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# New Mexico Register

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

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## **The New Mexico Register**

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# New Mexico Register

Volume XXXII, Issue 13

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## Notices of Rulemaking and Proposed Rules

### GAME AND FISH DEPARTMENT

#### STATE GAME COMMISSION MEETING AND RULE MAKING NOTICE

The New Mexico State Game Commission (“Commission”) will be hosting a meeting and rule hearing on Thursday August 12, 2021 beginning at 9:00 a.m. at the New Mexico State Capital, 490 Old Santa Fe Trail, Santa Fe, NM 87501. The purpose of this meeting is to hear and consider action as appropriate on the following: presentation of proposed changes to the Migratory Game Bird rule.

#### **Synopsis:**

The proposal is to amend the Migratory Game Bird rule, 19.31.6 NMAC, which will become effective September 1, 2021. The most recent Migratory Game Bird rule expired on March 31, 2021.

The proposed new rule will include changes to regular waterfowl season dates, and an increase to the Sandhill crane allocation based on fall population data. A full text of changes will be available on the Department’s website at: [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us).

Interested persons may submit comments on the proposed changes to the Migratory Game Bird rule at [DGF-waterfowl@state.nm.us](mailto:DGF-waterfowl@state.nm.us); or individuals may submit written comments to the physical address below. Comments are due by 8:00 a.m. on August 11, 2021. The final proposed rule will be voted on by the Commission during a public meeting on August 12, 2021. Interested persons may also provide data, views or arguments, orally or in writing, at the public rule hearing to be held on August 12, 2021.

Full copies of text of the proposed new rule, technical information related to proposed rule changes, and the agenda can be obtained from the

Office of the Director, New Mexico Department of Game and Fish, 1 Wildlife Way, Santa Fe, New Mexico 87507, or from the Department’s website at [www.wildlife.state.nm.us/commission/proposals-under-consideration/](http://www.wildlife.state.nm.us/commission/proposals-under-consideration/). This agenda is subject to change up to 72 hours prior to the meeting. Please contact the Director’s Office at (505) 476-8000, or the Department’s website at [www.wildlife.state.nm.us](http://www.wildlife.state.nm.us) for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Department at (505) 476-8000 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Department at 505-476-8000 if a summary or other type of accessible format is needed.

Legal authority for this rulemaking can be found in the General Powers and Duties of the State Game Commission 17-1-14, et seq. NMSA 1978; Commission’s Power to establish rules and regulations 17-1-26, et seq. NMSA 1978.

### HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

#### NOTICE OF PUBLIC HEARING

The Department is promulgating proposed regulations for the Supplemental Nutrition Assistance Program (SNAP) under the General Provisions for Public Assistance Programs administered by the Human Services Department (HSD), including its authority to promulgate regulation, and is governed by Chapter 9, Article 8, NMSA (Repl.

1983). Proposed amendments to section 17 of 8.100.100 NMAC and section 18 of 8.100.640 NMAC are being proposed to gain compliance with the Code of Federal Regulations (CFR) proposed in the 2018 Agricultural Act, effective September 1, 2021. In accordance with Section 4006 of the 2018 Farm Bill, this final rule amends the expungement timeframe from 12 months to nine months. The Department considers nine months to be equal to 274 days.

The NMHSD is amending the rule to be in compliance with the final rule, the amended expungement provisions are at 7 CFR 274.2(i). The rule will be amended under the statutory authority of the food stamp program as authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011-2036). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282 and 45 CFR Parts 200-299. State authority for administering the food stamp program is contained in Chapter 27 NMSA, 1978. Administration of the Human Services Department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983).

A public hearing to receive testimony on this proposed rule, pursuant to Section 14-4-5.6 NMSA 1978, will be held on Friday, August 6, 2021 from 9:00am-10:00am. The hearing will be held virtually through GoTo Meeting at this link: <https://global.gotomeeting.com/join/949602949>. Anyone wishing to join via phone may call +1 (571) 317-3112, Access Code: 949-602-949. Written comment may be dropped off during the scheduled hearing time at the HSD Administrative Services Division (ASD) conference room, 1474 Rodeo Road, Santa Fe, NM 87505; this drop off site will be for written comment only. The conference room is located on the first floor in the ASD Rodeo Building.

The Human Services Register Vol. 44 No. 14 outlining the proposed regulations are available on the HSD's website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Santa Fe, New Mexico 87504-2348, or by calling 505-396-0314.

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 505-827-6201 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.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 p.m. on the date of the hearing, Friday, August 6, 2021. The agency shall post all written comments on its website, if one exists, as soon as practicable and no more than 3 business days following receipt to allow for public review. All written comments received by the agency shall also be available for public inspection at the main office of the agency. Please send comments to:

Human Services Department  
P.O. Box 2348,  
Santa Fe, New Mexico 87504-2348

You may send comments electronically to: [HSD-isdrules@state.nm.us](mailto:HSD-isdrules@state.nm.us)

## REGULATION AND LICENSING DEPARTMENT CANNABIS CONTROL DIVISION

### NOTICE OF PROPOSED RULEMAKING

The New Mexico Regulation and Licensing Department (Department) Cannabis Control Division (Division) will hold a rule hearing on Friday, August 6, 2021, starting at 9:00 a.m. The rule hearing will be held both virtually and in-person at the New Mexico State Capitol, 490 Old Santa Fe Trail, Room 307, Santa Fe, NM 87501. If attending virtually, please use the following link to access the livestream of the hearing:

<https://ccd.rld.state.nm.us/>.

**Purpose of Rule Hearing.** The purpose of the rule hearing is to consider the proposed new rules set forth by the Cannabis Regulation Act regarding the processing, approval, and denial of license applications for cannabis producers, cannabis producer microbusinesses and any person properly licensed and in good standing as a licensed cannabis producer pursuant to the Lynn and Erin Compassionate Use Act. Good standing requires that the licensee be in good standing as of June 29, 2021. The rule hearing will also consider the regulation of licensees specified under the Cannabis Regulation Act. Licensing consideration will include proposed fees for corresponding license types and plant count limits.

Any technical information used to inform the proposed rules will be made available no later than July 7, 2021, and can be accessed by visiting: <https://ccd.rld.state.nm.us/>.

**Statutory Authority.** Legal authority for this rulemaking may be found in NMSA 1978, Section 9-16-6 (2020), and the Cannabis Regulation Act, enacted in House Bill 2, 1st Special Legislative Session, 2021. Additional authority may be found at NMSA 1978, and Section 9-7-6(E) (2017), and NMSA 1978.

**Public Comment.** The Division will begin accepting public comments on the proposed new rules beginning July 7, 2021. Please submit written comments on the proposed rules to Robert Sachs, Deputy Director of Policy for the Cannabis Control Division, via electronic mail at [ccd.publiccomment@state.nm.us](mailto:ccd.publiccomment@state.nm.us). Written comment may also be submitted by mailing the comment to the following address:

Cannabis Control Division  
Public Comment  
c/o Robert Sachs  
P.O. Box 25101  
Santa Fe, NM 87504

All public comments must be received by the close of the public rule hearing on Friday, August 6, 2021. Persons will also be given the opportunity to present their comments at the rule hearing. Comments received prior to the rule hearing will be posted to the RLD website at: [ccd.rld.state.nm.us](https://ccd.rld.state.nm.us/).

No later than July 7, 2021, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://ccd.rld.state.nm.us/> or by contacting the Cannabis Control Division at [rld.cannabiscontrol@state.nm.us](mailto:rld.cannabiscontrol@state.nm.us) or (505) 476-4995.

Any individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the hearing should contact Nicole Bazzano, Executive Assistant for the Office of the Superintendent, [rld.cannabiscontrol@state.nm.us](mailto:rld.cannabiscontrol@state.nm.us) or (505) 469-0982 at least seven days prior to the hearing.

### Summary of Proposed New Rules.

#### 16.8.1 NMAC: GENERAL PROVISIONS

Part 1 will provide for general requirements for licensees established under the Cannabis Regulation Act and required definitions.

**16.8.2 NMAC: LICENSING AND OPERATIONAL REQUIREMENTS FOR CANNABIS ESTABLISHMENTS**

Part 2 will provide the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 will govern the licensing and operational requirements for additional types of licensees, however the proposed rules to be discussed at the hearing will only govern cannabis producers.

**16.8.8 NMAC: CANNABIS PLANT LIMITS AND PROCESS TO ADDRESS SHORTAGE OF CANNABIS SUPPLY IN THE MEDICAL CANNABIS PROGRAM**

Part 8 will provide the requirements for limiting plant count, canopy or square footage for licensees.

**16.8.11 NMAC: FEES**

Part 11 will provide the licensing fees associated with corresponding license types, as well as plant-based fees for operations growing in excess of 200 plants.

**TAXATION AND REVENUE, DEPARTMENT OF**

**NOTICE OF PROPOSED RULEMAKING AND PUBLIC RULE HEARING**

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to repeal and replace a rule on gross receipts tax and services as authorized by Section 9-11-6.2 NMSA 1978:

**Summary of Proposed Changes:**

The New Mexico Taxation and Revenue Department proposes to repeal and replace the following rule:

**Gross Receipts and Compensating Tax Act, Section 7-9-3.5 NMSA 1978**

3.2.1.18 NMAC - Gross Receipts; Services

The New Mexico Taxation and Revenue Department proposes to enact the following rules:

**Gross Receipts and Compensating Tax Act, Section 7-9-3.5 NMSA 1978**

[NEW] 3.2.1.21 NMAC - Tax on Gross Receipts from Services Performed Outside the State

[NEW] 3.2.1.23 NMAC - "Performance of a service," "product of the service," "initial use", and "delivery"; presumptions

**Gross Receipts and Compensating Tax Act, Section 7-9-79.1 NMSA 1978**

[NEW] 3.2.300.9 NMAC - Credit for Tax Paid on Services Performed Outside the State

The New Mexico Taxation and Revenue Department proposes to repeal the following rules:

**Gross Receipts and Compensating Tax Act, Section 7-9-57 NMSA 1978**

3.2.215.11 NMAC - Product of Service Which is Reviewed and Accepted Outside of New Mexico but Initially Used in New Mexico

3.2.215.12 NMAC - General Examples

**Technical Information:** No technical information was consulted in drafting these proposed rule changes.

**Purpose of Proposed Rule:** The proposed rule is repealed and replaced to align with current law and provide guidance on the applicability of gross receipts tax on receipts from certain services.

**Notice of Public Rule Hearing:** A public hearing will be held on the proposed rule changes on August 10, 2021 at 10:00AM through the internet, email, and telephonic means in response to concerns surrounding COVID-19 and in accordance with Executive Order 2020-004, Declaration of a Public Health Emergency, and the March 12, 2020

Public Health Emergency Order to Limit Mass Gatherings Due to COVID-19.

The Public Hearing will be accessible via WebEx <https://nm-tax.webex.com/nm-tax/j.php?MTID=m89c40dd3456122210f5483dfb3e9d5b2>. Meeting number (access code): 132 352 6577 Meeting password: 08102021 or by telephone by dialing 1-844-621-3956. Any oral comments made during this hearing will be recorded and any electronic written comments can be submitted during the hearing at [policy.office@state.nm.us](mailto:policy.office@state.nm.us).

The proposals were placed on file in the Office of the Secretary on July 2, 2021. Pursuant to Regulation 3.1.2.9 NMAC under Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about August 26, 2021.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Alicia Romero at [alicia.romero@state.nm.us](mailto:alicia.romero@state.nm.us). The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Copies of the proposed rules may be found at <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> or are available upon request by contacting the Tax Policy Office at [policy.office@state.nm.us](mailto:policy.office@state.nm.us).

**Notice of Acceptance of Written Public Comment:** Written comments on the proposals can submitted by email to [policy.office@state.nm.us](mailto:policy.office@state.nm.us) or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before August 10, 2021 at 5:00 PM. All written comments received by the agency will be posted on [www](http://www).



tax.newmexico.gov no more than 3 business days following receipt to allow for public review.

## WORKFORCE SOLUTIONS DEPARTMENT

### NOTICE OF RULEMAKING

The New Mexico Department of Workforce Solutions (“Department” or “NMDWS”) hereby gives notice that the Department will conduct a public hearing in the conference room of the Human Rights Bureau located at 1596 Pacheco Street, Suite 103 in Santa Fe, New Mexico 87505 on August 9, 2021 from 1:00 pm to 3:00 pm. The public comment hearing will also be conducted virtually.

Participants may join the zoom call by going to:

<https://zoom.us/j/96319539893?pwd=RnYrbjh0UjJYcHNvM1ZDZ0YxSFpLUT09>

Meeting ID: 963 1953 9893

Passcode: 7zZdX4

Under NMSA 1978, §9-26-4, the Workforce Solutions Department is responsible for the administration of the workforce technology division and the workforce transition services division. The Department is therefore responsible for the administration of the Unemployment Compensation Law pursuant to NMSA 1978 §51-1-1 et seq.

The proposed amendment adds language to the work search requirement in section 11.3.300.320 NMAC to clarify that the work search requirement may only be waived by the secretary up to the extent permissible by federal law.

Interested individuals may testify at the public hearing or submit written comments to State of New Mexico Department of Workforce Solutions, 401 Broadway NE, P.O. Box 1928, Albuquerque, N.M. 87103, attention Andrea Christman. Written comments must be received no later than 5 p.m. on August 6, 2021.

However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed at <http://www.dws.state.nm.us/> or obtained by calling Andrea Christman at (505) 841-8478 or sending an email to Andrea.Christman@state.nm.us. The proposed rules will be made available at least thirty days prior to the hearing.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Christman as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

## 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.

### ECONOMIC DEVELOPMENT DEPARTMENT

**This is an amendment to 5.5.50 NMAC, Section 6, 8, 10, 12 and 15, effective 7/7/2021.**

#### 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. 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:** 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 are required to have a physical presence (real estate either purchased or leased) in 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, 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. 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. 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 within two years of the most recent board approval date. Jobs must also meet a wage requirement to be eligible for funding. The entry level wage requirements for JTIP eligibility are specified in the "Reimbursable Expenses" section of this policy manual. 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. In urban areas, companies with more than 20 employees 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 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. Companies are reimbursed at a reduced, flat reimbursement rate for trainees that meet these criteria.

**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

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

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.

(4)

Companies that hire trainees who are U.S. veterans may be eligible for an additional five percent wage reimbursement above the standard rates.

(5) Companies

that hire trainees who have graduated out of the NM foster care system may be eligible for an additional five percent 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.

(8) For

companies that hire remote workers, the reimbursement percentage for the remote employee shall be linked to the location of the employee. Urban companies must also offer the remote workers that reside in a rural or frontier location a wage that is consistent with the urban location. Conversely, a rural or frontier company that hires a remote worker from an urban location, the reimbursement percentage will be linked to the urban location and must also meet the minimum entry wage requirement respective to the O\*NET job zone for an urban location in order to qualify for the hours of training assigned to that job zone.

(a)

Rural – sixty-five percent.

(b)

Frontier, Tribal and Federally designated Colonias – seventy-five 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.

[5.5.50.6 NMAC - Rp, 5.5.50.6 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021]

#### 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 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 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. Eligibility as an expanding company is determined by peak employment over the four prior years. For first-time applicants, peak employment is based on the employment average from four previous years or the present employment level, whichever is higher. The company must meet or exceed the average employment level for the past four years in order to be considered an expanding company

and eligible for JTIP. Contract-based customer support centers that have been funded in the past four years must be expanding beyond the peak employment count achieved with previous JTIP funds.

(3) The company must be creating new jobs, whether due to expansion in New Mexico or relocation to the state of New Mexico. An expanding company is defined as an existing business that requires additional employees or workforce due to a market or product expansion. Eligibility as an expanding company is determined by peak employment over the two prior years. For first-time applicants, peak employment is based on the employment average from two previous years or the present employment level, whichever is higher. 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 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 and apprentices when calculating the two-year average headcount.

(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 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.

(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-ups and early-stage companies that do not have three years of financials 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.

(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.

(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) 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.

(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.

(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.

(11) Companies must be in good standing with the economic development department in order to be considered for participation in JTIP.

#### **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 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 training or education program, or within 90 days of completion of the internship by a recent graduate.

(6) Remote worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility.

**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. JTIP staff determines eligibility of these positions and trainees on a case by case basis, and if deemed eligible, training hours may be reduced. The vacancy left by an existing employee moving in to a JTIP position must be filled by the end of the project period. Individuals who have been employed temporarily in a position classified as intern or apprentice 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 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.

(f)

The trainee must not have worked at the company in a temporary position through a staffing agency prior to the board approval date.

(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 Subsection K of 5.5.50.12 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.

(13) Remote

worker trainees may be eligible if all of the trainee qualifications and requirements as defined in policy under trainee eligibility.

[5.5.50.8 NMAC - Rp, 5.5.50.8 NMAC, 6/26/2018; A, 7/7/2021]

#### 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 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 graduated out of the New Mexico foster care system.

(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. [For fiscal year 2019- (July 1, 2018 — June 30, 2019) and fiscal year 2020 July 1, 2019—June 30, 2020 are outlined in the table below:] For fiscal years [2021-2024] 2022-2024, the JTIP board may [uphold the FY2019] maintain wage requirements [beyond fiscal year 2019 under the following circumstances:— 1) For companies that have engaged with the Economic Development Department through a Local Economic Development Act (LEDA) agreement prior to December, 2019 for the length of the job ramp within the Project Participation Agreement (PPA), provided the company meets job creation requirements within that period and wages do not fall below the statewide minimum wage. 2) For companies that have engaged with the Economic Development Department prior to December, 2019 for consideration of business expansion or location and have been presented with a written incentive analysis based on the FY2019 wage requirements. JTIP applications must be submitted for consideration

no later than November 13, 2020] effective in the first year of JTIP approval for the length of the job ramp within the project participation agreement (PPA) for companies that are also engaged in a LEDA agreement with the economic development department provided the company meets job creation requirements within the period and wages do not fall below the statewide minimum wage.

<b>[General Guideline for Duration of Reimbursable Training Time/Wages for FY2019 and FY2020</b>							
<b>Job Zone</b>	<b>Definitions</b>	<b>SVP Range/ Conversions</b>	<b>Hours</b>	<b>Min. Wage @ Hiring - Urban</b>	<b>Min. Wage @ Hiring - Rural</b>	<b>Days</b>	<b>Weeks</b>
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]		

The number of recommended hours for fiscal years [2021,] 2022, 2023 and 2024 are outlined in the tables below.

<b>[General Guideline for Duration of Reimbursable Training Time/Wages for FY2021 (July 1, 2020-June 30, 2021</b>							
<b>Job Zone</b>	<b>Definitions</b>	<b>SVP Range/ Conversions</b>	<b>Hours</b>	<b>Min. Wage @ Hiring - Urban</b>	<b>Min. Wage @ Hiring - Rural</b>	<b>Days</b>	<b>Weeks</b>
1	Little or no preparation needed	Below 4.0	320	12.50	10.63	40	8
2a	Some preparation needed	4.0 to <6.0	480	14.00	11.13	60	12
2	Some preparation needed	4.0 to <6.0	640	15.50	11.63	80	16
3a	Medium preparation needed	6.0 to <7.0	800	17.00	13.13	100	20
3	Medium preparation needed	6.0 to <7.0	960	18.50	14.13	120	24
4	Considerable preparation needed	7.0 to <8.0	1,040	21.50	15.13	130	26
	Align with HWJTC	Additional five-percent		28.85	19.23]		



<b>General Guideline for Duration of Reimbursable Training Time/Wages for FY2022 (July 1, 2021-June 30, 2022)</b>							
<b>Job Zone</b>	<b>Definitions</b>	<b>SVP Range/ Conversions</b>	<b>Hours</b>	<b>Min. Wage @ Hiring - Urban</b>	<b>Min. Wage @ Hiring - Rural</b>	<b>Days</b>	<b>Weeks</b>
1	Little or no preparation needed	Below 4.0	320	14.00	11.90	40	8
2a	Some preparation needed	4.0 to < 6.0	480	15.50	12.40	60	12
2	Some preparation needed	4.0 to < 6.0	640	17.00	12.90	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	18.50	14.40	100	20
3	Medium preparation needed	6.0 to < 7.0	960	20.00	15.40	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	23.00	16.40	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

<b>General Guideline for Duration of Reimbursable Training Time/Wages for FY2023 (July 1, 2022-June 30, 2023)</b>							
<b>Job Zone</b>	<b>Definitions</b>	<b>SVP Range/ Conversions</b>	<b>Hours</b>	<b>Min. Wage @ Hiring - Urban</b>	<b>Min. Wage @ Hiring - Rural</b>	<b>Days</b>	<b>Weeks</b>
1	Little or no preparation needed	Below 4.0	320	15.00	12.75	40	8
2a	Some preparation needed	4.0 to < 6.0	480	16.50	13.25	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.00	13.75	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	19.50	15.25	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.00	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.00	17.68	130	26
	Align with HWJTC	Additional five percent		28.85	19.23		

**General Guideline for Duration of Reimbursable Training Time/Wages for FY2024 (July 1, 2023-June 30, 2024)**

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	15.50	13.18	40	8
2a	Some preparation needed	4.0 to < 6.0	480	17.00	13.68	60	12
2	Some preparation needed	4.0 to < 6.0	640	18.50	14.18	80	16
3a	Medium preparation needed	6.0 to < 7.0	800	20.00	15.68	100	20
3	Medium preparation needed	6.0 to < 7.0	960	21.50	16.68	120	24
4	Considerable preparation needed	7.0 to < 8.0	1,040	24.50	17.68	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 tables 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 as per criteria and procedures set forth by and at the discretion of the JTIP board, which may include consideration of the company benefits package. 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) Companies located in urban areas (cities with population above 60,000 in the most recent federal decennial census) and Class 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 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) 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.

(8) JTIP

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

(9) Trainee

has graduated out of the NM Foster Care System may be eligible for an additional five percent reimbursement. This provision is effective for fiscal years 2021 and 2022 and will be reassessed as part of the annual policy amendment process for FY2023.

(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: [†]

(i)

the trainee has graduated out of the New Mexico foster care system; [‡]

(ii)

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; [‡]

(iii)

the trainee is a U.S. veteran. High-wage positions filled by trainees who do not meet the one-year residency requirement are not eligible for additional wage reimbursement above the standard rate.

**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 NMAC, 6/26/2018; A, 1/1/2020; A, 7/14/2020; A, 7/7/2021]

#### 5.5.50.12 PROCEDURAL

**OVERVIEW:** The procedures for completing a funding proposal and the administration of a project are explained in detail in the JTIP online application and proposal guide and the JTIP policy and procedures manual.

##### A. Proposals

and contract amendments must be submitted to the economic development department, JTIP, no less than four weeks before the JTIP board meeting at which the proposal will be considered for funding.

##### B. The contract start date is the date of the board meeting at which funding was approved.

##### C. Eligible job

openings must be registered with the New Mexico workforce connection.

##### D. The company must hire trainees within six months of the contract start date.

##### E. The company must submit an online hiring report at the end of the six month hiring period.

##### F. Claims for reimbursement should be submitted as trainees complete training.

##### G. Each project is subject to compliance reviews throughout the term of the contract.

##### H. The company must arrange for an agreed upon procedure in accordance with

generally accepted standards and the general requirements included in the statements on standards for attestation engagements, as issued by the American institute of certified public accountants upon completion of the training.

**I.** The final claim for reimbursement should be submitted with the completed agreed upon procedures report.

**J.** Yearly follow-ups may be conducted to show effectiveness of the program, including surveys to address company retention, wage rates of program trainees and business and industry needs for industry recognized certifications and credentials by the economic development department, the department of workforce solutions and the public education department.

**K.** Companies that fail to comply with all established operating requirements, closeout procedures, and follow-up studies are not eligible to apply for future participation in JTIP.

**L.** Companies that are not in good standing with other economic development department programs may not be eligible for JTIP.

**M.** EDD and JTIP are taking steps to address setbacks that JTIP companies may encounter due to the COVID-19 health emergency. The board has elected to adopt the following procedural adjustments through [FY2021] FY2022 in order to support companies during this time and into recovery.

**(1)** JTIP companies that are still within the 6-month hiring period and have suspended their hiring plans, may be allowed to extend the hiring period and therefore the project period, by the length of time the Governor's order was in effect. If the company deems it necessary to postpone hiring for a longer period, JTIP staff will work with the company on a re-application at the appropriate time.

**(2)** If a JTIP company has to temporarily reduce hours of operation during the time the Governor's order was in place, part-time hours worked by JTIP trainees may be eligible for reimbursement.

**(3)** If a JTIP company allows trainees to [~~telework~~] remote work, the hours worked may be counted toward the JTIP training hours.

**(4)** [~~For FY2021, the expansion requirement for all companies will be that the~~] The company headcount at the time of application [is] must be at least at or above the two-year average headcount.

[5.5.50.12 NMAC - Rp, 5.5.50.12 NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021]

#### **5.5.50.15 GLOSSARY:**

**A. Apprentice:** Individual who has participated in a work-based training program through the New Mexico department of workforce solutions with the JTIP company.

**B. 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.

**C. 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.

**D. 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.

**E. 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.

**F. 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.")

**G. 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.

**H. 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.

**I. 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.

**J. 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, 2015, not to exceed \$12,000 per year per job. Qualified jobs must pay at least \$40,000 per year in a community with a population of less than 60,000 and \$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.

**K. 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 in Subsection E of Section [7-4-10D] 7-4-10 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."

**L. 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](http://www.census.gov/cgi-bin/sssd/naics/naicsrch).

**M. 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.

**N. 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.

**O. 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 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. 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.

**P. 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>.

**Q. 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.

**R. 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.

**S. Remote Worker:**

A person who is working partially or entirely at a remote work site. Remote work site is any location where a worker performs work duties that is separate from the physical location of the company.

**[S:] T. Retail trade:**

Retail establishments are those which are engaged in retailing merchandise and rendering services incidental to the sale of merchandise, such as installation. Retailers may operate fixed point-of-sale locations, located and designed to attract a high volume of walk-in customers, or use other forms of sales techniques, including the sale of goods through the internet, online catalogs, portable stalls, and infomercials. Retail trade is usually the final step in the production and distribution of goods and usually sells small amounts of a product to individuals.

**[F:] U. 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.

**[E:] V. 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.

**[V:] W. 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.

**[W:] X. 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 H counties (i.e., Los Alamos) fall under the same guidelines for reimbursement as urban communities.

**[X:] Y. 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.

**[Y:] Z. Rural:** Any area located outside communities defined as urban in the JTIP policy.

**[Z:] AA. 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.

**[AA:] AB. Intern:**

A student or recent graduate (within one year) of an academic or training program who works at a trade or occupation in order to gain work experience.

[5.5.50.15 NMAC - Rp, 5.5.50.15

NMAC, 6/26/2018; A, 7/14/2020; A, 7/7/2021]

**STATE PERSONNEL BOARD**

The New Mexico State Personnel Board approved at its 6/18/2021 open meeting, to repeal its rule 1.7.4 NMAC, Pay (filed 11/1/2002) and replace it with 1.7.4 NMAC, Pay (adopted on 6/18/2021), effective 8/1/2021.

**STATE PERSONNEL BOARD**

**TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 7 STATE PERSONNEL ADMINISTRATION PART 4 PAY**

**1.7.4.1 ISSUING AGENCY:** State Personnel Board. [1.7.4.1 NMAC - Rp, 1.7.4.1 NMAC, 8/1/2021]

**1.7.4.2 SCOPE:** All state agencies in the classified service. [1.7.4.2 NMAC - Rp, 1.7.4.2 NMAC, 8/1/2021]

**1.7.4.3 STATUTORY AUTHORITY:** NMSA 1978, Section 10-7-12 NMSA 1978, Sections 10-9-13(B); and 29 U.S.C. Sections 201 to 262. [1.7.4.3 NMAC - Rp, 1.7.4.3 NMAC, 8/1/2021]

**1.7.4.4 DURATION:** Permanent. [1.7.4.4 NMAC - Rp, 1.7.4.4 NMAC, 8/1/2021]

**1.7.4.5 EFFECTIVE DATE:** August 1, 2021 unless a later date is cited at the end of a section. [1.7.4.5 NMAC - Rp, 1.7.4.5 NMAC, 8/1/2021]

**1.7.4.6 OBJECTIVE:** The objective of Part 4 of Chapter 7 is: to provide a uniform system of pay

administration for employees that is externally competitive and internally equitable.

[1.7.4.6 NMAC - Rp, 1.7.4.6 NMAC, 8/1/2021]

**1.7.4.7 DEFINITIONS:**

**A. “Alternative pay band”** means a pay band based on current market rate for benchmark jobs in the relevant labor market(s).

**B. “Alternative work schedule”** means a schedule that is requested by an employee and approved by the agency that deviates from the normal work schedule.

**C. “Appropriate placement”** means those elements to be considered in determining pay upon hire, promotion, transfer or reduction including the employee’s education, experience, training, certification, licensure, internal pay equity, budgetary availability and, when known and applicable, employee performance.

**D. “Base pay” or “base salary”** means the rate of compensation paid to an employee exclusive of benefits, temporary increases (Subsection K and L of 1.7.4.12 NMAC), pay differentials (Subsection M of 1.7.4.12 NMAC, 1.7.4.13 NMAC), overtime payments (1.7.4.14 NMAC), call-back pay (1.7.4.15 NMAC), on-call pay (1.7.4.16 NMAC), holiday pay (Subsection C of 1.7.4.17 NMAC), and incentive awards (1.7.4.18 NMAC).

**E. “Comparison market”** means an identified group of employers for which similar jobs can be recognized for the primary purpose of obtaining information that can be used to assess how competitive employee pay levels are relative to the market.

**F. “Contributor proficiency zones”** means subdivisions of the pay band that designate the employee’s contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

**G. “In pay band adjustment”** means movement within a pay band for demonstrated

performance, skill or competency development, or internal alignment, which allows agency management to provide base salary growth within a pay band.

**H. “Internal alignment”** means an adjustment that addresses pay issues involving the proximity of one employee’s salary to the salaries of others in the same agency and classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

**I. “Normal work schedule”** means a schedule established by the agency, defining a start and end time for the employee.

**J. “Pay plan”** means a document developed by the director and approved annually by the board, that describes the board’s compensation philosophy and it is the foundation for ensuring consistent application of the philosophy.

**K. “Shift work schedule”** means a normal work schedule assigned to an employee as part of a rotating group of individuals that must continuously maintain a twenty-four hour operation.

**L. “Total compensation”** means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

[1.7.4.7 NMAC - Rp, 1.7.4.7 NMAC, 8/1/2021]

**1.7.4.8 PAY PLAN:**

**A.** The director, pursuant to direction from the board, shall establish, maintain and, in conjunction with state agencies, administer a pay plan for all positions throughout the classified service, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay band.

**B.** Agencies shall develop and utilize a compensation policy that is in compliance with 1.7.4 NMAC. Agency compensation

policies will be filed with, reviewed by, and approved by the director. Subsequent revisions to the compensation policy shall be filed with, reviewed by, and approved by the director prior to adoption of the policy.

**C.** The board shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.

**D.** The director shall conduct an annual compensation survey that includes total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, regional state government employers, and central, western and southwestern state government employers. The board or director may authorize additional comparison markets when deemed necessary and appropriate.

**E.** Prior to the end of each calendar year, the director shall submit a compensation report that includes a summary of the status of the classified pay system and the results of the annual compensation survey that includes total compensation to the board. The board shall review, adopt and submit this report to the governor and the legislative finance committee.

[1.7.4.8 NMAC - Rp, 1.7.4.8 NMAC, 8/1/2021]

**1.7.4.9 ASSIGNMENT OF PAY BANDS:** The director shall appoint a job evaluation committee consisting of 10 members. The director will provide training in the job evaluation and measurement process. The committee shall apply the job evaluation and measurement process to all newly created or revised classifications.

**A.** The committee shall submit the results of the job evaluation(s) as recommendations to the director. The director shall review the results and convert the total job evaluation points to the appropriate pay band. The director shall submit the pay band assignment results to the board for adoption.

**B. Agencies**  
 may request a re-evaluation of a classification which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months unless otherwise approved by the director.  
 [1.7.4.9 NMAC - Rp, 1.7.4.9 NMAC, 8/1/2021]

**1.7.4.10 ASSIGNMENT OF ALTERNATIVE PAY BANDS:**

- A.** The director shall recommend to the board the assignment of an alternative pay band(s).
- B.** Alternative pay band(s) will be utilized to address compensation related to recruitment and retention issues.
- C.** Requests for alternative pay bands must meet criteria established in the pay plan.
- D.** The board shall assign alternative pay bands based on the director’s report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.
- E.** The assignments to alternative pay bands shall be reviewed annually to determine their appropriateness. The director shall recommend to the board the continuation or removal of the alternative pay band assignments. The salary of affected employees shall be governed by Subsection H of 1.7.4.12 NMAC.  
 [1.7.4.10 NMAC - Rp, 1.7.4.10 NMAC, 8/1/2021]

**1.7.4.11 SALARY SCHEDULES:**

- A.** Based on the pay plan, the director shall develop and maintain salary schedules for the classified service that shall consist of pay bands.
- B.** No employee in the classified service shall be paid a salary less than the minimum nor greater than the maximum of their designated pay band unless otherwise authorized by the director, or provided for in these rules, or the employee has been transferred into the classified service

by statute, executive order, or order of a court of competent jurisdiction.

**C.** The director, pursuant to the direction of the board, shall adjust the salary schedules to address the external competitiveness of the service or other concerns. Employees whose pay band is adjusted upward or downward shall retain their current salary. Such salary schedule adjustments may result in employees temporarily falling below the minimum or above the maximum of their pay band upon implementation.

**(1)** The pay of employees who would be above the maximum of the pay band shall not be reduced.

**(2)** The pay of employees who fall below the minimum of their pay band shall be raised to the minimum unless the director confirms that the agency does not have budget availability. In these instances, agencies shall raise the pay of employees to the minimum of their pay band within six months of the effective date of the salary schedule adjustment. The director may grant an extension to the six-month time period upon submission and approval of a plan by the agency to raise the pay of employees to the minimum of their pay band.

**D.** An employee’s placement in the pay band will be identified by a compa-ratio value.  
 [1.7.4.11 NMAC - Rp, 1.7.4.11 NMAC, 8/1/2021]

**1.7.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:**

**A. Entrance salary:**  
 Upon entrance to a classified position, a newly appointed employee’s salary, subject to budget availability, should reflect appropriate placement within the pay band. Any entrance salary in the principal contributor zone must receive approval from the director prior to appointment.

**B. Legislative authorized salary increase:**

**(1)** Subject to specific statutory authorization for each state fiscal year, employees may be eligible for a salary increase within

their assigned pay band.

**(2)** Employees with a salary at or above the maximum of the position’s pay band shall not be eligible for an increase unless authorized by statute.

**C. Salary upon in pay band adjustment:** Agencies may increase an employee’s base salary within the assigned pay band once per fiscal year, subject to director approval, budget availability and reflective of appropriate placement. In pay band adjustments may not result in the employee’s base salary exceeding the maximum of the assigned pay band. When reviewing requests for in pay band adjustments the director will take into consideration those instances where the requesting agency has employees with a current rate of pay that falls below the minimum of their pay band.

**D. Salary upon promotion:** Upon promotion, an employee’s salary subject to budget availability, should reflect appropriate placement within the pay band. A salary increase of less than five percent (5%) or greater than fifteen percent (15%) shall require approval of the director. A salary increase greater than fifteen percent (15%) to bring an employee’s salary to the minimum of the pay band or less than five percent (5%) to prevent an employee’s salary from exceeding the maximum of the pay band does not require the approval of the director. The salary of a promoted employee shall be in accordance with Subsection B of 1.7.4.11 NMAC.

**E. Salary upon demotion:** Upon demotion, an employee’s salary shall be decreased by no more than fifteen percent (15%), unless a greater decrease is required to bring the salary to the maximum of the new pay band or the decrease is being made in accordance with Paragraph (2) of Subsection F of 1.7.4.12 NMAC.

**F. Pay allowance for performing first line supervisor duties:**

**(1)** An agency shall grant a pay allowance to an employee in a non-manager



classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and shall be between zero percent (0%) and twenty percent (20%) above the employee's base pay rate.

(2) A pay allowance granted under this Subsection F shall be considered a part of an employee's base salary while it is in place. When the supervisor duties are no longer being performed, the agency shall remove the pay allowance.

(3) Agencies shall require that a form, established by the director, be signed by all employees at the time of acceptance of a pay allowance evidencing their agreement to the terms and conditions of the pay allowance.

**G. Salary upon transfer:**

(1) Upon transfer an employee's salary, subject to budget availability and reflective of appropriate placement, may be increased up to ten percent. The director may approve a salary increase greater than ten percent (10%) due to special circumstances that are justified in writing.

(2) Employees shall be compensated, in accordance with agency policy, for all accumulated leave, other than sick, annual, or personal leave, prior to inter-agency transfer.

**H. Salary upon pay band change:** When a change of pay band is authorized in accordance with the provisions of 1.7.4.9 NMAC, 1.7.4.10 NMAC, or 1.7.4.11 NMAC the salaries of affected employees shall be determined in accordance with Subsection C of 1.7.4.11 NMAC. Employees whose pay band is adjusted upward or downward shall retain their current salary in the new pay band. Employees' salaries may be addressed through in pay band adjustment unless otherwise allowed by statute.

**I. Salary upon reduction:** The salary of employees who take a reduction may be reduced by up to fifteen percent (15%) unless the reduction is made in accordance with Paragraph (2) of Subsection F of 1.7.4.12 NMAC. An employee's salary should reflect appropriate placement within the pay band.

The director may approve a salary reduction greater than fifteen percent (15%) due to special circumstances that are justified in writing.

**J. Salary upon return to work or reemployment:** The salary of former employees who are returned to work or re-employed in accordance with the provisions of 1.7.10.10 NMAC, 1.7.10.11 NMAC, 1.7.10.12 NMAC, or 1.7.10.14 NMAC shall not exceed the hourly rate of their base salary at the time of separation, unless a higher salary is necessary to bring the employee to the minimum of the pay band.

**K. Salary upon temporary promotion:** Pay for a temporary promotion under Subsection F of 1.7.5.12 NMAC, will be administered in accordance with Subsection D of 1.7.4.12 NMAC, except that payment of a temporary promotion increase shall be separate from the employee's base salary. The agency shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12-month period, whichever occurs first.

**L. Temporary salary increase:** An agency may, with the approval of the director, grant a temporary salary increase of up to fifteen (15%), for a period not to exceed 1 year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability or a higher valued job. The director may approve temporary salary increases above the maximum of the employee's current pay band. Payment of a temporary salary increase shall be separate from the employee's base salary. The agency shall discontinue the temporary

salary increase when the temporary conditions cease to exist or at the end of the 12-month period, whichever occurs first.

**M. Salary adjustment to minimum:** An employee whose salary falls below the minimum of the pay band will be adjusted in accordance with Paragraph (2) of Subsection C of 1.7.4.11 NMAC. [1.7.4.12 NMAC - Rp, 1.7.4.12 NMAC, 8/1/2021]

**1.7.4.13 PAY DIFFERENTIALS:**

**A. Temporary recruitment differential:** The director may authorize, in writing, a pay differential of up to fifteen percent (15%) of an employee's base pay to an employee who fills a position which has been documented as critical to the effective operation of the agency and has been demonstrated and documented to be a severe recruitment problem for the agency.

(1) A temporary recruitment differential authorized under this provision shall be tied to the position and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary. Agencies shall demonstrate to the office, at least biennially, the circumstances which justified the differential to determine the necessity for its continuance.

(2) A temporary recruitment differential of more than fifteen percent (15%) of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band may be authorized by the director.

**B. Temporary retention differential:** The director may authorize, in writing, a pay differential of up to fifteen percent (15%) of an employee's base pay to an employee in a position which the agency has documented and has been designated as critical to the effective operation of the agency and the employee's departure would disrupt the agency's ability to fulfill its mission.

(1) A temporary retention differential authorized under this provision may be approved up to one year. The agency shall demonstrate to the office, at least annually, the circumstances which justify the continuance of the differential. The agency must provide a detailed plan that outlines how they intend to resolve the problems associated with the retention difficulties. Payment of this differential shall be separate from the employee's base salary and may not transfer with the employee should the employee leave that position.

(2) A temporary retention differential of more than fifteen percent (15%) of an employee's base pay or that results in an employee's pay exceeding the maximum of the pay band may be authorized if approved by the director.

C. The temporary recruitment differential and the temporary retention differential are separate and distinct pay differentials that are administered separately.

D. **Pay for dusk to dawn work:** Employees shall be paid, in addition to their hourly pay rate, no less than \$0.60 per hour for each hour of regularly scheduled work between 6:00 p.m. and 7:00 a.m.

(1) Agencies shall notify the director of any change to the dusk to dawn differential or hours of eligibility.

(2) Agencies may choose not to pay the dusk to dawn differential to an employee whose alternative work schedule request results in the employee working any hours between 6:00 p.m. and 7:00 a.m.

[1.7.4.13 NMAC - Rp, 1.7.4.13 NMAC, 8/1/2021]

**1.7.4.14 OVERTIME:**

A. Agencies are responsible for the evaluation of each employee's position and duties in order to determine their overtime status as set forth under the Fair Labor Standards Act.

B. Agencies shall provide documentation to employees as to the determination of their overtime status.

C. Employees have the right to appeal the determination of their overtime status according to the provisions of 1.7.6.13 NMAC. Agencies shall notify employees in writing of their appeal decision within 30 calendar days. The employee may file an appeal of the agency's decision to the director within 30 calendar days of the agencies decision.

Agencies shall notify employees that their appeal to the director must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documentation describing the work currently being performed by the employee and any other relevant information. All information contained in the appeal shall be verified by the employing agency.

D. Agencies shall maintain a record on each employee containing information required by the provisions of the Fair Labor Standards Act.

E. Workweek is a period of time which begins at 12:01 a.m. Saturday, and ends at 12:00 midnight, the following Friday. The director may approve an alternative workweek.

F. Time worked in excess of 40 hours during the designated workweek shall be compensated in accordance with the provision of the Fair Labor Standards Act [29 U.S.C. Sections 201 to 262] for Fair Labor Standards Act covered, non-exempt employees.

G. Agencies shall not change the workweek to avoid payment of overtime. A change to the scheduled work hours within the workweek shall not be considered a change to the workweek.

H. Agencies shall determine the need for employees to work overtime, and be responsible for authorizing overtime work.

I. Paid holiday leave in accordance with the provisions of Subsection A of 1.7.4.17 NMAC, annual leave taken in accordance with the provisions of Subsection F of 1.7.7.8 NMAC, and administrative leave for voting taken in accordance

with the provisions of Subsection C of 1.7.7.14 NMAC shall also count as time worked in the consideration of overtime for Fair Labor Standards Act covered, non-exempt employees.

J. Agencies shall pay Fair Labor Standards Act covered, non-exempt employees for overtime worked unless the employee, in advance, agrees in writing to compensatory time off. Employees may accrue a maximum of 240 hours of compensatory time, unless otherwise authorized by statute and shall be paid for accrued compensatory time upon separation.

K. Employees not covered or exempt from the overtime provisions of the Fair Labor Standards Act may be compensated for overtime if an agency's policy permits.

L. Any additional regular hours worked shall not be substituted for approved paid leave time during the same week additional regular hours were worked.

[1.7.4.14 NMAC - Rp, 1.7.4.14 NMAC, 8/1/2021]

**1.7.4.15 CALL-BACK PAY:**

A. Employees who are directed to return to work after completing their normal or alternative work schedule and before their next normal or alternative work schedule:

(1) shall be paid in accordance with the provisions of 1.7.4.14 NMAC, if the time worked results in overtime; or:

(2) shall be paid their hourly rate, if the time worked does not result in overtime.

B. Agencies may establish a minimum number of hours to be paid when employees are called back in accordance with their agency policy.

[1.7.4.15 NMAC - Rp, 1.7.4.15 NMAC, 8/1/2021]

**1.7.4.16 ON-CALL PAY:**

A. In accordance with the provisions of the Fair Labor Standards Act, agencies shall develop a policy to compensate employees directed to remain on-call after their normal or alternative work schedule.

**B.** Agencies shall file their on-call compensation policy with the office. Subsequent revisions to the on-call policy shall be filed with the office prior to implementation. [1.7.4.16 NMAC - Rp, 1.7.4.16 NMAC, 8/1/2021]

**1.7.4.17 HOLIDAY PAY:**

**A.** When an authorized holiday falls on an employee's regularly scheduled workday and the employee is not required to work, the employee shall be paid at their hourly rate of pay for the number of hours they would have normally worked.

**B.** Full-time employees, whose normal work schedule does not include the day observed as a holiday, shall be entitled to time off equal to the employee's normal workday.

**C.** Employees required to work on the day a holiday is observed, shall be compensated at two and one-half times their hourly rate of pay for all hours actually worked on the holiday. Such compensation shall be in the form of straight time cash payment for all hours actually worked and additional premium compensation, at the agency's discretion, of either compensatory time off or cash payment at one and one-half times the usual hourly rate of pay for all hours actually worked.

**D.** Part-time employees whose normal work schedule does not include the day a holiday is observed shall not be compensated for the holiday.

**E.** Employees who have been charged absence without leave on the workday prior to or directly following a holiday shall not be paid for the holiday.

[1.7.4.17 NMAC - Rp, 1.7.4.17 NMAC, 8/1/2021]

**1.7.4.18 GOVERNMENT COST SAVINGS INCENTIVE AWARDS:**

Agencies may provide cash awards to employees with the approval of the board in accordance with the provisions of NMSA 1978, Section 10-7-12. The director and the secretary of the department of finance and administration shall jointly

issue and administer guidelines for submitting proposed awards to the board.

[1.7.4.18 NMAC - Rp, 1.7.4.18 NMAC, 8/1/2021]

**1.7.4.19 [RESERVED]**

[1.7.4.19 NMAC - Rp, 1.7.4.19 NMAC, 8/1/2021]

**HISTORY OF 1.7.4 NMAC:**

**Pre-NMAC History:**

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as:

SPB Rule 4, Applications and Tests, filed 5/22/1980;

SPB Rule 4, Applications and Tests, filed 6/3/1981;

SPB Rule 4, Applications and Tests, filed 9/2/1981;

SPB Rule 4, Applications and Tests, filed 7/1/1982

SPB Rule 4, Applications and Tests, filed 10/21/1982;

SPB Rule 4, Applications and Tests, filed 8/15/1985;

SPB Rule 4, Applications and Tests, filed 10/17/1986;

SPB Rule 4, Applications and Tests, filed 7/30/1987;

SPB-8, Pay, filed 4/4/1990;

SPB-8, Pay, filed 9/4/1990;

SPB-8, Pay, filed 10/17/1990;

SPB-8, Pay, filed 10/19/1990;

SPB-8, Pay, filed 12/13/1990;

SPB-8, Pay, filed 7/15/1991;

SPB-8, Pay, filed 10/11/1991;

SPB-8, Pay, filed 12/24/1991;

SPB-8, Pay, filed 6/9/1992;

SPB-8, Pay, filed 9/10/1992;

SPB 6, Pay, filed 12/15/1992;

SPB 6, Pay, filed 2/10/1994;

SPB 6, Pay, filed 12/1/1994;

SPB 6, Pay, filed 9/1/1995.

**History of Repealed Material:**

1 NMAC 7.4, Pay (filed 6/13/1997) repealed 7/7/2001;

1.7.4 NMAC, Pay (filed 6/14/2001) repealed 11/14/2002.

**Other History:**

SPB 6, Pay (filed 9/1/1995) was renumbered, reformatted and replaced by 1 NMAC 7.5, Pay, effective 1/31/1996.

1 NMAC 7.5, Pay (filed 1/12/1996) was replaced by 1 NMAC 7.5, Pay, effective 5/15/1996.

1 NMAC 7.5, Pay (filed 5/2/1996) was renumbered, amended and replaced by 1 NMAC 7.4, Pay, effective 07/01/1997.

1 NMAC 7.4, Pay (filed 6/13/1997) was renumbered, reformatted and replaced by 1.7.4 NMAC, Pay, effective 7/7/2001.

1.7.4 NMAC, Pay (filed 6/14/2001) was replaced by 1.7.4 NMAC, Pay, effective 11/14/2002.

1.7.4 NMAC, Pay (filed 11/1/2002) was replaced by 1.7.4 NMAC, Pay, effective 8/1/2021.

**STATE PERSONNEL BOARD**

**This is an amendment to 1.7.1 NMAC, Section 7, effective 8/1/2021**

**1.7.1.7 DEFINITIONS:**

**A. "Agency"** means any state department, bureau, division, branch or administrative group which is under the same employer.

**B. "Anniversary date"** means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or transfer. The assignment of an employee to a new classification which best represents the job performed by the employee does not affect the employee's anniversary date. The director shall resolve disputes over how an anniversary date is derived.

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

**D. "Appointment"** means the assumption of job duties by a candidate who was offered and then accepted a classified position in a state agency.

**E. "Audit"** means an examination or inspection of an agency's personnel and human resources functions and activities, including but not limited to personnel transactions, recruitment, leave administration, collective

bargaining agreement administration, and completion of personnel evaluations.

**F. “Board”** means the personnel board.

**G. “Break in employment”** means any period of time of at least one workday of not being in the classified service.

**H. “Candidate”** means any applicant who is on the employment list for a position.

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

**J. “Classification”** means a job that is occupationally and quantifiably distinct.

**K. “Compa-ratio”** means pay expressed as a percentage of the midpoint of a pay band.

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

**M. “Director”** means the state personnel director.

**N. “Disciplinary action”** means any action taken by an agency to influence change in an employee’s performance or behavior to the expected standard, including letters of reprimand, suspensions, demotions and dismissals.

**O. “Dismissal”** means the involuntary separation from employment.

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

**Q. “Domestic partner”** means two individuals who have shared a common, primary

residence for at least 12 consecutive months, sign an affidavit of domestic partnership, and meet all of the following criteria:

(1) Both domestic partners must be unmarried.

(2) Domestic partners must have been in a mutually exclusive relationship, intending to do so indefinitely, and the relationship is similar to a marriage relationship in the State of New Mexico.

(3) Domestic partners must meet the age requirements for marriage in New Mexico (18 years of age) and be mentally competent to consent to contract.

(4) Domestic partners must not be related by blood to the degree prohibited in a legal marriage in the State of New Mexico.

(5) Domestic partners must be jointly responsible for the common welfare of each other and share financial obligations.

(6) Domestic partner must not be married or a member of another domestic partnership; nor have been so during the past 12 months. If domestic partnership dissolves and the same two people want to become partners again, they must once again meet the 12-month requirements.

(7) Domestic partners must provide proof of one of the following: joint mortgage or lease; joint ownership of a motor vehicle; joint bank account; joint credit account; domestic partner named as beneficiary of life insurance; domestic partner named as beneficiary of retirement benefits; domestic partner named as primary beneficiary in the employee’s will; domestic partner assigned durable property or health care power of attorney; or documentation of sharing of household expenses by both partners.

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

Subsection I of Section 10-9-3 NMSA 1978.]

**S. “Employer”** means any authority having power to fill positions in an agency.

**T. “Employment list”** the list of names of candidates referred to a hiring manager by the agency’s Human Resources, from which a candidate may be selected for an interview, and from which a candidate may be selected for appointment.

**U. “Employment records”** means documents that contain information related to a person’s employment or application for employment.

**V. “Examination”** means ranked competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including tests.

**W. “Exempt service”** means all positions in the executive branch of state government exempt from the classified service by law.

**X. “Filed”** means received by the office.

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

**Z. “Line authority”** means the assignment of activities or approval authority by the director to State Personnel Office staff or an agency in a manner that does not relinquish the director’s administrative oversight or authority.

**AA. “Manager”** means an employee in a position that manages internal staff or external staff, or who plans, organizes, integrates, coordinates, and controls the activities of others. A manager also is held accountable for the performance of people, services, systems, programs, projects and resources and can change their direction, objectives and assignments to meet performance and business needs.

**BB. “Midpoint”** means the salary midway between the minimum and maximum pay rates of a pay band for positions

in the classified service. Midpoint represents a compa-ratio value of 1.00 or one hundred percent.

**CC. “Minimum qualifications”** means requirements approved by the board that must be met to be considered for a position.

**DD. “Office”** means the state personnel office.

**EE. “Pay band”** means ~~[the range of pay rates, from minimum to maximum]~~ a discrete range of pay rates with fixed minimum and maximum limits to which classifications may be assigned.

**FF. “Probationer”** means an employee in the classified service who has not completed the one-year probationary period.

**GG. “Promotion”** means the change of an employee from a classified position in one pay band to a classified position in a higher pay band.

**HH. “Reduction”** means a voluntary change without prejudice, within an employee’s pay band, or from a classified position in one pay band to a classified position in a lower pay band.

**II. “Relation by blood or marriage within the third degree”** includes spouse, domestic partner, parent, mother-in-law, father-in-law, step-parent, children, domestic partner children, son-in-law, daughter-in-law, step-child, brother, step-brother, brother-in-law, sister, step-sister, sister-in-law, grandparent, grandchild, uncle, aunt, nephew, niece, great-grandchild, and great-grandparent.

**JJ. “Resignation”** means the voluntary separation of an employee from the classified service.

**KK. “Rules”** means the rules and regulations of the personnel board.

**LL. “Signature”** means handwritten or electronic signature(s), provided that the mechanism for electronic signatures is approved for use by the director, provides for authentication, and otherwise complies with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978.

**MM. “Status”** means

all of the rights and privileges of an appointment.

**NN. “Supervisor”** means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of two or more other employees and has the authority in the interest of the employer to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively, but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

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

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

**QQ. “Without prejudice”** means a declaration that no rights or privileges of the employee concerned are waived or lost except as may be expressly conceded or decided.

**RR. “Writing or written”** means in the written form and/or an alternative format, where deemed appropriate, and when requested, including electronic records that comply with the Uniform Electronic Transactions Act, Sections 14-16-1 to 21 NMSA 1978. [1.7.1.7 NMAC - Rp, 1 NMAC 7.1.7, 1/1/2020; A, 8/1/2021]

## STATE PERSONNEL BOARD

**This is an amendment to 1.7.7 NMAC, Sections 8, 9, 10, 11, 12, 14, and 20, effective 8/1/2021**

### 1.7.7.8 ANNUAL LEAVE:

**A.** Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay shall accrue annual leave at the rate of:

(1) 3.08 hours per pay period if less than three years of cumulative employment,

(2) 3.69 hours per pay period if three years or more but less than seven years of cumulative employment,

(3) 4.61 hours per pay period if seven years or more but less than eleven years of cumulative employment,

(4) 5.54 hours per pay period if eleven years or more but less than fifteen years of cumulative employment; or

(5) 6.15 hours per pay period if fifteen years or more of cumulative employment.

**B.** For purposes of Subsection A of 1.7.7.8. NMAC, any employment in the classified or exempt service and judicial or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment in the classified service.

**C.** For purposes of Subsection A of 1.7.7.8. NMAC, employment in programs transferred into the classified service by legislation or executive order shall count as cumulative employment.

**D.** Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue annual leave on a prorated basis.

**E.** A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December. However, there shall be no limit to the number of annual leave hours that shall be carried forward after the last pay period of December 2020. Any annual leave hours above 240 that are carried forward past December 2020 and are not used prior to the pay period ending July 9, 2021, shall not be carried forward beyond that pay period.

**F.** Annual leave shall not be used before it is accrued and must be authorized before it is taken in accordance with agency policy.

**G.** Employees separating from the classified service, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at the [if] current hourly rate of their base salary. This payout shall not exceed 240 hours, notwithstanding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

**H.** Employees separating from the classified service as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC.

**I.** The estate of an employee who dies while in the classified service shall be paid for the employee's total accrued annual leave, excluding any annual leave accrual beyond 240 hours that may occur pursuant to Subsection E of 1.7.7.8 NMAC. [1.7.7.8 NMAC - Rp, 1 NMAC 7.7.8, 7/7/2001; A, 11/14/2002; A, 1/1/2021; A, 8/1/2021]

#### **1.7.7.9 DONATION OF ANNUAL OR SICK LEAVE:**

**A.** Employees may donate annual or sick leave to another employee in the same agency for a medical emergency with approval of the head of the agency. Employees may also make and receive donations of annual leave to and from employees in the exempt service in the same agency for a medical emergency with approval of the head of the agency, as set forth by the department of finance and administration's policies for Governor Exempt Employees.

**B.** Employees may donate annual leave to the full amount of their accumulated hours.

**C.** In accordance with the provisions of Section 10-7-10

NMSA 1978, the donation of sick leave is governed by the following restrictions:

**(1)** employees who have accumulated more than six hundred hours of sick leave can transfer the additional amounts over 600 hours to another employee;

**(2)** the dollar value of the transferred leave shall equal fifty percent of the monetary value of the total hours transferred by the donor employee;

**(3)** no more than 120 hours of sick leave may be transferred by the donor in any one fiscal year, with the exception of the year in which an employee retires, when an employee may transfer up to 400 hours of sick leave;

**(4)** donations of sick leave may be made only once per fiscal year on either the pay date immediately following the first full pay period in January or the first full pay period in July, unless the employee is retiring.

**D.** An agency shall maintain the following documentation:

**(1)** the name, position title, and hourly rate of base pay of the proposed leave recipient;

**(2)** a licensed health care provider's description of the nature, severity, and anticipated duration of the emergency involved which has been provided by the employee or legally authorized representative and a statement that the recipient is unable to work all or a portion of their work hours; and

**(3)** any other information which the employing agency may reasonably require.

**E.** Supporting documentation for the request to donate leave shall be kept confidential and not subject to public inspection without the written consent of the employee.

**F.** The agency shall transfer the leave to the leave account of the employee converting the dollar value of the donor's leave based on the donor's hourly rate of base pay to hours of leave based on the recipient's hourly rate of base pay.

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

**H.** Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the employee separates from the agency. [1.7.7.9 NMAC - Rp, 1 NMAC 7.7.9, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2021; A, 8/1/2021]

#### **1.7.7.10 SICK LEAVE:**

**A.** Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of 4.00 hours per pay period.

**B.** Employees employed on a part-time basis and employees on furlough who work at least eight hours in a pay period shall accrue sick leave on a prorated basis.

**C.** Sick leave may not be used before it is accrued and must be authorized or denied according to agency policy.

**D.** An employee may use sick leave for personal medical treatment or illness or for medical treatment or illness of a family member, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

**E.** There is no limit to the amount of sick leave that may be accrued.

**F.** No payment shall be made for accrued sick leave at the time of separation from the classified service except as provided by law.

**G.** Former employees who were laid off and are returned to work in accordance with the provisions of 1.7.10.10 NMAC, shall have restored the sick leave they had accrued as of the date of layoff.

~~**H.** An agency may authorize an employee to use accrued sick leave to attend the funeral of a relation by blood or marriage~~

within the third degree, or of a person residing in the employee's household.]

**[H] H.** Payment for Accumulated Sick Leave:

**(1)** In accordance with the provisions of Section 10-7-10 NMSA 1978, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent of their hourly rate of base pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

**(2)** Immediately prior to retirement from the classified service, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to fifty percent of their hourly rate of base pay for up to 400 hours of sick leave.

**[H] I.** An agency shall not discharge or threaten to discharge, demote, suspend or retaliate or discriminate against an employee because that employee requests or uses sick leave for medical treatment or illness of a family member in accordance with the agency's sick leave policy, files an appeal alleging violation of the Public Employee Caregiver Leave Act, Section 10-16H-1, et seq. NMSA 1978, cooperates in an investigation or prosecution of an alleged violation of that act or opposes any policy or practice established pursuant to that act.

**[H] J.** Denials of an employee's request for sick leave related to medical treatment or illness of a family member, or alleged violations of the Public Employee Caregiver Leave Act by an agency directly impacting an employee, may be appealed to the director through the agency's chain-of-command. Appeals to the director must be in writing and include the agency's analysis of the reasons for the appeal. The director's

decision is final and binding.

[1.7.7.10 NMAC - Rp, 1 NMAC 7.7.10, 7/7/2001; A, 11/14/2002; A, 1/1/2020; A, 8/1/2021]

**1.7.7.11 LEAVE WITHOUT PAY:**

**A.** Leave without pay may be approved when:

**(1)** the agency can assure a position of like status and base pay, at the same geographic location, upon the return of the employee from leave without pay; or

**(2)** the employee agrees in writing to waive that requirement.

**B.** Leave without pay shall not exceed 30 consecutive calendar days for employees in emergency or temporary status.

**C.** Leave without pay may not exceed 30 consecutive calendar days for probationers or employees in term status with less than one year of employment without the prior approval of the agency. Any leave without pay in excess of 30 consecutive calendar days shall not be credited toward the probationary period unless the employee was called to active military duty.

**D.** Leave without pay for employees in career status and term status with more than one year of employment shall not exceed 12 consecutive months without the prior written approval of the agency.

**E.** Employees may be authorized leave without pay for up to one year to temporarily accept a position in the exempt service. Such leave without pay may be extended with the approval of the board.

[1.7.7.11 NMAC - Rp, 1 NMAC 7.7.11, 7/7/2001; A, 8/1/2021]

**1.7.7.12 FAMILY AND MEDICAL LEAVE:**

**A.** In addition to other leave provided for in 1.7.7 NMAC eligible employees are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 [29 U.S.C. Section 2601 et seq.], as amended. Employees who have been in the classified service for at least 12 months (which need not be

consecutive) and who have worked, as defined by Section 7 of the Fair Labor Standards Act [29 U.S.C. Section 201 et seq.], at least 1250 hours during the 12-month period immediately preceding the start of FMLA leave are eligible employees. In addition, employment in the exempt service, legislative or judicial branch, shall count as classified employment for purposes of this rule.

**B.** [~~Eligible employees are~~] An eligible employee is entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period [; at the time of a birth, placement through adoption or foster care, bonding, or serious health condition of a child of the employee or the employee's spouse, at the time of a serious health condition for the employee, or family members;] for the birth and care of a newborn child of the employee within one year of the birth; the placement with the employee of a child for adoption or foster care and the care of the newly placed child within one year of placement; the care of the employee's child, parent, spouse, or domestic partner who has a serious health condition; and the employee's own serious health condition that makes the employee unable to perform the essential functions of their job; or any other qualifying exigency arising out of the fact that the spouse, domestic partner, son, daughter or parent of the employee is on covered active duty or has been notified of an impending call or order to covered active duty status, [~~in support of a contingency operation~~] as defined in the FMLA regulations [29 CFR 825.102], including [~~family preparations~~] issues resulting from [~~a~~] short-notice [~~of~~] deployment, military events and related activities, childcare [~~on an urgent basis or for~~] and school activities for the military member's child, financial and legal arrangements to address the military member's absence while on covered active duty, counseling, spending time with the [~~service~~] military member while on short-term leave, post-deployment activities, care of the military member's parent who

is incapable of self-care, and other activities in accordance with the FMLA regulations [~~29 CFR 825.12~~] [~~29 CFR 825.126~~] [~~An employee whose family member is on active duty or called to active duty status in support of a contingency operation as a member of the Armed Forces is not eligible to take leave because of qualifying exigency.~~] The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, domestic partner, son, daughter, parent, or next of kin of a covered servicemember [~~who is recovering from~~] with a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the servicemember. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12-month period is calculated forward from the date an employee's first FMLA leave begins. [~~29 CFR 825.127~~]

D. An employee may elect, or an agency may require the employee, to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for any part of unpaid FMLA leave.

E. If a paid holiday occurs within a week of FMLA leave, the holiday is counted towards the FMLA entitlement. However, if an employee is using FMLA in increments less than one week, the holiday does not count against the employee's FMLA entitlement unless the employee was otherwise scheduled and expected to work during the holiday.

F. Employees shall not accrue annual and sick leave while on unpaid FMLA leave.

G. Agencies shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All

medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with 1.7.1.12 NMAC.

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

I. As a condition for restoring an employee whose own serious health condition required FMLA leave, an agency may require the employee to provide certification from their health care provider that the employee is able to resume work. The fitness-for-duty certification may only pertain to the specific health condition that required FMLA leave. [1.7.7.12 NMAC - Rp, 1 NMAC 7.7.12, 7/7/2001; A, 11/14/2002; A, 6/30/2006; A, 10/15/2008; A/E, 1/27/2009; A, 5/14/2009; A, 1/1/2020; A, 8/1/2021]

#### 1.7.7.14 ADMINISTRATIVE LEAVE:

A. An agency may authorize employees leave with pay for up to five consecutive [~~work-days~~] workdays when it is in the best interests of the agency to do so. Administrative leave in excess of five consecutive [~~work-days~~] workdays must have the prior written approval of the director except for administrative leave granted in accordance with the provisions of Paragraph (2) of Subsection B of 1.7.8.19 NMAC or Paragraph (2) of Subsection D of 1.7.8.19 NMAC or 1.7.11.12 NMAC.

B. Employees who are members of a state board or commission may be entitled to leave with pay to attend meetings or transact business of the board or commission.

C. Employees who are registered voters may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The employer may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose [~~work-day~~]

workday begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls. This leave is only available for those elections listed in Subsection A of Sections 1-12-42 and 1-1-19 NMSA 1978 and does not apply to absentee or early voting.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the employee's agency. Employees shall not be entitled to administrative leave to participate in judicial or administrative proceedings against an agency or the state of New Mexico in which the employee is a litigant in or party to the proceeding.

E. Employees shall be entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the employee's agency.

F. Employees with a child or children enrolled in a school shall be entitled to the following amounts of paid administrative leave for parent-teacher conferences, provided that the express purpose of the leave is to attend a parent-teacher conference during the employee's normal work day; provided that the leave is not being requested for parental participation or assistance in extra-curricular school activities; provided that the employee follows any procedures required by the office or agency to request paid administrative leave for the parent-teacher conference; and, provided that the employee provides reasonable notice to the agency in an effort to avoid disruption to operational needs:

(1) Employees with three or more children may be granted up to four hours of paid administrative leave during the spring semester, and up to four hours of paid administrative leave during



the fall semester for parent-teacher conferences; and

(2) Employees with one child or two children may be granted up to two hours of paid administrative leave during the spring semester, and up to two hours of paid administrative leave during the fall semester for parent-teacher conferences.

(3) Two employees may request available leave to attend the same scheduled parent-teacher conference for their children.

[1.7.7.14 NMAC - Rp, 1 NMAC 7.7.14, 7/7/2001; A, 11/14/2002; A, 7/5/2005; A, 1/1/2020; A, 8/1/2021]

#### **1.7.7.20 BEREAVEMENT LEAVE:**

**A.** Agencies may grant bereavement leave to employees who have experienced the death of a relation by blood or marriage within the third degree or a person residing in the employee's household.

**B.** Bereavement leave is a form of administrative leave that an agency may grant to employees in accordance with Subsection A of 1.7.7.14 NMAC. The agency may authorize bereavement leave for up to five consecutive workdays when it is in the best interests of the agency to do so. Bereavement leave in excess of five consecutive workdays must have the prior written approval of the director.

**C.** An agency may supplement bereavement leave by authorizing an employee to use accrued annual or sick leave or compensatory time to attend the funeral of a relation by blood or marriage within the third degree or a person residing in the employee's household.

[1.7.7.20 NMAC - N, 8/1/2021]

### **SUPERINTENDENT OF INSURANCE, OFFICE OF**

**TITLE 13 INSURANCE  
CHAPTER 2 INSURANCE  
COMPANY LICENSING AND  
OPERATION**

#### **PART 11 RISK MANAGEMENT AND OWN RISK AND SOLVENCY ASSESSMENT**

**13.2.11.1 ISSUING AGENCY:** New Mexico Office of Superintendent of Insurance.  
[13.2.11.1 NMAC - N, 08/01/2021]

**13.2.11.2 SCOPE:** This rule applies to all insurers domiciled in New Mexico unless exempt pursuant to Subsection 11 of this rule.  
[13.2.11.2 NMAC - N, 08/01/2021]

**13.2.11.3 STATUTORY AUTHORITY:** Authority for this rule derives from the superintendent's powers under Section 59A-1-18 NMSA 1978, Section 59A-2-9 NMSA 1978, Section 59A-2-12 NMSA 1978, Chapter 59A Article 4 NMSA 1978, "Examinations, Hearings and Appeals," Chapter 59A Article 5A NMSA 1978, the "Risk Based Capital Act," and Chapter 57 Article 3A NMSA 1978, the "Uniform Trade Secrets Act."  
[13.2.11.3 NMAC - N, 08/01/2021]

**13.2.11.4 DURATION:** Permanent.  
[13.2.11.4 NMAC - N, 08/01/2021]

**13.2.11.5 EFFECTIVE DATE:** August 1, 2021, unless a later date is cited at the end of a section.  
[13.2.11.5 NMAC - N, 08/01/2021]

**13.2.11.6 OBJECTIVE:** The purpose of this rule is to provide the requirements for maintaining a risk management framework and completing an own risk and solvency assessment and to provide guidance and instruction for filing an own risk and solvency assessment with the superintendent.  
[13.2.11.6 NMAC - N, 08/01/2021]

**13.2.11.7 DEFINITIONS:** The following terms have the meaning given, unless the context otherwise requires. Other terms used in this rule have the meanings given in Chapter 59A Article 4 NMSA 1978.

**A. "Guidance manual"** means the current version of

the own risk and solvency assessment guidance manual developed and adopted by the NAIC and as amended from time to time; provided that a change in the guidance manual shall be effective on the January 1 following the calendar year in which the changes have been adopted by the NAIC;

**B. "insurance group"** means those insurers and affiliates included within an insurance holding company system as defined in Subparagraph F of Section 59A-37-2 NMSA 1978;

**C. "insurer"** has the same meaning as set forth in Subparagraph G of Section 59A-37-2 NMSA 1978;

**D. "NAIC"** means the national association of insurance commissioners;

**E. "own risk and solvency assessment"** means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer's or insurance group's current business plan and the sufficiency of capital resources to support those risks;

**F. "summary report"** means a confidential high-level summary of an insurer's or insurance group's own risk and solvency assessment; and

**G. "superintendent"** means the superintendent of the New Mexico office of superintendent of insurance.  
[13.2.11.7 NMAC - N, 08/01/2021]

**13.2.11.8 RISK MANAGEMENT FRAMEWORK:** An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which an insurer is a member maintains a risk management framework applicable to the operations of the insurer.  
[13.2.11.8 NMAC - N, 08/01/2021]

**13.2.11.9 REQUIREMENT FOR OWN RISK AND SOLVENCY ASSESSMENT:**

Except as provided pursuant to Section 11 of this rule, an insurer, or the insurance group of which the insurer is a member, shall regularly conduct an own risk and solvency assessment consistent with a process comparable to the guidance manual. The own risk and solvency assessment shall be conducted no less than annually but also at any time when there are significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member.

[13.2.11.9 NMAC - N, 08/01/2021]

**13.2.11.10 OWN RISK AND SOLVENCY ASSESSMENT SUMMARY REPORT:**

**A.** Upon the superintendent's request, an insurer shall submit to the superintendent an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the guidance manual applicable to the insurer and the insurance group, if any, of which it is a member. The summary report, if requested, shall be due thirty days after the completion of the insurer's most recent own risk and solvency assessment that has been performed in accordance with the insurer's or the insurance group's internal strategic planning process. Upon the superintendent's request, the insurer shall advise the superintendent of the date, annual or otherwise, that the insurer or the insurance group conducts its internal strategic planning process. If the insurer is a member of an insurance group, the insurer shall submit the summary report or summary reports required by this subsection if the superintendent is the lead state commissioner of the insurance group as determined by the procedures within the financial analysis handbook adopted by the NAIC.

**B.** Each summary report shall include a signature of the insurer's or insurance group's chief risk officer or other executive having

responsibility for the oversight of the insurer's enterprise risk management process attesting, to the best of the signatory's belief and knowledge, that the insurer applies the enterprise risk management process described in the summary report and that a copy of the summary report has been provided to the insurer's board of directors or the appropriate committee thereof.

**C.** An insurer may comply with the provisions of Subsection A of this section by providing the most recent and substantially similar summary report or summary reports provided by the insurer or another member of the insurance group of which the insurer is a member to the commissioner of another state or to a supervisor or regulator of a foreign jurisdiction, if that report provides information that is comparable to the information described in the guidance manual. Any such report in a language other than English shall be accompanied by a translation of that report into the English language.

[13.2.11.10 NMAC - N, 08/01/2021]

**13.2.11.11 EXEMPTION:**

**A.** An insurer shall be exempt from the provisions of this rule if:

(1) the insurer has an annual direct written and unaffiliated assumed premium, including international direct and assumed premiums but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than five hundred million dollars (\$500,000,000); and

(2) the insurance group of which the insurer is a member has an annual direct written and unaffiliated assumed premium, including international direct and assumed premiums but excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of less than one billion dollars (\$1,000,000,000).

**B.** If an insurer qualifies for exemption pursuant to Paragraph (1) of Subsection A of this

section, but the insurance group of which it is a member does not qualify for exemption pursuant to Paragraph (2) of Subsection A of this section, the summary report that may be required pursuant to Section 10 of this rule shall include every insurer within the insurance group. This requirement may be satisfied by the submission of more than one summary report for any combination of insurers; provided that any combination of reports includes every insurer within the insurance group.

**C.** If an insurer does not qualify for exemption pursuant to the provisions of Paragraph (1) of Subsection A. of this section, but the insurance group of which it is a member qualifies for exemption pursuant to Paragraph (2) of Subsection A of this section, the only summary report that may be required pursuant to Section 10 of this rule shall be the report applicable to that insurer.

**D.** An insurer that does not qualify for exemption pursuant to Subsection A of this section may apply to the superintendent for a waiver from the requirements of this rule based upon unique circumstances. In deciding whether to grant an insurer's request for waiver, the superintendent may consider the type and volume of business written, ownership and organizational structure and any other factor the superintendent considers relevant to the insurer or insurance group of which it is a member. If an insurer is part of an insurance group with insurers domiciled in more than one state, the superintendent will coordinate with the lead state commissioner and with the other domiciliary commissioners in considering whether to grant the insurer's request for a waiver.

**E.** Notwithstanding the exemptions stated in this section:

(1) the superintendent may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment and file a summary report based on unique circumstances, including the type

and volume of business written, ownership and organizational structure, federal agency requests and international supervisor requests; and

(2) the superintendent may require that an insurer maintain a risk management framework, conduct an own risk and solvency assessment and file a summary report if the insurer has risk-based capital for a company action level event pursuant to the Risk Based Capital Act or otherwise exhibits qualities of a troubled insurer as determined by the superintendent.

F. If an insurer that qualifies for an exemption pursuant to Subsection A of this section subsequently no longer qualifies for that exemption due to changes in premium as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which it is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this rule.

[13.2.11.11 NMAC - N, 08/01/2021]

### 13.2.11.12 CONTENTS OF OWN RISK AND SOLVENCY ASSESSMENT SUMMARY REPORTS:

A. A summary report shall be prepared consistent with the guidance manual, subject to the requirements of Subsection B of this section. Documentation and supporting information shall be maintained and made available upon examination or upon request of the superintendent.

B. The review of the summary report, and any additional requests for information, shall be made using similar procedures currently used in the analysis and examination of multistate or global insurers and insurance groups.

[13.2.11.12 NMAC - N, 08/01/2021]

### 13.2.11.13 CONFIDENTIALITY:

A. Documents, materials or other information, including the summary report, in the possession or control of the office of

superintendent of insurance that are obtained by, created by or disclosed to the superintendent or any other person pursuant to this rule contain confidential and sensitive information related to an insurer or insurance group's identification of risks material and relevant to the insurer or insurance group filing the report. This information includes proprietary and trade secret information that has the potential for harm and competitive disadvantage to the insurer or insurance group if the information is made public. Any such documents, materials or other information, including the summary report, shall be treated as confidential trade secrets under the Uniform Trade Secrets Act, and as authorized by Subsection B of Section 59A-2-12 NMSA 1978, are deemed confidential by the superintendent as specifically defined by Subsection D of Section 57-3A-2 NMSA 1978.

B. The documents, materials or other information, including the summary report, submitted pursuant to this rule, shall remain confidential as long as the documents, materials or other information, including the summary report are in the possession or control of the superintendent. The superintendent may use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the superintendent's official duties. The superintendent may not otherwise make the documents, materials or other information public without prior written notice to the insurer.

C. In order to assist in the performance of the superintendent's regulatory duties, the superintendent:

(1) may, upon request, share documents, materials or other information related to an own risk and solvency assessment, including the confidential documents, materials or information subject to Subsection A of this section and including proprietary and trade-secret documents and materials, with other state, federal and international

financial regulatory agencies, with the NAIC, and with any third-party consultants designated by the superintendent; provided that the recipient agrees in writing to maintain the confidential status of the documents, materials or other information related to an own risk and solvency assessment and has verified in writing the legal authority to maintain confidentiality;

(2) may receive documents, materials or other information related to an own risk and solvency assessment, including confidential documents, materials or information and including proprietary and trade-secret information or documents, from regulatory officials of other foreign or domestic jurisdictions and from the national association of insurance commissioners, and shall maintain as confidential any documents, materials or information received with notice or the understanding that it is confidential under the laws of the jurisdiction that is the source of the document, material or information; and

(3) shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this rule consistent with this subsection that shall:

(a) specify procedures and protocols regarding the confidentiality and security of information shared with the national association of insurance commissioners or a third-party consultant pursuant to this rule, including procedures and protocols for sharing by the NAIC with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidential status of the documents, materials or other information related to an own risk and solvency assessment and has verified in writing the legal authority to maintain confidentiality;

(b) specify that ownership of information

shared with the NAIC or a third-party consultant pursuant to this rule remains with the insurer and that the NAIC's or a third-party consultant's use of the information is subject to the direction of the superintendent;

(c)

prohibit the NAIC or third-party consultant from storing the information shared pursuant to this rule in a permanent database after the underlying analysis is completed;

(d)

require prompt notice to be given to an insurer whose confidential information in the possession of the NAIC or a third-party consultant pursuant to this rule when subject to a request or subpoena;

(e)

require the NAIC or a third-party consultant to consent to intervention by an insurer in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer that has been shared with the NAIC or a third-party consultant pursuant to this rule; and

(f) in

the case of an agreement involving a third-party consultant, provide for the insurer's written consent.

**D.** The sharing of information and documents by the superintendent pursuant to this rule shall not constitute a delegation of regulatory authority or rulemaking, and the superintendent is solely responsible for the administration, execution and enforcement of the provisions of this rule.

**E.** No waiver of any applicable privilege or claim of confidentiality of documents, proprietary and trade-secret materials or other information related to an own risk and solvency assessment shall occur as a result of disclosure of that related information, materials or documents to the superintendent under this section or as a result of sharing as described in this rule. [13.2.11.13 NMAC - N, 08/01/2021]

**13.2.11.14 SANCTIONS:**  
Any insurer failing, without just

cause, to timely file the summary report as required in this rule shall be required, after notice and hearing, to pay a penalty of one thousand dollars (\$1,000) for each day's delay to be recovered by the superintendent, and the penalty so recovered shall be paid into the general fund of the state of New Mexico. The maximum penalty under this section is one hundred thousand dollars (\$100,000). The superintendent may reduce the penalty if the insurer demonstrates to the superintendent that the imposition of the penalty would constitute a financial hardship to the insurer. [13.2.11.14 NMAC - N, 08/01/2021]

**History of 13.2.11 NMAC:**  
[RESERVED]

**TAXATION AND REVENUE, DEPARTMENT OF**

The New Mexico Taxation and Revenue Department approved the repeal of 3.1.4 NMAC, Tax Administration - Filing (filed 12/15/2000) and replaced it with Tax Administration - Filing (adopted on 6/18/2021), effective 7/7/2021.

**TAXATION AND REVENUE, DEPARTMENT OF**

**TITLE 3: TAXATION**  
**CHAPTER 1: TAX ADMINISTRATION**  
**PART 4: FILING**

**3.1.4.1 ISSUING**  
**AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630. [3.1.4.1 NMAC - Rp, 3.1.4.1 NMAC, 7/7/2021]

**3.1.4.2 SCOPE:** This part applies to all taxpayers, their agents and representatives and all persons required to submit a return

or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act. [3.1.4.2 NMAC - Rp, 3.1.4.2 NMAC, 7/7/2021]

**3.1.4.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978. [3.1.4.3 NMAC - Rp, 3.1.4.3 NMAC, 7/7/2021]

**3.1.4.4 DURATION:** Permanent. [3.1.4.4 NMAC - Rp, 3.1.4.4 NMAC, 7/7/2021]

**3.1.4.5 EFFECTIVE DATE:** July 7, 2021, unless a later date is cited at the end of a section, in which case the later date is the effective date. [3.1.4.5 NMAC - Rp, 3.1.4.5 NMAC, 7/7/2021]

**3.1.4.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act. [3.1.4.6 NMAC - Rp, 3.1.4.6 NMAC, 7/7/2021]

**3.1.4.7 DEFINITIONS:** As used in 3.1.4 NMAC, "CRS liability" means the total of state gross receipts tax due for a period plus the amounts due for the same period for all other taxes collected with the state gross receipts tax, such as local option gross receipts taxes, governmental gross receipts tax, leased vehicle gross receipts tax, leased vehicle surcharge, compensating tax and withholding tax. [3.1.4.7 NMAC - Rp, 3.1.4.7 NMAC, 7/7/2021]

**3.1.4.8 FILING RETURNS - FORMS:**  
**A.** Information concerning the method of completing and filing a return, the filing date and the due date for paying taxes administered by the department may be found under the specific tax

statutes, the secretary's regulations thereunder, on the prescribed forms and on the instructions accompanying the forms. Returns are considered complete and timely filed when the requirements of these documents, including requirements on obtaining extensions of time to file, are complied with by taxpayers.

**B.** Copies of return forms and instructions will be furnished by the department to taxpayers and to those persons filing returns for the purpose of securing refunds and rebates. The failure to receive a return form, however, does not relieve taxpayers from their duty to report and pay taxes. The forms and instructions may be obtained from the department and from district offices.

[3.1.4.8 NMAC - Rp, 3.1.4.8 NMAC, 7/7/2021]

### **3.1.4.9 THE REQUIREMENT OF A CORRECT MAILING ADDRESS:**

**A.** All notices, returns or applications required to be made by the taxpayer must include the correct mailing address of the taxpayer and the taxpayer must promptly advise the department in writing of any change in mailing address. If the department has prescribed a form or format for reporting a change of address, the form or format must be followed provided that, if the required information is contained in a change of address form or notice of the United States postal service, the United States postal service change of address form or notice may be used in lieu of the department form.

**B.** If a taxpayer notifies the United States postal service of a change in the taxpayer's mailing address and this information is given by the United States postal service to the department either voluntarily or upon the department's request, the taxpayer shall have fulfilled the taxpayer's obligation to notify the department of a change in mailing address. Unless the taxpayer specifically notifies the department that the change of mailing address does not apply to mailings from the

department to the taxpayer, the notice by the taxpayer to the United States postal service of a change in the taxpayer's mailing address and given by the United States postal service to the department applies to mailings from the department.

[3.1.4.9 NMAC - Rp, 3.1.4.9 NMAC, 7/7/2021]

### **3.1.4.10 DUE DATES AND TIMELINESS:**

#### **A. FILING**

**RETURNS - DUE DATE:** A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

#### **B. TIMELINESS OF ELECTRONIC TRANSMISSIONS:**

**(1)** Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for filing the notice, return or application.

**(2)** Returns required by regulation or statute to be filed electronically shall not be considered filed until

filed electronically if filed by any means other than as specified in that regulation or statute unless the taxpayer receives an exception or waiver to electronic filing in writing from the department, and taxpayer will be subject to penalties under Section 7-1-69 NMSA 1978 for a late filed return until an electronic return is filed.

#### **C. DETERMINATION OF TIMELINESS:**

**(1)** Notices, returns, applications and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment.

**(2)** If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

**(3)** A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

**D. ILLEGIBLE POSTMARK:**

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for filing the notice, return or application or making the payment.

**E. SATURDAY, SUNDAY OR HOLIDAY DUE DATE:**

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state or New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file

gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

**F. STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:**

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

**G. "RECEIVED BY THE DEPARTMENT" DEFINED:**

(1) Unless the secretary by instruction or other directive permits or requires otherwise, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 means received at the Santa Fe headquarters of the department during the department's normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, "received by the department" for the purposes of Section 7-1-13.1 NMSA 1978 includes such locations or times.

**H. "BANKING DAY" DEFINED:**

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:  
(a) When Memorial Day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

**I. TIMELINESS OF ELECTRONIC PAYMENTS:**

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies

upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making the payment. [3.1.4.10 NMAC - Rp, 3.1.4.10 NMAC, 7/7/2021]

### **3.1.4.11 SEMIANNUAL OR QUARTERLY FILING**

#### **A. SEMIANNUAL OR QUARTERLY REPORTING - RESOURCES EXCISE AND SEVERANCE TAXES:**

(1) Persons who are liable for reporting taxes under the Resources Excise Tax Act (Sections 7-25-1 to 7-25-9 NMSA 1978) or the Severance Tax Act (Sections 7-26-1 to 7-26-8 NMSA 1978) and whose anticipated aggregate tax liability for both of these taxes is less than \$200 a month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year and the quarterly intervals shall be only for the three-month periods ending March 31, June 30, September 30 and December 31 of any calendar year.

(2) The taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(3) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the taxpayer's tax liability under the Resources Excise Tax Act or Severance Tax Act.

#### **B. SEMIANNUAL OR QUARTERLY REPORTING - CRS LIABILITY:**

(1) Any taxpayer with an anticipated CRS liability of less than \$200 per month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. Prior approval is also required when a taxpayer, having received permission to file on a quarterly or semiannual basis, wishes to change from quarterly to semiannual or semiannual to quarterly. Quarterly reporting and payment intervals shall be only the three-month periods ending March 31, June 30, September 30 and December 31. Semiannual reporting and payment intervals shall be only for the reporting periods of January through June and July through December. Approval, once granted, applies only so long as the taxpayer's actual average liability for the reporting periods does not exceed \$200 per month.

(2) Any taxpayer who is registered to report and pay on a quarterly or semiannual basis and who subsequently has an average CRS liability over any one-year period of two hundred dollars or more per month must report and pay on a monthly basis, beginning with the first month following the close of the last quarterly or semi-annual reporting period within that year. In addition, when the department, upon examination of its records, discovers

a taxpayer who is registered to report and pay on a quarterly or semiannual basis but who has an average monthly CRS liability of two hundred dollars or more over a one-year period may withdraw its approval and require the taxpayer to report and pay on a monthly basis, beginning with a month selected by the department.

(3) The secretary shall furnish the necessary forms to apply for filing tax returns at semiannual or quarterly intervals and to change the reporting interval. A taxpayer may change from quarterly or semiannual intervals to monthly without prior approval of the secretary or the secretary's delegate if the taxpayer begins monthly reporting with the first month following the end of a quarter or semiannual period.

(4) Except as otherwise provided in Paragraphs (2) and (3) of Subsection B of 3.1.4.11 NMAC, the taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(5) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the taxpayer's CRS liability.

#### **C. QUARTERLY OR SEMIANNUAL REPORTING - WATER CONSERVATION FEE:**

(1) Persons who are liable for reporting the water conservation fee under Section 74-1-13 NMSA 1978 and whose anticipated aggregate liability for the fee is less than \$200 a month may report and pay this fee at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or the secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year. The quarterly reporting and payment intervals shall be only for the three-month periods ending March 31, June

30, September 30 and December 31 of any calendar year.

(2) Persons who are liable for reporting the water conservation fee may not change from one reporting interval to another without the prior written approval of the secretary or the secretary's delegate except that the person may change without prior approval from quarterly or semiannual reporting to monthly if the person begins the monthly reporting with either the January or July reporting period.

(3) As a condition of approving quarterly or semiannual reporting, the secretary or the secretary's delegate may require the posting of a security bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the person's water conservation fee liability.

**D. FILING PERIODS FOR ALTERNATIVE FUEL TAX DISTRIBUTORS:**

(1) In anticipation that distributors who are required to file and pay the alternative fuel excise tax will have a tax liability of less than \$200 per month, distributors are authorized to report and pay this tax on a quarterly basis without advance approval of the secretary. The quarterly reporting and payment intervals shall only be for the three-month periods ending March 31, June 30, September 30 and December 31.

(2) After December 31, 1996, any distributor reporting and paying on a quarterly basis whose alternative fuel excise tax liability averages more than \$200 per month during a calendar quarter will be required to report and pay alternative fuel excise tax on a monthly basis. After December 31, 1996, any distributor reporting on a monthly basis but whose alternative fuel tax liability is less than \$200 per month may report and pay the alternative fuel excise tax on a quarterly basis if the distributor obtains the prior approval of the secretary or the secretary's delegate.

(3) This regulation is retroactively applicable to tax periods beginning on or after January 1, 1996.

**E. QUARTERLY REPORTING - WITHHOLDING BY FEDERAL AGENCIES:**

Agencies of the federal government responsible for withholding and paying over state taxes pursuant to federal law, the Withholding Tax Act or any voluntary agreement between the agency and federal employees or retired federal employees may report and pay on a quarterly basis, regardless of the dollar limitation set in Section 7-1-15 NMSA 1978 because of the provisions of the Constitution of the United States. [3.1.4.11 NMAC - Rp, 3.1.4.11 NMAC, 7/7/2021]

**3.1.4.12 EXTENSIONS:**

**A. GOOD CAUSE FOR EXTENSIONS:**

(1) "Good cause" for which the secretary or secretary's delegate may grant extensions is construed strictly. Such extensions for no more than a total of 12 months will be granted only in situations in which the taxpayer shows a good faith effort to comply with the statute.

(2) Example 1: If the taxpayer operates a multistate business and the filing of returns for New Mexico taxes at the statutory due date would cause the taxpayer unreasonable bookwork and recordkeeping, an extension will be given favorable consideration by the secretary or secretary's delegate.

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return, an extension will be given favorable consideration.

(4) Example 3: If the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments

to the conduct of the taxpayer's business causing the taxpayer an inability to compute taxes before the due date, an extension of time will be given favorable consideration.

(5) Example 4: If the taxpayer's accountant has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to complete the return or to procure the services of a person to complete the return before the due date, an extension will be given favorable consideration.

(6) Example 5: If the taxpayer is awaiting the outcome of a court or administrative proceeding or the action of the internal revenue service on a federal tax claim, an extension will be given favorable consideration provided that the extension does not contravene the time limits established by this statute or other New Mexico or federal statute.

**B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:**

(1) The procedures in Subsection B of 3.1.4.12 NMAC apply only to extensions which the applicant must request; these procedures do not apply to automatic extensions under Subsection E of 3.1.4.12 NMAC.

(2) Any taxpayer may request an extension of time in which to file a tax return. Such a request must be in writing and must be received by the department on or before the date that the tax is due. The application for extension must clearly set forth:

- (a) the tax or tax return to which the extension, if granted, will apply;
- (b) a clear statement of the reasons for the requested extension; and
- (c) the signature of the taxpayer or the taxpayer's authorized representative.

(3) The extension will not be granted unless a reason satisfactory to the secretary or secretary's delegate appears in the request.



(4) An approved extension will ordinarily be granted for a period of 30 days. A request for longer extensions must state the reason why the 30 days is insufficient. Additional 30-day extensions or a longer extension may be granted by the secretary or secretary's delegate for up to a maximum aggregate extension of 12 months.

(5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business, P will be unable to complete all of P's customers' tax returns before the due date. P submits to the secretary a request for an extension of time on behalf of each customer whose return P is unable to complete. The request will be denied. It is irrelevant to consider whether or not P's request states a good cause because an extension will not be granted unless the taxpayer's personal necessity is the basis of the request. In this case, each of the taxpayers must request an extension and give "good cause" for this privilege.

(6) Example 2: On April 20, 20XX, T is granted a 30-day extension for payment of March, 20XX, taxes due April 25, 20XX. On May 20, 20XX, T, showing good cause, requests a further extension of the March taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following 20XX.

**C. EXTENSIONS GRANTED WHEN NO LIABILITY HAS ARISEN:**

(1) An extension may be granted even though the tax liability has not yet arisen. The following examples illustrate the application of Subsection E of Section 7-1-13 NMSA 1978.

(2) Example 1: B's business is destroyed by flood on June 1, 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25, 20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.

(3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, 20XX taxes for a period of nine months to September 25 of the year following 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted was until August 25 of the year following 20XX.

**D. AUTOMATIC EXTENSION FOR REPORT OF FEDERAL FORM 990-T INCOME:** A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income. Interest will accrue during the period of the automatic extension.

**E. AUTOMATIC FEDERAL INCOME TAX EXTENSIONS - GENERAL:**

(1) An automatic extension of time to file a federal income tax return as provided in the Internal Revenue Code shall be considered to be an approved federal extension of time and shall be sufficient to extend the time for filing the New Mexico income tax return. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing

the federal income tax return, then a copy of the federal form claiming the automatic extension for federal tax purposes shall be attached to the taxpayer's New Mexico income tax return and shall serve as the basis for extending the time for filing the New Mexico return to the date of filing the federal return under the automatic extension provided by the Internal Revenue Code. If it is not necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then the due date for filing the New Mexico income tax return shall be extended automatically to the same date as the extension for the federal return unless the federal extended date is more than six months from the original due date, in which case the extended due date for the New Mexico return shall be six months after the original due date.

(2) If the taxpayer desires additional time beyond the automatic extension for filing the New Mexico income tax return, a written request for the additional time must be made by the taxpayer prior to the expiration of the extended federal date. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal return, then a copy of the federal form requesting the automatic extension for filing the federal return must accompany the taxpayer's request for additional time to file the New Mexico income tax return beyond the extended federal date. The total combined extension for filing the New Mexico return shall not exceed 12 months beyond the actual due date for that return.

**F. INVALIDATION OF FEDERAL EXTENSION:** If an extension of time to file a federal income tax return is invalidated for any reason for federal income tax purposes, it is also invalidated for New Mexico income tax purposes.

**G. FAILURE TO FILE, PAY OR PROTEST BY EXTENDED DUE DATE:**

(1) The term "extended due date" means:

(a) for income tax returns, the latest date to which the due date for filing the New Mexico income tax return has been extended by either an extension granted by the internal revenue service with respect to the taxpayer's federal income tax return or by an extension granted by the department; and

(b) for all other tax returns, the latest date to which the due date for filing the tax return has been extended by the department.

(2) A taxpayer becomes a delinquent taxpayer if the taxpayer fails by the extended due date either to file the required return and, if a tax is due, to pay the tax due or to protest in accordance with Section 7-1-24 NMSA 1978 the payment or filing requirement.

**H. AUTOMATIC EXTENSION FOR CERTAIN INFORMATION RETURNS:** The due date for Form 1099-MISC or *pro forma* 1099-MISC information returns that are required to be electronically filed pursuant to 3.3.5.19 NMAC is automatically extended to the first day of April of the year following the year for which the statement is made. This extended due date conforms to the federal due date for electronic filings of Form 1099-MISC. [3.1.4.12 NMAC - Rp, 3.1.4.12 NMAC, 7/7/2021]

**3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCATION [Applicable to periods beginning July 1, 2021]:**

**A. DEFINITIONS:** As used in 3.1.4.13 NMAC, these terms have the following definitions:

(1) **“Gross receipts.”** Under Section 7-1-14 NMSA 1978, “gross receipts” is defined as that term is used in the Gross Receipts and Compensating Tax Act, the Leased Vehicle Gross Receipts Tax Act, or the Interstate Telecommunications Gross Receipts Tax Act, as applicable. As used in 3.1.4.13 NMAC, the term “gross receipts from” or similar terms indicates that under the applicable

tax acts, the gross receipts would be treated as derived from a particular source or characterized as relating to a particular activity such as the lease or property or the sale of services.

(2) **“In-person service.”** Under Section 7-1-14 NMSA 1978 “professional service,” as defined, “does not include an in-person service.” The term “in-person service” means a service physically provided in person by the service provider, where the customer or the customer’s real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed. If the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer’s property, it is not an “in-person service” simply because it may be or sometimes is performed in the presence of the customer or at the location of the customer’s property.

(a) Examples of services that will generally be treated as in-person services include, but are not limited to:

(i) Services provided by healthcare workers that are generally performed or required to be performed on or in the presence of the patient.

(ii) Mental health services, unless the provider generally provides the particular service either only in-person, or with limited exceptions.

(iii) Services provided by athletic trainers or physical therapists for clients.

(iv) Services provided by barbers and cosmetologists.

(v) Home healthcare services.

(b) Examples of services that will generally not be treated as in-person services include, but are not limited to:

(i) Architectural and engineering services. Note, however, that when

performed as part of or billed to a construction project, these services are considered “construction-related services” rather than professional services pursuant to Subsection C of Section 7-9-3.4 NMSA 1978, and the reporting location for gross receipts from these services is the construction site per Paragraph (2) of Subsection F of Section 7-1-14 NMSA 1978.

(ii) Legal services.

(iii) Accounting, auditing, and tax preparation services.

(iv) Real estate appraisal services.

(3) **“Professional service.”** The term “professional service” as defined in Section 7-1-14 NMSA 1978 means a service, other than an in-person service or construction-related service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform. As provided in Paragraph (2) of Subsection A of 3.1.4.13 NMAC, just because a service is provided in person by the service provider does not make it an “in-person” service if the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer’s property.

(4) **“Reporting location.”** 3.1.4.13 NMAC uses the term “reporting location” in place of the term “business location,” the term that is used in Sections 7-1-3 and 7-1-14 NMSA 1978 as well as local option taxes to refer to the location code designated by the department and required to be used to report the gross receipts and related deductions subject to gross receipts tax or the value of items whose taxable use is subject to the compensating tax. Like the term “business location,” the term “reporting location” refers to the location code and applicable tax rate for reporting gross receipts tax and compensating tax, as designated by the department.

(5) **“Seller’s location” or “place of performance.”** This regulation may use the terms “seller’s location” or “place of performance” or similar terms to refer to the general facts that may be essential for determining the reporting location. In general, a seller’s location may include a particular building, including a store or office, or other physical location maintained or operated by or for the seller, or used by the seller, where some designated activity giving rise to gross receipts takes place. If the seller uses no such physical location in New Mexico, and if the seller’s domicile is not in New Mexico, then the “seller’s location” as used in this regulation is deemed to be outside the state.

**B. REPORTING ACCORDING TO REPORTING LOCATION - GENERAL:**

(1) Reporting location and rate of tax for gross receipts and taxable use. Section 7-1-14 NMSA 1978, amended effective July 1, 2021, determines the proper reporting jurisdiction and rate of tax that apply under the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax.

(2) Effect of the substantive tax provisions on the rules for reporting location. Unless otherwise indicated, the provisions of 3.1.4.13 NMAC should be read consistently with the provisions of the Gross receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act, as appropriate, and any acts authorizing imposition of local option gross receipts or compensating tax, and any regulations issued under these acts. No provisions of 3.1.4.13 NMAC should be read as subjecting to tax items that are not subject to tax, or excluding from tax items that are subject to tax, under these substantive tax provisions.

(3) State reporting location and application of the state rate. In some cases, taxable gross receipts or the value of items whose taxable use is subject to the compensating tax may not be required to be reported to a particular reporting location in this state. In those cases, the reporting location is the state reporting location and only the state tax rate will apply.

(a) Example: Gross receipts from a professional service performed outside New Mexico, the product of which is delivered to a New Mexico customer for initial use in the state, are taxable in the state. Because Paragraph (9) of Subsection C of 3.1.4.13 NMAC provides that the reporting location of gross receipts from professional services is the location where the services are performed or sold, the gross receipts would be reported to the reporting location for the state and taxed at the state rate.

(b) Example: A nonresident individual with no regular place of business in the state is hired by an out-of-state seller to represent the seller. In order to perform this service, the individual obtains tangible personal property in a tax-free transaction outside the state, which would have been subject to the gross receipts tax had it been acquired inside the state. After acquiring the property, the individual brings that property into New Mexico, using the property in the service performed at various locations throughout the state. The compensating tax on the value of this property would be reported to the reporting location for the state and taxed at the state rate. See Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C, and Subsection E of 3.1.4.13 NMAC.

(c) Example: Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, a seller that does not have access to sufficient information for reporting sales of tangible personal property to the location where the customer receives that property may report to the gross

receipts from those sales to the seller’s location. So an out-of-state seller may have certain sales that would be reported to the reporting location for the state and taxed at the state rate. As explained under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, however, sellers who have access to reliable information from which they can determine an estimate of receipts by reporting location must use that information.

(4) Gross receipts tax not required to be charged or collected. Nothing in Section 7-1-14 NMSA 1978 or 3.1.4.13 NMAC requires the person that engages in activity or transactions resulting in taxable gross receipts to charge or collect the tax from purchasers. The gross receipts tax is a tax on the seller and under Section 7-9-6 NMSA 1978, the taxpayer need only affirmatively state on the billing to its purchaser whether gross receipts tax is included in the amount billed. Furthermore, 3.2.6.8 NMAC provides that the amount of gross receipts tax owed may be “backed out” of the total charged to the customer.

(5) Gross receipts of commissioned sales agents versus consignors/consignees and marketplace sellers/providers.

(a) Commissioned sales agents. Under Subparagraph (a) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978 and applicable regulations, commissioned sales agents report only their commission or fee when the property or services which they promote for sale are those of a third party. Under Section 7-1-14 NMSA 1978, the commission is gross receipts from the performance of a service by the sales agent and the reporting location of those receipts is determined in accordance with Paragraph (9) of Subsection C of 3.1.4.13 NMAC.

(b) Gross receipts of consignors/consignees and marketplace sellers/providers. Under Subparagraphs (b) and (g) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978

and applicable regulations, the gross receipts and related deductions for sales on consignment and for sales facilitated by marketplace providers are generally defined as all amounts paid or collected from the sale, lease, or licensing of property or services even where a third party consignor or marketplace seller also has gross receipts from selling the related property or service provided. The reporting location of gross receipts and related deductions of the consignor/consignee or the marketplace seller/provider is determined under 3.1.4.13 NMAC as follows:

(i) By looking to the nature of the transaction or activity from which the gross receipts are derived, as though the consignor and consignee, or the marketplace seller and marketplace provider, is each the seller or provider of that transaction or activity to the customer; and, except as provided in Items (ii) and (iii) of this Subparagraph (b), imputing to both parties information known by either party that may be relevant in properly determining the reporting location of the gross receipts.

(ii) In a case where the consignor or marketplace seller may properly claim a deduction under the Gross Receipts and Compensating Tax Act and applicable regulations on account of the transaction with the consignee or marketplace provider, respectively, the consignor or marketplace seller may report these deductions and related gross receipts to the reporting location based on information available to them, without imputing of information known by the consignee or marketplace provider.

(iii) In a case where the marketplace provider, in determining the reporting location of gross receipts reasonably relies on erroneous information provided by the marketplace seller as provided in Subsection C of Section 7-9-5 NMSA 1978, the correct information that may be known to the marketplace seller will not be imputed to the marketplace provider.

(c) Examples:

(i) Commissioned sales agent X works for business y to sell tangible personal property owned by y to customers in New Mexico. Agent X receives a commission based on the amount of the sale made on behalf of business Y to a customer. Business Y will have gross receipts from selling tangible personal property. The reporting location of Y's gross receipts from the sale of the property is the location of Y's customer, determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Agent X is performing a service sourced under Subparagraph (e) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC. The product of the service performed by agent X is the completion of the order and sale to a customer of Y's products. Therefore, the reporting location of agent X's gross receipts from commissions paid by Y for services performed is also the location of Y's customer and this location should be determined consistent with the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(ii) Same facts as Item (i) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC, except that, rather than a commissioned sales agent, X is a consignee and Y is a consignor. Under the consignment arrangement, X receives receipts from customers for Y's tangible personal property and agrees to pay Y a portion of those receipts. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling tangible personal property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Same facts as Item (ii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13

NMAC, except that rather than the consignee/consignor relationship described, X is a marketplace provider and y is a marketplace seller. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling or facilitating the sale of tangible personal property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iv) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, while the consignee or marketplace provider offers the tangible personal property for sale to the customer and collects the payment, it is the consignor or marketplace seller that ships the tangible personal property to the customer. Information as to the customer's location is imputed to the consignee or marketplace provider when determining reporting location of its gross receipts, but the marketplace provider is also allowed to reasonably rely on information provided by the marketplace seller, even if erroneous, in determining the reporting location.

(v) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, the consignee or marketplace provider offers the tangible personal property for sale to the customer, collects the payment, and also ships the tangible personal property to the customer. The consignor or marketplace seller may report gross receipts for which a proper deduction can be taken on account of the sale by the consignee or marketplace seller based on information known by the consignor or marketplace seller, without imputing information known by the consignee or marketplace provider.

**C. GENERAL RULES FOR DETERMINING REPORTING LOCATION:**

(1) Meaning of certain terms. Unless otherwise defined in Subsection A of 3.1.4.13 NMAC, Section A or otherwise indicated by the context, the terms used in these rules have the same meaning as under the Gross Receipts and Compensating Tax Act.

(2) Effect of the reporting location. A person that has gross receipts and a person making taxable use of property or services in New Mexico subject to the compensating tax shall report the gross receipts or compensating tax to the proper reporting location as provided in this section. The gross receipts and compensating taxes imposed by the Gross Receipts and Compensating Tax Act may include both a state rate of tax as well as applicable local option rates authorized by state law and imposed by county and municipal governments. The reporting location, as that term is used in 3.1.4.13 NMAC, determines the local jurisdiction to which the tax will be reported as well as the gross receipts or compensating tax rate that applies.

(3) Reporting to multiple locations. Any person that must report gross receipts or taxable use of items to more than one reporting location under one identification number is required to report gross receipts, deductions, and the value of items used for each location on the tax return and in accordance with the reporting location codes as designated by the Secretary under Section 7-1-14 NMSA 1978 and 3.1.4.13 NMAC.

(4) Gross receipts from transactions involving real property. If the gross receipts are from the sale, lease or granting of a license to use real property located in New Mexico, then the reporting location for those gross receipts and any related deductions is the location of the real property.

(5) Gross receipts from sale or license of tangible personal property and from certain licenses and other services. If the gross receipts are from the sale or license of tangible personal

property, or if the receipts are from activity described in Subparagraph (e) of Paragraph (9) or Paragraph (6) of Subsection C, of 3.1.4.13 NMAC the reporting location for the gross receipts and related deductions is determined as follows:

(a) If the gross receipts are from the property or the product of a service that is delivered by the seller and received by the purchaser from the seller at the seller's location, then the reporting location of the gross receipts and any related deductions, is the seller's location.

(b) If the gross receipts are from property or the product of a service that is not delivered by the seller and received by the purchaser at the seller's location as described in Subparagraph (a) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the reporting location is the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the seller.

(c) If Subparagraphs (a) and (b) do not apply, the reporting location is the location indicated by an address for the purchaser available from the business records of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith.

(d) If Subparagraphs (a) through (c) do not apply, the reporting location is the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith.

(e) If Subparagraphs (a) through (d) do not apply, including a circumstance in which the seller is without sufficient information to apply those provisions, then the reporting location for the gross receipts and related deductions is the location from which the property or product of the service was shipped or transmitted to the purchaser.

(i) Except as provided in provision in Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC below, the seller is not considered to be without sufficient information to apply provisions of Subparagraphs (a) through (d) if it obtains or has access to sufficient information at the time of the sale, or subsequently, but simply fails to maintain that information in its records; or it has access to sufficient information from other reliable sources to make a reasonable estimate of the reporting location under Subsection F of this regulation at the time the gross receipts are required to be reported. Examples of information from other reliable sources includes population or market-penetration information that may be used to develop a reasonable estimate of the location of consumers of certain products.

(ii) If gross receipts are derived from a single sale or transaction where the property or the product of a service provided is determined to be delivered simultaneously at multiple locations throughout the state, the seller is deemed not to have sufficient information to determine the reporting location under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Example: Company X provides an advertising service to Customer Y that will be distributed or displayed to persons in New Mexico through general access to particular media. The product of the advertising service is delivered to the location of the person accessing or viewing the advertising. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions from this service is the location of Company X as determined by the location from which the advertising service was primarily provided.

(iv) Example: Company x provides customer Y with a license to use

digital goods by customer Y at various locations throughout the state. The license is delivered to customer Y throughout the state. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions of company X from providing the license to use digital goods is the location of company X as determined by the location from which the digital goods were primarily provided. A person may report different gross receipts and deductions to different reporting locations under the rules of this Paragraph (5) of Subsection C of 3.1.4.13 NMAC, as applicable.

(6) If the gross receipts are from the sale of a license of digital goods, or any other sale of a license not otherwise specifically addressed in these regulations, the reporting location of the gross receipts and related deductions is determined consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(7) If the gross receipts are from the lease of tangible personal property, including vehicles, other transportation equipment, and other mobile tangible personal property, then the reporting location for the gross receipts any related deductions is the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor’s records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The primary reporting location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(8) If the gross receipts are from the sale, lease or license of franchises, then the reporting location for the gross receipts and any related deductions is where the franchise is used. The location where the franchise is used may be determined from the franchise agreement or from other facts and circumstances related to the exercise of the franchise.

(9) The reporting location of gross receipts and related deductions from the sale of services is determined as follows:

(a) If the gross receipts are from professional services, whether performed in New Mexico or performed outside the state where the product of the service is initially used in New Mexico, the reporting location of the gross receipts and related deductions is the location of the performance of the service. Gross receipts from a service performed outside the state that are taxable in New Mexico because the buyer makes initial use of the product of the service in this state are reported to the state reporting location and taxed at the state rate.

(b) If the gross receipts are from construction services and construction-related services, as those terms are defined under the Gross Receipts and Compensating Tax Act and applicable regulations, performed for a construction project in New Mexico, the reporting location of the gross receipts and related deductions is the location of the construction site.

(c) If the gross receipts are from the service of selling of real estate located in New Mexico, the reporting location of the gross receipts and related deductions is the location of the real estate.

(d) If the gross receipts are from transportation of persons or property in, into or from New Mexico, the reporting location of the gross receipts and related deductions is the location of where the person or property enters the vehicle.

(e) If the gross receipts are from services other than those described in Subparagraphs (a) through (d) of Paragraph (9) of Section C of 3.1.4.13 NMAC, including in-person services, the reporting location of those gross receipts and related deductions is the location where the product of the service is delivered. In general, the location of delivery of the product of the service is determined under

rules consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC. The “product of the service” is determined under applicable provisions of the Gross Receipts and Compensating Tax Act and related regulations.

(i) Advertising services. An advertising service involves an agreement with a client to communicate or to place advertisements before an intended audience, on behalf of the client. The product of an advertising service is the ad which is capable of being heard or viewed by the intended audience. The reporting location for gross receipts from an advertising service is determined under Paragraph (5) of Subsection C of 3.1.4.13 NMAC based on delivery of the product of the service, which is the location where the ad may be heard or seen by the intended audience.

(ii) Services ancillary to advertising. Services ancillary to advertising include design of the advertisement, creation of data processing or information technology to capture of customer related information, etc., which the seller may treat as a separate service under Section D of 3.1.4.13 NMAC and which are provided to a client. The reporting location of gross receipts from a service ancillary to advertising under Paragraph (5) of Subsection C of 3.1.4.13 NMAC depends on the product of the service and where it is delivered, but will generally be the location of delivery of that product of the service to the client.

(f) The reporting location of gross receipts from in-person services is the location of the performance of the service, which is also the location of the customer or the customer’s property on which the service is performed.

**D. MIXED TRANSACTIONS:** Where a single transaction gives rise to gross receipts that would have different reporting locations under Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC if they were provided to the customer in the form

of separate transactions, the reporting location for those gross receipts shall be determined as follows:

(1) If the billing to the customer does not break out the charges for the separate items, then the reporting location will be determined based on how the gross receipts for the transaction would be treated under the Gross Receipts and Compensating Tax Act and applicable regulations, and applying Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC.

(2) If the billing to the customer breaks out the separate charges for the items and one or more items would be treated as incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act and applicable regulations, then the reporting location of those incidental receipts will be the reporting location as determined for the gross receipts from the remaining related item or items.

(3) If the billing to the customer breaks out the separate charges for the items and one or more items would not be treated as an incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act, and if the reporting location for the gross receipts from two or more such items would be different under Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC, then the gross receipts and related deductions reported to each reporting location will be determined as follows:

(a) the separate gross receipts for each item will be reported to the separate reporting locations, based on the separate charges in the bill to the customer; or

(b) all of the gross receipts may be reported to the single reporting location properly determined for the item or items from which the majority of the gross receipts result as properly determined under Subsection C of 3.1.4.13 NMAC.

(4) Example:

Taxpayer sells a professional service along with tangible personal property delivered to the buyer. The billing to the buyer includes a separate charge of \$100 for the service, \$100 for the tangible personal property, and \$5 for shipping. Assume that under the Gross Receipts and Compensating Tax Act and applicable regulations, the taxpayer would be treated as having \$100 of gross receipts from the sale of a service and \$105 (the charge for the property and the incidental charge for shipping) from the sale of tangible personal property. Assume also that the reporting location of the gross receipts from the sale of the service under 3.1.4.13 NMAC is the location where the service is performed but the reporting location for the gross receipts from the sale of the tangible personal property is the location of the delivery to the customer. The taxpayer may report the gross receipts from the service to the reporting location as properly determined under Subparagraph (a) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC and the gross receipts from the sale of property to the reporting location as properly determined under Subparagraphs (b) through (d) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Alternatively, the taxpayer may report all of the gross receipts to the reporting location as determined for the sale of the property.

**E. REPORTING LOCATION FOR COMPENSATING TAX:**

(1) Except as provided in Paragraphs (2) and (3) of Subsection E of 3.1.4.13 NMAC, the value of an item that is subject to compensating tax under Section 7-9-7 NMSA 1978 is generally reported to the same reporting location to which gross receipts from the transaction in which the item was acquired would have been reported under Subsections C or D of 3.1.4.13 NMAC, had the transaction been subject to gross receipts tax. In applying Subsections C or D to determine the reporting location to report the value of items for compensating tax, the taxpayer

should assume that the person providing those items would have had information on the taxpayer's location at the time of the transaction.

(2) In the case of an individual who owes compensating tax for non-business use of items acquired in a transaction with a person that did not have nexus in New Mexico, the reporting location for reporting that compensating tax is the individual's residence or primary place of abode in the state at the time of the transaction.

(3) In the following cases, the reporting location for reporting compensating tax on purchases, other than professional services, is the location of first use in the state:

(a) purchases made by a business that were not subject to the gross receipts tax solely because they were made outside the state, where the later use inside New Mexico is subject to the compensating tax; or

(b) where the taxpayer has information that can show that first use upon which compensating tax is imposed occurred at a different time and place than would be determined under Paragraphs (1) or (2) of Subsection G of 3.1.4.13 NMAC.

(4) Examples:

(a) A business acquires tangible personal property in a transaction with a person that lacks nexus in New Mexico. The business uses the property in a manner that would have rendered the transaction subject to the gross receipts tax, had the person had nexus. The reporting location for purposes of reporting the compensating tax is the reporting location to which the gross receipts would have been reported by the person if the person had had nexus and assuming, for this purpose, that the person would have had information on the location of the business that acquired the property.

(b) A business with offices both inside and outside New Mexico purchases tangible personal property at its office outside the state and later ships that

property to its New Mexico office for use. The use of the property in New Mexico was such that the property would have been subject to the gross receipts tax had it been acquired in New Mexico. The reporting location for purposes of reporting the compensating tax is the office in New Mexico at which the property is first used.

**(c)**

A business purchases tangible personal property for resale from a New Mexico seller and takes delivery of that property at the seller's place of business in Location X, using a nontaxable transaction certificate to purchase the property tax-free. Subsequent to the purchase, the business uses the property, rather than reselling it, at its own place of business in location Y. The reporting location for purposes of reporting the compensating tax is location Y.

**(d)**

A business with offices both inside and outside New Mexico obtains a license to use digital goods which will be used at its offices inside and outside the state. In the transaction with the provider of the license, the provider knows only the purchaser's out-of-state office and conducts the transaction with that office. The reporting location for the portion of the value of the license used in New Mexico is the location of the office in New Mexico.

**(e)**

A business purchases a service from an out-of-state person who lacks nexus in New Mexico. The product of the service is initially used in New Mexico. The reporting location of the value of the service for purpose of compensating tax is the location of the initial use by the business in New Mexico.

**(f)**

A nonresident individual with a place of abode in New Mexico purchases tangible personal property for use in New Mexico from a seller who lacks nexus in New Mexico. The transaction would not otherwise be exempt or deductible from gross receipts tax had it occurred in New Mexico. The reporting location of

the compensating tax owed by the individual is that individual's place of abode.

**F. USE OF REASONABLE ESTIMATES:**

**(1)** Use of reasonable estimates allowed. Where a person subject to the gross receipts or compensating tax maintains records or has access to other reliable information that would allow that person to determine or estimate the reporting location for those gross receipts or the compensating tax under the rules of Subsections C and D of 3.1.4.13 NMAC, those records or other information may be used to establish reasonable estimates of the amounts reported to be reported by reporting location. Provided that the taxpayer's reporting of gross receipts or compensating tax otherwise complies with provisions of the Gross Receipts and Compensating Tax Act and applicable regulations, the department will not assess the taxpayer for additional tax if the taxpayer uses reasonable estimates, applied consistently and in good faith to determine the reporting location, so long as there is no obvious distortion. Obvious distortion shall be presumed whenever the method used to estimate the reporting location treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion.

**(2)** Use of reasonable estimates required. Where a person has gross receipts that would generally be sourced under the rules of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, and where the person has records or information that would allow a reasonable estimate of the reporting location of those receipts applying Subparagraphs (a) through (d) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the taxpayer shall use a reasonable estimate before applying Subparagraph (e) of Paragraph (5) of Section C of 3.1.4.13 NMAC.

**G. REPORTING LOCATION - RECEIPTS SUBJECT TO THE INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX:**

Notwithstanding anything in Section 7-1-14 NMSA 1978, or provisions of 3.1.4.13 NMAC, the reporting location for gross receipts subject to the interstate telecommunications gross receipts tax is the state location and rate. The following telecommunications services are subject to the tax:

**(1)** interstate telecommunications services (other than mobile telecommunications services) that originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico; and

**(2)** mobile telecommunications services that originate in one state and terminate in any location outside it, to a customer with a place of primary use in New Mexico as defined under Subsection E of Section 7-9C-2 NMSA 1978.

**H. TRANSACTIONS ON TRIBAL TERRITORY:**

A person selling or delivering goods or performing services on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service. [3.1.4.13 NMAC - Rp, 3.1.4.13 NMAC, 7/7/2021]

**3.1.4.14 PRESCRIBED FORMAT OF NON-PAPER RETURNS MUST BE FOLLOWED:**

Whenever the secretary permits or requires returns to be filed electronically or in electromagnetic media, such as tapes or disks, the return information must be in the format prescribed by the department. Failure to follow the prescribed format may result in non-acceptance of an attempted filing. If a return is not accepted because of formatting errors and re-submission of the return occurs after the due date,



the return has not been timely filed.  
[3.1.4.14 NMAC - Rp, 3.1.4.14  
NMAC, 7/7/2021]

**3.1.4.15 REPORTING PERIOD - PERMISSION REQUIRED FOR USE OF NON-STANDARD "MONTH":** For purposes of reporting taxes due on a monthly basis, the reporting period is a calendar month unless the taxpayer has obtained the secretary's permission to use another period, such as reporting based on standardized calendar quarters of 4 weeks, 4 weeks and 5 weeks or thirteen months of 4 weeks. Because of complications introduced by deviations from the calendar month reporting, the secretary may require substantial justification before approving any significant departure from the calendar month reporting cycle.  
[3.1.4.15 NMAC - Rp, 3.1.4.15 NMAC, 7/7/2021]

**3.1.4.16 PRIVATE DELIVERY SERVICE POSTMARKS:** Delivery to a private delivery service designated by the secretary of the treasury under 26 USCA 7502 during the time the designation is in effect will be considered a timely mailing for purposes of the Tax Administration Act if the date recorded or marked by the private delivery service is on or before the date by which mailing is required. Section 3.1.4.16 NMAC applies to deliveries to a designated private delivery service after June 30, 1999.  
[3.1.4.16 NMAC - Rp, 3.1.4.16 NMAC, 7/7/2021]

**3.1.4.17 APPROVED ELECTRONIC MEDIA:** Department approved electronic media includes an electronic transmission of the personal income tax return data submitted in an approved format using a computer language designated by the department.  
[3.1.4.17 NMAC - Rp, 3.1.4.17 NMAC, 7/7/2021]

**3.1.4.18 ELECTRONIC FILING:**

**A.** This regulation is adopted pursuant to the secretary's authority in Section 9-11-6.4 NMSA 1978.

**B.** For returns due after August 1, 2010, the returns and reports for the following taxes must be filed electronically using approved electronic media on or before the due date of the return or report:

(1) taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded twenty thousand dollars (\$20,000); and

(2) weight distance tax if the taxpayer must pay taxes for two or more trucks.

**C.** For returns due after January 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded ten thousand dollars (\$10,000) must be filed electronically on or before the due date of the return.

**D.** For returns due after July 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax liability for this group of taxes during the preceding calendar year equaled

or exceeded one thousand dollars (\$1,000), must be filed electronically on or before the due date of the return.

**E.** Confirmation of electronic filing of a return must accompany payment of taxes by taxpayer. If taxpayer does not have confirmation of electronic filing when the taxpayer submits payment to the department, taxpayer must ensure that taxpayer's tax identification number is on the payment. Payments without confirmation or tax identification number may not be properly applied to the taxpayer's account and interest and penalty may be assessed.

**F.** Once a taxpayer is required to file returns electronically pursuant to this regulation, the taxpayer may not file future returns by mail or any method other than electronically.

**G.** For the purposes of this section, "average monthly tax payment" means the total amount of taxes paid with respect to a group of taxes under Paragraph (1) of Subsection B, Subsection C or Subsection D of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group.

**H.** A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic return is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the tax or tax return to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

**I.** A taxpayer may be granted a waiver to the requirement of electronic filing for a single tax return. The request for a waiver must be in writing and received by the department on or before the date that the tax return is due and must include the tax or tax return to which the waiver if granted will apply, a clear statement of the reasons for the waiver, and the signature of the taxpayer. A waiver may be granted for the following reasons:

(1) if the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return and file it electronically;

(2) if the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to electronically file; or

(3) if the taxpayer's accountant or other agent or employee who routinely electronically files for taxpayer has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to electronically file the return or to procure the services of a person to electronically file the return before the due date.

**J.** If a taxpayer is granted an exception or waiver, the taxpayer must file a paper return in a timely fashion unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a paper return is not timely filed, interest will be due even if an extension is granted. [3.1.4.18 NMAC - Rp, 3.1.4.18 NMAC, 7/7/2021]

### **3.1.4.19 ELECTRONIC FILING OF INFORMATION RETURNS AND REPORTS:**

**A.** Annual income

and withholding information returns, federal Form 1099-MISC, *pro forma* 1099-MISC or successor forms must be filed with the department using a department-approved electronic medium if a pass-through entity has more than 50 New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

**B.** The annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity has more than fifty New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

**C.** A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

**D.** If a pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute. [3.1.4.19 NMAC - Rp, 3.1.4.19 NMAC, 7/7/2021]

### **HISTORY OF 3.1.4 NMAC:**

Pre-NMAC History: The material

in this part was derived from that previously filed with the State Records Center:

BOR 67-1, Tax Administration Act, 7/19/1967, filed 7/28/1967.

R.D./OGAD Rule No. 1985, Regulations Pertaining to the Tax Administration Act, filed 11/5/1985. TRD Rule TA-90, Regulations Pertaining to the Tax Administration Act, Sections 7-1-1 to 7-1-82 NMSA 1978, filed 8/15/1990.

**History of Repealed Material:** 3.1.4 NMAC, Tax Administration - Filing, filed 12/15/2000, Repealed effective 7/7/2021.

### **Other History:**

3 NMAC 1.4, Tax Administration - Filing, filed 6/3/1996.

3.1.4 NMAC, Tax Administration - Filing, filed 12/15/2000.

3.1.4 NMAC, Tax Administration - Filing, filed 12/15/2000 was replaced by 3.1.4 NMAC, Tax Administration - Filing, effective 7/7/2021.

## **TAXATION AND REVENUE, DEPARTMENT OF**

**This is an amendment to Section 3.2.1 NMAC, Sections 7, 12, 14, 15, and 20, effective 7/7/2021.**

**3.2.1.7 DEFINITIONS:**  
The terms defined in 3.2.1.7 NMAC apply throughout 3.2 NMAC.

**A. Benefit:** A "benefit" is any consideration to either party. "Benefit" is not limited to profits, pecuniary gains, or any particular kind of advantage.

**B. Consideration:** "consideration" is any benefit, interest, gain or advantage to one party, usually the seller, or any detriment, forbearance, prejudice, inconvenience, disadvantage, loss of responsibility, act or service given, suffered, or undertaken by the other party, usually the buyer.

**C. Detriment:** A "detriment" is a forbearance of either party of a right which the party is entitled to exercise or any

consideration flowing from either party, not limited to payment of money or transfer of property.

**D. Digital good:** A “digital good” means a digital product delivered electronically, including software, music, photography, video, reading material, an application and a ringtone. A digital good generally takes the form of a license to use and which property is stored, conveyed, and used in a digital or electronic format. Digital goods are generally intangible property for purposes of the Gross Receipts and Compensating Tax Act.

**[D] E. Financial corporations:**

(1) A financial corporation is any corporation primarily dealing in moneyed capital and in substantial competition with commercial banks.

(2) Example 1: FC is a corporation which is primarily engaged in the following activities:

(a) buying and selling mortgages on real estate,

(b) initiating mortgages on real estate and selling these mortgages, and

(c) servicing mortgages. FC is a financial corporation because it is primarily dealing in moneyed capital and is in substantial competition with commercial banks.

(3) Example 2: IA is an insurance agency which, as an adjunct of its primary business, loans money to finance premiums. IA is not a financial corporation because it is not primarily dealing in moneyed capital and it is not in substantial competition with commercial banks.

(4) Example 3: A corporation which receives a commission on sales of money orders to its customers as an adjunct of its primary business is not a financial corporation within the meaning of Subsection C of Section 7-9-3 NMSA 1978 simply because it engages in this business activity.

(5) Example 4: A corporation which is engaged in the following activities is not a financial

corporation because it is not primarily dealing in moneyed capital and is not in substantial competition with commercial banks:

(a) acting as an investment advisor to a mutual fund and others and receiving a fee for such services;

(b) acting as principal underwriter for the same mutual fund as in 1 above and receiving a fixed percentage of the selling price of the securities sold as a commission or fee; or

(c) issuing a weekly stock analysis report as an advisory service, receiving for this service payment in the form of subscription fees.

**[E:] E. Franchise:**

(1) A “franchise” is an agreement in which the franchisee agrees to undertake certain business activities or to sell a particular type of product or service in accordance with methods and procedures prescribed by the franchisor, and the franchisor agrees to assist the franchisee through advertising, promotion and other advisory services. The franchise usually conveys to the franchisee a license to use the franchisor’s trademark or trade name in the operation of the franchisee’s business.

(2) Example: Y, a pie company of Cambridge, Massachusetts, grants to X of Virden, New Mexico, the right to make pies according to their exclusive recipe and to operate Y Pie shops throughout New Mexico. The right to make the pies and operate the pie shops, whether granted for a “one-time” payment or for a continuing percentage of the proceeds of the shops, is a franchise. Therefore, the receipts of Y, from its granting of the franchise are subject to gross receipts tax.

**[F:] G. Computer-related terms:**

(1) “Computer software” means computer programming in whatever form or medium.

(2) “Custom software” means computer

programming developed specifically at the order of another or for a specific purpose. “Custom software” includes the modification of existing computer programming.

(3) “Packaged software” means computer programming embodied in electronic, electromagnetic or optical materials for transfer from one person to another, with or without explanatory materials, instructions or other programming and intended to be sold or licensed without modification to multiple buyers or users.

(4) “Digital software” means packaged software that is transmitted electronically rather on any type of material.

~~(4)~~ (5) “Software” means “computer software”.

**H. “Marketplace provider:** A “marketplace provider” means a person who facilitates the sale, lease or license of tangible personal property or services or licenses for use of real property on a marketplace seller’s behalf, or on the marketplace provider’s own behalf. To “facilitate”, as that term is used here, means listing or advertising the sale, lease or license, by any means, whether physical or electronic, including by catalog, internet website or television or radio broadcast; and either directly or indirectly, through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the marketplace provider’s services. A marketplace provider also includes a person that has gross receipts as a marketplace provider under Section 7-9-3.5 NMSA 1978 from the sales of licenses, including digital goods.

**I. Marketplace seller:** A “marketplace seller” means a person who sells, leases or licenses tangible personal property or services or who licenses the use of real property through a marketplace provider. A marketplace seller also includes a seller that sells licenses through a marketplace provider.

**[G.] J.** Practitioner of the healing arts: A “practitioner of the healing arts” is a person licensed to practice in this state medicine, osteopathic medicine, acupuncture and oriental medicine, dentistry, podiatry, optometry, chiropractic, nursing or similar medical services for human beings. The term also includes veterinarians licensed to practice in this state.

**[H.] K.** Person engaged in the construction business: A “person engaged in the construction business” is a person who performs construction services as defined in Section 7-9-3.4 NMSA 1978.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 12/29/1989, 11/26/1990, 11/15/1996, 4/30/1997, 1/15/1998; 3.2.1.7 NMAC - Rn & A, 3 NMAC 2.1.7, 4/30/2001; A, 12/30/2003; A, 12/14/2012; A, 7/7/2021]

### 3.2.1.12 ENGAGING IN BUSINESS:

**A.** Engaging in business - Generally: For periods beginning July 1, 2020, “engaging in business” conforms to the constitutional requirement for substantial nexus under *South Dakota v. Wayfair*, 585 U.S. (2018). A person that has physical presence in the state and is also conducting activity with the purpose of direct or indirect benefit is engaging in business and subject to the imposition of gross receipts tax. A person that does not have physical presence in the state is nevertheless engaging in business and has substantial nexus in New Mexico if, in the preceding calendar year, that person has total taxable gross receipts from sales, leases and licenses of tangible personal property, sales of licenses and sales of services and licenses for use of real property sourced to this state pursuant to Section 7-1-14 NMSA 1978, of at least one hundred thousand dollars (\$100,000).

**[A.] B.** Affiliated corporations:

(1) When a corporation is carrying on or causing

to be carried on, with a wholly owned subsidiary, any activity with the purpose of direct or indirect benefit, both the corporation and the subsidiary are “engaging in business”.

(2) Example: B corporation, which operates a hotel supply house, sells supplies only to C Hotel Corporation, which owns all the stock in B Corporation. B claims that since it sells only to C, its parent corporation, it is not engaging in business. B and C are each engaging in business because the purpose of their activities is to benefit either or both corporations.

**[B.] C.** Corporation not for profit: When a corporation not for profit is carrying on or is causing to be carried on any activity with the purpose of direct or indirect benefit it is “engaging in business”.

**[C.] D.** Leasing property:  
(1) Persons leasing property employed in New Mexico are engaging in business within the state for the purpose of direct or indirect benefit.

(2) Example: X, an out of state business, leases construction machinery to Y who employs the leased property in New Mexico. X asks if X is engaged in business in New Mexico for purpose of registration, reporting and paying the gross receipts tax. X is engaged in business in New Mexico.

**[D.] E.** Hotels and motels providing interstate telecommunications service to guests:

(1) Hotels, motels and similar establishments offering interstate telecommunications service to guests in conjunction with the rental of rooms or other facilities are not “engaging in interstate telecommunications business” for purposes of the Interstate Telecommunications Gross Receipts Tax Act.

(2) A hotel, motel or similar establishment is primarily engaged in the business of renting rooms and meeting facilities to the general public. Providing interstate telephone service or other interstate telecommunications services to guests is incidental to the

primary business of the hotel, motel or similar establishment. Receipts from providing such service are additional receipts from engaging in the primary business and are subject to the provisions of the Gross Receipts and Compensating Tax Act.

(3) Subsection D of 3.2.1.12 NMAC is retroactively applicable to transactions occurring on or after July 1, 1992.

**[E.] F.** Persons not engaging in business - foster parents: Individuals who enter into an agreement with the state of New Mexico to provide foster family care for children placed with them by the state are not thereby engaging in business. Receipts of the individuals from providing foster care pursuant to such an agreement are not receipts from engaging in business.

**[F.] G.** Persons not engaging in business - certain caretakers: Individuals who enter into an agreement with the state of New Mexico to provide non-medical personal care and housekeeping assistance to low income disabled adults pursuant to the critical in home care program are not thereby engaging in business. Receipts of the individuals from such caretaking activities are not receipts from engaging in business.

**[G.] H.** Persons not engaging in business - home care for developmentally disabled family members: Any individual who enters into an agreement with the state of New Mexico to provide home based support services for developmentally disabled individuals in the home of the developmentally disabled individuals or the home of the support provider and receives payments which under 26 USCA 131 are “qualified foster care payments” is not thereby engaging in business. Receipts of the individuals which are “qualified foster care payments” from providing such home based support services pursuant to such an agreement are not receipts from engaging in business.

**[H.] I.** Owner engaged in business when selling to an owned entity:

(1) Except

as provided in Paragraph (2) of this Subsection, when an owner of an entity sells property in New Mexico to, leases property employed in New Mexico to, or performs services in New Mexico for the entity or other owners of the entity, the owner is engaging in business in New Mexico except when the transaction may be characterized for federal income tax purposes as a contribution of capital.

(2) When a partner or interest holder in an entity taxed as a partnership is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third-parties transacting business with the partnership, the partner is not engaging in business separately from the partnership and the allocations, payments, or distributions are not gross receipts. A partner may, however engage in business separately from the partnership and any transactions between that partner and the partnership, where the partner is not acting as a partner on behalf of the partnership, constitute gross receipts from engaging in business. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

- (a) that the partner engages in similar transactions with third parties other than the partnership; or
- (b) that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement; or
- (c) that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

(3) For the purposes of Subsection H of 3.2.1.12 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

[F] J. Persons not

engaging in business - sale or exchange of renewable-fueled electricity generated from a system installed in a personal residence. Any individual who sells or transfers electricity to an entity engaged in the business of selling electricity, for which the individual receives monetary compensation or credit against a future month's electricity use, is not engaged in business if the electricity is generated from a renewable-fueled system installed in a personal residence.

[12/5/1969, 3/9/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 9/3/1992, 7/19/1994, 11/15/1996, 5/14/1999, 6/15/1999, 10/29/1999; 3.2.1.12 NMAC - Rn & A, 3 NMAC 2.1.12, 4/30/2001; A, 9/30/2010; A, 9/25/2018; A, 7/7/2021]

#### 3.2.1.14 GROSS RECEIPTS - GENERAL:

[~~A.~~ Gross receipts—  
Unless the receipt is from one or more of the following, it is not taxable:  
~~(1) selling property in New Mexico;~~  
~~(2) leasing property employed in New Mexico;~~  
~~(3) performing services outside of New Mexico the product of which is initially used in New Mexico; or~~  
~~(4) performing services in New Mexico.]~~

[B:] A. Credit card sales:  
Gross receipts of the seller of property or services or the lessor of property include the full sale or lease contract amount of any property or service sold or of any property leased when payment is made through the use of a credit card which has been issued by a third party. The seller or lessor may not deduct from gross receipts the amount charged by the credit card company for converting the account into cash.

[C:] B. Consideration other than money:

(1) If the consideration received by the seller or lessor for the item sold or leased or for the service performed is in a form other than money, the fair

market value of the consideration received or the fair market value of the item sold or of the lease or of the service performed must be included in gross receipts. The value of the consideration received or the item sold or of the lease or of the service performed is the fair market value at the time of the transaction.

(2) Example  
1: X has Y, a garage owner, repair X's automobile. In exchange for the service performed by Y, X gives Y a deer rifle. The fair market value of the rifle at the time of the transaction is the measure of Y's gross receipts.

(3) Example  
2: X, a New Mexico construction company, contracts with Y Electric Co-op Association for the construction of transmission lines. The contract requires X to furnish all materials and labor for a fixed price; however, it permits a reduction of the contract price in the amount of the value of materials furnished by Y. The gross receipts of X include the value of any material supplied by the cooperative.

(4) Example  
3: X is a firm engaged in the construction business in New Mexico. The receipts of X from the sale of a completed construction project include the value of construction services performed by the buyer of the construction project pursuant to a "sweat labor contract" if the performance of services are required to fulfill a contractual obligation of X. A "sweat labor contract", as used in this example, is a contract whereby the buyer of a completed construction project agrees to perform certain construction services for the seller of the construction project as partial payment of the sale price of the construction project.

(5) Example  
4: M agrees to drill an oil well for the XYZ Oil Company. The contract provides that M will drill the well for \$7.50 per foot and a one-eighth interest in the minerals which belong to XYZ. The well, when completed, produces forty barrels of oil per day for a period which is expected to last for 10 years. M admits that the \$7.50

per foot that is received from drilling the well are gross receipts subject to the gross receipts tax. M questions whether the value of the one-eighth interest is gross receipts. The value of the mineral interest is consideration and must be included in M's gross receipts. It will be valued at its fair market value at the time the well is completed.

(6) Example 5: The A Oil Company hires the B Drilling Company to drill a well on its property. A furnishes drill bits to B, but A has the right to deduct the rental value of the bits from the total footage or day rate price it agrees to pay B for the drilling. The use of the drill bits is partial consideration, furnished by A, for the performance of the drilling service by B and the reasonable value of their use must be included in B's gross receipts. A also must include the rental value of the bits in its gross receipts because it is leasing the drill bits to B. However, if A furnishes drill bits to B and does not have the right to deduct the rental value of the bits from the total footage or day rate price which it has agreed to pay B for the drilling, then no amounts from the drill bit transaction are includable in either A's or B's gross receipts. The same applies if B furnishes the drill bits.

~~(D)~~ C. Consideration less than fair market value:

(1) In a transaction where the actual consideration received does not represent the fair market value of the property sold or leased or of the service sold, the fair market value shall be included in the gross receipts of the seller or lessor. Fair market value is the value which the property or service can command in an arms length transaction between two independent parties in an open market.

(2) The following example illustrates the application of Section 7-9-3.5 NMSA 1978 with respect to consideration less than fair market value. Example: X, a land and cattle company, is a corporation which is affiliated with Y, an equipment company. Because

of their affiliation, X leases a \$30,000 tractor from Y for \$1.00 a month. Y reports that its gross receipts from this transaction are \$1.00. Y's gross receipts are the market value of a monthly lease of a \$30,000 tractor. Y must pay gross receipts tax on the adjusted amount.

~~(E)~~ D. Sale of commercial paper:

(1) The full sale or leasing contract amount of property or service sold, excluding any type of time price differential, is included in the seller's gross receipts even though the seller subsequently sells the contract and does not receive the total contract price in money. No deduction is allowed for discounts suffered from the sale of commercial paper arising from a sale or lease.

(2) Example: X sells a washing machine to Y under a conditional sales contract in which the full sale contract amount, excluding time price differential, is \$120. The principal on the washing machine is to be paid for over a twelve month period at \$10 a month. X collects \$20 of principal under the contract and then assigns its rights to W for \$90. Depending upon the method regularly used for reporting gross receipts, X would either pay tax on the full contract amount for the month in which the sale was made (accrual basis) or pay tax measured by the receipts as they were received (cash basis). If X had elected to pay tax measured by its receipts as they were received, X would have reported \$20 during the first two months from this transaction. When X assigned the contract, X would have to include \$100 in the gross receipts for the third month since a deduction is not allowed for a discount suffered upon the transfer of a conditional sales contract.

~~(F)~~ E. Interdepartmental transfers:

(1) Receipts derived from an interdepartmental transfer of services or property are not subject to the gross receipts tax. To qualify as an interdepartmental transfer, the transfer must be a transfer of services or property within

the same corporation or other taxable entity.

(2) Example: C, a company located in New Mexico, operates both an electric utility and a water utility. C records on its books the sale of the electricity to the water utility in order to comply with the public service commission regulations but does not thereby incur gross receipts as that term is used in the Gross Receipts and Compensating Tax Act. Such book entries do not record receipts from selling property in New Mexico but record interdepartmental transfers. However, the value of the electricity at the time of its conversion to use by the water utility is subject to the compensating tax.

~~(G)~~ F. Service charges computed on balances:

(1) Service charges on accounts receivable balances or installment sales contracts which are not computed at the time of sale, are time-price differential charges, are not subject to the gross receipts tax and are not to be included in the sales price of an item brought into New Mexico for the purpose of computing the compensating tax.

(2) Example: X corporation located outside New Mexico is engaged in the business of publishing books. X has several nonemployee salesmen soliciting orders on a commission basis in New Mexico. Every such order is forwarded to X's main office where it is reviewed and then either accepted or rejected. Accepted orders are shipped directly to the purchaser from X's binderies located outside of New Mexico. Since X has salesmen in New Mexico, it is an agent for collection of the compensating tax, pursuant to Section 7 9 10 NMSA 1978. The purchaser may elect to pay for the books on an installment basis. If after 90 days from purchase, the balance has not been paid, a one percent per month service charge is added to the balance. This charge is not precomputed and no portion thereof is due unless the purchaser elects to pay on an installment plan extending over 90 days. Such a

charge is a time-price differential and is not a part of the sales price of the item. Therefore, it should not be included in the sales price when considering the amount of compensating tax that should be paid over to the state of New Mexico.

**[H:] G.** Corporations and organizations not organized for profit - fund raising activities:

**(1)** Receipts of a corporation or organization not organized for profit, other than an organization granted a 501(c)(3) determination by the internal revenue service, derived from fund raising activities which are in the nature of donations, gifts, and contributions are not subject to the gross receipts tax.

**(2)** The department will presume that the total receipts of such a nonprofit organization from a fund raising activity are receipts derived from a taxable activity if the project involves the performance of any service or the sale or lease of any property by the organization. This presumption may be overcome by establishing the following:

**(a)** the purchaser or lessee of the property or service intended by the purchase or lease to make a gift, donation, or contribution to the organization; and

**(b)** the purchase or lease price clearly exceeded the fair market value of the service or property or the fair rental value of the property.

**(3)** If these conditions are satisfied, the amount of consideration received by the organization in excess of the fair market price or fair rental value is not subject to the gross receipts tax.

**[H:] H.** Discount coupons: The gross receipts attributable to a sale in which a seller accepts discount coupons provided by buyers are measured by the cash received plus the value of the coupon. However, if the discount coupon is not redeemable by the seller, the acceptance of the coupon constitutes a cash discount allowed and taken and is excluded from gross receipts.

**[H:] I.** Gross receipts

embezzled: Receipts that have been embezzled or lost through bookkeeping errors are not a cash discount allowed and taken; such receipts are not deductible under Section 7 9 67 NMSA 1978 because they are not a refund, allowance or uncollectible debt.

**[H:] J.** Vending machines:

**(1)** A vending machine is a device that, when the appropriate payment has been inserted into it, whether payment is made by coins, tokens, paper money, credit card, debit card or other means, dispenses tangible personal property, performs a service (including entertainment) or dispenses tickets, tokens or similar objects redeemable for money, tangible personal property or services; but "vending machine" does not include any device which is designed to primarily or solely to play a game of chance, such as slot machines, video gaming machines and the like.

**(2)** Amounts received from allowing the vending machine to be placed in a location as well as amounts received from use of or sales from vending machines are gross receipts and are subject to the gross receipts tax. The vending machine owner is responsible for reporting the receipts and paying the gross receipts tax.

**(3)** Receipts derived from allowing vending machines to be placed in a location not owned or rented by the vending machine owner are gross receipts and are subject to the gross receipts tax. Except as provided otherwise in Subsection K of Section 3.2.1.14 NMAC, the person receiving the receipts is responsible for reporting the receipts and paying the gross receipts tax with respect to such receipts.

**(4)** If the vending machine owner and a person controlling the premises where the machine is located enter into a written agreement similar to the one below, the department will presume that a joint venture has been created, that the joint venture is registered with the department and that the vending

machine owner has agreed to pay all gross receipts tax due with respect to the joint venture. In such a case, the person owning the machine, on behalf of the joint venture, will report and pay the gross receipts tax due on all the receipts derived from either allowing the vending machine to be placed in a location or sales from the vending machine for all parties in the joint venture and the person controlling the premises is relieved of the duty to report or pay gross receipts tax on those same receipts.

**(5)** Agreement: Total amounts collected from the vending machine shall be allocated between the vending machine owner and the person controlling the location. The vending machine owner will receive a percentage of the amounts collected net of gross receipts tax due, plus an amount equal to the gross receipts tax payable on the entire proceeds from the vending machine. The person controlling the location will receive a percentage of the amounts collected net of gross receipts tax due. The vending machine owner will report and pay any gross receipts tax due on all the receipts derived from either the use of or sales from the vending machine.

**(6)** In the event that no such agreement exists, the department will presume that no joint venture exists. In such a case, the vending machine owner will be subject to gross receipts tax on the entire amounts collected from the use of or sales from the vending machine, and the person controlling the premises will be subject to gross receipts tax on the amount that person receives from the vending machine owner for allowing the placement of the machine on the premises.

**(7)** In the event the vending machines are leased to the person who services them, the term "vending machine owner" means the lessee of the vending machines.

**[H:] K.** "Gross receipts" excludes leased vehicle surcharge: For the purposes of Subparagraph (b) of Paragraph (3) of Subsection A of Section 7-9-3.5 NMSA 1978, the term

“leased vehicle gross receipts tax” includes the leased vehicle surcharge. The amount of any leased vehicle surcharge may be excluded from gross receipts.

**[M:] L.** Receipts from furnishing parts or labor under automotive service contract:

**(1)** When an automobile dealer, who is the promisor under an automotive service contract as that term is defined under Subsection C of Section 3.2.1.16 NMAC, furnishes parts or labor or both to satisfy the promisor’s obligation to repair the breakdown involving a part specified in the contract, the dealer has taxable gross receipts equal to the retail value of the parts and labor furnished. A transfer of property or performance of service for a consideration has occurred and therefore a receipt from selling property or performing services has been realized by the dealer.

**(2)** The consideration received by the dealer is the discharge of the dealer’s obligation to make the repair which obligation arose when the covered breakdown occurred.

**(3)** Receipts of a repair facility, including an automobile dealer, from furnishing parts and labor to fulfill the obligation of another person under an automotive service contract are gross receipts and not deductible under Sections 7 9 47 and 7 9 48 NMSA 1978, even though the seller has received NTTCs for other transactions.

**[N:] M.** Receipts from deductibles/co-payments under automotive service contracts: The receipts of a New Mexico automotive dealer or other repair facility, including the promisor under an automotive service contract, from the “deductible” or “co-payment” amount paid by a customer as required by automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC in connection with the provision of repair services under contract are gross receipts.

**[O:] N.** Receipts of dealer from own reserve:

**(1)** The receipts of a New Mexico auto dealer for repairs provided by the dealer under an automotive service contract as that term is defined in Subsection C of Section 3.2.1.16 NMAC, on which the dealer is obligated as promisor are not gross receipts if:

**(a)** the receipts are paid from a reserve account established by the dealer under an agreement with an auto service contract administrator or an insurance company, or both, and

**(b)** the dealer is entitled to a return of any amounts in the reserve account not used to pay for parts and labor or to pay other charges against the dealer in connection with the auto service contract.

**(2)** In this situation, the dealer is being “paid” from the dealer’s own funds and has no receipts. However, the dealer as promisor is liable for gross receipts tax on the retail value of the parts or labor or both furnished to discharge the dealer’s obligation.

**[P:] O.** Water conservation fee: Section 74-1-13 NMSA 1978 imposes the water conservation fee on the operator of a public water supply system. The fee is measured by the amount of water produced. The operator is not authorized to impose the water conservation fee on the operator’s customers. If the operator of the system separately bills an amount characterized as a reimbursement of the water conservation fee to the operator’s customers, the separately stated amount is simply an element of the price of the water sold and the “reimbursement” is included in gross receipts. The definition of “gross receipts” does not exclude the water conservation fee or amounts characterized as reimbursements of water conservation fee paid.

**[Q:] P.** Sales of items subject to the federal manufacturer’s excise tax:

**(1)** The gross receipts from sales of items such as motor vehicle tires include the total amount of money or the value of other

consideration received even though this amount includes the Federal Manufacturer’s Excise Tax, 26 U.S.C.A. Section 4061 et seq., (1986) which is separately stated on the invoice. Gross receipts do not include the amount of money attributable to the Federal Communications Excise Tax, 26 U.S.C.A. Section 4251, et seq., (1986), and the Federal Air Transportation Excise Tax, 26 U.S.C.A. Section 4261 et seq., (1986), which are user’s taxes.

**(2)** Example: A tire dealer sells a tire in New Mexico to a retail customer for \$40.00 and separately states \$1.00 for Federal Manufacturer’s Excise Tax on the sales ticket. The seller’s gross receipts for this transaction are \$41.00.

**[R:] Q.** Transactions among related persons are gross receipts

**(1)** Each person engaging in business in New Mexico is subject to the provisions of the Gross Receipts and Compensating Tax Act. Each person who is a member of any group of related or affiliated persons and who engages in business in New Mexico is a taxpayer. The provisions of the Gross Receipts and Compensating Tax Act apply to the transactions between that taxpayer and all other persons, including the other related or affiliated persons, even though consideration is not received in the form of cash or other monetary remuneration.

**(2)** Example 1: A cooperative association and X both engage in business in New Mexico. The cooperative sells services to X, one of its members. The cooperative is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

**(3)** Example 2: Both X and a cooperative association engage in business in New Mexico. X is a member of the cooperative and sells services to it. X is a taxpayer and the receipts from this transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

**(4)** Example 3: X engages in business in New



Mexico, specifically by selling office supplies. X is also a partner in a partnership. Sales by X to the partnership are subject to the provisions of the Gross Receipts and Compensating Tax Act.

**(5) Example**

4: C is a corporation engaging in business in New Mexico. S, an individual who is the majority stockholder in C, buys in New Mexico services and goods from C. C's receipts from these transactions with S are subject to the provisions of the Gross Receipts and Compensating Tax Act.

**(6) Example**

5: C and S are corporations engaging in business in New Mexico. S is a wholly-owned subsidiary of C. C sells tangible personal property in New Mexico to S. C's receipts from the transaction are subject to the provisions of the Gross Receipts and Compensating Tax Act.

**(7) Example**

6: X and Y are both divisions of corporation Z. X and Y are both parts of the same person, Z, and are not "related persons". Receipts from transactions between these two divisions are activities within Z and do not constitute gross receipts.

**(8) Example**

7: P, an individual, operates two businesses as sole proprietorships. One of P's businesses transfers tangible personal property to the other. Since both businesses and P are the same person, they are not "related persons" and the transaction does not constitute gross receipts.

**[S:] R.** Owner's receipts from transactions with owned entity are gross receipts

**(1) Except**

as provided in Paragraph (2) of this Subsection, when a person who owns all or part of an entity has receipts from the sale of property in New Mexico to, the lease of property employed in New Mexico to or the performance of services in New Mexico for the entity, the person's receipts are gross receipts except when the transaction may be characterized for federal income tax purposes as a contribution of capital.

The person's receipts include the actual amount of money received by the person plus the value of any additional consideration. Additional consideration includes forbearance of charges against the person's ownership interest. These gross receipts are subject to the gross receipts tax unless an exemption or deduction applies.

**(2) When**

a partner or interest holder in an entity is allocated profits or receives a guaranteed payment or other distributions for activities undertaken as a partner on behalf of the partnership such as administrative services done solely for the benefit of the partnership or for activities for third-parties transacting business with the partnership, these receipts of the partner are not gross receipts and are not subject to the gross receipts tax. When a partner engages in business separately from the partnership any transactions of that partner with the partnership, where the partner is not acting as a partner on behalf of the partnership, are gross receipts. Indicia that a partner is not acting as a partner on behalf of the partnership may include:

**(a)**

that the partner engages in similar transactions with third parties other than the partnership;

**(b)**

that the allocation, payment, or distribution made by the partnership is not made under the partnership agreement;

**(c)**

that the partner's transaction(s) with the partnership involve the sale or lease of goods or the sale of services not provided by the partnership to third parties.

**(3) For**

the purposes of Subsection S of Section 3.2.1.14 NMAC, an "entity" means any business organization or association other than a sole proprietorship.

**(4) Example:**

C is a corporation and S is C's wholly owned subsidiary corporation. C and S create L, a limited liability company; C and S each own fifty

percent of L. L purchases a twenty percent interest in P, a limited partnership. C sells goods to P. P pays the amount charged. C has gross receipts from this transaction equal to the amount received for the goods. [9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1982, 5/4/1984, 4/2/1986, 4/20/1990, 11/26/1990, 9/20/1993, 2/22/1995, 11/15/1996, 5/31/1997, 6/15/1999; 3.2.1.14 NMAC - Rn & A, 3 NMAC 2.1.14, 4/30/2001; A, 12/30/2003; A, 9/25/2018; A, 7/7/2021]

**3.2.1.15 GROSS RECEIPTS; TANGIBLE PERSONAL PROPERTY:**

**A. Lease purchase**

**agreement as a sale:** The receipts from a two party "lease-purchase" or "paid-out lease" agreement for tangible personal property will be treated as receipts from the sale of tangible personal property under the Gross Receipts and Compensating Tax Act if the lessee-buyer treats the property as an asset and depreciates the property pursuant to generally accepted accounting practices.

**B. Consignment**

**sales:** Receipts of both a consignor and a consignee from the sale of tangible personal property handled on consignment are subject to the gross receipts tax.

**C. Delivery expenses:**

**(1) Receipts**

from charges by a seller of tangible personal property for delivery costs, including postage and transportation charges, paid by the seller and passed on to the buyer, are an element of the sales price of the property.

**(2) Example:**

X sells tangible personal property in the state of New Mexico and transports property to buyers located in New Mexico in its own equipment from its factory and warehouse. In some instances the contracts of sale which X has with its buyers stipulate that title passes on completion of manufacturing; in other cases there is no stipulation regarding passage of title. On its billing to buyers, X separately states amounts categorized

as “warehouse charges” and “delivery charges”. These separately stated charges are elements of the sale price of the property.

**D. Freight charges:**  
**(1)**

Transportation costs that are paid by the seller to the carrier are an element of the sales price of the property.

**(2)**

Transportation costs that are paid to the carrier by the buyer are not an element of the sales price of the property. If the buyer transports the property with the buyer’s own equipment, the cost of the transportation does not increase the value of the property.

**(3)** If the

seller transports the property with its own equipment, and the cost of the transportation is already included in the price of the property, it is considered as an element of the sales price of the property. If extra separate charges are made, receipts from such charges are gross receipts.

**E. Refundable deposits:** Amounts received in the form of refundable deposits on bottles, cartons, cases and the like are to be included in gross receipts of the seller or lessor and are subject to the gross receipts tax.

**F. Buyer’s financing costs:** In a situation where:

**(1)** a lending institution lends money directly to a buyer of tangible personal property;

**(2)** the buyer executes a promissory or installment note together with a security agreement or a retail financing agreement directly to the lending institution;

**(3)** neither the note nor the agreement is endorsed or guaranteed in any manner by the seller of the property; and

**(4)** the lending institution as agent for the buyer, pays the seller by crediting the account of the seller with an amount equal to the loan against the property, with no amount added or later rebated, the receipts of the seller from the sale of the property include any down payment and the amount credited to

the account of the seller unless that amount is less than the fair market value of the property sold, in which case the fair market value would be the measure of the seller’s gross receipts.

**G. Sale of items subject to the state Cigarette Tax Act:** The gross receipts from sales of cigarettes include the total amount of money or the value of other consideration received even though this amount includes the excise tax levied by the Cigarette Tax Act.

**H. Florist receipts:** Receipts of a New Mexico florist are gross receipts when the florist:

**(1)** receives an order and payment for flowers under an agreement that the flowers are to be delivered at another location by another florist; and

**(2)** uses long distance communication to authorize the other florist to make delivery; and

**(3)** pays the other florist for the flowers.

**I. Sale of food and beverage at horse racetracks:**

Receipts from the sale of food and beverage either by a concessionaire or the owner of a New Mexico horse racetrack, including the track at the state fair grounds, are subject to the gross receipts tax. If a concessionaire pays a racetrack owner a consideration for operating a food and beverage concession, the racetrack owner’s receipts are subject to the gross receipts tax.

**J. Packaged software:**

**(1)** The transaction constitutes a sale of tangible personal property or a digital good, as defined by 3.2.1.7 NMAC when a person sells a packaged software where:

**(a)** no extraordinary services are performed in order to furnish the packaged software; and

**(b)** the buyer pays a fixed amount for the packaged software and the license to use the software; and

**(c)** the buyer is allowed to resell the

license to use the software with the packaged software itself.

**(2)** Sale of such property for resale is subject to the deduction provided in Section 7-9-47 NMSA 1978.

**(3)** This version of Subsection J of Section 3.2.1.15 NMAC is retroactively applicable to transactions occurring on or after July 1, 1991.

**K. Sale of postage stamps:**

**(1)** Receipts in excess of the face value of the postage stamps from reselling uncanceled postage stamps issued by the United States postal service or any foreign government are gross receipts. Receipts in excess of the face value of the postage from imprinting, mechanically or by other means, the amount of postage on documents to be mailed are gross receipts.

**(2)** Receipts from selling canceled postage stamps issued by the United States postal service or any foreign government are gross receipts.

**L. Refined metals:** The receipts of a person who sells refined metals in New Mexico are gross receipts subject to the gross receipts tax regardless of whether the seller is a severer or processor as defined in the Resources Excise Tax Act or the Severance Tax Act. [12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 3/16/1979, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 9/17/1991, 10/28/1994; 3 NMAC 2.1.15.10, 11/15/1996; 4/30/1997, 10/31/1997, 3.2.1.15 NMAC - Rn & A, 3 NMAC 2.1.15, 10/31/2000; A, 7/7/2021]

**3.2.1.20 Gross Receipts of Marketplace Providers and Marketplace Sellers:**

**A. Gross Receipts of Marketplace Providers:** Under Section 7-9-3.5 NMSA 1978, the receipts of marketplace providers are defined to include receipts collected by a marketplace provider engaging in business in the state from sales, leases and licenses of tangible personal property, sales of licenses

and sales of services or licenses for use of real property that are sourced to this state and are facilitated by the marketplace provider on behalf of marketplace sellers, regardless of whether the marketplace sellers are engaging in business in the state. As used here, the term “collected by a marketplace provider” means amounts paid by the customer directly to the marketplace provider or indirectly through third parties, where the marketplace provider either retains the receipts or transmits all or part of the receipts to the marketplace seller, regardless of whether the marketplace provider retains any portion of the gross receipts as consideration in exchange for the marketplace provider’s services. The receipts of the marketplace provider, therefore, include all gross receipts collected from the customer for the sales, leases and licenses, regardless of whether any amount is paid over to the marketplace seller. The gross receipts collected by the marketplace provider are treated as receipts of that marketplace provider from sales, leases and licenses for purposes of the Gross Receipts and Compensating Tax Act, including exemptions and deductions, as though the marketplace provider had gross receipts from selling, leasing or licensing.

**B. Gross Receipts of Marketplace Sellers:** Under Section 7-9-3.5 NMSA 1978, a marketplace seller that sells, licenses or leases through a marketplace provider to customers in New Mexico has gross receipts in New Mexico from selling, licensing or leasing under Section 7-9-3.5 NMSA 1978. A marketplace seller may be entitled to deduct gross receipts for sales, licenses or leases facilitated on its behalf by a marketplace provider under Section 7-9-117 NMSA 1978. A marketplace seller that is not entitled to deduct gross receipts for sales, licenses or leases facilitated on its behalf by a marketplace provider under Section 7-9-117 NMSA 1978 may be entitled to other exemptions and deductions under the Gross Receipts and Compensating Tax Act that would otherwise apply to those gross

receipts.  
[3.2.1.20 NMAC - N, 7/7/2021]

## TAXATION AND REVENUE, DEPARTMENT OF

This is an amendment to 3.2.6 NMAC, Section 8, effective 7/7/2021.

### 3.2.6.8 SEPARATELY STATING THE GROSS RECEIPTS TAX:

**A.** If a seller or lessor separately states the gross receipts tax on the books of original entry, and if the amount of tax separately stated for the reporting period is in excess of that which is payable on transactions for the reporting period, the excess must be included in the seller’s or lessor’s gross receipts:

**B.** Example: A owns a gas station located where the tax rate is 5%. The price of a car wash at A’s station is \$1.00. In the books A shows a sale of \$1.00 and gross receipts tax of \$0.50. Since the amount A collected for gross receipts tax (\$.50) is more than the tax due (\$.05) on the sale of \$1.00, A must recalculate the gross receipts and tax. To do so, A must divide the total income (\$1.50) by one plus the tax rate (1.05). The result is A’s gross receipts without tax, which is then multiplied by the tax rate (5%) to determine the tax due amount:

\$1.00 (receipts from sale)  
\$+.50 (tax collected)  
\$1.50 (total income)  
————— \$1.50/1.05 = \$1.43 (gross receipts)  
————— \$1.43 X 5% = \$.07 (tax due)]

**A.** A person who is required to report and pay tax on gross receipts is not required to charge or collect the tax from the customer, but if the person does not separately state the amount of tax on the bill other transactional document provided to the customer, the person must affirmatively state that the gross receipts tax is included in the amount billed. This requirement is

met if the person provides a general statement on bills or invoices to customers stating that New Mexico tax is included or if the information generally provided to New Mexico customers at the time of sale or subsequently indicates that the seller has included New Mexico tax in the amount charged.

**B.** A person who uses reasonable estimates as provided in 3.1.4.13 NMAC to determine the reporting location for reporting gross receipts and related deductions may also use these estimates for the purpose of billing tax to customers.

**C.** Gross receipts does not include the gross receipts tax, including any local option amount of tax, due. In a case where a person does not separately charge the tax or where the tax is charged at a different rate than the rate actually due, the person shall compute the amount of gross receipts net of tax as follows:

(1) total  
amount charged including any  
separately charged tax;  
————— (2) divided  
by 1 plus the tax rate expressed as a  
decimal;  
————— (3) equals  
gross receipts.

[9/29/1967, 12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 3/31/1986, 4/2/1986, 4/26/1990, 11/20/1990, 11/15/1996; 3.2.6.8 NMAC - Rn, 3 NMAC 2.6.8, 4/30/2001; A, 7/7/2021]

## TAXATION AND REVENUE, DEPARTMENT OF

This is an amendment to 3.2.10 NMAC, Sections 10, adding 23 and 24, effective 7/7/2021.

### 3.2.10.10 ~~[THE USE IN NEW MEXICO OF A SERVICE PERFORMED ENTIRELY OUTSIDE NEW MEXICO~~

**A.** The use of a service, other than a research and development service, in New Mexico is not subject to the compensating-

tax when the service is performed entirely outside New Mexico. The use of a service, other than a research and development service, in New Mexico is subject to compensating tax only when the service rendered is a result of a transaction which was not initially subject to the gross receipts tax but should have been subject to the gross receipts tax because of the subsequent use of the service by the buyer. Receipts from performing a service other than research and development service outside New Mexico are not subject to the gross receipts tax regardless of how the buyer subsequently uses the services.

**B.** Example: The X Company sends rubber-lined pipe and pump casings out-of-state for repairs. Repairs include vulcanizing worn sections of the pipe and pump casings. The out-of-state vendor does not distinguish between the cost of labor and materials, and transactions are billed only as repairs. In this example, the materials used are incidental to the rendering of the repair service. The use of this service in New Mexico is not subject to the compensating tax when performed entirely outside New Mexico. **[RESERVED]**

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 11/15/1996, 3.2.10.10 NMAC - Rn, 3 NMAC 2.7.10, 4/30/2001; Repealed, 7/7/2021]

**3.2.10.23 COMPENSATING TAX ON SERVICES PERFORMED OUTSIDE THE STATE:**

**A.** For periods after July 1, 2021, if a purchaser acquires services performed outside the state in a transaction that was not subject to the gross receipts tax and subsequently makes taxable use of that service in New Mexico, the service is subject to the gross receipts tax. For services that were performed outside the state, the taxable use in New Mexico is not subject to compensating tax unless that use is the initial use of the service, as that term is defined under Subsection E of Section 7-9-3 NMSA 1978 and

applicable regulations.

**B.** Examples:

**(1)** X acquires financial advisory services from Y. Y performs the services entirely outside New Mexico resulting in recommendations for investing in certain assets. Y delivers the recommendations to X in New Mexico and has no reason to believe that X will not make initial use of the recommendations in New Mexico. X does not owe compensating tax on the service. Instead, Y owes the gross receipts tax on that service because it was initially used in New Mexico.

**(2)** Same facts as Paragraph (1) of Subsection B of 3.2.10.23 NMAC except that Y relies in good faith on X's representation that X will make initial use of the recommendations outside New Mexico. X owes the compensating tax if initial use of the recommendations is made in New Mexico.

**(3)** Same facts as Paragraph (2) of Subsection B of 3.2.10.23 NMAC except that X makes initial use of the recommendations outside of New Mexico. Subsequently, X makes use of the recommendations in New Mexico. Because that subsequent use is not the initial use, X does not owe compensating tax.

[3.2.10.23 NMAC - N, 7/7/2021]

**3.2.10.24 PURCHASER ENTITLED TO RELY ON SELLER'S STATEMENT AS TO WHETHER TAX WAS CHARGED:**

In determining whether compensating tax is owed, the purchaser may rely on the seller's invoice or other written billing or contract documentation that indicates that the seller has charged the gross receipts tax or has included the tax in the amount billed (whether by name or indicating that taxes for the state of New Mexico were charged or included). Under Section 7-9-6 NMSA 1978, the seller need not state the amount of tax charged or paid.

[3.2.10.24 NMAC - N, 7/7/2021]

**TAXATION AND REVENUE, DEPARTMENT OF**

**This is a repeal of 3.2.13 NMAC, Section 8 and 9, effective 7/7/2021.**

**3.2.13.8 [GUIDELINES FOR "ACTIVITY"]:** "Activity" includes engaging in any of the following in New Mexico, directly or by an agent:

**A.** maintaining or utilizing an office, distribution house, sales house, warehouse, service enterprise, or other place of business; or

**B.** maintaining a stock of goods; or

**C.** regularly soliciting orders whether or not such orders are accepted in New Mexico, unless the activity in New Mexico consists solely of soliciting by direct mail; or

**D.** regularly engaging in the delivery of property in New Mexico other than by common carrier or U.S. mail as a consequence of an advertising or other sales program directed at potential customers. **[RESERVED]**

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 3/3/1986, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.13.8 NMAC - Rn, 3 NMAC 2.10.8, 4/30/2001; Repealed, 7/7/2021]

**3.2.13.9 [THIRD-PARTY SALES BY AGENTS FOR COLLECTION OF COMPENSATING TAX]:**

When a person registered with the department as an agent for collection of New Mexico compensating tax sells tangible personal property to a customer located outside New Mexico who requests delivery be made to the customer's customer located in New Mexico, the agent for collection of compensating tax may receive a properly executed nontaxable transaction certificate from the out-of-state buyer. **[RESERVED]**

[6/18/1979, 4/7/1982, 5/4/1984, 3/3/1986, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.13.9 NMAC - Rn, 3

NMAC 2.10.9, 4/30/2001; Repealed,  
7/7/2021]

**TAXATION AND  
REVENUE,  
DEPARTMENT OF**

This is an amendment to 3.2.100  
NMAC, adding Section 10, effective  
7/7/2021.

**3.2.100.10 Exemptions of Gross  
Receipts of Marketplace Sellers and  
Marketplace Providers:**

Under Section 7-9-3.5 NMSA 1978,  
marketplace sellers may have gross  
receipts from selling, leasing or  
licensing property or selling services  
in the state and marketplace providers  
may have receipts from receipts  
collected from selling, leasing,  
licensing property or selling services.  
The exemptions provided in the  
Gross Receipts and Compensating  
Tax Act apply to the gross receipts of  
marketplace sellers and marketplace  
providers to the extent that the sale,  
lease or licensing of property or  
selling of services would be exempt.  
[3.2.100.10 NMAC - N, 7/7/2021]

**TAXATION AND  
REVENUE,  
DEPARTMENT OF**

This is an amendment to 3.2.203  
NMAC, Adding Section 11 effective  
7/7/2021.

**3.2.203.11 DEDUCTIONS  
OF GROSS RECEIPTS OF  
MARKETPLACE PROVIDERS  
AND MARKETPLACE SELLERS:**

Under Section 7-9-3.5 NMSA 1978,  
marketplace sellers may have gross  
receipts from selling, leasing or  
licensing property or selling services  
in the state and marketplace providers  
may have receipts from receipts  
collected from selling, leasing,  
licensing property or selling services.  
The deductions provided in the Gross  
Receipts and Compensating Tax  
Act apply to the gross receipts of  
marketplace sellers and marketplace

providers to the extent that the  
sale, lease or licensing of property  
or selling of services would be  
deductible.

[3.2.203.11 NMAC - N, 7/7/2021]

**End of Adopted Rules**

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**Other Material Related to Administrative Law**


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**GOVERNOR,  
OFFICE OF THE**
**EXECUTIVE ORDER 2021-030**
**RENEWING THE STATE  
OF PUBLIC HEALTH  
EMERGENCY INITIALLY  
DECLARED IN EXECUTIVE  
ORDER 2020-004, OTHER  
POWERS INVOKED IN  
THAT ORDER, AND ALL  
OTHER ORDERS AND  
DIRECTIVES CONTAINED IN  
EXECUTIVE ORDERS TIED  
TO THE ONGOING PUBLIC  
HEALTH EMERGENCY**

On December 31, 2019, several cases of pneumonia with an unknown cause were detected in Wuhan City, Hubei Province, China, and reported to the World Health Organization (“WHO”). The underlying virus giving rise to those reported instances of respiratory illness was later identified as a novel coronavirus disease which has been referred to as “COVID-19.”

By the time the first COVID-19 cases had been confirmed in New Mexico, on March 11, 2020, COVID-19 had already spread globally and throughout the United States. At that time, more than 100,000 people had been infected globally and there were more than 1,000 cases in the United States, spread out over 39 states. The President of the United States declared a national state of emergency for COVID-19 on March 13, 2020. As of June 24, 2021 the Centers for Disease Control and Prevention (“CDC”) reported over 33 million people have been infected in the United States, with over 600,000 related deaths, and the New Mexico Department of Health has reported 205,215 positive COVID-19 cases and 4,334 related deaths in New Mexico.

Public health organizations have implemented emergency measures intended to slow the

spread of COVID-19. For example, on January 20, 2020, the CDC activated its Emergency Operations Center in response to the COVID-19 outbreak. The WHO declared a Public Health Emergency of International Concern shortly thereafter. All of our sister states have declared a state of emergency and implemented significant measures and deployed substantial resources to fight the spread of COVID-19; many, if not most, have kept such states of emergency in place.

New Mexico has taken aggressive measures to reduce the spread of COVID-19 and to mitigate its impacts. I have been in frequent contact with federal and state agencies and officials who are coordinating their efforts and resources to fight COVID-19. Various state agencies have been at the forefront of our State’s response to COVID-19, particularly the New Mexico Department of Health. The hard work of a variety of state employees has made a difference in our fight against COVID-19. Due to the continued spread of COVID-19, it is necessary for all branches of State government to continue taking actions to minimize transmission of COVID-19 and to reduce its attendant physical and economic harms.

Therefore, for the reasons above, I, Michelle Lujan Grisham, Governor of the State of New Mexico, by virtue of the authority vested in me by the Constitution and laws of the State of New Mexico, hereby ORDER and DIRECT:

1. In consultation with the New Mexico Department of Health, I have determined that the statewide public health emergency proclaimed in Executive Order 2020-004, and renewed in Executive Orders 2020-022, 2020-026, 2020-030, 2020-036, 2020-053, 2020-55, 2020-059, 2020-064, 2020-073, 2020-080, 2020-085, 2021-001, 2021-004, 2021-010, 2021-011, 2021-12 and 2021-023 shall be

renewed and extended through July 23, 2021.

2. All other powers, directives, and orders invoked in Executive Order 2020-004 remain in effect.

3. All other Executive Orders with a duration that was tied to the COVID-19 public health emergency or that was not explicitly stated shall continue with the same effect, including any orders appropriating emergency funding as well as Executive Orders 2020-016, 2020-020, 2020-021, 2020-025, and 2020-039.

This Order supersedes any previous orders, proclamations, or directives in conflict. This Order shall take effect on June 25, 2021 and shall remain in effect until July 23, 2021 unless renewed, modified, or until the Governor rescinds it.

**DONE AT THE EXECUTIVE  
OFFICE THIS 25TH DAY OF  
JUNE 2021**

**ATTEST:  
/S/MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE  
GREAT SEAL OF THE STATE OF  
NEW MEXICO**

**/S/MICHELLE LUJAN  
GRISHAM  
GOVERNOR**

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**HEALTH,  
DEPARTMENT OF**

**PUBLIC HEALTH ORDER  
NEW MEXICO DEPARTMENT  
OF HEALTH  
SECRETARY TRACIE C.  
COLLINS, M.D.**

**JUNE 30, 2021**

**Public Health Emergency Order  
Clarifying that Current Guidance  
Documents, Advisories, and**

**Emergency Public Health Orders  
Remain  
in Effect; and Amending Prior  
Public Health Emergency Orders  
to  
Impose County-by-County  
Restrictions Due to COVID-19**

**PREFACE**

The purpose of this amended Public Health Emergency Order is to amend restrictions on mass gatherings and business operations, which were implemented in response to the spread of the Novel Coronavirus Disease 2019 (“COVID-19”). While vaccines are the most effective method to prevent the spread of COVID-19, social distancing and self-isolation measures continue to be necessary to protect New Mexicans who are ineligible to receive a COVID-19 vaccine or who choose not to receive a vaccine. All New Mexicans should continue to adhere to social distancing protocols when required to protect our State as a whole. IN accordance with these purposes, this Order and its exceptions should be narrowly construed to encourage New Mexicans continue social distancing measures.

It is hereby **ORDERED** that

1. All current guidance documents and advisories issued by the Department of Health remain in effect.

2. The following Public Health Emergency Orders remain in effect through the current Public Health Emergency and any subsequent renewals of that Public Health Emergency or until they are amended or rescinded:

A. December 15, 2020 Amended Public Health Emergency Order Implementing Additional Contact Tracing Information Requirements for All Laboratories and Submitters Submitting Notifiable Condition COVID-19 Test Results to the New Mexico Epidemiology and Response Division;

B. January 8, 2021 Emergency Order Implementing Administration and Reporting Requirements for All COVID-19 Vaccine Providers;

C. April 5, 2021 Amended Public Health Emergency Order Temporarily Limiting Long-Term Care Facilities Visitation Due to COVID-19; and

D. February 26, 2021 Public Health Emergency Order Implementing Administration Requirements for all COVID-19 Vaccine Providers and Requiring Accurate Information be Provided by Individuals Registering to Receive the COVID-19 Vaccine.

3. The June 2, 2021 Public Health Emergency Order Clarifying that Current Guidance Documents, Advisories, and Emergency Public Health Orders Remain in Effect; and Amending Prior Public Health Emergency Orders to Impose County-by-County Restrictions Due to COVID-19 is hereby amended as follows:

**ORDER**

**WHEREAS**, on March 11, 2020, because of the spread of the novel Coronavirus Disease 2019 (“COVID-19”), Michelle Lujan Grisham, the Governor of the State of New Mexico, declared that a Public Health Emergency exists in New Mexico under the Public Health Emergency Response Act, and invoked her authority under the All Hazards Emergency Management Act;

**WHEREAS**, Governor Michelle Lujan Grisham has renewed the declaration of a Public Health Emergency through July 23, 2021;

**WHEREAS**, confirmed cases in the United States have risen to more than 33.3 million and confirmed COVID-19 infections in New Mexico have risen to over 205,000;

**WHEREAS**, COVID-19 is a deadly virus and has taken the lives of over 600,000 Americans

and over 4,335 New Mexicans;

**WHEREAS**, the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, wellbeing and property of the residents in the State due to, among other things, illness from COVID-19, illness-related absenteeism from employment (particularly among public safety and law enforcement personnel and persons engaged in activities and businesses critical to the economy and infrastructure of the State), potential displacement of persons, and closures of schools or other places of public gathering;

**WHEREAS**, vaccination, social distancing and the consistent and proper use of face coverings in public spaces are the most effective ways New Mexicans can minimize the spread of COVID-19 and mitigate the potentially devastating impact of this pandemic in New Mexico; and

**WHEREAS**, the New Mexico Department of Health possesses legal authority pursuant to the Public Health Act, NMSA 1978, Sections 24-1-1 to -40, the Public Health Emergency Response Act, NMSA 1978, Sections 12-10A-1 to -19, the Department of Health Act, NMSA 1978, Sections 9-7-1 to -18, and inherent constitutional police powers of the New Mexico state government, to preserve and promote public health and safety, to adopt isolation and quarantine, and to close public places and forbid gatherings of people when deemed necessary by the Department for the protection of public health.

**NOW, THEREFORE, I**, Tracie C. Collins, M.D., Secretary of the New Mexico Department of Health, in accordance with the authority vested in me by the Constitution and the Laws of the State of New Mexico, and as directed by the Governor pursuant to the full scope of her emergency powers under the All Hazard Emergency Management Act, do hereby declare the current outbreak of COVID-19 a condition of public health importance, as

defined in NMSA 1978, Section 24-1-2(A) as an infection, a disease, a syndrome, a symptom, an injury or other threat that is identifiable on an individual or community level and can reasonably be expected to lead to adverse health effects in the community, and that poses an imminent threat of substantial harm to the population of New Mexico.

**I HEREBY DIRECT AS FOLLOWS:**

(1) Unless a healthcare provider instructs otherwise, all individuals shall wear a mask or multilayer cloth face covering in public settings except when: eating or drinking, exercising outdoors alone or with members of the same household; attending a small, outdoor gathering of fully vaccinated individuals. Notwithstanding the foregoing, fully vaccinated individuals are not required to wear a mask unless otherwise recommended by the latest official guidance from the Centers for Disease Control (“CDC”). Further, fully vaccinated individuals shall not be required to socially distance from other individuals unless otherwise recommended by the latest official guidance from the CDC, in which case they must follow that guidance. Businesses, establishments, houses of worship, and other non-profit entities shall also follow the latest official guidance from the CDC regarding mask-wearing and social distancing, provided that nothing in this Order shall be construed as prohibiting any entity from imposing more stringent requirements.

(2) Any business, establishment, or non-profit (other than those which are a healthcare operation, utility, or indigent care services) which members of the public regularly visit must report to the Department of Health when there is an occurrence of four (4) or more rapid responses within a fourteen (14) day period. For purposes of this directive, rapid responses will be counted

on a rolling basis. Businesses, establishments, or non-profits with four or more rapid responses shall not be required to cease operations. However, the rapid responses must be reported to the Department of Health so that the public may be made aware of the positive cases.

(3) All businesses, establishments, and non-profit entities must adhere to the pertinent COVID-Safe Practices

(4) Private educational institutions serving children and young adults from pre-Kindergarten through 12th Grade, including homeschools serving children who are not household members, shall adhere to the face covering and other COVID-Safe Practices requirements for in person instruction contained in the New Mexico’s Public Education Department’s “Reentry Guidance” and “COVID-19 Response Toolkit for New Mexico’s Public Schools”, available at <https://webnew.ped.state.nm.us/reentry-district-and-school-guidance/>, and may operate up to maximum capacity. Private educational institutions shall follow the reporting, testing, and closure requirements set forth by the Public Education Department in the Reentry Guidance and COVID-19 Response Toolkit for New Mexico’s Public Elementary Schools.

**I FURTHER DIRECT** as follows:

(1) This Order shall be broadly disseminated in English, Spanish and other appropriate languages to the citizens of the State of New Mexico.

(2) This Order declaring restrictions based upon the existence of a condition of public health importance shall not abrogate any disease-reporting requirements set forth in the Public Health Act.

(3) Nothing in this Order is intended to restrain or preempt local authorities from enacting more stringent restrictions than those required by the Order.

(4) The June 2, 2021 Public Health Order shall remain in

effect through June 30, 2021. This Order shall take effect on July 1, 2021 and remain in effect through July 30, 2021.

(5) The New Mexico Department of Health, the New Mexico Department of Public Safety, the New Mexico Department of Homeland Security and Emergency Management, the New Mexico Environment Department, and all other State departments and agencies are authorized to take all appropriate steps to ensure compliance with this Order.

(6) Any and all State officials authorized by the Department of Health may enforce this Public Health Order by issuing a citation of violation, which may result in civil administrative penalties of up to \$5,000 for each violation under Section 12-10A-19.

**DONE AT THE EXECUTIVE OFFICE THIS 30TH DAY OF JUNE 2021**

**ATTEST:**

**/S/ MAGGIE TOULOUSE OLIVER  
SECRETARY OF STATE**

**WITNESS MY HAND AND THE GREAT SEAL OF THE STATE OF NEW MEXICO**

**/S/ TRACIE C. COLLINS, M.D.  
SECRETARY OF THE STATE OF NEW MEXICO DEPARTMENT OF HEALTH**

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**End of Other Material  
Related to Administrative  
Law**



# 2021 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXII, Issues 1-24

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

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