incentive approved in that case shall continue in effect as provided by the commission. All utilities shall file their annual reports each year and in the same docket as the application that covered the period of the annual report. Public service company of New Mexico (and its successors) shall file its application and its annual reports on April 15 of the applicable year. Southwestern public service company (and its successors) shall file its application and its annual reports on May 15 of the applicable year. El Paso electric company (and its successors) shall file its application and its annual reports on June 1 of the applicable year. A natural gas company shall file its annual report on or before July 1 of each year, and shall file its application on or before August 31 of the applicable year in which it is required to file an application. If a specified filing date falls on a weekend or legal holiday, the public utility shall file on the next business day.

B. Compliance with pre-filing requirements. Applications shall describe how the public utility has met the pre-filing requirements of [Section 62-17-5 (E) NMSA 1978] Subsection E of Section 62-17-5 NMSA 1978, including descriptions of the process used to solicit non-binding recommendations, and any competitive bids required by the commission for good cause. The public utility shall identify by name, association, and contact information, each interested party that participated in the process, including commission staff, the attorney general, and the energy, minerals and natural resources department. The public utility shall summarize each participant's non-binding recommendation on the design, implementation, and use of third-party energy service contractors through competitive bidding for programs and measures.

C. The public utility shall identify within its application its estimated plan year funding for energy efficiency and load management program costs.

(1) Estimated plan year funding for electric public utilities' energy efficiency and load management program costs shall be three percent [~~(3%)~~] of billing revenues from all of its customers' bills that the public utility estimates to be billed during the plan year, excluding:

- (a)** gross receipts taxes and franchise and right-of-way access fees;
- (b)** revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);
- (c)** any customer's plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and
- (d)** any customer's plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

(2) Estimated plan year funding for gas public utilities' energy efficiency and load management program costs shall not exceed three percent [~~(3%)~~] of customers' bills that the public utility estimates to be billed during the plan year, excluding:

- (a)** gross receipts taxes and franchise and right-of-way access fees;
- (b)** revenues that the public utility estimates to bill during the plan year to any single customer that exceed seventy five thousand (\$75,000);
- (c)** any customer's plan year self-directed program credits approved by the public utility or by a commission approved self-direct administrator; and
- (d)** any customer's plan year self-directed program exemptions approved by the public utility or by a commission approved self-direct administrator.

D. The public utility's application shall calculate and provide the difference between its actual prior plan year expenditures for measures and programs and the same plan year's commission authorized funding. At the end of each plan year, the public utility shall calculate the following applicable values:

(1) any plan year overage; or
(2) any plan year underage.

E. In each plan year, a public utility shall make its best efforts to expend its plan commission authorized funding as calculated in [17.7.2.8.C NMAC] Subsection C of 17.7.2.8 NMAC above subtracting any applicable prior plan year overage or adding any applicable prior plan year underage.

F. The application shall include an executive summary to facilitate commission review.

G. The utility shall utilize well known, commercially available or standard engineering, economic and financial calculations, ratings, and simulations, or other reasonable methods, to determine monetary costs and avoided monetary costs of measures and programs.

H. For each proposed measure or program, including previously approved measures and programs submitted for reauthorization, the application shall provide:

(1) the public utility's statement that the measure or program is estimated to be cost-effective and meets the utility cost test;

(2) a detailed description of the proposed measure or program;

(3) the expected useful life of the measure or program;

(4) any participation requirements and restrictions of the measure or program;

(5) the time period during which the measure or program will be offered;

(6) a description of any competitive bid process for utility measures or programs;

(7) the estimated number of measure or program participants, supported by written testimony and exhibits;

(8) the

estimated economic benefit to the participants attributable to the measure or program, supported by written testimony and exhibits;

(9) the estimated annual energy savings and the estimated energy savings over the useful life for the measure or program (expressed in kilowatt hours and dollars), supported by written testimony and exhibits;

(10) the estimated annual demand savings and the estimated demand savings over the useful life for the measure or program (expressed in kilowatts and dollars), supported by written testimony and exhibits;

(11) the proposed program costs to be incurred by the utility to support more than one measure or program, along with the associated allocation of this cost to each measure or program, and the method used to determine each allocation, supported by written testimony and exhibits;

(12) a detailed separate measure or program budget that identifies the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure and program on a life cycle basis, for each year of the expected useful life of the measure or program;

(13) the estimated monetary program costs to be incurred by the public utility in acquiring, developing, and operating each measure or program on a life cycle basis, supported by written testimony and workpapers that:

(a) demonstrate and justify how the estimated monetary program costs will be equal to or greater than the actual monetary program costs; and

(b) explain the public utility's rationale and methodology used to determine the estimated monetary program costs.

(14) the estimated avoided monetary cost associated with developing, acquiring and operating associated supply side resources, supported by written

testimony and exhibits that:

(a) demonstrate and justify how the estimated avoided monetary cost will be equal to or greater than the actual avoided monetary cost; and

(b) explain the public utility's rationale and methodology used to estimate the avoided monetary cost associated with acquiring, developing, and operating the associated supply side resource.

(15) supporting documentation, underlying data, calculations, estimates and other items shall be presented in a manner that facilitates the preparation of a measurement and verification report by an independent program evaluator, along with compilation and preparation of the public utility's reporting requirements, and that facilitates a simple comparison of measure or program estimated results to actual results, including the public utility's cost of capital and discount rate; and

(16) if the utility cost test is not met, justify why the utility is proposing to implement the program within its portfolio of proposed programs.

I. The public utility shall demonstrate, and has the burden to demonstrate, that it has evaluated and determined that the proposed measure or program is cost-effective and will reduce energy usage or energy demand or both, if approved by the commission and implemented by the utility.

J. The public utility shall demonstrate that its portfolio of proposed measures and programs are cost-effective, meets the utility cost test as defined by [Section 62-17-4 (C) NMSA 1978] Subsection C of Section 62-17-4 NMSA 1978 and are designed to provide every affected customer class with the opportunity to participate and benefit economically.

K. The public utility shall demonstrate that no less than five percent [(5%)] of the funding for measure and program costs shall be specifically directed to measures or

programs for low-income customers.

L. As stated in Subsection F of Section 62-17-5 NMSA 1978, applications may include a proposal for an opportunity to earn a profit on cost effective energy efficiency and load management resource development that, with satisfactory program performance, is financially more attractive to the public utility than a supply-side utility resource. Accordingly, any application that includes a proposed annual incentive award shall:

(1) be based on the utility's costs;

(2) be based on satisfactory performance of measures and programs;

(3) be supported by written testimony and exhibits; and

(4) shall not exceed the product (expressed in dollars) of:

(a) its weighted cost of capital (expressed as a percent), and

(b) its approved annual program costs.

M. For each approved large customer self-directed program, the utility's application shall describe, in an annual report, the process that enabled the utility to determine that a large customer self-directed program met the cost-effective definition set forth in [Section 62-17-9 (B) NMSA-1978] Subsection B of Section 62-17-9 NMSA 1978 and merited the credit or exemption.

N. The commission shall act expeditiously on the public utility's request for approval of its energy efficiency and load management measures and programs. [17.7.2.8 NMAC - Rp. 17.7.2.8 NMAC, 1/1/2015; A, 7/11/2017]

SUPERINTENDENT OF INSURANCE

The Office of Superintendent of Insurance approved, at its 11/3/2016 hearing, to repeal its rule 13

NMAC 20.2, Bail Bondsmen and Solicitors, (filed 1/1/2000), at the recommendation of the Commission of Public Records, and replace it with 13.20.2 NMAC, Bail Bondsmen and Solicitors, effective July 11, 2017.

SUPERINTENDENT OF INSURANCE

TITLE 13 INSURANCE CHAPTER 20 MISCELLANEOUS INSURANCE PART 2 BAIL BONDSMEN AND SOLICITORS

13.20.2.1 ISSUING AGENCY: Office of Superintendent of Insurance (OSI), Post Office Box 1689, Santa Fe, NM 87504-1689. [13 NMAC 20.2.1; - Rp, 13.20.2.1 NMAC, 7/11/17]

13.20.2.2 SCOPE: This rule applies to all persons seeking licensure to transact, or all persons transacting bail bond business in New Mexico. [13 NMAC 20.2.2 - Rp, 13.20.2.2 NMAC, 7/11/17]

13.20.2.3 STATUTORY AUTHORITY: Sections 59A-2-8, 59A-2-9 NMSA 1978 and 59A-51-1 NMSA 1978 *et seq.* [13 NMAC 20.2.3 - Rp, 13.20.2.3 NMAC, 7/11/17]

13.20.2.4 DURATION: Permanent. [13 NMAC 20.2.4 - Rp, 13.20.2.4 NMAC, 7/11/17]

13.20.2.5 EFFECTIVE DATE: July 11, 2017 [13 NMAC 20.2.5 - Rp, 13.20.2.5 NMAC, 7/11/17]

13.20.2.6 OBJECTIVE: The purpose of this rule is to implement the Bail Bondsmen Licensing Law, Section 59A-51-1 NMSA 1978 *et seq.* [13 NMAC 20.2.6 - Rp, 13.20.2.6 NMAC, 7/11/17]

13.20.2.7 DEFINITIONS: All of the definitions contained

in the bail bondsmen licensing law are applicable in this section. Additionally, as used in this rule:

A. "Accredited provider" means a provider of either continuing education or of the required pre-licensing formal classroom education as described in Sections 13.20.2.11 NMAC and 13.20.2.12 NMAC, who has been awarded official approval by the insurance education committee and the superintendent.

B. "Clock hour" means 50 minutes of continuous formal pre-licensing or continuing education classroom education.

C. "Extraterritorial recovery" means travel outside of a 60-mile radius from the bail bondsman's physical office address for purposes of recovering and delivering an absconder to the court.

D. "Limited surety agent" has the same meaning as defined in Subsection C of Section 59A-51-2 NMSA 1978.

E. "Principal" means a person acting on behalf of the defendant to arrange for or execute a surety bond and who bears the risk upon forfeiture.

F. "Property bondsman" has the same meaning as defined in Subsection D of Section 59A-51-2 NMSA 1978.

G. "Solicitor" has the same meaning as defined in Subsection E of Section 59A-51-2 NMSA 1978.

H. "Sponsoring bondsman" means a licensed bail bondsman that has been accredited and awarded official approval by the insurance education committee and the superintendent to sponsor a solicitor and provide on-the-job training for bail bondsmen and solicitor applicants, as described in Section 13.20.2.12 NMAC.

I. "Superintendent" means the superintendent of insurance. [13 NMAC 20.2.7 - Rp, 13.20.2.7 NMAC, 7/11/17]

13.20.2.8 LICENSING RESTRICTIONS:

A. All applicants.
(1) 18 U.S.C. Sections 1033 and 1034 of the Violent Crime Control and Law Enforcement Act of 1994, and the New Mexico Criminal Offender Employment Act, Section 28-2-1 NMSA 1978 *et seq.*, apply to all bail bondsmen and solicitor applicants.

(2) Pursuant to Subsection A of Section 59A-51-3 NMSA 1978, no person shall act as a property bondsman, limited surety agent or solicitor, or perform any functions or duties or exercise any of the powers prescribed for bail bondsmen or solicitors in the bail bondsmen licensing law, unless such person is qualified and licensed.

B. Bail bondsmen.

(1) An individual seeking to transact or transacting both surety and property bail bonds must be licensed as both a limited surety agent and a property bondsman.

(2) A licensed bail bondsman shall not concurrently be licensed as a solicitor.

(3) A bail bondsman shall be a high school graduate or have passed a high school equivalency examination. This requirement is waived for bail bondsmen who were licensed prior to May 21, 2014.

(4) A licensed bail bondsman shall not engage in untrustworthy or incompetent conduct.

C. Solicitors.

(1) A solicitor shall not concurrently be licensed as a bail bondsman.

(2) A solicitor shall not concurrently be employed by more than one bail bondsman and must be registered with the superintendent by the employer bail bondsmen within seven days of employment.

(3) The solicitor's license shall cover the kinds of bail bonds for which the employer bail bondsman is licensed.

(4) A solicitor employed by a limited surety agent shall not sign surety bail bonds.

(5) A licensed solicitor shall not engage in untrustworthy or incompetent conduct.

D. Revocation of license. The superintendent shall suspend or revoke a license of a bondsman or a solicitor if there is a finding of conduct that was a source of injury or loss to the public, including a finding that the bondsman or solicitor licensee:

(1) is unfit to engage in the bail bond business;

(2) has engaged in actions that are detrimental to the public interest;

(3) is no longer engaging in business in good faith;

(4) is guilty of offering a rebate on commissions as surety agent or property bondsman; or

(5) has made false representation regarding the requirements and compliance with the bail bondsmen licensing law.

E. Fines and penalties. The superintendent may impose a fine not to exceed \$1,000.00 for each violation and may also impose a penalty pursuant to Section 59A-1-16 NMSA 1978. [13 NMAC 20.2.8 - Rp, 13.20.2.8 NMAC, 7/11/17]

13.20.2.9 APPLICATION FOR LICENSE: The requirements in this section are in addition to the requirements of Section 59A-51-5 NMSA 1978.

A. All applicants.

(1) The applicant shall complete pre-licensing education, as described in Subsection B of 13.20.2.11 NMAC.

(2) The applicant shall complete on-the-job training requirements, as described in Subsection B of 13.20.2.12 NMAC.

(3) The applicant shall register for and complete the required examination. Proof of the applicant's identity, including a recent legible credential-sized full-face photograph of the applicant shall be provided by the applicant at the time of the

exam and shall be submitted to the superintendent by the exam vendor along with the applicant's exam result.

(4) The applicant shall complete the license application, which shall be signed by the applicant, under oath if required by the form.

(a) The application shall state the type of license applied for.

(b) The application shall be accompanied by the license application filing fee.

(5) The application shall require such information about the applicant as:

(a) the applicant's name, date of birth, social security number, residence address, mailing address, business address and a valid electronic mail (email) address;

(b) the applicant's personal history and business experience;

(c) the applicant's experience or special training or education in the bail bond business;

(d) whether the applicant was ever previously licensed to transact bail bonds or any other insurance business in this state or elsewhere;

(e) whether any bail bondsman, insurance or other professional license of the applicant was ever refused, suspended or revoked;

(f) whether any insurer or bail bondsman claims that the applicant is indebted to it, and if so, the details of the claim;

(g) whether the applicant has ever had an insurance agency contract cancelled and the facts concerning the cancellation; and

(h) such other pertinent information about the applicant as the superintendent may reasonably require.

B. Non-resident applicants.

(1) All non-resident applicants must keep a

current business, mailing, residence and email address on file with the superintendent.

(2) All non-resident applicants must irrevocably appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom service of process may be served.

(a) Upon service, the superintendent shall promptly forward a copy by certified mail, return receipt requested to the non-resident licensee at the non-resident licensee's last address of record.

(b) Process served and copy forwarded to the last address of record with the superintendent constitutes personal service upon the non-resident licensee.

(3) A non-resident licensee shall also file a written agreement with the superintendent, to appear before the superintendent pursuant to a notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the non-resident licensee at the last address of record.

(4) A failure to appear by the non-resident licensee will constitute a consent to subsequent suspension, revocation or refusal by the superintendent to continue the license.

C. Limited surety agents.

(1) The application shall show "bail bonds" as the class of surety insurance business to be transacted.

(2) The application must be accompanied by appointment of the applicant as a limited surety agent by an authorized surety insurer, subject to issuance of the license.

(3) If required by the superintendent, the surety insurer shall certify in writing:

(a) that it has investigated the applicant's experience or training in the bail bond

business;

(b) that it has investigated the applicant's business and personal reputation;

(c) that it believes the applicant is trustworthy and worthy of licensing; and

(d) that it believes the applicant intends in good faith to engage in the bail bond business.

D. Property bondsmen.

(1) The application shall show "property bail bonds" as the class of bail bond business to be transacted.

(2) The applicant shall demonstrate financial responsibility by filing a detailed financial statement, signed under oath. All instructions for preparing and submitting a detailed financial statement are available on the OSI website.

(3) Prior to issuance of the license, the applicant shall deposit with the superintendent an acceptable deposit as defined in Section 51A-51-8 NMSA.

E. Solicitors.

(1) The application shall be accompanied by a written appointment of the applicant as a solicitor by a licensed bail bondsman, subject to issuance of the license.

(2) If required by the superintendent, the sponsoring bail bondsman shall certify in writing:

(a) that he has investigated the applicant's experience or training in the bail bond business;

(b) that he has investigated the applicant's business and personal reputation;

(c) that he believes the applicant is trustworthy and worthy of licensing;

(d) that he believes the applicant intends in good faith to engage in the bail bond business; and

(e) that he shall supervise the solicitor's activities on the bondsman's behalf.

F. Approval or denial of license application.

(1) Prior to submission of an application, the applicant shall pass the examination conducted by and under authorization of the superintendent, with a score of seventy percent or higher.

(2) After completing a review of an application for a license as a bail bondsman or solicitor, the superintendent shall notify the applicant in writing whether the application has been approved or denied.

[13 NMAC 20.2.9 - Rp, 13.20.2.9 NMAC, 7/11/17]

13.20.2.10 SCOPE OF EDUCATION AND EXAMINATION:

Pre-licensing and continuing education courses, on-the-job training, and examinations shall be based on the following subjects, laws and rules:

A. Subjects:

- (1) ethics;
- (2) bond forfeiture procedures;
- (3) rights of the accused;
- (4) permitted and prohibited rates and charges;
- (5) receipt and return of collateral security;
- (6) financial management, accounting, trust account maintenance, and fiscal responsibilities;
- (7) violations of law and applicable penalties;
- (8) procedures for recovering a defendant who fails to appear and for returning a defendant to custody;
- (9) record-keeping requirements;
- (10) reporting requirements; and
- (11) other relevant issues confronting the bail bond business in New Mexico.

B. Laws:

- (1) Chapter 59A, Article 51 NMSA 1978, the Bail Bondsmen Licensing Law;
- (2) all NMSA 1978 articles and sections cited in the

bail bondsmen licensing law;
 (3) Chapter
 31, Article 3, NMSA 1978, Bail; and
 (4) Chapter
 46, Article 6 NMSA 1978, Surety
 Bonds.

C. Rules:

(1) Rule
 5-401 *et seq.* NMRA 1999, Rules of
 Criminal Procedure for the district
 courts;
 (2) Rule
 6-401 *et seq.* NMRA 1999, Rules of
 Criminal Procedure for the magistrate
 courts;
 (3) Rule
 7-401 *et seq.* NMRA 1999, Rules
 of Criminal Procedure for the
 metropolitan courts;
 (4) Rule
 8-401 *et seq.* NMRA 1999, Rules of
 Criminal Procedure for the municipal
 courts;
 (5) Forms
 9-302 through 9-311 NMRA 1999,
 Criminal Forms;
 (6) 13.4.7
 NMAC, continuing education
 requirements; and
 (7) this rule.
 [13 NMAC 20.2.10 - Rp, 13.20.2.10
 NMAC, 7/11/17]

13.20.2.11 PRE-LICENSING CLASSROOM EDUCATION:

A. Accreditation. A
 provider seeking to offer formal pre-
 licensing classroom education courses
 for bail bondsmen or solicitors shall
 be approved and accredited by the
 insurance education committee
 as provided in 13.4.7 NMAC,
 Continuing Education Requirements.

**B. Pre-licensing
 classroom requirements.** Each
 applicant shall complete 10 clock
 hours of pre-licensing classroom
 education using a curriculum that has
 been approved by the superintendent.

C. Curriculum. Once
 a year, during the month of January
 but before January 31, an accredited
 provider shall file a course curriculum
 with the superintendent for approval.
 The course curriculum shall be based
 on the subjects, laws and rules cited
 in 13.20.2.10 NMAC, shall describe
 how each subject will be taught to

the applicant, and shall indicate the
 approximate amount of time to be
 allocated to each subject.

D. Course sites.

Accredited providers shall offer
 formal pre-licensing classroom
 education courses in at least two
 geographic areas of the state located
 not less than 150 miles apart, as
 measured in driving distance from
 one course site to the other, until such
 time as the superintendent determines
 that sufficient classes are available
 statewide.

**E. Certificate of
 completion.** For each applicant who
 successfully completes the entire 10
 clock hours of required pre-licensing
 classroom education, the accredited
 provider shall prepare and furnish to
 the applicant on the form provided by
 the superintendent a written certificate
 stating that the applicant has
 successfully completed the required
 formal pre-licensing classroom
 education in accordance with the
 approved curriculum. The accredited
 provider shall specify the number
 of hours the applicant attended the
 course.

[13 NMAC 20.2.11 - Rp, 13.20.2.11
 NMAC, 7/11/17]

13.20.2.12 PRE-LICENSING ON-THE-JOB TRAINING:

**A. On-the-job
 training plan.** Once a year, during
 the month of January but before
 January 31, the sponsoring bail
 bondsman shall file an on-the-job
 training plan with the superintendent
 for approval. The on-the-job training
 plan shall be based on the subjects,
 laws and rules cited in 13.20.2.10
 NMAC, shall describe how each
 subject will be taught to the applicant,
 and shall indicate the approximate
 amount of time to be allocated to each
 subject.

**B. Training
 requirements.** Each applicant shall
 complete 30 clock hours of on-the-job
 training under the direct supervision
 of a sponsoring bail bondsman.

**C. Certificate of
 completion.** For each applicant
 who successfully completes on-the-
 job training, the sponsoring bail

bondsman shall certify in writing to
 the superintendent that the applicant
 has been taught the subjects pertinent
 to the duties and responsibilities of a
 bail bondsman, including ethics, all
 laws and rules related to the bail bond
 business and that applicant is prepared
 to take the exam. The sponsoring bail
 bondsman shall prepare and furnish
 to the applicant on the form provided
 by the superintendent a written
 certificate stating that the applicant
 has successfully completed on-the-
 job training in accordance with the
 approved on-the-job training plan.
 [13 NMAC 20.2.12 - Rp, 13.20.2.12
 NMAC, 7/11/17]

**13.20.2.13 WAIVER OF
 PRE-LICENSING EDUCATION
 REQUIREMENTS:** Upon written
 request from an applicant, the
 superintendent may, at his discretion,
 waive the pre-licensing education
 requirements whenever the applicant's
 background and experience so
 warrant.

[13 NMAC 20.2.13 - Rp, 13.20.2.14
 NMAC, 7/11/17]

**13.20.2.14 ELIGIBILITY
 FOR LICENSE:**

A. Before an applicant
 may take the examination required for
 licensure, the applicant shall:

(1) complete
 the pre-licensing classroom education
 and on-the-job training required by
 13.20.2.11 NMAC and 13.20.2.12
 NMAC, unless the pre-licensing
 education requirement is waived by
 the superintendent as provided for in
 13.20.2.13 NMAC;

(2) submit a
 written certificate of completion from
 his sponsoring bail bondsman for on-
 the-job training; and

(3) submit a
 written certificate of completion from
 an accredited provider for formal
 pre-licensing classroom education, if
 applicable.

B. Prior to licensure
 the applicant must successfully pass
 the examination.
 [13 NMAC 20.2.14 - Rp, 13.20.2.15
 NMAC, 7/11/17]

13.20.2.15 SPONSORING BAIL BONDSMEN:**A. Certification:**
(1)

Application: A bail bondsman seeking to be accredited as a sponsoring bail bondsman or as an accredited provider shall file an application with the superintendent on a form prescribed by the superintendent.

(2)

Qualifications: The superintendent may certify a person as a sponsoring bail bondsman or an accredited provider if the person:

(a)

is a licensed bail bondsman in good standing in this state or elsewhere;

(b)

has been actively engaged in the bail bond business in this state or elsewhere for at least three years;

(c)

has reasonable knowledge of the bail bond business and the laws and rules governing its transaction in New Mexico; and

(d)

has a good business and personal reputation.

(3)

Certificate: The superintendent shall issue written authorization to act as a sponsoring bail bondsman or as an accredited provider.

B. Assignment:

The superintendent may assign a sponsoring bail bondsman to conduct on-the-job training for an applicant for licensure as a bail bondsman or solicitor.

C. De-certification:

The superintendent may decertify a sponsoring bail bondsman for:

(1) refusal or

failure to conduct on-the-job training for an applicant for licensure as a bail bondsman or solicitor; or

(2) failure to

continue to meet the qualifications set forth in Paragraph (2) of Subsection A of 13.20.2.15 NMAC.

[13 NMAC 20.2.15 - Rp, 13.20.2.16 NMAC, 7/11/17]

13.20.2.16 CONTINUING EDUCATION: Continuing

education for bail bondsmen and solicitors shall be provided in accordance with 13.4.7 NMAC, Continuing Education Requirements. The continuing education hourly requirements in 13.4.7 NMAC shall be completed prior to license renewal for a bail bondsman or solicitor licensee issued a license by the superintendent.

[13 NMAC 20.2.16 - Rp, 13.20.2.17 NMAC, 7/11/17]

13.20.2.17 RESPONSIBILITIES OF BAIL BONDSMEN:**A. Permanent street address of place of business.**

Every bail bondsman and solicitor shall have and maintain in this state a place of business accessible to the public where the bail bondsman or solicitor principally conducts bail bond transactions. The permanent street address of such place shall appear upon the bail bondsman's or solicitor's license, and the bail bondsman shall notify the superintendent in writing or as otherwise specified by the superintendent within 30 days of any change of address. Nothing in this paragraph shall prohibit the bail bondsman from maintaining his place of business in his residence in this state as long as the residence is properly permitted by the municipality in which the residence is located. A bondsman with more than one office location must have a permanent street address in each office location.

B. Affiliation. Any licensee licensed under the bail bond licensing law doing bail bond business in a business entity name, must complete a business entity license application, and must provide business registration documents for the business entity from the New Mexico office of secretary of state, to the superintendent. All bail bond business must be conducted in the business entity name.

C. Display of licenses.

The licenses of the bail bondsman and the solicitors employed by him shall be conspicuously displayed in a part

of the place of business customarily open to the public.

D. Allowable charges.

A bail bondsman shall not accept any charges, fees, reimbursement or other remuneration except as approved by the superintendent.

E. Receipt for premium required. A bail bondsman shall issue a receipt for premium collected that includes the following information:

(1) the name

and address of the bail bondsman or solicitor collecting premium;

(2) the face

amount of the bond;

(3) the date

bond was posted;

(4) the

defendant's name, address and date of birth;

(5) the charges

against the defendant;

(6) the date of

the defendant's release;

(7) the date

and time the defendant is required to appear;

(8) the case

number;

(9) the name

and address of the court at which the defendant must appear; and

(10) the

signature of the defendant or principal acknowledging delivery of the receipt for premium.

F. Payment by credit card. A bail bondsman may accept payment by credit card as long as the fee charged by the credit card company is not passed on to the client.

G. Maintenance of bond or deposit. A bond or deposit must be maintained until all bonds that have been posted with all courts becomes exonerated.

H. Restrictions.**(1)** A

bondsman shall not offer a reduction in rates, charges or premiums or give or promise anything of value to the defendant or principal or anyone on behalf of the defendant or principal.

(2) A

bondsman shall not suggest or

recommend an attorney to represent the defendant. If pressed to provide a referral, the bondsman may suggest that the defendant or principal contact the local bar association.

(3) A

bondsman shall not participate as an attorney at trial or hearing on behalf of a defendant or surety.

I. In relation to solicitors.

(1) Notice of employment.

A sponsoring bondsman shall register a licensed solicitor with the superintendent within seven days of employment with the bail bondsman and shall supervise the activities of every solicitor in the bail bondsman's employ.

(2) Records of transactions. A bail bondsman shall maintain all records of his solicitors' bail bond transactions in his principal place of business, provided that a bail bondsman:

(a) may collect the records of solicitors not working out of the bail bondsman's principal place of business monthly; and

(b) shall make all records of bail bond transactions made pursuant to his license available for inspection at his principal place of business within 48 hours of a request from the superintendent.

(3) Annual report. The bail bondsman shall file an annual report with the superintendent on or before March 1 of each year, to include an alphabetic list of all solicitors whose license will be continued and who have met license renewal requirements in accordance with Section 59A-11-1, et seq.

(4) Termination. When the employment relationship between a bail bondsman and solicitor ceases as a result of either discharge or resignation, the bail bondsman shall terminate the appointment as prescribed in Section 59A-51-12B NMSA 1978.

(5) Notice of termination. When a bail bondsman

terminates his relationship with a solicitor, the bail bondsman shall file a confidential written notice of the termination with the superintendent within 30 days. This notice shall include the following:

(a) a statement that the bail bondsman has provided written notice of the termination to the solicitor; and
(b) a statement of the reason, if any, for the termination.

[13 NMAC 20.2.17 - Rp, 13.20.2.18 NMAC, 7/11/17]

13.20.2.18 RESPONSIBILITIES OF SOLICITORS:

A. The transactions of a solicitor under a solicitor's license shall be in the name of the employer bail bondsman.

B. A solicitor shall maintain records of his bail bond transactions.

C. A solicitor shall notify the superintendent and the employer bail bondsman when he ceases employment as a solicitor.

D. A solicitor shall not suggest or recommend an attorney to represent the defendant. If pressed to provide a referral, the bondsman may suggest that the defendant or principal contact the local bar association.

E. A solicitor shall not participate as an attorney at trial or hearing on behalf of a defendant or surety.

[13 NMAC 20.2.18 - Rp, 13.20.2.19 NMAC, 7/11/17]

13.20.2.19 EVIDENCE OF LICENSE AND EMPLOYMENT:

A. When posting a bail bond, a bail bondsman or solicitor transacting bail bond business in New Mexico must show that he has a valid license issued by the superintendent.

B. When countersigning bonds for another bail bondsman, a bail bondsman must show proof that he is employed by the authorizing bail bondsman.

[13 NMAC 20.2.19 - Rp, 13.20.2.20 NMAC, 7/11/17]

13.20.2.20 COLLATERAL SECURITY OR OTHER INDEMNITY:

A. Permissible forms. Collateral security may be in the form of cash or negotiable instruments, a mortgage on real property, personal property, or a lien on personal property.

B. Receipt required. A bail bondsman shall issue a receipt for collateral or security deposited with him or her that includes the following information:

(1) the depositor's name, address and date of birth;

(2) the defendant's name;

(3) a description and the actual or estimated value of the collateral or security deposited;

(4) a description of the condition of the collateral or security at the time it is received by the bail bondsman;

(5) the printed name and the signature of the person receiving the deposited collateral or security; and

(6) an acknowledgement that the collateral or security has been returned to the depositor, the date returned, and to whom.

C. Reasonable amount. A bail bondsman may charge or accept collateral or security or other indemnity that is of reasonable value in relation to the amount of the bond. No collateral or security in tangible property may be retained, sold or otherwise disposed of upon default of the premium payment. The bail bondsman's aggregate interest in any combination of collateral, security or real property shall be limited to one hundred percent of the amount of the bond.

D. Return of collateral. Except for the premium on the bond and any expenses incurred in extraterritorial recovery, a bail bondsman shall return to the client any collateral not forfeited to a court within 10 days of final termination of liability on the bond, as

evidenced by receipt of the judgment and sentence in the case, a certificate of discharge, or an order releasing the bond. The client may retrieve the collateral at the bail bondsman's place of business or the bail bondsman may deliver the collateral to the client in a manner or at a location agreeable to the client. A bail bondsman shall not use collateral to pay for expenses of recovering a defendant who fails to appear.

E. Unclaimed collateral. A bail bondsman shall maintain and dispose of any unclaimed collateral in accordance with the Uniform Unclaimed Property Act, Sections 7-8A-1 NMSA 1978 *et seq.*

[13 NMAC 20.2.20 - Rp, 13.20.2.21 NMAC, 7/11/17]

13.20.2.21 RECORDS

OF OPERATIONS: Every bail bondsman shall keep the records required by Subsections A and B of 13.20.2.22 NMAC for at least three years after final termination of liability on the bond and the records required by Subsection C of 13.20.2.22 NMAC for at least five years after final termination of liability on the bond.

A. Bail bond transactions. The record of bail bond transactions shall show:

- (1) the name of the solicitor or bondsman involved in the transaction, if any;
- (2) the name and address of the defendant;
- (3) the name and address of the person paying the premium for the bail bond;
- (4) the court in which the bail bond was posted;
- (5) the type of bail bond;
- (6) the amount of the premium; and
- (7) whether the bond was forfeited.

B. Receipt and return of collateral security in the form of property. The record of property received and returned shall show:

- (1) the date the property was received;

- (2) the name and address of the person from whom the property was received;

- (3) a description of the collateral;

- (4) the estimated value of the collateral; and

- (5) the date the property was returned.

C. Receipt and return of collateral security in the form of cash or negotiable instruments.

Cash and negotiable instruments received as collateral security shall be deposited in one or more trust accounts maintained for that purpose. The record of trust accounts shall show:

- (1) the date the cash or negotiable instrument was received;

- (2) the amount of the cash or negotiable instrument received;

- (3) the name and address of the person from whom the cash or negotiable instrument was received;

- (4) the name and address of the financial institution maintaining the trust account;

- (5) the date of each disbursement;

- (6) the amount of each disbursement;

- (7) the name of the person to whom the disbursement was made; and

- (8) the reason for the disbursement.

[13 NMAC 20.2.21 - Rp, 13.20.2.22 NMAC, 7/11/17]

13.20.2.22 PROPERTY BONDSMAN'S SCHEDULE OF CHARGES AND RATING

PLAN: Every property bondsman shall maintain records to confirm compliance with the superintendent's published premium rates, schedule of charges and rating plan. The superintendent may, if he deems it necessary to evaluate compliance require the property bondsman to submit audited financial statements under oath.

A. The published premium rates, schedule of charges

and rating plan shall be available on the OSI website and will be updated periodically, pursuant to a public hearing, as deemed necessary by the superintendent.

B. The published premium rates, schedule of charges and rating plan shall be:

- (1) posted in a conspicuous place in the bail bondsman's place of business;

- (2) available for public inspection in the offices of the superintendent; and

- (3) provided to any court upon request.

[13 NMAC 20.2.22 - Rp, 13.20.2.23 NMAC, 7/11/17]

13.20.2.23 INSTRUCTIONS FOR PREPARING AND SUBMITTING THE ANNUAL FINANCIAL STATEMENT:

Upon the licensee's renewal anniversary date, property bondsman must submit a detailed financial statement to the OSI examinations bureau. All instructions for preparing and submitting a financial statement are posted on the OSI website at: <http://www.osi.state.nm.us/>. In lieu of submitting the detailed financial statement, the licensee may provide a copy of the most recent federal tax return along with evidence that any funds due pursuant to the return were also submitted.

[13 NMAC 20.2.23 - Rp, 13.20.2.24 NMAC, 7/11/17]

13.20.2.24 – 13.20.2.33 [RESERVED]

HISTORY OF 13.20.2 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center:

INS Rule 79-1, Regulations Governing the Licensing of Bail Bondsmen and Surety Bondsmen, filed 10/17/79. The Bail Bondsman Licensing Law, Sections 59A-51-1 *et seq.* NMSA 1978, was amended in Section 39, L. 2014 Ch. 21, and became effective on May 21, 2014.

History of Repealed Material:

13 NMAC 20.2, Licensing Property and Surety Bondsmen, was repealed effective December 31, 1999 and repromulgated as 13 NMAC 20.2, Bail Bondsmen and Solicitors, effective January 1, 2000.
13 NMAC 20.2, Bail Bondsmen and Solicitors, was repealed and replaced by 13.20.2 NMAC, Bail Bondsmen and Solicitors, effective July 11, 2017.

TRANSPORTATION, DEPARTMENT OF

The New Mexico Department of Transportation approved, at its 5/31/2017 hearing, to repeal its rule 18.28.3 NMAC, Highway Contracting and Bidding - Selection Committee For Qualifications Based Proposals (filed 11/16/2004) and replace it with 18.28.3 NMAC, Highway Contracting and Bidding - Selection Committee For Qualifications Based Proposals, effective 7/11/2017.

TRANSPORTATION, DEPARTMENT OF

TITLE 18 TRANSPORTATION AND HIGHWAYS CHAPTER 28 HIGHWAY CONTRACTING AND BIDDING PART 3 SELECTION COMMITTEE FOR QUALIFICATIONS BASED PROPOSALS

18.28.3.1 ISSUING
AGENCY: New Mexico Department of Transportation, P.O. Box 1149 Santa Fe, New Mexico 87504-1149.
[18.28.3.1 NMAC - Rp, 18.28.3.1 NMAC, 7/11/2017]

18.28.3.2 SCOPE: New Mexico department of transportation. General public. Engineering consultants.
[18.28.3.2 NMAC - Rp, 18.28.3.2 NMAC, 7/11/2017]

18.28.3.3 STATUTORY
AUTHORITY: Subsection D of 13-1-121 NMSA 1978.

[18.28.3.3 NMAC - Rp, 18.28.3.3 NMAC, 7/11/2017]

18.28.3.4 DURATION:
Permanent.

[18.28.3.4 NMAC - Rp, 18.28.3.4 NMAC, 7/11/2017]

18.28.3.5 EFFECTIVE
DATE: July 11, 2017, unless a later date is cited at the end of a section.
[18.28.3.5 NMAC - Rp, 18.28.3.5 NMAC, 7/11/2017]

18.28.3.6 OBJECTIVE:
To create a professional services selection committee to serve as the selection committee for transportation projects of the New Mexico department of transportation using competitive sealed qualifications based proposals. This selection committee is necessary in order for the New Mexico department of transportation to fulfill its duties and responsibilities by effectively and continuously managing and conducting its work on transportation projects through the procurement process.
[18.28.3.6 NMAC - Rp, 18.28.3.6 NMAC, 7/11/2017]

18.28.3.7 DEFINITIONS:
[RESERVED]

18.28.3.8 COMMITTEE
FOR QUALIFICATIONS BASED
PROPOSALS:

A. The professional services selections committee for transportation projects using competitive sealed qualifications based professional services shall consist of the following members:

(1) voting members:
(a) two employees of the New Mexico department of transportation as requested to serve on the committee designated by the deputy secretary of operations for the New Mexico department of transportation;

(b) two employees of the New Mexico department of transportation as requested to serve on the committee

designated by the division director of design and construction for the New Mexico department of transportation;

(c) the employee of the New Mexico department of transportation in responsible charge of the contract; and

(d) the committee shall consist of a minimum of three registered New Mexico professional engineers.

(2) advisory (non-voting) members:

(a) the New Mexico department of transportation chief procurement officer and staff; and;

(b) any other employee of the New Mexico department of transportation as requested to serve by the cabinet secretary of the New Mexico department of transportation.

B. Members of the state transportation commission may attend any or all meetings of the professional services selection committee for consultant engineering and land surveyors at their discretion, but shall not participate in the selection process directly or indirectly.

[18.28.3.8 NMAC - Rp, 18.28.3.8 NMAC, 7/11/2017]

HISTORY OF 18.28.3 NMAC:
Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Archives under: SHTD Rule 93-4, Emergency Rule creating a Highway Project Selection Committee for Competitive Sealed Qualifications Based Proposals, filed 6/29/93; SHTD Rule 93-4, Rule Creating a Highway Project Selection Committee for Competitive Sealed Qualifications Based Proposals, filed 11/2/93; and SHTD Rule 93-4, Amendment 1, Amendment to Rule Creating a Highway Project Selection Committee for Competitive Sealed Qualifications Based Proposals, filed 12/15/94.

History of Repealed Material: 18 NMAC 28.3, Selection Committee for Qualification Based Proposals (filed

01/02/1998) repealed 12/01/2004.
18.28.3 NMAC, Selection Committee
for Qualifications Based Proposals,
filed 11/16/2004 repealed 7/11/2017.

Other History: SHTD Rule
93-4, Rule Creating a Highway
Project Selection Committee for
Competitive Sealed Qualifications
Based Proposals, filed 11/2/93 was
renumbered, reformatted, amended
and replaced by 18 NMAC 28.3,
Selection Committee for Qualification
Based Proposals, effective
01/15/1998.
18 NMAC 28.3, Selection Committee
for Qualification Based Proposals
(filed 01/02/1998) was replaced by
18.28.3 NMAC, Selection Committee
for Qualifications Based Proposals,
effective 12/01/2004.
18.28.3 NMAC, Selection Committee
for Qualifications Based Proposals
(filed 11/16/2004) was replaced by
18.28.3 NMAC, Selection Committee
for Qualifications Based Proposals,
effective 7/11/2017.

End Of Adopted Rules

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Submittal Deadlines and Publication Dates

Volume XXVII, Issues 1-24

Issue	Submittal Deadline	Publication Date
Issue 1	January 5	January 17
Issue 2	January 19	January 31
Issue 3	February 2	February 14
Issue 4	February 16	February 28
Issue 5	March 2	March 14
Issue 6	March 16	March 28
Issue 7	March 30	April 11
Issue 8	April 13	April 25
Issue 9	April 27	May 16
Issue 10	May 18	May 30
Issue 11	June 1	June 13
Issue 12	June 15	June 27
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Issue 20	October 19	October 31
Issue 21	November 2	November 14
Issue 22	November 16	November 28
Issue 23	November 30	December 12
Issue 24	December 14	December 26

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