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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 XXXIV, Issue 19

October 10, 2023

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## Notices of Rulemaking and Proposed Rules

### ALBUQUERQUE - BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

#### ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD NOTICE OF RULEMAKING HEARING TO CONSIDER AMENDING EXISTING RULE 20.11.104 NMAC, NEW MOTOR VEHICLE EMISSION STANDARDS

The Albuquerque-Bernalillo County Air Quality Control Board (“AQCB”) will hold a joint public hearing with the New Mexico Environmental Improvement Board (“EIB”) beginning on November 13, 2023 at 9:00 a.m. and continuing through November 16, 2023 to consider AQCB Petition No. 2023-1, filed by the City of Albuquerque Environmental Health Department (“EHD”). The hearing will last as long as required to hear all testimony, evidence and public comment but is expected to last approximately three days, with a fourth day being reserved for deliberations. The in-person hearing will be held at the New Mexico State Bar Center, 5121 Masthead St NE, Albuquerque, NM 87109. The AQCB may decide on the proposed regulatory change at the conclusion of the hearing or at a separate board meeting, as determined in coordination with the EIB. Final hearing details will be posted online no later than October 20, 2023. See the Contact Information below for ways to learn more and received updates.

#### Contact Information.

Websites: [www.cabq.gov/airquality/air-quality-control-board](http://www.cabq.gov/airquality/air-quality-control-board) ; and [www.cabq.gov/airquality/regulation-development/public-notice-and-comment-opportunities](http://www.cabq.gov/airquality/regulation-development/public-notice-and-comment-opportunities).

Phone: Anita SdeArmijo, AQCB Hearing Clerk, at 505-768-1915.  
Email: [airboard@cabq.gov](mailto:airboard@cabq.gov).  
In-Person Address: EHD, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102 during

normal business hours.  
Postal Mail Address: EHD, P.O. Box 1293, Albuquerque, NM 87103.

Hearing Details. Additional meeting and access details, including whether the AQCB holds the hearing with a virtual participation component, will be posted online or can be sought using the Contact Information above. Information from EHD is also available at <https://www.cabq.gov/airquality/regulation-development/clean-vehicles-regulation-documents>.

The proposed regulatory change would amend existing rule 20.11.104 NMAC, New Motor Vehicle Emission Standards, to adopt California’s current low- and zero-emission vehicle standards for new 2027-2032 model year light- and medium-duty vehicles, and to adopt California’s emission standards and reporting requirements for new 2027-2035 model year heavy-duty vehicles. To assure that the standards apply statewide in both the EIB and the AQCB jurisdictions, and meet the identity requirements of Section 177 of the Clean Air Act, the AQCB and the EIB will hold a joint hearing and deliberation to consider both 20.11.104 NMAC and the New Mexico Environment Department’s Petition EIB 23-56 (R) – In the Matter of Proposed 20.2.91 NMAC – New Motor Vehicle Emission Standards, available at [www.env.nm.gov/opf/docketed-matters](http://www.env.nm.gov/opf/docketed-matters).

The entire rulemaking docket, including copies of the proposed regulatory change, is accessible on the web at <http://bit.ly/petition2023-01> . A link to the rulemaking record can also be found under the heading “Rulemaking Procedures” on the AQCB’s website. The proposed amended regulatory text is identified in the record as Exhibits B and C to EHD’s petition. Copies may also be obtained by contacting the AQCB Hearing Clerk. EHD charges a fee of fifty (50) cents per page for providing paper copies.

The hearing will be conducted in accordance with the Air Quality Control Act, NMSA 1978, Section 74-2-6; the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994, Section 9-5-1-6; Bernalillo County Code, Article II, Section 30-35; 20.11.82 NMAC, Rulemaking Procedures-AQCB; and other applicable procedures, including any pre-hearing orders. Pre-hearing orders will be included in the rulemaking docket.

Public Participation. AQCB hearings are open to the public and all interested persons are encouraged to participate. All interested persons will be given a reasonable opportunity to submit relevant data, views or arguments, orally or in writing, and to examine witnesses by filing a notice of intent to present technical testimony (“NOI”), filing an entry of appearance, or participating as a member of the general public.

Technical Testimony. Persons intending to present technical testimony at the hearing must file a written NOI at least twenty (20) days before the hearing. In addition to any requirements a pre-hearing order may have, an NOI shall: (1) identify the person for whom the witness(es) will testify; (2) identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their education and work background; (3) include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness; (4) include the text of any recommended modifications to the proposed regulatory change; (5) list and attach an original copy of all exhibits anticipated to be offered by that person at the hearing, including any proposed statement of reasons for adoption of rules; and (6) be served pursuant to 20.11.82.16 NMAC and pre-hearing orders, including served on EHD. Unless otherwise provided for in a pre-hearing order, the filing

of an NOI shall be accomplished by delivering the document to the AQCB Hearing Clerk via the email, in-person address, or postal mail address listed in Contact Information above.

**Entry of Appearance.** Any person who is or may be affected by the proposed regulatory change may file and serve upon all parties an entry of appearance at least twenty (20) days prior to the hearing date and shall be a party. In the event of multiple entries of appearance by those affiliated with one interest group, the hearing officer may consolidate the entries or divide the service list to avoid a waste of public resources. A timely NOI shall be considered an entry of appearance.

**Non-Technical Testimony/Public Comment.** Any member of the general public may present non-technical testimony at the hearing. No prior notification is required to present non-technical testimony. Any member of the public may also offer non-technical exhibits in connection with non-technical testimony, as long as the non-technical exhibit is not unduly repetitious of previous testimony. A member of the general public who wishes to submit a non-technical written statement for the record instead of oral testimony shall file the written statement prior to the hearing or submit it at the hearing. Unless otherwise provided for in a pre-hearing order, written statements submitted prior to the hearing shall be delivered to the AQCB Hearing Clerk in the same manner as described above for filing a NOI.

**Notice to Persons with Disabilities or Special Needs.** If you have a disability or require special assistance to participate in this process, including interpretation or an auxiliary aid, please contact the AQCB Hearing Clerk as soon as possible but no later than seventy-two (72) hours before the hearing. Those in need of hearing assistance can call 711.

**Nondiscrimination Notice.** The AQCB does not discriminate on the bases of race, color, national origin,

sex, age or disability. If you believe you have been discriminated against, you may submit a complaint at [www.cabq.gov/airquality/non-employee-discrimination-complaints](http://www.cabq.gov/airquality/non-employee-discrimination-complaints). You may also contact Amanda Trujillo, Executive Assistant, General Services Division, at (505) 768-2534 or [amandatrujillo@cabq.gov](mailto:amandatrujillo@cabq.gov).

**AVISO DE AUDIENCIA DE REGLAMENTACIÓN PARA CONSIDERAR LA ENMIENDA A LA NORMATIVA VIGENTE 20.11.104 NMAC POR PARTE DE LA JUNTA DE CALIDAD DEL AIRE DEL-CONDADO DE ALBUQUERQUE-BERNALILLO, ESTÁNDARES DE EMISIONES PARA NUEVOS VEHÍCULOS AUTOMOTORES**

La Junta de Calidad del Aire del Condado de Albuquerque-Bernalillo (AQCB, por sus siglas en inglés) llevará a cabo una audiencia en conjunto con la Junta de Mejora Ambiental de Nuevo México (EIB, por sus siglas en inglés), que comenzará el 13 de noviembre de 2023 a las 9:00 a. m. y continuará hasta el 16 de noviembre de 2023, para considerar la Petición No. 2023-1 de la AQCB, presentada por el Departamento de Salud Ambiental de la Ciudad de Albuquerque (EHD, por sus siglas en inglés). La audiencia durará todo el tiempo que se requiera para escuchar todo testimonio, prueba y opinión pública, pero se espera que su duración sea de aproximadamente tres días, con un cuarto día reservado para deliberaciones. La audiencia presencial se realizará en New Mexico State Bar Center, 5121 Masthead St NE, Albuquerque, NM 87109. La AQCB puede decidir si acepta el cambio normativo propuesto cuando concluya la audiencia o en una reunión de la junta directiva, según determine en coordinación con la EIB. Los detalles finales de la audiencia serán publicados en línea a más tardar el 20 de octubre de 2023. Vea la información de contacto a continuación para saber más y recibir actualizaciones.

**Información de contacto.**

Páginas web: [www.cabq.gov/airquality/air-quality-control-board](http://www.cabq.gov/airquality/air-quality-control-board) and [www.cabq.gov/airquality/regulation-development/public-notices-and-comment-opportunities](http://www.cabq.gov/airquality/regulation-development/public-notices-and-comment-opportunities). Teléfono: Anita SdeArmijo, secretaria de audiencia de la AQCB, al 505-768-1915.

Correo electrónico: [airboard@cabq.gov](mailto:airboard@cabq.gov).

Dirección en persona: EHD, One Civic Plaza NW, 3rd Floor, Room 3023, Albuquerque, NM 87102 durante horario comercial normal. Dirección de correo postal: EHD, P.O. Box 1293, Albuquerque, NM 87103.

**Detalles de la Audiencia.** Detalles adicionales de acceso y de la reunión, incluyendo si la AQCB realizará la reunión con un componente de participación virtual, se publicará en línea o se puede obtener usando la información de contacto que se proporcionó anteriormente. Información del EHD también está disponible en <https://www.cabq.gov/airquality/regulation-development/clean-vehicles-regulation-documents>.

El cambio normativo propuesto enmendaría la normativa vigente 20.11.104 del Código Administrativo de Nuevo México (NMAC, por sus siglas en inglés), Estándares de Emisiones para Nuevos Vehículos Automotores, para adoptar los estándares actuales de emisión baja y cero emisión de vehículos de California para nuevos vehículos ligeros y medianos de modelos 2027-2032, y para adoptar los estándares de emisión de California e informar los requisitos para vehículos pesados de modelos 2027-2035. Para asegurarse de que los estándares se cumplan en todo el estado, tanto en la jurisdicción de la EIB como en la de AQCB, y para que los requisitos sean idénticos a los de la Sección 177 del Acta de Aire Limpio, la AQCB y la EIB tendrán una audiencia conjunta para considerar tanto la 20.11.104 NMAC como la Petición EIB 23-56 (R) – sobre la propuesta 20.2.91 NMAC – Estándares de Emisiones para Nuevos Vehículos Automotores, disponible



en [www.env.nm.gov/opf/docketed-matters](http://www.env.nm.gov/opf/docketed-matters). del Departamento de Medio Ambiente de Nuevo México.

Se puede acceder al expediente normativo, incluyendo copias del cambio normativo propuesto, en la página <http://bit.ly/petition2023-01>. También se puede encontrar un enlace al registro normativo bajo el encabezado "Rulemaking Procedures" (Procedimientos de Normativas) en la página de la AQCB. El texto propuesto de enmienda de normativa se identifica en el registro como Anexo B y C, a la petición del EHD. También se pueden obtener copias comunicándose con la Secretaria de Audiencias de la AQCB. El EHD cobra una tarifa de cincuenta (50) centavos por página por proveer copias en papel.

La audiencia se llevará a cabo de acuerdo al Acta de Control de Calidad del Aire de los Estatutos Anotados de Nuevo México (NMSA, por sus siglas en inglés), 1978, Sección 74-2-6; Ordenanza de la Junta de Calidad del Aire, Ordenanzas Revisadas de Albuquerque 1994, Sección 9-5-1-6; Código del Condado de Bernalillo, Artículo II, Sección 30-35; 20.11.82 NMAC, Procedimientos de Normativas-AQCB; y otros procedimientos aplicables, incluyendo todas las órdenes previas a la audiencia. Las órdenes previas a la audiencia se incluirán en el expediente normativo.

**Participación pública.** Las audiencias de la AQCB están abiertas al público y se les alienta a participar a todas las personas interesadas. A todas las personas interesadas se les otorgará una oportunidad razonable para presentar datos relevantes, opiniones o argumentos, de forma oral o escrita, e interrogar a testigos luego de completar un aviso de intención de presentar testimonio técnico (NOI, por sus siglas en inglés), una actuación de comparecencia, o al participar como miembro del público general.

**Testimonio técnico.** Las personas que pretendan presentar testimonio técnico durante la audiencia deberán completar un NOI escrita al menos veinte (20) días antes de la audiencia. Además de todos los requisitos que una orden previa a la audiencia debe tener, un NOI deberá: (1) identificar a la persona en favor de la cual testificará el testigo; (2) identificar a cada testigo técnico que la persona quiera presentar e indicar las calificaciones de ese testigo, incluyendo una descripción de sus antecedentes de educación y de trabajo; (3) incluir una copia del testimonio directo de cada testigo técnico e indicar la duración estimada del testimonio de ese testigo; (4) incluir el texto de todas modificaciones recomendadas al cambio normativo propuesto; (5) enumerar y adjuntar una copia original de todas las pruebas que se espera que esa persona ofrezca en la audiencia, incluyendo todas las declaraciones de las razones propuestas para la adopción de las normativas; y (6) ser notificado de conformidad a 20.11.82.16 NMAC y a las órdenes previas a la audiencia, incluidas las del EHD Salvo que se proporcionen en una orden previa a la audiencia, un NOI se debe completar y enviar a la Secretaria de Audiencia de la AQCB por medio de correo electrónico, la dirección en persona o correo postal que se detalla en la información de contacto.

**Actuación de comparecencia.** Cualquier persona que se vea o pueda verse afectada por el cambio normativo propuesto puede completar y presentar una personación a todas las partes al menos veinte (20) días antes de la fecha de la audiencia y queda constituido como parte. En el caso de que haya múltiples personaciones de aquellos afiliados con un grupo de interés, el oficial de audiencia puede combinar esas actuaciones o dividir la lista de servicio para evitar un gasto de recursos públicos. Un NOI oportuno será considerado una actuación de comparecencia.

**Testimonio no técnico/opinión pública.** Cualquier miembro del público general puede presentar un testimonio no técnico en la audiencia. No se necesita notificación previa para presentar un testimonio no técnico. Cualquier miembro del público también puede presentar pruebas no técnicas junto con el testimonio no técnico, siempre y cuando la prueba no técnica no sea excesivamente repetitiva de testimonios anteriores. Un miembro del público general que desee entregar una declaración por escrito para el registro en lugar de testimonio oral deberá presentarlo antes o durante la audiencia. A menos que se entreguen en una orden previa a la audiencia, las declaraciones por escrito presentadas antes de la audiencia deberán entregarse a la secretaria de audiencia de la AQCB, de la misma forma en la que se debe enviar un NOI, como se indicó anteriormente.

**Aviso para personas con discapacidades o necesidades especiales.** Si usted tiene una discapacidad o requiere de asistencia especial para participar en este proceso, incluyendo interpretación o una asistencia auxiliar, comuníquese con la secretaria de audiencia de AQCB lo antes posible, pero no después de setenta y dos (72) horas antes de la audiencia. Aquellos que necesiten asistencia auditiva pueden llamar al 711.

**Aviso de no discriminación.** La AQCB no discrimina por motivos de raza, color, nacionalidad de origen, sexo, edad o discapacidad. Si usted cree que se lo ha discriminado, puede enviar una queja a [www.cabq.gov/airquality/non-employee-discrimination-complaints](http://www.cabq.gov/airquality/non-employee-discrimination-complaints). También puede comunicarse con Amanda Trujillo, asistente ejecutiva, División de Servicios Generales, al (505) 768-2534 o [amandatrujillo@cabq.gov](mailto:amandatrujillo@cabq.gov).



**ENERGY, MINERALS  
AND NATURAL  
RESOURCES  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

The State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Forestry Division and Taxation and Revenue Department (TRD) hereby give notice of the following proposed rulemaking. EMNRD and TRD propose to amend their rule, 3.13.20 NMAC, Land Conservation Incentives Tax Credit.

**Purpose of Amendment.** EMNRD and TRD propose the amendments to (1) update citations to Internal Revenue Service regulations in the definitions of qualified appraisal and qualified appraiser; (2) amend definitions of land, public or private conservation agency, and taxpayer to include citations to the statutes where those terms are defined because the State Rules Act, NMSA 1978, Section 14-4-5.7(B) provides words defined in the applicable statute should not be defined in rule; (3) revise the requirements and methods for submitting assessment and certification applications for the Land Conservation Incentives Tax Credit; (4) revise 3.13.20.10(A) NMAC to allow a taxpayer to increase the acreage of the proposed donation or decrease the size of or remove a proposed building envelope without having to submit a new assessment application for review and approval prior to submitting a certification application; (5) replace references to husband and wife with married individuals; (6) replace references to the Combined Reporting System with Business Tax Identification Number; (7) correct citations to statutes; and (8) make stylistic changes.

**Legal Authority.** EMNRD and TRD propose the rule amendments under the authority of NMSA 1978, Sections 7-2-18.10 and 7-2A-8.9, Section 9-1-5(E), and Section 9-11-6.2 and the Land Conservation Incentives Act,

NMSA 1978, Sections 75-9-1 to 75-9-6.

**The full text of the proposed rule amendments is available** from Carmen Austin at (505) 617-0119 or [carmelitam.austin@emnrd.nm.gov](mailto:carmelitam.austin@emnrd.nm.gov) or can be viewed on the EMNRD, Forestry Division’s website at <https://www.emnrd.nm.gov/sfd/public-meetings-hearings/> or at the Forestry Division’s office at 1220 South St. Francis Drive, Santa Fe, NM 87505 or at its offices in Chama, Cimarron, Las Vegas, Rio Rancho, Socorro, Capitan, and Silver City. The proposed rule amendments may be also 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@tax.nm.gov](mailto:policy.office@tax.nm.gov).

**Public Hearing and Comment.** EMNRD and TRD will hold a public hearing on the proposed rule amendments at 10:00 a.m. on Wednesday, November 14, 2023, at the Montoya Building, 3<sup>rd</sup> Floor, 1100 South St. Francis Drive, Santa Fe, NM 87504. Those wishing to attend virtually may join through Zoom using one of the following:

Join Zoom Meeting  
<https://us02web.zoom.us/j/89388156977?pwd=bUh1SjNoQUVvWHJiSHkwejhoYjJKZz09>

Meeting ID: 893 8815 6977  
Passcode: 709295

One tap mobile  
+12532158782,,89388156977#,,,,\*709295# US (Tacoma)  
+13462487799,,89388156977#,,,,\*709295# US (Houston)

Dial by your location  
• +1 253 215 8782 US (Tacoma)  
• +1 346 248 7799 US (Houston)  
• +1 669 444 9171 US  
• +1 669 900 6833 US (San Jose)  
• +1 719 359 4580 US  
• +1 253 205 0468 US  
• +1 309 205 3325 US  
• +1 312 626 6799 US (Chicago)  
• +1 360 209 5623 US

- +1 386 347 5053 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 646 558 8656 US (New York)
- +1 646 931 3860 US
- +1 689 278 1000 US
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US

Meeting ID: 893 8815 6977  
Passcode: 709295

Find your local number: <https://us02web.zoom.us/j/89388156977>

Those wishing to comment on the proposed rule amendments may make oral comments or submit information at the hearing or may submit written comments by November 14, 2023, by 10:00 a.m. by mail or email. Please mail written comments to Carmen Austin, EMNRD, Forestry Division, 1220 South St. Francis Drive, Santa Fe, NM 87505 or submit comments by email to [carmelitam.austin@emnrd.nm.gov](mailto:carmelitam.austin@emnrd.nm.gov).

**Technical Information that served as a basis for the proposed rule amendments includes:**

26 C.F.R. section 1.170A-17.

Copies of the technical information can be obtained from Carmen Austin at (505) 617-0119 or [carmelitam.austin@emnrd.nm.gov](mailto:carmelitam.austin@emnrd.nm.gov) or can be viewed on the EMNRD, Forestry Division’s website at <https://www.emnrd.nm.gov/sfd/public-meetings-hearings/>.

**If you are an individual with a disability** who needs a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Carmen Austin at (505) 617-0119 or through the New Mexico Relay Network at 1-800-659-1779 two weeks prior to the hearing. Public documents can be provided in various accessible formats. Please contact Carmen Austin at (505) 617-0119 or by email at [carmelitam.austin@emnrd.nm.gov](mailto:carmelitam.austin@emnrd.nm.gov)

emnrn.nm.gov if a summary or other type of accessible format is needed.

**HUMAN SERVICES  
DEPARTMENT  
MEDICAL ASSISTANCE  
DIVISION**

**NOTICE OF RULEMAKING**

The Human Services Department (the Department), through the Medical Assistance Division (MAD), is proposing to amend the New Mexico Administrative Code (NMAC) rule 8.324.5 NMAC, *Adjunct Services, Vision Appliances, Hearing Appliances, Durable Medical Equipment, Oxygen, Medical Supplies, Prosthetics and Orthotics* for the purpose of providing clarification to the non institutionalized durable medical equipment and medical supplies benefit.

Section 9-8-6 NMSA 1978, authorizes the Department Secretary to promulgate rules and regulations that may be necessary to carry out the duties of the Department and its divisions.

Notice Date: October 10, 2023  
Hearing Date: November 9, 2023  
Adoption Date: Proposed as January 1, 2024  
Technical Citations: 2023 NM House Bill 53

**The Department is proposing to amend the rule as follows:**

The Human Services Department is adding clarification to the diabetic technology and supplies benefit, and the prosthetics and orthotics supplies benefit to allow multiple devices that meet unique needs. Clarification is also being added to the bathroom equipment benefit to extend the benefit beyond railings in the bathroom.

These proposed rule changes will be contained in 8.324.5 NMAC. This register and the proposed rule are available on the HSD website

at: <https://www.hsd.state.nm.us/lookingforinformation/registers/> and <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>. If you do not have internet access, a copy of the proposed register and rule may be requested by contacting MAD at (505) 827-1337.

The Department proposes to implement these rules effective January 1, 2024. A public hearing to receive testimony on this proposed rule will be held on November 9, 2023, at 10:00 a.m. to 11:00 a.m. The hearing will be held at the Administrative Services Division (ASD), 1474 Rodeo Rd, Santa Fe, NM 87505 and **via conference call. Conference phone number: 1-800-747-5150. Access Code: 2284263.**

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATT: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348.

Recorded comments may be left at (505) 827-1337. Interested persons may also address comments via electronic mail to: [HSD-madrules@state.nm.us](mailto:HSD-madrules@state.nm.us). Written mail, electronic mail and recorded comments must be received no later than 5 p.m. MT on November 9, 2023. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing. All written comments received will be posted as they are received on the HSD website at <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/> along with the applicable register and rule. The public posting will include the name and any contact information provided by the commenter.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact MAD in Santa Fe at 505-827-1337. The Department requests at least ten (10) days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by the MAD upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

**PUBLIC EDUCATION  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

**Public Hearing**

The New Mexico Public Education Department (PED) gives notice that it will conduct a public hearing for the following proposed rulemaking on Tuesday, November 14, 2023, from 1:30 p.m. to 2:30 p.m. (MDT) in Mabry Hall, located in the Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico 87501:

**Amendment of 6.41.4 NMAC, Standard for Providing Transportation for Eligible Students**

The PED will give a verbal summary statement, on record, at the hearing.

The purpose of the public hearing is to receive public input on the proposed rulemaking. Attendees who wish to provide public comment on record will be given three minutes to make a statement concerning the proposed rulemaking. To submit written comment, please see the Public Comment section of this notice.

**Explanation of Purpose of Rulemaking, Summary of Text, and**

**Statutory Authority, by Proposed Rule****6.41.4 NMAC, Standard for Providing Transportation for Eligible Students**

**Explanation:** The purpose of the proposed rulemaking is to provide for the safety of students during extreme heat conditions and to modify the pre-trip inspection requirements to include electric buses.

**Summary:** The proposed amendment of the emergency rule places in permanent rule new requirements for loading and unloading school buses during heat advisories or excessive heat warnings. The rule also includes appropriate exceptions for electric buses in the pre-trip bus inspection checklist.

**Statutory Authority:** Sections 1111g(1)(E) and 1112c(5)(B) of ESEA, Section 722g(J)(iii) of the McKinney-Vento Act, and Sections 22-2-1, 22-2-2, 22-8-26, 22-10A-5, 22-16-2, 22-16-4, and Subsection D of Section 9-24-8 NMSA 1978.

No technical information served as a basis for this proposed rule change.

**Public Comment**

Interested parties may provide comment at the public hearing or may submit written comments by mail or e-mail.

Mailing Address

Policy and Legislative Affairs  
Division  
New Mexico Public Education  
Department  
300 Don Gaspar Avenue, Room 121  
Santa Fe, New Mexico 87501

E-Mail Address

Rule.Feedback@ped.nm.gov

Written comments must be received no later than 5 p.m. (MDT) on Tuesday, November 14, 2023. The PED encourages the early submission of written comments.

**Public Comment Period**

The public comment period is from Tuesday, October 10, 2023,

to Tuesday, November 14, 2023, at 5:00 p.m. (MDT). The PED will review all feedback received during the public comment period and issue communication regarding a final decision of the proposed rulemaking at a later date.

Copies of the proposed rule may be obtained from Denise Terrazas at (505) 470-5303 during regular business hours or may be accessed through the PED Police and Legislative Affairs webpage titled, "Proposed Rules," at <http://webnew.ped.state.nm.us/bureaus/policy-innovation-measurement/rule-notification/>.

Individuals with disabilities who require the above information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Denise Terrazas at (505) 470-5303 as soon as possible before the date set for the public hearing. The PED requires at least 10 calendar days advance notice to provide any special accommodations requested.

**REGULATION  
AND LICENSING  
DEPARTMENT  
CANNABIS CONTROL  
DIVISION**

**NOTICE OF PROPOSED RULE  
AMENDMENTS**

**Public Hearing.** The New Mexico Regulation and Licensing Department (RLD), Cannabis Control Division (CCD), will hold a public rule hearing on November 13, 2023, at 9:00am. The rule hearing will be held at the Toney Anaya state office building located at 2550 Cerrillos Road, Santa Fe, New Mexico. Individuals wishing to participate and offer public comment during the hearing, must appear in-person at the hearing location. The hearing will be live-streamed via Internet-based video and via telephone for those wishing

to solely observe and not offer public comment. A PDF of the proposed rule and meeting details may be accessed through the Cannabis Control Division website: <https://www.rld.nm.gov/cannabis/> or from Victoria Kaniatobe at the contact below.

**Purpose of Rule Hearing.** The purpose of the public rule hearing is to receive public commentary regarding the proposed amendments to existing rules related to licensure requirements, amendments to existing licensure, cannabis and cannabis product finished product packaging, and fees related to licensing activities. The proposed changes related to licensing will improve division efficiency when processing applications, will collect additional information used for licensing and compliance purposes, and will require additional information to be collected to provide additional assurance that applicants and licensees are compliant with local and state laws. The proposed changes related to cannabis and cannabis finished product packaging will clarify requirements, specifically as it relates to packaging initially created to comply with packaging regulations from other states. The proposed changes related to fees will ensure consistent fee schedules for microbusiness licenses and will introduce fees required to administer complex licensing requests.

Any technical information used to inform the proposed rules will be accessible by visiting: <https://www.rld.nm.gov/cannabis/>.

**Statutory Authority.** Legal authority for this rulemaking may be found the Cannabis Regulation Act, NMSA 1978 Section 26-2C-1 through Section 26-2C-42 NMSA (2021). Additional authority may be found at NMSA 9-16-6 (2021).

**Public Comment.** The Division will begin accepting public comment on the proposed rules



beginning October 10, 2023. Please submit written comments on the proposed rules to Robert Sachs, Division Counsel 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 visiting the Division website at <https://www.rld.nm.gov/cannabis/> or 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 November 13, 2023. 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: <https://www.rld.nm.gov/cannabis/>.

No later than October 10, 2023, interested parties may obtain and review copies of the proposed rules and public comments by going to the Cannabis Control Division website at <https://www.rld.nm.gov/cannabis/> or by contacting the Cannabis Control Division at [RLD.CannabisControl@rld.nm.gov](mailto:RLD.CannabisControl@rld.nm.gov) 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 Victoria Kaniatobe, Legal Clerk for the Cannabis Control Division at [Victoria.Kaniatobe2@rld.nm.gov](mailto:Victoria.Kaniatobe2@rld.nm.gov) or (505) 476-4577 at least seven (7) days prior to the hearing.

### Summary of Proposed Amendments to Rules.

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

Part 2 provides the requirements necessary for issuance of a license under the Cannabis Regulation Act. Part 2 also governs the licensing and operational requirements for licenses. The proposed changes related to licensing will improve division efficiency when processing applications, will collect additional information used for licensing and compliance purposes, and will require additional information to be collected to provide additional assurance that applicants and licensees are compliant with local and state laws.

#### 16.8.3 NMAC: PACKAGING, LABELING, ADVERTISING, MARKETING, AND COMMERCIAL DISPLAY REQUIREMENTS FOR CANNABIS PRODUCTS

Part 3 provides the requirements related to packaging, labeling, advertising, marketing, and commercial display requirements for cannabis products. The proposed changes related to cannabis and cannabis finished product packaging will clarify requirements, specifically as it relates to packaging initially created to comply with packaging regulations from other states.

#### 16.8.11 NMAC: FEES

Part 11 provides the requirements for fees collected in connection with the administration of commercial cannabis activity and licensing. The proposed changes related to fees will ensure consistent fee schedules for microbusiness licenses and will introduce fees required to administer complex licensing requests.

## TAXATION AND REVENUE DEPARTMENT

### NOTICE OF PROPOSED RULEMAKING

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 amend/

repeal/replace and enact certain rules and regulations pertaining to digital advertising services under the Gross Receipts and Compensating Tax Act and further clarification for engaging in business as authorized by Section 9-11-6.2 NMSA 1978:

### Summary of Proposed Changes:

The New Mexico Taxation and Revenue Department proposes to amend and enact the following rule(s):

#### Tax Administration Act

Section 7-1-14 NMSA 1978

*3.1.4.13 – Reporting According to Business Location [Applicable to periods beginning July 1, 2021] (Amend)*

#### Gross Receipts and Compensating Tax Act

Section 7-9-3.3 NMSA 1978

*3.2.1.12 – Engaging in Business (Amend)*

Section 7-9-55 NMSA 1978

*3.2.213.13 – Receipts of a Digital Platform that Displays Digital Advertising (New)*

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

**Purpose of Proposed Rule:** The proposed rules are being amended to clarify the taxation of digital advertising, the correct reporting location to use when reporting these gross receipts and deductions that may be available, and further clarifies engaging in business for those taxpayers that only have economic presence in New Mexico. The proposed regulations detail which receipts from the sale of digital advertising services are subject to gross receipts taxation and which are deductible, and also clarifies the sourcing rules for such receipts.

Notice of Public Rule Hearing: A public hearing will be held on the proposed rule changes on Thursday, November 9, 2023, from 10 AM to 11

AM at the 3rd floor in the Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504. The hearing will be recorded, and oral comments can be made during the public hearing. Written comments can be submitted as outlined at the end of this notice. Virtual meeting access also available using Zoom <https://us02web.zoom.us/j/85402950259?pwd=Si9RNDhldGxsK2JlekdiUnpGVUdvQT09> Meeting ID: 854 0295 0259 Passcode: 682655

The rule proposals were placed on file in the Office of the Secretary on September 25, 2023. 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 November 24, 2023.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bobbie Marquez at [BobbieJ.Marquez@tax.nm.gov](mailto:BobbieJ.Marquez@tax.nm.gov). 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@tax.nm.gov](mailto:policy.office@tax.nm.gov).

Notice of Acceptance of Written Public Comment: Written comments on the proposals can be submitted by email to [policy.office@tax.nm.gov](mailto:policy.office@tax.nm.gov) 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 by 5PM on Thursday, November 9, 2023. All written comments received by the agency will be posted on <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations->

[hearing-notices/](#) no more than 3 business days following receipt to allow for public review.

## 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.

### PUBLIC EDUCATION DEPARTMENT

**This is an amendment to 6.12.11 NMAC, Sections 8, 10, 12, and 13, effective October 10, 2023.**

**6.12.11.8 DIABETES CARE PERSONNEL TRAINING:**

**A.** Each governing body shall ensure annual diabetes training programs are provided to all school nurses and diabetes care personnel. Training content for the annual diabetes training program, at a minimum, shall include:

- (1) identification and treatment of hyperglycemia and hypoglycemia;
- (2) appropriate actions to take when blood glucose levels are outside the target ranges indicated by a student’s diabetes medical management plan;
- (3) understanding interpretation of health care practitioner instructions regarding diabetes medication drug dosage, frequency, and manner of administration;
- (4) performance of finger stick blood glucose testing, and scanning of continuous glucose monitors, ketone testing, and recording of results;
- (5) administration of glucagon and insulin and recording of results;
- (6) administration of glucagon and insulin through the insulin delivery system;
- (7) recognizing diabetes-related complications that require emergency assistance; and
- (8) recommended schedules for food intake, the effect of physical activity upon blood glucose levels, and

appropriate actions to be implemented in the case of a schedule disruption.

**B.** Each governing body shall ensure a minimum of two school employees, at each school attended by a student with diabetes, receive the training outlined in this rule.

**C.** Each governing body shall not require that diabetes care personnel be health care practitioners.

**D.** If at any time fewer than two school employees are available to be trained at a school, the principal or other school administrator shall distribute to all staff a written notice stating that the school is seeking volunteers to serve as diabetes care personnel. This notice shall inform staff of the following:

- (1) the school is required to provide diabetes care to one or more students with diabetes and is seeking personnel willing to be trained to provide that care;
  - (2) the tasks to be performed by diabetes care personnel;
  - (3) participation is voluntary and no school, school district or governing body will take action against any staff member who does not volunteer to be designated;
  - (4) training will be provided to employees who volunteer to provide care; and
  - (5) the contact information of the person whom staff should contact in order to volunteer to be diabetes care personnel.
- E.** Annual diabetes training programs shall be provided by the school nurse if the school has a licensed school nurse or by a licensed health care practitioner with expertise in diabetes.
- F.** Each governing body shall also ensure annual training

is provided to all school personnel with a primary responsibility for supervising a student with diabetes during some portion of the school day that includes bus drivers responsible for transporting a student with diabetes. Training for these individuals must include:

- (1) recognition of hyperglycemia;
- (2) recognition of hypoglycemia; and
- (3) actions to take in response to diabetes-related emergency situations.

[6.12.11.8 NMAC – N, 11/26/2019; A, 10/10/2023]

**6.12.11.10 SCHOOL DIABETES CARE:**

**A.** Each governing body shall ensure that all students diagnosed with diabetes receive appropriate and necessary diabetes care as specified in the student’s diabetes medical management plan.

**B.** In accordance with [a] the request of a parent or guardian of a student with diabetes and the student’s diabetes medical management plan, a school nurse, or in the absence of a school nurse, diabetes care personnel shall perform diabetes care functions that may include:

- (1) checking and recording the student’s blood glucose or ketone levels and assisting the student with recording these levels;
- (2) responding to blood glucose levels that are outside of the student’s target range;
- (3) administering glucagon and other emergency treatments as prescribed;
- (4) administering insulin or assisting a student in administering insulin;

(5) providing oral diabetes medications as prescribed; and

(6) following instructions regarding meals, snacks and physical activity.

C. A school nurse or at least one diabetes care personnel shall be at each school where a student with diabetes is attending and shall be available to provide care to each student with diabetes pursuant to this rule during regular school hours, all school-sponsored activities, trips, extended offsite school-sponsored excursions, extracurricular activities where a student with diabetes is a participant, and on buses where the bus driver has not been trained in diabetes care and a student with diabetes is a passenger.

[6.12.11.10 NMAC – N, 11/26/2019; A, 10/10/2023]

#### 6.12.11.12 DIABETES SELF-MANAGEMENT:

A. Upon written request of a parent or guardian of a student with diabetes and authorization by the student's diabetes medical management plan, and upon demonstrated proficiency, a student shall be permitted to:

(1) perform self-management blood glucose monitoring to check blood glucose and ketones;

(2) administer prescribed medication for the treatment of diabetes including the self-administration of insulin through the insulin delivery system that the student uses as determined in the student's diabetes medical management plan;

(3) treat hyperglycemia as determined in the student's diabetes medical management plan; and

(4) treat hypoglycemia as determined in the student's diabetes medical management plan.

B. A student with diabetes shall be permitted to self-manage in any area of the school or school grounds, and at any school-related activity.

C. A student with diabetes shall be permitted to possess on the student's person at all times all necessary supplies and equipment to perform these monitoring and treatment functions.

D. If a student's parent or guardian or the student requests, the student shall have access to a private area for performing diabetes care tasks.

E. Each governing body shall develop written policies or procedures to address safe storage of medical supplies and for the safe and appropriate storage of diabetes medication.

[6.12.11.12 NMAC – N, 11/26/2019; A, 10/10/2023]

#### 6.12.11.13 ENFORCEMENT AND REPORTING:

A. A student with diabetes and the student's parent or guardian may submit a written administrative complaint, via e-mail or via mail, to the secretary or secretary's designee containing a statement of the facts on which the complaint is based specific to any school or governing body that fails to meet its obligations to train school personnel to provide diabetes care, or to permit self-management of diabetes per the Student Diabetes Management Act. The secretary or secretary's designee may require additional documentation to be provided by the parent or guardian, school district or charter school before responding to the complaint. Such additional documentation, if requested, shall be due within 10 days of the request. The secretary or secretary's designee, at the secretary's discretion, may require a hearing to be conducted within 60 days of receipt of the complaint or additional documentation, whichever is later, and to include a representative of the school district or charter school, before the secretary or secretary's designee. The secretary or the secretary's designee shall provide a written response with a final decision within 30 days of receipt of the complaint or within 30 days of the hearing's conclusion, whichever is later.

B. Governing bodies shall ~~[submit]~~ report the following data to the department ~~[by October 15, 2020, and]~~ annually, no later than October 15 ~~[every year thereafter]~~, in a format required by the department for the preceding school year:

(1) the number of students within the school district or state charter school with a diagnosis of diabetes;

~~[(2) the date(s) of the diabetes care training(s) provided to diabetes care personnel;~~

~~(3) the name(s) of the licensed school nurse or licensed health care practitioner who provided the diabetes care training(s);~~

~~(4) a copy of the agenda for the diabetes care training(s);~~

~~(5) the name(s) and title(s) of each staff person identified as a diabetes care personnel;~~

~~(6) the name(s) and title(s) of any other personnel who received the diabetes care training(s); and~~

~~(7) the school(s) in which each identified diabetes care personnel provides services.]~~

(2) the number of school sites attended by students with diabetes;

(3) the number of designated diabetes care personnel trained in diabetes management; and

(4) the number of additional staff members trained in diabetes management, not including assigned diabetes care personnel.

C. The department ~~[will]~~ shall post each district, ~~[and state]~~ state-chartered charter school, and locally chartered charter school report on the department's website annually by November 15. ~~[2020, and by November 15 every year thereafter.]~~

[6.12.11.13 NMAC – N, 11/26/2019; A, 10/10/2023]



**PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

The Public Employees Retirement Association approved at its 9/28/2023 board meeting to repeal its rule 2.80.700 NMAC, Normal Retirement, filed 12/28/2000, and replace it with 2.80.700 NMAC, Normal Retirement, adopted on 9/28/2023 and effective 10/10/2023.

The Public Employees Retirement Association approved at its 9/28/2023 board meeting to repeal its rule 2.80.900 NMAC, Pre-Retirement Survivor Pensions, filed 12/28/2001, and replace it with 2.80.900 NMAC, Pre-Retirement Survivor Pensions, adopted on 9/28/2023 and effective 10/10/2023.

The Public Employees Retirement Association approved at its 9/28/2023 board meeting to repeal its rule 2.80.1000 NMAC, Disability Retirement Benefits, filed 12/28/2000, and replace it with 2.80.1000 NMAC, Disability Retirement Benefits, adopted on 9/28/2023 and effective 10/10/2023.

The Public Employees Retirement Association approved at its 9/28/2023 board meeting to repeal its rule 2.83.700 NMAC, Retirement, filed 12/28/2000, and replace it with 2.83.700 NMAC, Retirement, adopted on 9/28/2023 and effective 10/10/2023.

The Public Employees Retirement Association approved at its 9/28/2023 board meeting to repeal its rule 2.83.800 NMAC, Survivor Pension, filed 12/28/2001, and replace it with 2.83.800 NMAC, Survivor Pension, adopted on 9/28/2023 and effective 10/10/2023.

The Public Employees Retirement Association approved at its 9/28/2023 board meeting to repeal its rule 2.84.700 NMAC, Retirement, filed 12/28/2000, and replace it with 2.84.700 NMAC, Retirement,

adopted on 9/28/2023 and effective 10/10/2023.

The Public Employees Retirement Association approved at its 9/28/2023 board meeting to repeal its rule 2.84.800 NMAC, Survivor Pension, filed 12/28/2001, and replace it with 2.84.800 NMAC, Survivor Pension, adopted on 9/28/2023 and effective 10/10/2023.

**PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

**TITLE 2 PUBLIC  
FINANCE  
CHAPTER 80 PUBLIC  
EMPLOYEES RETIREMENT  
PART 700 NORMAL  
RETIREMENT**

**2.80.700.1 ISSUING AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507 [2.80.700.1 NMAC – Rp, 2.80.700.1, 10/10/2023]

**2.80.700.2 SCOPE:** This rule affects the members, retirees, beneficiaries, affiliated public employers, and the association under the Public Employees Retirement Act. [2.80.700.2 NMAC – Rp, 2.80.700.2, 10/10/2023]

**2.80.700.3 STATUTORY AUTHORITY:** This rule is authorized by, Sections 10-11-8, 10-11-116, 10-11-130, 10-11-136 NMSA 1978, as amended. [2.80.700.3 NMAC – Rp, 2.80.700.3, 10/10/2023]

**2.80.700.4 DURATION:** Permanent. [2.80.700.4 NMAC – Rp, 2.80.700.4, 10/10/2023]

**2.80.700.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited at the end of a section. [2.80.700.5 NMAC – Rp, 2.80.700.5, 10/10/2023]

**2.80.700.6 OBJECTIVE:** The objective of this rule is to establish procedures for normal retirement. [2.80.700.6 NMAC – Rp, 2.80.700.6, 10/10/2023]

**2.80.700.7 DEFINITIONS:** [RESERVED] [2.80.700.7 NMAC – Rp, 2.80.700.7, 10/10/2023]

**2.80.700.8-9 [RESERVED]**

**2.80.700.10 PROCEDURE FOR RETIREMENT:**

**A.** The following procedure governs the process for retirement:

**(1)** The member shall request an application for retirement from PERA. To ensure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement. Any changes to an application for retirement that has already been submitted to PERA, including, but not limited to, retirement date, designation of survivor beneficiary or form of payment option, must be in writing and filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

**(2)** PERA shall furnish the member an estimate of retirement pension payable under form of payment A within a reasonable time of receipt of the properly completed application and required documents. If the member also desires an estimate of retirement pension payable under forms of payment B, C and D, the member shall request an estimate in writing.

**(3)** When the application is filed, PERA shall furnish the member's last affiliated

public employer with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the affiliated public employer.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the form of payment and beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form. If a married member does not provide spousal consent, the member shall execute an affidavit that:

- (a) states why the member has been unable to obtain spousal consent;
- (b) provides the most recent contact information for the member's spouse; and
- (c) acknowledges that the member understands that because he or she is married and has not provided spousal consent, the PERA Act provides that the member will be retired under form of payment C with his or her spouse named as survivor beneficiary.

(6) The application shall be considered to be "filed" when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service and age; and c) the member's termination of covered employment with all employers covered by any state system or the educational retirement system.

(8) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

B. The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, a religious record of birth established before age 5 years, a current passport, a current New Mexico driver's license or a current New Mexico motor vehicle division issued identification card, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life or automobile insurance policy;
- (b) current voter registration or voter identification record;
- (c) tribal census record;
- (d) childhood immunization record made prior to age 18 years;
- (e) military record, including a valid United States active-duty, retiree or reservist military identification card;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) immigration record;
- (i) naturalization record;
- (j) social security records.

(2) For any designated beneficiary to be identified as a spouse, a copy of a marriage certificate, other proof of marital status acceptable in a court of law or any two of the following documents showing marital status:

- (a) financial institution or bank records;
- (b) joint real estate deeds or mortgages;
- (c) insurance policies.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the Federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the PERA Act.

(4) Complete endorsed copies of all court documents necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment with an affiliated public employer. If the member's only divorce was prior to becoming a PERA member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required. The requirement for providing a copy of a final decree may be waived, in PERA's discretion, when PERA can establish through online court records that a divorce decree was entered on a specific date and no further documentation is deemed necessary to administer benefits.

(5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. The pension of a member who has earned service credit under more than one coverage plan with different pension factors shall be calculated pursuant to Subsection I of Section 10-11-8, NMSA 1978. If a member has earned service credit under one coverage plan on or before July 1, 2013 and under one or more coverage plans after July 1, 2013 with different pension factors, each pension factor shall be used to calculate the member's pension. The coverage plan from which the member was last employed shall govern the age and service requirements for retirement. Permissive service credit purchased pursuant to Subsection H of Section 10-11-7, NMSA 1978 cannot be used to determine final average salary, pension factor or pension maximum for pension calculation purposes.

E. Upon meeting the membership requirements in 2.80.400 NMAC, a member shall combine concurrent salaries received from two affiliated public employers. In the case of concurrent full-time and part-time employment or full-time and elected official service, service credit shall be earned only for the full-time employment. In the case of two part-time employments, service credit shall be earned only for the employment which has the lowest pension factor and pension maximum. In the case of concurrent employment, termination from all affiliated public employers is required before retirement. No combining of concurrent salary may occur for employees who are on extended annual or sick leave until retirement.

F. In addition to any other vesting provided by state law, a member's normal retirement benefit is non-forfeitable when the member reaches normal retirement age, which is:

(1) age 65, with five or more years of credited service, whichever is later, for individuals who were members on June 30, 2013;

(2) age 65, with eight or more years of credited service, whichever is later, for individuals who became general plan members on or after July 1, 2013; and

(3) age 60, with six or more years of credited service, whichever is later, for individuals who became public safety plan members on or after July 1, 2013.

G. In addition to any other vesting provided by state law, a member is also vested in his or her accrued benefits when the member reaches such lesser age and specified years of credited service as provided under the plan in which he or she is a member at the time of retirement or was last a member. If there is a termination of the PERA retirement system, or if employer contributions to the PERA fund are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[2.80.700.10 NMAC – Rp, 2.80.700.10, 10/10/2023]

**2.80.700.11-19 [RESERVED]**

**2.80.700.20 BENEFIT**

**PAYMENT:** The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the PERA Act and regulations, all benefits paid from the PERA trust fund shall be distributed in accordance with the requirements of Internal Revenue Code Section 401(a)(9) and the regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

A. The entire interest of the member shall:

(1) be completely distributed to the member not later than the required beginning date; or

(2) shall be distributed, beginning not later

than the required beginning date, in accordance with internal revenue service regulations, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and a designated beneficiary.

B. For the purposes of this section, "required beginning date" shall be defined in the same manner as the term "required beginning date" is defined in the Internal Revenue Code Section 401 (a)(9) and the regulations under that section.

C. The life expectancy of the member or the member's beneficiary may not be recalculated after the benefits commence.

D. If a member dies before the distribution of the member's benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died.

E. The amounts payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations thereunder. PERA shall adjust the percentage of the member's pension payable to a non-spouse survivor beneficiary who is more than 10 years younger than the member at the time of the member's retirement as required by 26 C.F.R. Section 1.401(a)(9)-6.

[2.80.700.20 NMAC – Rp, 2.80.700.20, 10/10/2023]

**2.80.700.21-29 [RESERVED]**

**2.80.700.30 ANNUAL COMPENSATION:**

Notwithstanding any provision of the PERA Act and regulations, the annual compensation of each member that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17).

[2.80.700.30 NMAC – Rp, 2.80.700.30, 10/10/2023]

**HISTORY of 2.80.700 NMAC:**  
**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 700.00, Retirement Benefits, filed on 10/4/1979; Rule 800.00, Deferred Retirement Benefits, filed on 10/4/1979; PERA Rule 700.00, Retirement Benefit Applications and Overpayments, filed on 11/19/1981; PERA Rule 800.00, Deferred Retirement Benefits, filed on 11/19/1981; PERA Rule 700, Retirement Benefit Applications, Retirement Dates and Overpayments, filed on 7/1/1987; PERA Rule 800.00, Deferred Retirement Benefits, filed on 7/1/1987; PERA Rule 700, Normal and Deferred Retirement, filed on 12/29/1989; PERA Rule 700, Normal and Deferred Retirement, filed on 7/1/1991; PERA Rule 700, Normal and Deferred Retirement, filed on 7/1/1992; PERA Rule 700, Normal and Deferred Retirement, filed on 7-1-93; PERA Rule 700, Normal and Deferred Retirement, filed 11/1/1994.

**History of Repealed Material:**  
 2 NMAC 80.700.30 - Repealed, 11/15/1997

**Other History of 2.80.700 NMAC:**  
 2.80.700 NMAC, Normal Retirement, filed 11/1/1994 and renumbered 12/28/2000.  
 2.80.700, Normal Retirement, filed 12/28/2000 was repealed, and replaced with 2.80.700 NMAC, Normal Retirement, effective 10/10/2023.

**PUBLIC EMPLOYEES  
 RETIREMENT  
 ASSOCIATION**

**TITLE 2 PUBLIC  
 FINANCE  
 CHAPTER 80 PUBLIC  
 EMPLOYEES RETIREMENT  
 PART 900 PRE-  
 RETIREMENT SURVIVOR  
 PENSIONS**

**2.80.900.1 ISSUING  
 AGENCY:** Public Employees

Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507  
 [2.80.900.1 NMAC – Rp, 2.80.900.1, 10/10/2023]

**2.80.900.2 SCOPE:** This rule affects beneficiaries of deceased PERA members, the retirement board and the association under the Public Employees Retirement Act.  
 [2.80.900.2 NMAC – Rp, 2.80.900.2, 10/10/2023]

**2.80.900.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-11-14.5, 10-11-130 NMSA 1978, as amended.  
 [2.80.900.3 NMAC – Rp, 2.80.900.3, 10/10/2023]

**2.80.900.4 DURATION:** Permanent.  
 [2.80.900.4 NMAC – Rp, 2.80.900.4, 10/10/2023]

**2.80.900.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited at the end of a section.  
 [2.80.900.5 NMAC – Rp, 2.80.900.5, 10/10/2023]

**2.80.900.6 OBJECTIVE:** The objective of this rule is to establish procedures for payment of pre-retirement survivor pensions.  
 [2.80.900.6 NMAC – Rp, 2.80.900.6, 10/10/2023]

**2.80.900.7 DEFINITIONS:**  
 [RESERVED]

**2.80.900.8 PRE-RETIREMENT SURVIVOR PENSIONS:** The procedure for payment of a pre-retirement survivor pension is:

**A.** Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.

**B.** The completed application shall be returned to PERA with the following documents:

**(1)** A certified copy of the death certificate or other proof of death acceptable in a court of law.

**(2)** Copy of marriage license or other proof of marital status acceptable in a court of law if the application is for a surviving spouse.

**(3)** Affidavit of surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased member.

**(4)** Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over 10 years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

**(5)** Documents required under the Probate Code for payments to a minor if the application is on behalf of eligible surviving children.

**(6)** Affidavit that the applicant or beneficiary of a special needs trust is unmarried if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.

**(7)** Copies of social security cards for all prospective payees.

**(8)** If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements for all marriages during the member’s employment with an affiliated public employer. If the member’s only divorce was prior to becoming a PERA member, then the final divorce decree is required,



but no marital property settlement is required. If the member was divorced more than once before becoming a PERA member, then only the most recent final decree is required.

(9) a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

C. When the application and accompanying documentation as required in Subsection B of 2.80.900.8 NMAC above are filed, PERA will determine whether a pension is payable. The application shall be considered to be “filed” when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the member’s death. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

D. Duty death.  
(1) If the application is for a survivor pension resulting from duty death, the application shall be accompanied by documentation supporting the claim, in addition to the documentation required in Subsection B of 2.80.900.8 NMAC above. Documentation may include but is not limited to the following:

(a) a certified copy of the death certificate or other proof of death acceptable in a court of law;

(b) employer’s report of accident;

(c) determination of duty death by another agency such as workers compensation administration or social security administration although such

a determination does not necessarily prove the death was a duty death for PERA purposes;

(d) autopsy report;

(e) attending physician’s narrative report containing the conclusion of duty death and stating the basis therefor;

(f) any other information requested by the association.

(2) The burden of proof of duty death is on the applicant.

(a) “Solely and exclusively” means the member’s work is so substantial a factor of the death that the death would not have occurred at the time without it.

(b) “Course of the member’s performance of duty” means place or activity for which the employer’s business required the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the “special errand” rule in which case such time will be considered in the course of employment.

(3) The board hereby authorizes the director of member services to determine whether the death was the natural and proximate result of causes arising solely and exclusively out of and in the course of the member’s performance of duty with an affiliated public employer. Such determination shall be presented to the board for ratification at the next regular meeting of the board. The board may remove the matter from the consent calendar and substitute its own determination for that of the director of member services, or it may assign the matter to an administrative hearing officer for determination.

E. Military death.  
Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing

qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a) (37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member’s death while employed. In any event, a deceased member’s period of qualified military service must be counted for vesting purposes.

[2.80.900.8 NMAC – Rp, 2.80.900.8, 10/10/2023]

**HISTORY of 2.80.900 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 900.00, Death Benefits, filed on 10/4/1979; PERA Rule 900.00, Death Benefit Documents, filed on 11-19-81; PERA Rule 900.00, Death Benefit Documents, filed on 7/1/1987; PERA Rule 900.00, Survivor Pension Benefits, filed on 12-29-89; PERA Rule 900, Pre-Retirement Survivor Pensions, filed on 7/1/1993; PERA Rule 900, Pre-Retirement Survivor Pensions, filed on 12/1/1995.

**Other History of 2.80.900 NMAC:**

2.80.900 NMAC, Pre-Retirement Survivor Pensions, filed 12/15/1995 and renumbered 12/28/2001. 2.80.900 NMAC, Pre-Retirement Survivor Pensions, filed 12/28/2001 was repealed, and replaced with 2.80.900 NMAC, Pre-Retirement Survivor Pensions, effective 10/10/2023.

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

**TITLE 2 PUBLIC FINANCE  
CHAPTER 80 PUBLIC EMPLOYEES RETIREMENT  
PART 1000 DISABILITY RETIREMENT BENEFITS**

**2.80.1000.1 ISSUING**

**AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, New Mexico 87507  
[2.80.1000.1 NMAC – Rp, 2.80.1000.1, 10/10/2023]

**2.80.1000.2 SCOPE:** This rule affects the members, disability retirees, beneficiaries, affiliated public employers, the retirement board and the association under the Public Employees Retirement Act.  
[2.80.1000.2 NMAC – Rp, 2.80.1000.2, 10/10/2023]

**2.80.1000.3 STATUTORY AUTHORITY:** Sections 10-11-10.1 and 10-11-130 NMSA 1978.  
[2.80.1000.3 NMAC – Rp, 2.80.1000.3, 10/10/2023]

**2.80.1000.4 DURATION:** Permanent.  
[2.80.1000.4 NMAC – Rp, 2.80.1000.4, 10/10/2023]

**2.80.1000.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited at the end of a section.  
[2.80.1000.5 NMAC – Rp, 2.80.1000.5, 10/10/2023]

**2.80.1000.6 OBJECTIVE:** The objectives of this rule are to define terms used in the disability retirement provision of the PERA Act; to set forth with particularity the membership of the committee; to clarify the compensation applicable to various members of the committee; to set forth procedures for initial disability retirement applications and for reevaluation of retirees' continued eligibility for disability payments; to provide a procedure for trial employment; and to provide for notice to retirees of pension reclassifications. The intent of the board in promulgating these rules is to encourage continued employment of members while providing protection in cases of disability. Vocational rehabilitation is strongly recommended in every case possible.  
[2.80.1000.6 NMAC – Rp, 2.80.1000.6, 10/10/2023]

**2.80.1000.7 DEFINITIONS:**

For purposes of disability retirement the following definitions shall apply:

**A. “Commensurate”** employment means that the applicant is able to engage in some profitable employment or enterprise in the state of New Mexico, which approximates to a substantial degree the applicant's pre-injury compensation but is not necessarily equal to the applicant's pre-injury employment.

**B. “Course of the member's performance of duty”** means place or activity for which the employer's business requires the presence of the employee, but shall not include travel or time on the way to assume the duties of employment or travel or time leaving such duties, except when the employee is temporarily assigned to a destination other than his or her normal work station or is within the “special errand” rule, in which case such time will be considered to be in the course of employment. Mere presence on the employer's premises while coming to or going from the job shall not establish this element unless the member has also assumed or is performing job duties.

**C. “Currently employed, contributing employee of an affiliated public employer;”** in the case of an applicant for duty disability benefits, means the employment and contribution status on the date the disability was incurred.

**D. “Likely to be permanent”** means that the weight of the medical evidence presented indicates that the applicant has either reached maximum medical improvement and the disability will probably last at least until the applicant reaches the age at which he or she will become eligible for normal retirement or that the medical information supports a determination of permanent disability, even though maximum medical improvement has not been reached.

**E. “Solely and exclusively”** means the member's work is so substantial a factor of the disability that the disability would not have occurred at the time without it

and a pre-existing condition is not a significant contributing factor material to the disability.

**F. “Totally incapacitated”** means inability, as a result of either sudden injury or illness or the cumulative long-term effects of injury or illness, to work the member's regular work week.  
[2.80.1000.7 NMAC – Rp, 2.80.1000.7, 10/10/2023]

**2.80.1000.8-19 [RESERVED]****2.80.1000.20 DISABILITY REVIEW COMMITTEE:**

**A.** The disability review committee shall consist of at least one physician licensed in New Mexico and at least three, but not more than five members of the board; the physician need not be either a board member or association member, but may be either or both. The committee may also engage a psychologist (Ph.D.) or a psychiatrist (M.D.) licensed in New Mexico to serve on an as-needed basis to evaluate and advise the committee regarding applications for disability retirement based in whole or in part on mental incapacity.

**B.** The executive director or designated representative shall act as secretary for the committee.

**C. Compensation:** Members of the committee shall receive no compensation other than that authorized by the Per Diem and Mileage Act, except that physicians, psychiatrists or psychologists who are not board or association members and are engaged by the board to serve on the committee may be compensated at the rate established by the board.  
[2.80.1000.20 NMAC – Rp, 2.80.1000.20, 10/10/2023]

**2.80.1000.21-29 [RESERVED]****2.80.1000.30 INITIAL APPLICATION PROCEDURE:**

**A.** Application. The association shall provide application forms for members to use in complying with these provisions. No member shall be deemed an applicant

for disability retirement until the member or his or her representative or employer has completed and filed the disability application package, including all the forms required in order to process the application. The following forms shall be required in order to process the application:

(1) Employer's report of disability (not applicable to members who are not currently employed contributing members). If the employer refuses to provide the report, the committee may take whatever steps it deems necessary to obtain the required information.

(2) Member's examining physician's statement for disability retirement benefits. If the application is for disability retirement based on physical incapacity, the examining physician must be a medical doctor (M.D.), doctor of osteopathic medicine (D.O.), certified nurse practitioner (CNP), or a physician's assistant (PA). An M.D., D.O., or CNP must be licensed in the state in which he or she practices. If the application is for disability retirement based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, a psychiatrist (M.D.), or certified nurse practitioner (CNP) licensed in the state in which he or she practices. If the application is for disability retirement based on both physical and mental incapacity, reports must be made for each kind of incapacity. The examining physician's statements shall be based on an examination of the member not more than 3 months prior to the date of submitting the application.

(3) Employer's first report of injury, if any.

(4) A list of all health care practitioners consulted who have examined or treated the member regarding the disability and all records, reports, narratives, evaluations, diagnoses, prognoses or notes discussing, establishing, evaluating or measuring the disability. Such records shall include, but not be limited to, one or more reports, evaluations, analyses or narratives made within 90 days of application.

(5) Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred.

(6) Release of medical information to PERA on a form signed by the applicant or his or her legal representative.

(7) Any other information requested by members of the committee.

**B.** If information requested by members of the committee is not provided by the disability applicant within 120 days of the written request, the application, if otherwise complete, will be considered by the committee in the absence of the requested information and the applicant's failure to provide the requested information may be considered by the committee in its consideration of the application.

**C.** Notification: The applicant shall be given notice of every meeting at which his or her application is to be considered. Such notice shall be in writing and mailed not less than five days prior to such disability review committee meeting, unless the applicant waives, in writing, the notification requirement in order to expedite any action on his or her application.

**D.** Meetings: The committee shall hold its regular meetings at designated times at the PERA building, Santa Fe, New Mexico. A majority of the committee members, at least one of whom must be a physician, shall constitute a quorum. No action may be taken by the committee in the absence of a quorum.

(1) Confidentiality: Meetings of the committee shall not be open to the public in order to preserve the confidentiality of medical records pursuant to Section 14-2-1 NMSA 1978. The applicant and the applicant's guest(s) or representative may be present to hear discussion and to address the committee during consideration of his or her application.

(2) Testimony and oral statements or arguments

made by an applicant or his or her representative shall be tape recorded.

**E.** Release of medical reports: Copies of medical reports may be given to the applicant or his or her representative, provided a release of information form is signed by the applicant or his or her legal representative.

**F.** Examination: Upon receipt and consideration of the completed disability retirement forms required in Subsection A of Section 30 above, the committee may notify the applicant in writing if further examination is necessary, and if so, the type of examination and information necessary to document the disability application. If, after the applicant has been notified in writing, the applicant fails without good cause to report to an examining physician within 90 days, his or her application for disability retirement benefits shall become void.

**G.** The committee shall determine whether the applicant meets the requirements for disability retirement, and approve or deny the application. The applicant shall be notified by letter of the committee's action within 10 working days of its meeting. If the application is approved, the type (duty or non-duty) of the retirement pension and the effective date shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

**H.** If the application for disability retirement is approved, the member, unless excluded from coverage by the federal social security administration, shall apply for federal disability benefits within 30 calendar days of approval of the application for disability retirement. A copy of the federal social security administration application shall be submitted to PERA.

**I.** If an application for disability retirement benefits is approved and the member does not terminate employment within 45 calendar days, a new application must be filed and approved by the committee before a disability retirement pension can be paid.



**J.** If an application for disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may re-apply and present new medical evidence in support of a new application for disability retirement benefits based on the same disorder one year after the date of the initial denial. The applicant may not re-apply for disability benefits for the same medical condition without new medical evidence made within 90 days of the re-application.

[2.80.1000.30 NMAC – Rp,  
2.80.1000.30, 10/10/2023]

**2.80.1000.31-39 [RESERVED]**

**2.80.1000.40 APPEAL:** If the committee denies disability retirement benefits, the applicant may appeal the action. Any appeals under this section shall be conducted according to Section 10-11-120 NMSA 1978 and 2.80.1500 NMAC. An applicant's withdrawal or refund of contributions at any time before or during the pendency of an appeal causes the forfeiture of service credit and shall result in the automatic dismissal of the appeal and the issuance of a notice of dismissal.

[2.80.1000.40 NMAC – Rp,  
2.80.1000.40, 10/10/2023]

**2.80.1000.41-49 [RESERVED]**

**2.80.1000.50 CONTINUATION PROCEDURE:**

**A.** At the end of the first year that a disability retirement pension is paid, the disability retired member's condition shall be reevaluated to determine eligibility for continuation of payment of a disability retirement pension.

**B.** The disability retired member must submit a copy of the application for benefits with the federal social security administration and written evidence of payment of federal disability benefits in the following form: 1) a copy of a warrant for federal disability benefits; or 2) a letter from the federal social security administration confirming

that the disability retired member is receiving federal disability benefits.

**C.** If the disability retired member has not applied for federal disability benefits, has applied and has not received a written final determination, or has received federal social security disability for a different condition than presented in the application for PERA disability, the committee shall determine the disability retired member's eligibility for continuation of payment of a state disability retirement pension. The following forms and information are required for re-evaluation for continuation of disability retirement benefits:

**(1)** Examining physician's statement for continuation of disability retirement pension. If disability retirement was granted based on mental incapacity, the examining physician must be either a psychologist (Ph.D.) certified in the state in which he or she practices, a psychiatrist (M.D.), or a certified nurse practitioner (CNP) licensed in the state in which he or she practices. If the disability retirement was granted based on both physical and mental incapacity, reports must be made for each kind of incapacity by the appropriate health care professionals. The examining physician's statements shall be based on an examination of the disability retired member not more than three months prior to the date of consideration of the re-evaluation;

**(2)** Disability retired member's statement for continuation of disability retirement pension;

**(3)** A list of all health care practitioners consulted who have examined or treated the disability retired member regarding the disability;

**(4)** Copies of any and all vocational rehabilitation reports and work performance evaluation reports made since the disability was incurred. At re-evaluation for continuation of disability retirement benefits, at least one vocational rehabilitation report by a vocational rehabilitation evaluator

approved by PERA must be submitted to the committee. In addition to any other vocational rehabilitation reports, if the disability retired member was referred by PERA to the division of vocational rehabilitation ("DVR") at the time of initial approval of disability retirement benefits, a report from DVR must be submitted at re-evaluation.

**(5)** Any other information requested by the committee.

**D.** Disability retired members whose examination reports are under consideration by the committee have the right to be heard by and to present any pertinent evidence which they may have to the committee. They may also review any and all evidence that the committee may have which pertains to their case.

**E.** Appeals of denial of continuation of disability retirement pensions by members who are not covered by or who are not eligible to apply for federal disability benefits shall be conducted according to Section 10-11-120 NMSA 1978, and 2.80.1500 NMAC.

**F.** If the disability retired member fails to appeal as provided herein the committee's decision becomes final.

**G.** If continuation of disability retirement benefits is denied, and the applicant either fails to appeal or appeals and the denial is upheld on appeal, the applicant may not re-apply for disability retirement benefits based on the same condition(s) for at least one year after the initial denial of continuation of disability retirement benefits.

[2.80.1000.50 NMAC – Rp,  
2.80.1000.50, 10/10/2023]

**2.80.1000.51-59 [RESERVED]**

**2.80.1000.60 TRIAL EMPLOYMENT:**

**A.** A disability retired member who desires to return to employment for a trial period of not more than 120 calendar days shall first request, in writing, approval from the association not less than 30 days

before the first day of work. The request for approval shall contain the following information:

(1) name, address, and telephone number of the proposed employer;

(2) job title;

(3) salary;

(4) trial

employment start date.

**B.** If the disability retired member successfully completes a trial period of employment with an affiliated public employer, the disability retired member shall be reinstated as a PERA member and resume contributions to PERA.

[2.80.1000.60 NMAC – Rp, 2.80.1000.60, 10/10/2023]

**2.80.1000.61-69 [RESERVED]**

**2.80.1000.70 EARNINGS FROM EMPLOYMENT:**

**A.** Except for trial employment, a disability retired member who desires to return to employment by an employer covered by any state system shall comply with the applicable rule regarding post-retirement employment, Subsection G of 2.80.700.10 NMAC for PERA retirees, 2.84.1100.20 NMAC for magistrate retirees or 2.83.1100.20 NMAC for judicial retirees.

**B.** If the amount earned from any employment, except for trial employment, is \$15,000 or more, disability benefits shall be suspended immediately and any amounts paid after that limit is reached must be reimbursed by the retiree to PERA.

**C.** PERA shall require all disability retired members to provide a statement of earnings from any employment during the preceding calendar year. Such statement of earnings shall include the internal revenue service tax return or other proof of earnings, acceptable to PERA, if an IRS tax return does not exist.

[2.80.1000.70 NMAC – Rp, 2.80.1000.70, 10/10/2023]

**2.80.1000.71-79 [RESERVED]**

**2.80.1000.80 PENSION**

**RECLASSIFICATION:** When a disability retired member reaches the combined age and years of service that qualifies a member for normal retirement benefits under the coverage plan under which the disability retired member was last employed before receiving disability retirement benefits, PERA shall reclassify that person’s pension from disability to normal retirement. The disability retired member shall be notified in writing by PERA of this action within 30 days of reclassification.

[2.80.1000.80 NMAC – Rp, 2.80.1000.80, 10/10/2023]

**HISTORY of 2.80.1000 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: Rule 1000.00, Disability Benefits, filed on 10/4/1979; PERA Rule 1000.00, Disability Benefits, filed on 11/19/1881; PERA Rule 1000.00, Disability Benefits, filed on 11/23/1982; PERA Rule 1000.00, Disability Benefits, filed on 7/1/1987; PERA Rule 1000, Disability Benefits, filed on 10/21/1988; PERA Rule 1000, Disability Benefits, filed on 7/10/1990; PERA Rule 1000, Disability Benefits, filed on 7/1/1991; PERA Rule 1000, Disability Retirement Benefits, filed on 7/1/1993; PERA Rule 1000, Disability Retirement Benefits, filed on 12/1/1995.

**History of Repealed Material:**

2 NMAC 80.1000, Paragraph 60.2 - Repealed 1/15/1999. 2.80.1000 NMAC, Disability Retirement Benefits, filed 12/28/2000 was repealed, and replaced with 2.80.1000 NMAC, Disability Retirement Benefits, effective 10/10/2023.

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

**TITLE 2 PUBLIC FINANCE**

**CHAPTER 83 JUDICIAL RETIREMENT PART 700 RETIREMENT**

**2.83.700.1 ISSUING**

**AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507 [2.83.700.1 NMAC – Rp, 2.83.700.1, 10/10/2023]

**2.83.700.2 SCOPE:** This rule affects retirees, beneficiaries, judicial agencies and the association under the Judicial Retirement Act.

[2.83.700.2 NMAC – Rp, 2.83.700.2, 10/10/2023]

**2.83.700.3 STATUTORY**

**AUTHORITY:** This rule is authorized by Sections 10-12B-3 and 10-12B-8 NMSA 1978.

[2.83.700.3 NMAC – Rp, 2.83.700.3, 10/10/2023]

**2.83.700.4 DURATION:**

Permanent. [2.83.700.4 NMAC – Rp, 2.83.700.4, 10/10/2023]

**2.83.700.5 EFFECTIVE**

**DATE:** October 10, 2023, unless a different date is cited at the end of a section.

[2.83.700.5 NMAC – Rp, 2.83.700.5, 10/10/2023]

**2.83.700.6 OBJECTIVE:** The objective of this rule is to establish standards and procedures for the payment, of pensions of retired members.

[2.83.700.6 NMAC – Rp, 2.83.700.6, 10/10/2023]

**2.83.700.7 DEFINITIONS:**

[RESERVED] [2.83.700.7 NMAC – Rp, 2.83.700.7, 10/10/2023]

**2.83.700.8 - 2.83.700.9 [RESERVED]**

**2.83.700.10 PROCEDURE FOR RETIREMENT:**

**A.** The following procedure governs the process for retirement:

(1) The member shall request an application for retirement from PERA. To ensure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement. The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable within a reasonable time of receipt of the properly completed application and required documents.

(3) When the application is filed, PERA shall furnish the member's last judicial agency with an employer's certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer's certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the judicial agency.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member's spouse to the survivor beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed, signed application with all required documentation; b) the member's qualifying for retirement based on service credit and age; and c) the member's leaving office. An application will be deemed to be "filed" when received by PERA

as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) The retirement of the judge shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

**B. Documentation:**  
The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over 10 years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age 18 years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician's or midwife's record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated survivor beneficiary to be identified as a spouse.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit

from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the Judicial Retirement Act.

(4) Complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a judge or justice. If the member's only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

(5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

**C.** No adjustments to the pension based on failure to claim free or any other service credit may be made after the first pension payment.

**D.** Under the provisions of Section 10-12B-12 NMSA 1978, the Public Employees Retirement Reciprocity Act applies to members covered under the Judicial Retirement Act early retirement.

**E.** In addition to any other vesting provided by state law, a judge's normal retirement benefit is non-forfeitable when the judge reaches normal retirement age, which is age 65, with five or more years of credited service, whichever is later for an individual who initially became a judge prior to July 1, 2014 and age 65 with eight or more years

of credited service whichever is later for an individual who initially became a judge on or after July 1, 2014. A judge is also vested in his or her accrued benefits when the judge reaches such lesser age and specified years of credited service as provided under the plan. If there is a termination of the judicial retirement system, or if employer contributions to the judicial retirement plan are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.  
[2.83.700.10 NMAC – Rp, 2.83.700.10, 10/10/2023]

**2.83.700.11 DISABILITY RETIREMENT:** A judge who becomes disabled prior to retirement can make application for benefits in accordance with 2.80.1000 NMAC.  
[2.83.700.11 NMAC – Rp, 2.83.700.11, 10/10/2023]

**2.83.700.12 - 2.83.700.19 [RESERVED]**

**2.83.700.20 BENEFIT PAYMENT:** The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the Judicial Retirement Act and regulations, all benefits paid from the Judicial Retirement trust fund shall be distributed in accordance with the requirements of Internal Revenue Code Section 401(a)(9) and the regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

- A.** The entire interest of the judge shall:
- (1) be completely distributed to the judge not later than the required beginning date; or
  - (2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue

service regulations, over a period not extending beyond the life expectancy of the judge or the life expectancy of the judge and a designated beneficiary.

**B.** For the purposes of this section, “required beginning date” shall be defined in the same manner as the term “required beginning date” is defined in the Internal Revenue Code Section 401 (a)(9) and the regulations under that section.

**C.** The life expectancy of the judge or the judge’s beneficiary may not be recalculated after the benefits commence.

**D.** If a judge dies before the distribution of the judge’s benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the judge died.

**E.** The amounts payable to a judge’s beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations thereunder. PERA shall adjust the percentage of the judge’s pension payable to a non-spouse survivor beneficiary who is more than 10 years younger than the judge at the time of the judge’s retirement as required by 26 C.F.R. Section 1.401(a)(9)-6.

[2.83.700.20 NMAC – Rp, 2.83.700.20, 10/10/2023]

**2.83.700.21 - 2.83.700.29 [RESERVED]**

**2.83.700.30 ANNUAL COMPENSATION:** Notwithstanding any provision of the of the Judicial Retirement Act and regulations, the annual compensation of each judge that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17).  
[2.83.700.30 NMAC – Rp, 2.83.700.30, 10/10/2023]

**HISTORY of 2.83.700 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: JRA Rule 700, Retirement, filed on 7/1/1992; JRA Rule 700, Retirement, filed on 11/1/1994.

**History of Repealed Material:** 2 NMAC 83.700, Paragraph 10.1.5 - Repealed, 11/15/1997. 2 NMAC 83.700.20 - Repealed, 11/15/1997.

**Other History of 2.83.700 NMAC:** 2.83.700 NMAC, Judicial Retirement, filed 11/1/1994 and renumbered 12/28/2000. 2.83.700 NMAC, Judicial Retirement, filed 12/28/2000 was repealed, and replaced with 2.83.700 NMAC, Judicial Retirement, effective 10/10/2023.

**PUBLIC EMPLOYEES RETIREMENT ASSOCIATION**

**TITLE 2 PUBLIC FINANCE CHAPTER 83 JUDICIAL RETIREMENT PART 800 SURVIVOR PENSION**

**2.83.800.1 ISSUING AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507  
[2.83.800.1 NMAC – Rp, 2.83.800.1, 10/10/2023]

**2.83.800.2 SCOPE:** This rule affects members, former members, retirees, beneficiaries, and the association under the Judicial Retirement Act.  
[2.83.800.2 NMAC – Rp, 2.83.800.2, 10/10/2023]

**2.83.800.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-12B-3 and 10-12B-14 NMSA 1978.  
[2.83.800.3 NMAC – Rp, 2.83.800.3, 10/10/2023]



**2.83.800.4 DURATION:**  
 Permanent.  
 [2.83.800.4 NMAC – Rp, 2.83.800.4, 10/10/2023]

**2.83.800.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited at the end of a section.  
 [2.83.800.5 NMAC – Rp, 2.83.800.5, 10/10/2023]

**2.83.800.6 OBJECTIVE:** The objective of this rule is to establish the procedure for the payment of a survivor pension under the Judicial Retirement Act.  
 [2.83.800.6 NMAC – Rp, 2.83.800.6, 10/10/2023]

**2.83.800.7 DEFINITIONS:**  
 [RESERVED]

**2.83.800.8-9** [RESERVED]

**2.83.800.10 PROCEDURE:**  
 The procedure for payment of a survivor pension is:

**A.** Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.

**B.** The completed application shall be returned to PERA along with the following documents:

**(1)** A certified copy of the death certificate or other proof of death acceptable in a court of law.

**(2)** If the application is for a surviving spouse: copy of the marriage license or other proof of marital status acceptable in a court of law, and an affidavit of the surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased.

**(3)** Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof of age shall be a birth certificate, a baptismal certificate, a copy of a life

insurance policy, a certified copy of a voter registration issued over 10 years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

**(4)** Documents required under the Probate Code for payments to a minor if the application is on behalf of minor and dependent children.

**(5)** Affidavit that the applicant or beneficiary of a special needs trust is not married or otherwise emancipated if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.

**(6)** Copies of social security cards for all prospective payees.

**(7)** If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements for all marriages during the member’s covered employment as a judge or justice. If the member’s only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

**(8)** a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

**C.** The application shall be considered to be “filed” when PERA receives the completed application as evidenced by a writing

on the application indicating the date of receipt by PERA. Upon filing of the application, and accompanying documentation as required in Subsection B above, PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the death resulting in the pension. The amount of survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

**D. Military death.**  
 Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member’s death while employed. In any event, a deceased member’s period of qualified military service must be counted for vesting purposes.  
 [2.83.800.10 NMAC – Rp, 2.83.800.10, 10/10/2023]

**HISTORY of 2.83.800 NMAC:**  
**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: JRA Rule 800, Survivor Pension, filed on 7/1/1992; JRA Rule 800, Survivor Pension, filed on 11/1/1994.

**Other History of 2.83.800 NMAC:**  
 2.83.800 NMAC, Survivor Pension, filed 11/1/1994 and renumbered 12/28/2001.  
 2.83.800 NMAC, Survivor Pension, filed 12/28/2001 was repealed, and replaced with 2.83.800 NMAC, Survivor Pension, effective 10/10/2023.

**PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

**TITLE 2 PUBLIC  
FINANCE  
CHAPTER 84 MAGISTRATE  
RETIREMENT  
PART 700 RETIREMENT**

**2.84.700.1 ISSUING**  
**AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507  
[2.84.700.1 NMAC – Rp, 2.84.700.1, 10/10/2023]

**2.84.700.2 SCOPE:** This rule affects the members, former members, retirees, beneficiaries, public employers, the retirement board and the association under the Magistrate Retirement Act.  
[2.84.700.2 NMAC – Rp, 2.84.700.2, 10/10/2023]

**2.84.700.3 STATUTORY AUTHORITY:** This rule is authorized by Sections 10-12C-3, 10-12C-8, and 10-12C-9 NMSA 1978, as amended.  
[2.84.700.3 NMAC – Rp, 2.84.700.3, 10/10/2023]

**2.84.700.4 DURATION:** Permanent.  
[2.84.700.4 NMAC – Rp, 2.84.700.4, 10/10/2023]

**2.84.700.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited as the end of a section.  
[2.84.700.5 NMAC – Rp, 2.84.700.5, 10/10/2023]

**2.84.700.6 OBJECTIVE:** The objective of this rule is to establish standards and procedures for the payment, of pensions of retired members.  
[2.84.700.6 NMAC – Rp, 2.84.700.6, 10/10/2023]

**2.84.700.7 DEFINITIONS:** [RESERVED]  
[2.84.700.7 NMAC – Rp, 2.84.700.7, 10/10/2023]

**2.84.700.8-9 [RESERVED]**

**2.84.700.10 PROCEDURE FOR RETIREMENT:**

**A.** The following procedure governs the process for retirement:

(1) The member shall request an application for retirement from PERA. To ensure that the member may retire on the date the member has chosen, the completed application should be returned to PERA, with the required documents described in Subsection B below, at least 60 days prior to the selected date of retirement.

The completed application and all supporting documentation must be filed with PERA no later than the close of business on the last working day of the month prior to the selected date of retirement.

(2) PERA shall furnish the member an estimate of retirement pension payable within a reasonable time of receipt of the properly completed application and required documents.

(3) When the application is filed, PERA shall furnish the member’s last judicial agency with an employer’s certification of earnings form to be completed and returned to PERA. The final calculation of pension cannot be processed until PERA receives the properly completed employer’s certification form.

(4) PERA will furnish the member a final calculation of retirement pension based on the information provided by the judicial agency.

(5) The completed application form must either include or be accompanied by a signed notarized statement of consent by the member’s spouse to the survivor beneficiary elected by the member or an affidavit that the member is not married. An affidavit naming all former spouses must also accompany the final application form.

(6) Retirement will be effective on the first day of the month following: a) the filing with PERA of the completed,

signed application with all required documentation; b) the member’s qualifying for retirement based on service credit and age; and c) the member’s leaving office. An application will be deemed to be “filed” when received by PERA as evidenced by a writing on the application indicating the date of receipt by PERA.

(7) The retirement of the member shall be submitted to the board for ratification at the next regular meeting following the effective date of retirement.

**B. Documentation:** The retiring member shall furnish the following documents to PERA:

(1) Proof of age of the member and any designated beneficiary or beneficiaries or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents are a birth certificate, a baptismal certificate, or religious record of birth established before age 5 years, or any two of the following documents showing the date of birth of the member or designated beneficiary or beneficiaries:

- (a) copy of a life insurance policy;
- (b) certified copy of voter registration issued over ten years prior;
- (c) tribal census record;
- (d) childhood immunization record made prior to age 18 years;
- (e) military record;
- (f) birth certificate of child showing age of parent;
- (g) physician’s or midwife’s record of birth;
- (h) passport;
- (i) immigration record;
- (j) naturalization record.

(2) A copy of a marriage certificate or other proof of marital status acceptable in a court of law for any designated survivor

beneficiary to be identified as a spouse.

(3) For any designated beneficiary to be identified as a supplemental needs trust, a copy of the documents related to the formation of the trust and an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act. Additional information may be required by the association to ascertain the purpose and function of the trust to ensure compliance with the Magistrate Retirement Act.

(4) Complete endorsed copies of all court documents the association deems necessary to ascertain the current marital status of the member and whether any ex-spouse of the member is entitled to any portion of the member's benefits. Such documents shall include the final decrees and marital property settlements for all marriages during the member's employment as a magistrate. If the member's only divorce was prior to becoming a member, then the final decree is required, but no marital property settlement is required. If the member was divorced more than once prior to becoming a member, then only the most recent final decree is required.

(5) Any member with an effective retirement date on or after January 1, 2014 shall provide authorization to the association for the electronic transfer of pension payments to the retiree's banking institution. Such authorization shall be executed, in writing, in the form prescribed by the association.

C. No adjustments to the pension based on failure to claim free service credit may be made after the first pension payment.

D. In addition to any other vesting provided by state law, a magistrate's normal retirement benefit is non-forfeitable when the magistrate reaches normal retirement age, which is age 65, with five or more years of credited service, whichever is later for an individual who was a member on June 30, 2014 and age 65 with eight

or more years of credited service, whichever is later for an individual who initially became a member on or after July 1, 2014. A magistrate is also vested in his or her accrued benefits when the magistrate reaches such lesser age and specified years of credited service as provided under the plan. If there is a termination of the magistrate retirement system, or if employer contributions to the magistrate retirement plan are completely discontinued, the rights of each affected member to the benefits accrued at the date of termination or discontinuance, to the extent then funded, are non-forfeitable.

[2.84.700.10 NMAC – Rp, 2.84.700.10, 10/10/2023]

**2.84.700.11 DISABILITY RETIREMENT:** A magistrate who becomes disabled prior to retirement can make application for benefits in accordance with 2.80.1000 NMAC. [2.84.700.11 NMAC – Rp, 2.84.700.11, 10/10/2023]

**2.84.700.12-19 [RESERVED]**

**2.84.700.20 BENEFIT PAYMENT:** The maximum annual benefit limits contained in Internal Revenue Code Section 415(b), as amended and adjusted, are incorporated herein by reference. Notwithstanding any other provision of the Magistrate Retirement Act and regulations, all benefits paid from the magistrate retirement trust fund shall be distributed in accordance with the requirements of Internal Revenue Code section 401(a)(9) and the regulations under that section. In order to meet these requirements, the trust fund must be administered in accordance with the following provisions:

A. The entire interest of the magistrate shall:

(1) be completely distributed to the magistrate not later than the required beginning date; or

(2) shall be distributed, beginning not later than the required beginning date, in accordance with internal revenue

service regulations, over a period not extending beyond the life expectancy of the magistrate or the life expectancy of the magistrate and a designated beneficiary.

B. For the purposes of this section, "required beginning date" shall be defined in the same manner as the term "required beginning date" is defined in the Internal Revenue Code Section 401 (a)(9) and the regulations under that section.

C. The life expectancy of the magistrate or the magistrate's beneficiary may not be recalculated after the benefits commence.

D. If a magistrate dies before the distribution of the magistrate's benefits has begun, distribution to beneficiaries must begin no later than December 31 of the calendar year immediately following the calendar year in which the magistrate died.

E. The amounts payable to a magistrate's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of the Internal Revenue Code Section 401(a)(9)(G) and regulations thereunder. PERA shall adjust the percentage of the magistrate's pension payable to a non-spouse survivor beneficiary who is more than 10 years younger than the magistrate at the time of the magistrate's retirement as required by 26 C.F.R. Section 1.401(a)(9)-6. [2.84.700.20 NMAC – Rp, 2.84.700.20, 10/10/2023]

**2.84.700.21-29 [RESERVED]**

**2.84.700.30 ANNUAL COMPENSATION:** Notwithstanding any provision of the of the Magistrate Retirement Act and regulations, the annual compensation of each magistrate that is taken into account under the plan, including for benefit calculation purposes, for any year does not exceed the limit specified in Internal Revenue Code Section 401(a)(17). [2.84.700.30 NMAC – Rp, 2.84.700.30, 10/10/2023]

**HISTORY of 2.84.700 NMAC:**



**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: MRA Rule 400.00, Normal and Deferred Retirement, filed on 12/29/1989; MRA Rule 700, Retirement, filed on 7/1/1992; MRA Rule 700, Retirement, filed on 11/1/1994.

**History of Repealed Materials:**  
2 NMAC 84.700, Paragraph 10.1.5 - Repealed 11/15/1997.  
2 NMAC 84.700.20 - Repealed, 11/15/1997.

**Other History of 2.84.700 NMAC:**  
2.84.700 NMAC, Retirement, filed 11/1/1994 and renumbered 12/28/2000.  
2.84.700 NMAC, Retirement, filed 12/28/2000 was repealed, and replaced with 2.84.700 NMAC, Retirement, effective 10/10/2023.

**PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

**TITLE 2 PUBLIC  
FINANCE  
CHAPTER 84 MAGISTRATE  
RETIREMENT  
PART 800 SURVIVOR  
PENSION**

**2.84.800.1 ISSUING**  
**AGENCY:** Public Employees Retirement Association, 33 Plaza La Prensa, Santa Fe, NM, 87507  
[2.84.800.1 NMAC – Rp, 2.84.800.1, 10/10/2023]

**2.84.800.2 SCOPE:** This rule affects the members, former members, retirees, beneficiaries, public employers, retirement board and the association under the Magistrate Retirement Act.  
[2.84.800.2 NMAC – Rp, 2.84.800.2, 10/10/2023]

**2.84.800.3 STATUTORY**  
**AUTHORITY:** This rule is authorized by Sections 10-12C-3 and

10-12C-13 NMSA 1978, as amended.  
[2.84.800.3 NMAC – Rp, 2.84.800.3, 10/10/2023]

**2.84.800.4 DURATION:**  
Permanent.  
[2.84.800.4 NMAC – Rp, 2.84.800.4, 10/10/2023]

**2.84.800.5 EFFECTIVE DATE:** October 10, 2023, unless a different date is cited at the end of a section.  
[2.84.800.5 NMAC – Rp, 2.84.800.5, 10/10/2023]

**2.84.800.6 OBJECTIVE:** The objective of this rule is to establish the procedure for the payment of a survivor pension under the Magistrate Retirement Act.  
[2.84.800.6 NMAC – Rp, 2.84.800.6, 10/10/2023]

**2.84.800.7 DEFINITIONS:**  
[RESERVED]

**2.84.800.8 PROCEDURE:**  
The procedure for payment of a survivor pension is:  
**A.** Applicants for pre-retirement survivor pensions shall notify PERA of the death of the member and complete an application for benefits.  
**B.** The completed application shall be returned to PERA along with the following documents:  
**(1)** A certified copy of the death certificate or other proof of death acceptable in a court of law;

**(2)** If the application is for a surviving spouse: copy of the marriage license or other proof of marital status acceptable in a court of law, and an affidavit of the surviving spouse that he or she and the deceased member were married at the time of death and stating whether there are any surviving minor children of the deceased;

**(3)** Proof of age of the surviving spouse, surviving minor children or other designated beneficiary or the proof of age for a beneficiary to a supplemental needs trust. Acceptable documents for proof

of age shall be a birth certificate, a baptismal certificate, a copy of a life insurance policy, a certified copy of a voter registration issued over 10 years prior, or proof of age meeting a standard at least equivalent to that applied by the social security administration.

**(4)** Documents required under the Probate Code for payments to a minor if the application is on behalf of minor and dependent children.

**(5)** Affidavit that the applicant or beneficiary of a special needs trust is not married or otherwise emancipated if the applicant is a child of the deceased member or a supplemental needs trust formed for the benefit of a child of the deceased member.

**(6)** Copies of social security cards for all prospective payees.

**(7)** If the member has been divorced, the applicant shall provide PERA with complete endorsed copies of all court documents the association deems necessary to ascertain the marital status of the member at the time of death and whether any ex-spouse of the member is entitled to any portion of any benefits payable. Such documents shall include the final decrees and marital property settlements of all marriages during the member’s covered employment as a magistrate. If the member’s only divorce was prior to becoming a member, then the final divorce decree is required, but no marital property settlement is required. If the member was divorced more than once before becoming a member, then only the most recent final decree is required.

**(8)** a copy of the documents related to the formation of the supplemental needs trust, an affidavit from the trustee that the trust is formed as a supplemental needs trust as authorized by the federal Social Security Act and any additional information requested by the association if the application is on behalf of a supplemental needs trust.

**C.** The application shall be considered to be “filed”

when PERA receives the completed application as evidenced by a writing on the application indicating the date of receipt by PERA. Upon filing of the application, and accompanying documentation as required in Subsection B above, PERA will calculate the pension payable and begin paying the pension effective the first day of the month following the date of the death resulting in the pension. The amount of the survivor pension shall be submitted to the board for ratification at the next regular meeting following the date of the first payment of survivor pension to the applicant.

**D. Military death.**

Effective with respect to deaths occurring on or after January 1, 2007, while a member is performing qualified military service, as defined in Chapter 43 of Title 38, United States Code, to the extent required by Internal Revenue Code Section 401(a)(37), survivors of such member are entitled to any additional benefits that the plan would provide if the member had resumed employment and then died, such as accelerated vesting or survivor benefits that are contingent on the member's death while employed. In any event, a deceased member's period of qualified military service must be counted for vesting purposes. [2.84.800.8 NMAC – Rp, 2.84.800.8, 10/10/2023]

**HISTORY of 2.84.800 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: MRA Rule 600.00, Survivors Benefits, filed on 12/29/1989; MRA Rule 800, Survivor Pension, filed on 7/1/1992; MRA Rule 800, Survivor Pension, filed on 11/1/1994.

**Other History of 2.84.800 NMAC:**

2.84.800 NMAC, Survivors Benefits, filed 11/1/1994 and renumbered 12/28/2000. 2.84.800 NMAC, Survivors Benefits, filed 12/28/2000 was repealed, and replaced with 2.84.800

NMAC, Survivor Pension, effective 10/10/2023.

**REGULATION  
AND LICENSING  
DEPARTMENT  
CONSTRUCTION INDUSTRIES  
DIVISION**

**This is an amendment to 12.2.15 NMAC, Sections 2, 3, 6 and 7, effective 10/10/2023.**

**12.2.15.2 SCOPE:** This part sets forth definitions to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978. [12.2.15.2 NMAC - Rp, 12.2.15.3 NMAC, 8/12/2012; A, 10/10/2023]

**12.2.15.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978. [12.2.15.3 NMAC - Rp, 12.2.15.2 NMAC, 8/12/2012; A, 10/10/2023]

**12.2.15.6 OBJECTIVE:** The purpose of this part is to define language required pursuant to Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978. [12.2.15.6 NMAC - Rp, 12.2.15.6 NMAC, 8/12/2012; A, 10/10/2023]

**12.2.15.7 DEFINITIONS:**

**A. "Secondhand metal dealer":** means a scrap metal processor in the business of operating or maintain a scrap metal yard in a physical location in which scrap metal or cast-off regulated material is purchased for shipment, sale or transfer.

**B. "Aluminum material":** means a product made from aluminum, an aluminum alloy or an aluminum byproduct. Aluminum material includes an aluminum beer keg but does not include other types of aluminum cans used to contain a food or beverage.

**C. "Bronze material":**

means a cemetery vase, receptacle or memorial made from bronze; bronze statuary; or material readily identifiable as bronze.

**D. "Copper or brass material":** means insulated or non-insulated copper wire, hardware or cable of the type used by a public utility, commercial mobile radio service carrier or common carrier that consists of at least twenty-five percent copper; or a copper or brass item of a type commonly used in construction or by a public utility, commercial mobile radio service carrier or common carrier.

**E. "Lead material"**

means:  
**(1)** a lead-acid battery; or  
**(2)** material readily identifiable as being made of or containing lead:

**[E:] F. "Business day":**

means any calendar day except Sunday and following holidays: New Year's day, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, Christmas day, Martin Luther King Jr.'s birthday and any other legal public holiday of the state of New Mexico or the United States.

**[F:] G. "Department":**

means the regulation and licensing department.

**[G:] H. "Superintendent":**

means the superintendent of the regulation and licensing.

**[H:] I. "Peace officer":**

means any full-time salaried and commissioned or certified law enforcement officer of a police or [sherriff's] sheriff's department that is part of or administered by the state or a political subdivision of the state.

**[I:] J. "Personal**

**identification document":** means a driver's license; a military identification card; or a passport issued by the United States or by another country and recognized by the United States.

**K. "Additional documentation":** means documentation required from the

seller to prove the seller’s ownership of material that is the subject of a restricted transaction under Paragraph (7) of Subsection B of Section 57-30-5 NMSA 1978 of the Sale of Recycled Metals Act.

**[F:] L. “Regulated material”:** means aluminum material; bronze material; copper or brass material; steel material; lead material; a utility access cover; a water meter cover; a road or bridge guard rail; a highway or street sign; a traffic directional or control sign or signal; or a catalytic converter that is not part of an entire motor vehicle. Catalytic converter includes any portion thereof.

**M. “Restricted transaction”:** means any purchase of regulated material listed in Paragraphs (1) through (10) of Subsection A of Section 57-30-2.4 NMSA 1978 of the Sale of Recycled Metals Act.

**[K:] N. “Steel material”:** means a product made from an alloy of iron, chromium, nickel or manganese, including stainless steel beer kegs.

**[E:] O. “Military service member”:** has the same meaning as set forth in Paragraph (3) of Subsection F of Section 61-1-34 NMSA 1978.

**[M:] P. “Veteran”:** means a person who has received an honorable discharge or separation from military service.  
[12.2.15.7 NMAC - Rp, 12.2.15.7 NMAC, 8/12/2012; A, 4/22/2022; A, 10/10/2023]

**REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION**

**This is an amendment to 12.2.16 NMAC, Sections 2, 3, 6, 8, and 10 effective 10/10/2023.**

**12.2.16.2 SCOPE:** This part sets forth application procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14

NMSA 1978.  
[12.2.16.2 NMAC - N, 8/12/2021; A, 10/10/2023]

**12.2.16.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978.

[12.2.16.3 NMAC - N, 8/12/2021; A, 10/10/2023]

**12.2.16.6 OBJECTIVE:** The purpose of this part is to register secondhand metal dealers pursuant to Section [57-30-14] 57-30-2.1 NMSA 1978.

[12.2.16.6 NMAC - N, 8/12/2021; A, 10/10/2023]

**12.2.16.8 APPLICATION REQUIREMENTS:**

**A.** Effective July 1, 2012, all secondhand metal dealers shall not buy or sell regulated material without a valid registration issued by the department.

**B.** Applications for registration shall be completed on a form provided by the department.

**C.** Electronic signatures will be acceptable for applications submitted pursuant to Section 14-16-1 through Section [14-16-19] 14-16-21 NMSA 1978.

**D.** Information submitted shall include:  
**(1)** the full name and business address of the applicant;  
**(2)** [a list of ~~all~~] the location at which the applicant engages or will engage in the business of buying or selling regulated material;

**(3)** a non-refundable registration fee as set forth in 12.2.16.9 NMAC;

**(4)** affirmation of compliance with all federal requirements;

**(5)** affirmation of registration with metal theft alert system as described in [Paragraph (3) of Subsection A] Subsection C of 12.2.18.8 NMAC.

**E.** Any occupational or professional registration pursuant to these rules shall be issued as soon as practicable, but no later than 30 days after a military service member or a veteran as defined in these rules submits an application, pays any required fees, and provides a background check if required.

[12.2.16.8 NMAC - N, 8/12/2021; A, 4/22/2022; A, 10/10/2023]

**12.2.16.10 RENEWAL REQUIREMENTS:**

**A.** Original and renewed registrations shall be valid for a period of three years from the date of issuance, unless the registration is suspended or revoked.

**B.** Prior to the expiration of the license, [all] a registered secondhand metal [dealers] dealer shall apply for registration renewal and shall pay the renewal fee as set forth in 12.2.16.9 NMAC.

**C.** A current registration shall be posted in the business of operation.

[12.2.16.10 NMAC - N, 8/12/2021; A, 10/10/2023]

**HISTORY OF 12.2.16 NMAC: [RESERVED]**

**REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION**

**This is an amendment to 12.2.17 NMAC, Sections 2, 3, and 8, and repealing Section 9 effective 10/10/2023.**

**12.2.17.2 SCOPE:** This part sets forth reporting procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978.

[12.2.17.2 NMAC - N, 8/12/2012; A, 10/10/2023]

**12.2.17.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Sale of

Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978.  
[12.2.17.3 NMAC - N, 8/12/2012; A, 10/10/2023]

### 12.2.17.8 REPORTING REQUIREMENTS:

**A.** All secondhand metal dealers are required to report all transactions of regulated material. Reports of such transaction shall be made on a purchase record form designed and provided or approved by the department and shall be uploaded to the database maintained by the department.

**B.** Reports shall be in English and shall include:

- (1) the place and date of the purchase;
- (2) the name and address of each person from whom the regulated material is purchased or obtained;
- (3) the identifying number of the personal identification document of each person from whom the regulated material is purchased or obtained;
- (4) the year, make, model and license plate number of the motor vehicle used to transport the regulated material;
- (5) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased; and
- (6) affirmation under penalty of perjury that the seller ~~[has signed a written statement that he or she]~~ is the legal owner of or is lawfully entitled to sell the regulated material offered for sale as required by Paragraph (2) of Subsection A of Section 57-30-4 NMSA 1978 of the Sale of Recycled Metals Act.

~~[E.]~~ **E.** ~~Electronic submission of data by secondhand metal dealers to the department prior to January 2014 will be done via the department's file transfer protocol (FTP) site or other similar system maintained by the department in an excel or equivalent format.]~~

**C.** Restricted transactions require the secondhand

metal dealer to obtain from the seller additional documentation on a form designed and provided by the department and to upload the additional documentation with the purchase record.

**(1)** For each restricted transaction in which a secondhand metal dealer purchases any item listed in Paragraphs (1) through (10) of Subsection A of Section 57-30-2.4 NMSA 1978 of the Sale of Recycled Metals Act the dealer shall obtain from the seller one or more of the following types of documentation as provided in the additional documentation form:

- (a) a police report;
- (b) a fire report;
- (c) a contract with bulk or other vendor;
- (d) a letter from a governmental or other entity on entity letterhead and signed by a person authorized to dispose of the material, containing language sufficient to reasonably determine that the seller by way of such transfer has become the rightful owner of the material;
- (e) any other document with language sufficient to reasonably determine that the seller is the rightful owner of the material, provided that any signature appearing on the document is notarized;

**(2)** For each restricted transaction in which a secondhand metal dealer purchases a catalytic converter, the dealer shall obtain from the seller in addition to the documentation listed in this section the following types of documentation required by Paragraphs (1) and (2) of Subsection D of Section 57-30-2.4 NMSA 1978 of the Sale of Recycled Metals Act and as more specifically set forth in the additional documentation form:

- (a) a photocopy or digital image of the seller's or offeror's personal identification document;
- (b) the date and time of the transaction;

**(c)** the name, address, telephone number and signature of the seller or offeror;

**(d)** the license plate number and vehicle identification number of the vehicle used to transport the catalytic converter to the secondhand metal dealer, if applicable;

**(e)** an original, a photocopy or a digital image of the title or registration of the motor vehicle from which the catalytic converter was removed showing the seller as the owner of the motor vehicle, or a notarized statement demonstrating ownership by the seller or offeror;

**D.** A secondhand metal dealer may use in place of the purchase record form designed and provided by the department any electronic program or software that contains and uploads the information required. Such electronic record must be printable at the request of the department or peace officer.

~~[D.]~~ **E.** After January 2014 secondhand metal dealers will be required to submit their data in the format(s) specified by the department for direct loading into its database.

~~[E.]~~ **F.** The department will specify the acceptable format(s) of data for electronic submission to the department's database. Data submitted electronically after January 2014 will be transferred directly into the department's database via a web interface or other electronic system ~~[developed and]~~ maintained by the department.

~~[F.]~~ **G.** Secondhand metal dealers will be responsible for correcting any formatting errors or data validation errors that occur during the transfer of data or the loading of data into the database. Secondhand metal dealers will be responsible for re-submitting corrected data to the department.

~~[G.]~~ **H.** A secondhand metal dealer shall comply with the waiting period for disposal of regulated material.

~~[H.]~~ **I.** Secondhand metal dealer shall not process or permit regulated material



to be removed from the dealer's premises until at least twenty-four hours have elapsed since the dealer acquired the regulated material.

~~(2)~~ shall not with intent to deceive display to a secondhand metal dealer a false or invalid personal identification document in connection with the person's attempted sale of regulated material. ]

**I.** A person attempting to sell regulated material to a secondhand metal dealer:

**(1)** shall sign under penalty of perjury a written statement provided by the secondhand metal dealer that the person is the legal owner of or is lawfully entitled to sell the regulated material offered for sale or transfer.

**(2)** shall not with intent to deceive display to a secondhand metal dealer a false or invalid personal identification document or false or fraudulent additional documentation in connection with the person's attempted sale of regulated material.

~~[H:]~~ **J.** A secondhand metal dealer may take a digital photograph, with a date and time stamp, of:

**(1)** the seller of the regulated material, and  
**(2)** the regulated material in the form in which it was purchased or obtained by the secondhand metal dealer.  
 [12.2.17.8 NMAC - N, 8/12/2012; A, 10/10/2023]

**12.2.17.9 [RESTRICTED-TRANSACTIONS:**

~~**A.**~~ A secondhand metal dealer shall not purchase any of the following without written documentation indicating that the seller is the rightful owner or has permission from the rightful owner or that the material was otherwise lawfully obtained:

~~**B.**~~ Infrastructure grade regulated material that has been burned to remove insulation unless the seller can produce written proof that the regulated material was lawfully burned.

~~**C.**~~ Regulated material where the manufacturer's make,

model, serial or personal identification number or other identifying marks engraved or etched upon the material have been conspicuously removed or altered.

~~**D.**~~ Regulated material marked with the name initials or otherwise identified as the property of an electrical company, telephone company, cable company, water company or other utility company, a railroad or a governmental entity to include: a utility access cover; a water meter cover; a road or bridge-guard rail; a highway or street sign; a traffic directional or control sign; a metal beer keg that is clearly marked as being the property of the beer manufacturer; or a catalytic converter that is not part of an entire motor vehicle.

~~**E.**~~ An additional form will be required to be completed by all second hand metal dealers who purchase material listed in 12.2.17.9 NMAC;] **[RESERVED]**  
 [12.2.17.9 NMAC - N, 8/12/2012; Repealed, 10/10/2023]

**HISTORY OF 12.2.17 NMAC: [RESERVED]**

**REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION**

**This is an amendment to 12.2.18 NMAC, Sections 2, 3, 6 and 9, and repealing Section 10 effective 10/10/2023.**

**12.2.18.2 SCOPE:** This part sets forth application procedures to the department pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978.

[12.2.18.2 NMAC - N, 8/12/2012; A, 10/10/2023]

**12.2.18.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Sale of Recycled Metals Act, Sections 57-30-1 through [57-30-17] 57-30-14

NMSA 1978.

[12.2.18.3 NMAC - N, 8/12/2012; A, 10/10/2023]

**12.2.18.6 OBJECTIVE:**

The purpose of this part is to facilitate compliance of all registered secondhand metal dealers pursuant to Sections 57-30-1 through [57-30-17] 57-30-14 NMSA 1978.

[12.2.18.6 NMAC - N, 8/12/2012; A, 10/10/2023]

**12.2.18.9 RESPONSIBILITIES:**

**A.** A secondhand metal dealer or the dealer's agent shall visually verify the accuracy of the personal identification document and vehicle identification presented by the seller at the time of the dealer's purchase or acquisition. The dealer shall not substitute or rely upon information existing in the dealer's records system in place of such visual verification at the point of each sale.

~~[A:]~~ **B.** A secondhand metal dealer who becomes aware that the dealer is in possession of regulated material that was stolen or unlawfully obtained shall not remove the material from the dealer's premises and shall report the same to a local law enforcement agency within 24 hours.

~~[B:]~~ **C.** A secondhand metal dealer must inform all employees who are involved in the purchasing or receiving of regulated material of alerts received on theft of regulated material in the geographic area.

~~[C:]~~ **D.** A secondhand metal dealer shall maintain an accurate and legible written record, in a form approved by the department, of each purchase made in the course of the dealer's business of regulated material. [of the following:

- ~~(1)~~ copper or brass material;
- ~~(2)~~ bronze material;
- ~~(3)~~ aluminum material in excess of ten pounds;
- ~~(4)~~ steel material in excess of one ton, and
- ~~(5)~~ written record shall be kept of each purchase of a stainless steel beer keg.

**D.** The records shall be in English and shall include:

- (1) the place and date of the purchase;
- (2) the name and address of each person from whom the regulated material is purchased or obtained;
- (3) the identifying number of the personal identification document of each person from whom the regulated material is purchased or obtained;
- (4) the year make, model and license plate number of the motor vehicle used to transport the regulated material;
- (5) a description made in accordance with the custom of the trade of the type and quantity of regulated material purchased.

**E.** A secondhand metal dealer may take a digital photograph with a date and time stamp of:

- (1) the seller of the regulated material;
- (2) the regulated material in the form in which it was purchased or obtained by the secondhand metal dealer.]

**E.** A secondhand metal dealer shall preserve each record required until the first anniversary of the date the record was made, except for any record for the purchase of a catalytic converter, which shall be kept until the third anniversary of the date the record was made.

**F.** A secondhand metal dealer shall produce to a peace officer or compliance officer upon request the requested record of purchase. [12.2.18.9 NMAC - N, 8/12/2012; A, 10/10/2023]

**12.2.18.10 [RETENTION OF RECORDS:**

**A.** A secondhand metal dealer shall preserve each record required until the first anniversary of the date the record was made:

**B.** A secondhand metal dealer shall produce to a peace officer upon request the requested record of purchase. **[RESERVED]** [12.2.18.10 NMAC - N, 8/12/2012; Repealed, 10/10/2023]

**REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF**

**This is an amendment to 16.19.6 NMAC, Section 17, 23, and 24 effective 10/10/2023**

**Explanatory paragraph: Subsection B of 16.19.6.17 NMAC was not published, as there are no changes to this Subsection. Subsections A through C and E through I of 16.19.6.23 NMAC were not published, as there are no changes. Subsections A, B, and D through F of 16.19.6.24 NMAC were not published, as there are no changes.**

**16.19.6.17 SIGNS TO BE REMOVED WHEN PHARMACY DISCONTINUES OPERATION:**

When a pharmacy discontinues operation, the permit issued by the board shall be immediately surrendered to the board office, all drug signs and symbols, either within or without the premises, shall be immediately removed; all drugs, devises, poisons shall be removed or destroyed:

**A.** Signs: Any store, shop, laboratory or place of business which has upon it or in it a sign or words "pharmacist", "pharmaceutical chemist", ["apothecary"], "druggist", "pharmacy", "drug store", "drugs", "drug sundries", "prescriptions", or any of these words, or words of similar import either in English or any other language, or which is advertised by any sign containing any of these words, is defined by law to be a drug store or pharmacy and must obtain a license from the board of pharmacy. Any such place of business not licensed by the board shall remove any such sign or words which it may have upon or in it.

\*\*\*  
**C.** Use of pharmacy, pharmacist and other names: Any advertiser, as defined by Paragraph (2) of Subsection A of 16.19.6.21 NMAC, using the names "pharmacist", "pharmacy",

["apothecary", "apothecary shop";] "drug store", "druggist", " drug sundries", "prescriptions", or any other combination of these words or any other words of similar import that indicate to the public that the advertiser is a pharmacy, is prohibited unless the following occurs:

- (1) the advertiser is or has a licensed pharmacy in New Mexico; or
- (2) the advertiser is or has a non-resident pharmacy licensed in New Mexico; or
- (3) the advertiser has a clear statement, included with such advertisement, stating to the effect, "the advertiser is not a licensed pharmacy and does not fill prescriptions or practice pharmacy"; and
- (4) the advertiser must disclose the name of the licensed pharmacy where prescriptions are filled for New Mexico residents and such disclosure would be clear and concise; and
- (5) any "confidential information", as defined by Subsection D of Section 61-11-2 NMSA 1978, is obtained by persons authorized by law to receive such information.

(6) pharmacists registered in this state may advertise their professional services except such advertisement shall not solicit prescription drug (dangerous drug) sales unless in conjunction with a licensed pharmacy. [16.19.6.17 NMAC - Rp, 16 NMAC 19.6.17, 3/30/2002; A, 9/30/2003; A, 12/15/2020; A 10/10/2023]

**16.19.6.23 PRESCRIPTIONS: \*\*\***

**D.** Exchange of prescription information between pharmacies for the purpose of filling or refilling is authorized under the following conditions only.

- (1) The original prescription entry shall be marked in the pharmacy computer system. Pharmacies not using a computer shall mark the hard copy.
- (2) The prescription shall indicate that it

has been transferred and pharmacy location and file number of the original prescription.

(3) In addition to all information required to appear on a prescription, the prescription shall show the date of original fillings as well as the number of valid refills remaining.

(4) An original unfilled non-controlled substance prescription that is transferred shall be subject to the same record keeping requirements as filled prescriptions.

(5) Transfer or forwarding of controlled substance prescriptions shall not be allowed electronically except as permitted by federal law. ~~[Any transfer of controlled substances listed in Schedules III, IV, and V must be within any rule adopted by the federal DEA under Title 21 CFR 1306.25, for refill purposes.]~~

(6) A pharmacy may not refuse to transfer original prescription information to another pharmacy who is acting on behalf of a patient and who is making a request for this information as specified in this subsection. The transfer of original prescription information must be done in a timely manner.

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[16.19.6.23 NMAC - Rp 16 NMAC 19.6.23, 3/30/2002; A, 6/30/2006; A, 03/22/2015; A, 12/15/2020; A 10/10/2023]

**16.19.6.24 NONRESIDENT PHARMACIES:**

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C. Requirements for obtaining licensure.

(1) Application. Each nonresident pharmacy applying for licensure ~~[or renewal of licensure]~~ shall submit an application to the board which includes the following minimum information:

(a) The address of the principle office of the nonresident pharmacy and the name and titles of all principal corporate officers and all pharmacists who are dispensing prescription drugs

to persons in New Mexico. A report containing this information shall be made on an annual basis and within ~~[+0]~~ 30 days after any change of office location, corporate officer or pharmacist in charge;

(b) Proof that the nonresident pharmacy maintains a valid license, permit or registration to operate the pharmacy in compliance with the laws of the resident state;

(c) A copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the resident state;

(d) If compounded sterile preparations (CSP) are to be shipped into New Mexico, a copy of the most recent CSP operations inspection report conducted by the regulatory or licensing agency of the resident state (or party recognized by that agency to perform such inspection, or party recognized by the board) which demonstrates the pharmacy operates in conformance with the requirements of applicable USP/NF General Chapters numbered below 1000. The inspection must have occurred within the 12 months immediately preceding receipt of the license application by the board. The board may deny licensure unless the applicant submits documentation satisfactory to the board that any deficiencies noted in the inspection report have been corrected. For entities also acting as outsourcing facilities, the required standard of operation shall be current good manufacturing practices (cGMP).

(e) The policy and procedure manual required by Paragraph (2) of Subsection D of 16.19.6.24 NMAC;

(f) Proof that the nonresident pharmacy has a toll-free telephone service available to New Mexico patients;

(g) The name and address of a resident in New Mexico for service of process;

(h) If the nonresident pharmacy wants to ship, mail or deliver controlled substances to New Mexico patients, then the pharmacy must submit an application for controlled substances under 16.19.20 NMAC; and

(i) All fees required by 16.19.12 NMAC.

(j) An application that is not successfully completed within 12 months of the date of initial receipt by the board will be considered withdrawn. For consideration of license issuance, a new application and fee are required.

(2) Agent of record. Each nonresident pharmacy that ships, mails or delivers prescription drugs to a patient in New Mexico shall designate a resident agent in New Mexico for service of process. If a nonresident pharmacy does not designate a registered agent, the shipping, mailing, or delivering of prescription drugs in the state of New Mexico shall be deemed an appointment by such nonresident pharmacy of the secretary of state to be its true and lawful attorney upon whom may be served all legal process in any action or proceeding against such pharmacy growing out of or arising from such delivery.

(3) A nonresident pharmacy may apply for license renewal by submitting a renewal application on a form provided by the board.

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[16.19.6.24 NMAC - Rp, 16 NMAC 19.6.24, 3/30/2002; A, 06/09/2017; A, 11/28/2017. A. 12/15/2020; A 10/10/2023]

**REGULATION AND LICENSING DEPARTMENT PHARMACY, BOARD OF**

**This is an amendment to 16.19.8 NMAC, Section 9, 11, 15, 17, 20, 21 and 22 effective 10/10/2023**

**Explanatory paragraph: Subsections B through I of 16.19.8.9**



NMAC were not published as there are no changes. Subsections B through D of 16.19.8.11 NMAC were not published as there are no changes. Subsections B through H of 16.19.8.15 NMAC were not published as there are no changes. Subsections B through E of 16.19.8.17 NMAC were not published as there are no changes. Subsections B through H of 16.19.8.20 NMAC were not published as there are no changes. Subsections A and B of 16.19.8.21 NMAC were not published as there are no changes.

**16.19.8.9 MINIMUM REQUIRED INFORMATION FOR WHOLESALE DRUG LICENSURE:**

A. Every wholesale distributor who engages in the wholesale distribution of drugs shall be licensed with the board by submitting an application and providing information required by the board on an application approved by the board including [~~but not limited to~~]:

(1) applicant's full name; all trade or business names used by the licensee (includes "is doing business as" and "formerly known as") which cannot be identical to the name used by another unrelated wholesale distributor, third-party logistics provider, or repackager licensed by the board; full business address and telephone number;

(2) type of ownership, e.g. individual, partnership, limited liability company or corporation;

(3) name(s) of the owner(s) of the applicant, including;

(a) if a person, the name, address, social security number or Federal Employer Identification Number (FEIN), and date of birth;

(b) if other than a person, the name, address, social security number and date of birth of each partner,

limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(c) if a corporation, the state of incorporation; and

(d) if a publicly traded corporation, the information in Subparagraph (b) of this paragraph is not required for corporate officers and corporate directors;

(e) any other relevant information that the board requires;

(4) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the wholesale distributor that engages in the distribution of drugs;

(5) evidence of criminal background checks and fingerprinting of the applicant, if a person, and of the applicant's designated representative; the background check shall be sufficient to include all states residence since the person has been an adult;

(6) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the wholesale drug distributor by any other state and federal authority that authorizes the wholesale distributor to purchase, possess and distribute drugs;

(7) a list of all disciplinary actions or any other sanction by state and federal agencies against the wholesale distributor as well as any such actions against principals, owners, directors or officers;

(8) a full description of each facility and warehouse located in New Mexico, including all locations utilized for drug storage or distribution; the description must include the following:

(a) square footage;

(b) security and alarm system descriptions;

(c) terms of lease or ownership;

(d) address and;

(e) temperature and humidity controls;

(9) a description of the wholesale distributor's drug import and export activities;

(10) a copy of the wholesale distributor's written policies and procedures as required in Subsection I of 16.19.8.13 NMAC, (Written policies and procedures);

(11) a facility located outside of New Mexico shall submit a copy of a current satisfactory inspection report issued by the FDA, or state licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such wholesale distributor, or by the board;

(12) the information collected pursuant to Paragraphs (5), (8) and (10) of this subsection shall be made available only to the board, and to state and federal law enforcement officials; the board shall make provisions for protecting the confidentiality of the information collected under this section.

(13) renewal applications shall be on a form furnished by the board.

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[16.19.8.9 NMAC - Rp, 16.19.8.9 NMAC, 11-28-2017; A, 10/10/2023]

**16.19.8.11 PERSONNEL:** As a condition of receiving and retaining a wholesale drug distributor license, the licensee shall require each person employed in any prescription drug wholesale distribution activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained by law. Each person that is issued an initial or renewal license as a wholesale distributor whether in state or out of state must designate in writing

on a form required by the board a person for each facility to serve as the designated representatives of the wholesale distributor.

**A.** To be certified as a designated representative a person must:

(1) submit an application on a form furnished by the board and provide information that includes [but is not limited to]:

(a) evidence of criminal background check and fingerprinting, the background check shall be sufficient to include all states residence since the person has been an adult;

(b) date of birth and social security number;

(c) occupations, positions of employment and offices held during the past seven years;

(d) whether the person during the past seven years has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating and state or federal laws regulating the possession, control or wholesale distribution of prescription drugs or devices, together with details of such events;

(e) whether the person has been during the past seven years, the subject of any proceeding for the revocation of any professional or business license or any criminal violation and if so, the nature of the proceeding and the disposition of the proceeding;

(f) description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, which manufactured, administered, prescribed, wholesale distributed or stored prescription drugs and devices in which such businesses were names as a party in a lawsuit;

(g) description of any criminal offense (not including minor traffic violations) of which the person, as an adult, was

found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere; if the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of the criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the board a copy of the final written order of disposition; and

(h) any other information the board deems relevant;

(2) may serve as the designated representative for only one wholesale distributor at any one time, except where more than one licensed wholesale distributor is co-located in the same facility and such wholesale distributors are members of an affiliated group as defined in Section 1504 of the Internal Revenue Code;

(3) be actively involved in and aware of the actual daily operations, purchasing and inventory control of the wholesale distributor;

(a) employed full-time in a managerial position by the wholesale distributor;

(b) physically present at the wholesale distributor during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation or other authorized absence;

(c) aware of and knowledgeable about all policies and procedures pertaining to the operations of the wholesale distributor.

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[16.19.8.11 NMAC - Rp, 16.19.8.11 NMAC, 11-28-2017; A, 10/10/2023]

**16.19.8.15 MINIMUM REQUIRED INFORMATION FOR THIRD-PARTY LOGISTICS PROVIDER LICENSURE:**

**A.** Every third-party logistics provider, located in New Mexico or located in another state and not licensed as a third-party logistics provider by the FDA, who

engages in third-party logistics activities involving product shall be licensed with the board, by submitting an application and providing information required by the board on an application approved by the board, including [but is not limited to]:

(1) applicant's full name; all trade or business names used by the licensee (includes "is doing business as" and "formerly known as"), which cannot be identical to the name used by another unrelated wholesale distributor, third-party logistics provider, or repackager licensed by the board; full business address and telephone number;

(2) type of ownership, e.g. individual, partnership, limited liability company or corporation;

(3) name(s) of the owner(s) of the applicant, including;

(a) if a person, the name, address, social security number or FEIN, and date of birth;

(b) if other than a person, the name, address, social security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(c) if a corporation, the state of incorporation; and

(d) if a publicly traded corporation, the information in Subparagraph (b) of this paragraph is not required for corporate officers and corporate directors.

(e) any other relevant information that the board requires;

(4) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the third-party logistics provider that engages in the distribution of drugs;

(5) evidence of criminal background checks

and fingerprinting of the applicant, if a person, and of the applicant's designated representative; the background check shall be sufficient to include all states residence since the person has been an adult;

(6) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the third-party logistics provider by any other state and federal authority that authorizes the third-party logistics provider to possess and distribute drugs;

(7) a list of all disciplinary actions or any other sanction by state and federal agencies against the third-party logistics provider as well as any such actions against principals, owners, directors or officers;

(8) a full description of each facility and warehouse located in New Mexico, including all locations utilized for drug storage or distribution; the description must include the following:

(a) square footage;

(b) security and alarm system descriptions;

(c) terms of lease or ownership;

(d) address and;

(e) temperature and humidity controls;

(9) a description of the third-party logistics provider's drug import and export activities;

(10) a copy of the third-party logistics provider's written policies and procedures as required in Subsection D of 16.19.8.18 NMAC;

(11) a facility located outside of New Mexico shall submit a copy of a current satisfactory inspection report issued by the FDA, or state licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such third-party logistics provider, or by the board;

(12) the information collected pursuant to Paragraphs (5), (8) and (10) of this subsection shall be made available only to the board, and to state and federal law enforcement officials; the board shall make provisions for protecting the confidentiality of the information collected under this section.

(13) renewal applications shall be on a form furnished by the board.

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[16.19.8.15 NMAC - Rp, 16.19.8.15 NMAC, 11-28-2017; A, 10/10/2023]

**16.19.8.17 PERSONNEL:**

As a condition of receiving and retaining a third-party logistics provider license, the licensee shall require each person employed in any prescription drug third-party logistics activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained by law. Each person that is issued an initial or renewal license as a third-party-logistics provider whether in state or out of state must designate in writing on a form required by the board a person for each facility to serve as the designated representatives of the third-party logistics provider.

A. To be certified as a designated representative a person must:

(1) submit an application on a form furnished by the board and provide information that includes [but not limited to]:

(a) evidence of criminal background check and fingerprinting, the background check shall be sufficient to include all states residence since the person has been an adult;

(b) date of birth and social security number;

(c) occupations, positions of employment and offices held during the past seven years;

(d) whether the person during the past seven years has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating and state or federal laws regulating the possession, control or wholesale distribution of prescription drugs or devices, together with details of such events;

(e) whether the person has been during the past seven years, the subject of any proceeding for the revocation of any professional or business license or any criminal violation and if so, the nature of the proceeding and the disposition of the proceeding;

(f) description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, which manufactured, administered, prescribed, distributed or stored prescription drugs and devices in which such businesses were names as a party in a lawsuit;

(g) description of any criminal offense (not including minor traffic violations) of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere; if the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of the criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the board a copy of the final written order of disposition;

(h) any other information the board deems relevant;

(2) may serve as the designated representative for only one third-party logistics provider at any one time, except where more than one licensed third-party logistics provider is co-located in the same facility and such third-party logistics providers are members of an affiliated group as defined in Section 1504 of the Internal Revenue Code;

(3) be actively involved in and aware of the actual daily operations and inventory control of the third-party logistics provider;

(a) employed full-time in a managerial position by the third-party logistics provider;

(b) physically present at the third-party logistics provider during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation or other authorized absence;

(c) aware of and knowledgeable about all policies and procedures pertaining to the operations of the third-party logistics provider.

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[16.19.8.17 NMAC - Rp, 16.19.8.17 NMAC, 11-28-2017; A, 10/10/2023]

**16.19.8.20 MINIMUM REQUIRED INFORMATION FOR REPACKAGER LICENSURE:**

A. Every repackager who engages in the distribution of product shall be licensed with the board by submitting an application and providing information required by the board on an application approved by the board, including [but not limited to]:

(1) applicant's full name; all trade or business names used by the licensee (includes "is doing business as" and "formerly known as"), which cannot be identical to the name used by another unrelated wholesale distributor, third-party logistics provider, or repackager licensed by the board; full business address and telephone number;

(2) type of ownership, e.g. individual, partnership, limited liability company or corporation;

(3) name(s) of the owner(s) of the applicant, including;

(a) if a person, the name, address, social security number or FEIN, and date of birth;

(b) if other than a person, the name, address, social security number and date of birth of each partner, limited liability company member, or corporate officer and corporate director and the federal employer identification number;

(c) if a corporation, the state of incorporation; and

(d) if a publicly traded corporation, the information in Subparagraph (b) of this paragraph is not required for corporate officers and corporate directors.

(e) any other relevant information that the board requires;

(4) name(s), business address(es), telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the repackager that engages in the distribution of drugs;

~~[(5) evidence of criminal background checks and fingerprinting of the applicant, if a person, and of the applicant's designated representative; the background check shall be sufficient to include all states residence since the person has been an adult;]~~

~~[(6) (5) proof of valid registration as a drug establishment with the FDA;~~

~~[(7) (6) a list of all state and federal licenses, registrations or permits, including the license, registration or permit numbers issued to the repackager by any other state and federal authority that authorizes the repackager to purchase, possess, repackage and distribute drugs;~~

~~[(8) (7) a list of all disciplinary actions or any other sanction by state and federal agencies against the repackager as well as any such actions against principals, owners, directors or officers;~~

~~[(9) (8) a full description of each facility and warehouse located in New Mexico, including all locations utilized for drug storage or distribution; the description must include the following:~~

(a) square footage;

(b) security and alarm system descriptions;

(c) terms of lease or ownership;

(d) address and;

(e) temperature and humidity controls;

~~[(10) (9) a description of the repackager's drug import and export activities;~~

~~[(11) (10) a copy of the repackager's written policies and procedures as required in Subsection D of 16.19.8.23 NMAC;~~

~~[(12) (11) a facility located outside of New Mexico shall submit a copy of a current satisfactory inspection report issued by the FDA, or State licensing authority, or by a third-party inspection service approved by the FDA or the state authority licensing such repackager, or by the board.~~

~~[(13) (12) the information collected pursuant to Paragraphs [(5), (9)] (8) and [(11)] (10) of this subsection shall be made available only to the board, and to state and federal law enforcement officials; the board shall make provisions for protecting the confidentiality of the information collected under this section.~~

~~[(13) renewal applications shall be on a form furnished by the board.~~

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[16.19.8.20 NMAC - Rp, 16.19.8.20 NMAC, 11-28-2017; A, 10/10/2023]

**16.19.8.21 MINIMUM QUALIFICATIONS:**

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~~[(C) The board shall consider the results of a criminal and financial background check and fingerprinting of the applicant and designated representative, to determine if an applicant or others associated with the ownership, management or operations of the repackager have committed criminal acts that would constitute grounds for denial of licensure.]~~



~~(D:)~~ **C.** The applicant shall provide and attest to a statement providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts.

~~(E:)~~ **D.** The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest. Public interest considerations shall be based upon factors and qualifications that are directly related to the protection of the public health and safety.  
[16.19.8.21 NMAC - Rp, 16.19.8.21 NMAC, 11-28-2017; A, 10/10/2023]

**16.19.8.22 PERSONNEL:** As a condition of receiving and retaining a repackager license, the licensee shall require each person employed in any repackaging or distribution activity to have education, training, and experience, or any combination thereof, sufficient for that person to perform the assigned functions in such a manner as to provide assurance that the drug product quality, safety and security will at all times be maintained by law. Each person that is issued an initial or renewal license as a repackager whether in state or out of state must designate in writing on a form required by the board a person for each facility to serve as the designated representatives of the repackager.

~~(A:)~~ To be certified as a designated representative a person must:

~~(1)~~ submit an application on a form furnished by the board and provide information that includes but is not limited to;

~~(a)~~ evidence of criminal background check and fingerprinting, the background check shall be sufficient to include all states residence since the person has been an adult;

~~(b)~~ date of birth and social security number;

~~(c)~~ occupations, positions of employment and offices held during the past seven years;

~~(d)~~ whether the person during the past seven years has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating and state or federal laws regulating the manufacturing, possession, control or distribution of prescription drugs or devices, together with details of such events;

~~(e)~~ whether the person has been during the past seven years, the subject of any proceeding for the revocation of any professional or business license or any criminal violation and if so, the nature of the proceeding and the disposition of the proceeding;

~~(f)~~ description of any involvement by the person with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund during the past seven years, which manufactured, administered, prescribed, distributed or stored prescription drugs and devices in which such businesses were names as a party in a lawsuit;

~~(g)~~ description of any criminal offense (not including minor traffic violations) of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere; if the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of the criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the board a copy of the final written order of disposition;

~~(h)~~ any other information the board deems relevant;

~~(2)~~ may serve as the designated representative for only one repackager at any one time, except where more than one licensed repackager is co-located in the same facility and such repackagers are

members of an affiliated group as defined in Section 1504 of the Internal Revenue Code;

~~(3)~~ be actively involved in and aware of the actual daily operations, purchasing and inventory control of the repackager;

~~(a)~~ employed full-time in a managerial position by the repackager;

~~(b)~~ physically present at the repackager facility during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation or other authorized absence;

~~(c)~~ aware of and knowledgeable about all policies and procedures pertaining to the operations of the repackager.

~~(B:)~~ The criminal and financial information collected pursuant to this section shall be made available only to the board, a third party recognized by the board, and to state and federal law enforcement officials. The board and a third party recognized by the board shall make provisions for protecting the confidentiality of the information collected under this section.

~~(C:)~~ **A.** Each licensed repackager located outside of this state that distributes prescription drugs in this state shall designate a registered agent in this state for service of process. Any licensed repackager that does not so designate a registered agent shall be deemed to have designated the secretary of state of this state to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed repackager growing out of or arising from such manufacture or distribution. A copy of any such service or process shall be mailed to such repackager by the board by certified mail, return receipt requested, postage prepaid, at the address such licensed repackager has designated on its application for licensure in this state. If any such repackager is not licensed in this state, service on the secretary of state only shall be sufficient service.

~~(D)~~ **B.** A designated representative must complete training programs that address applicable state and federal laws and are provided by qualified in-house specialists, outside counsel or counseling specialists with capabilities to help ensure compliance.  
[16.19.8.22 NMAC - Rp, 16.19.8.22 NMAC, 11-28-2017; A, 10/10/2023]

**REGULATION  
AND LICENSING  
DEPARTMENT  
PHARMACY, BOARD OF**

**This is an amendment to 16.19.20 NMAC, Section 9, effective 10/10/2023**

**Explanatory paragraph:  
Subsections A through C of 16.19.20.9 NMAC were not published, as there are no changes to these subsections.**

**16.19.20.9 REGISTRATION  
AND EXPIRATION DATES:  
\*\*\***

~~(D)~~—Renewal applications will be mailed to the physical, mailing, or electronic address indicated on the application on file or as amended by change of address supplied by the registrant to the board of pharmacy:]  
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[16.19.20.9 NMAC - Rp 16.19.20.9 NMAC, 6/26/2018; A, 12/17/2019; A, 10/10/2023]

**REGULATION  
AND LICENSING  
DEPARTMENT  
PHARMACY, BOARD OF**

**This is an amendment to 16.19.29 NMAC, Section 7 and 8, effective 10/10/2023.**

**Subsections A through E and G through N of 16.19.29.7 NMAC were not published, as there are no changes. Subsections A and C through D of 16.19.29.8 NMAC**

**were not published, as there are no changes.**

**16.19.29.7 DEFINITIONS:  
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**F.** “Drug of concern” means a non-controlled dangerous drug that the Board has by rule determined to require dispenser PMP reporting of in the same manner as controlled substance prescription dispensing, when required reporting is expected to protect patients due to interaction of the drug of concern with controlled substances or other compelling issue. Gabapentin is a drug of concern, except when dispensed pursuant to a prescription issued by a veterinarian.  
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[16.19.29.7 NMAC - N, 07/15/2004; A, 06/11/2011; A, 08/31/2012; A, 10/24/2014; A, 03/22/2015; A, 11/27/2016; A, 09/25/2018; A, 2/28/2023, A 10/10/2023]

**16.19.29.8 MANDATORY  
REPORTING OF PRESCRIPTION  
INFORMATION TO THE PMP:  
\*\*\***

**B.** Each dispenser shall submit to the board by electronic means information regarding each prescription dispensed for a drug included under Subsection A of this section. Information to be submitted for each prescription as well as the standards for how this information shall be formatted, not contrary to law, is defined in the PMP data reporting manual available on the state PMP website at <http://nmpmp.org> info shall include at a minimum:

- (1) dispenser NPI number;
- (2) dispenser NCPDP number;
- (3) dispenser DEA number (unless no controlled substances are dispensed and dispenser has no DEA number);
- (4) patient name;
- (5) patient address;
- (6) patient date of birth;
- (7) patient gender;

- (8) reporting status (new, revised, void);
- (9) prescription number;
- (10) date prescription written;
- (11) refills authorized;
- (12) date prescription filled;
- (13) refill number;
- (14) product ID (NDC) + product ID qualifier;
- (15) quantity dispensed;
- (16) days’ supply;
- (17) drug dosage units;
- (18) transmission form of Rx origin;
- (19) payment type;
- (20) prescriber NPI number; (except veterinarians)
- (21) prescriber DEA number (unless prescriber is prescribing a drug of concern and has no DEA number)

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[16.19.29.8 NMAC - N, 07/15/2004; A, 06/11/2011; A, 08/31/2012; A, 03/22/2015; A, 03/23/2016; A, 09/25/2018; A, 2/28/2023; A 10/10/2023]

**WORKFORCE  
SOLUTIONS,  
DEPARTMENT OF**

**This is an amendment to 9.1.1 NMAC Sections 7, 8, 9, 10 ,11 ,13, 14, 15, 16 and 17 to be effective 10/10/2023.**

**9.1.1.7 DEFINITIONS:**  
As used in these rules incorporates the definitions of 28-1-2 NMSA 1978 and:

**A. “Act or Acts”**  
means the Human Rights Act, Sections 28-1-1 to 28-1-7, 28-1-9 to 28-1-14 NMSA 1978, The Criminal Offender Employment Act, 28-2-[3] 1 to 28-2-6 NMSA 1978, The Fair Pay for Women Act [and] 28-23-

1 to 28-23-6, 50-16-1 to 50-16-4 NMSA 1978, The Lynn and Erin Compassionate Use Act, 26-2B-9 NMSA 1978 and all subsequent amendments and provisions.

**B. “Applicant for employment”** means a person applying or attempting to apply for a position as an employee.

**C. “Bureau”** means the human rights bureau of the labor relations division of the New Mexico department of workforce solutions.

**D. “Chairperson” and “vice chairperson”:**

(1)

“Chairperson” means a member of the commission designated by the governor to serve as chair.

(2)

“Vice chairperson” means a member of the commission designated by the commission to preside in the absence or incapacity of the chairperson.

**E. “Commission”** means the New Mexico human rights commission.

**F. “Commissioner”** means one of the members appointed by the governor to serve on the New Mexico human rights commission.

**G. “Complainant” or “claimant”** means any person who claims to be aggrieved by an unlawful discriminatory practice and who has filed a complaint with the human rights bureau within 300 calendar days after the alleged unlawful discriminatory act was committed.

**H. “Complaint” or “charge”** means a charge of discrimination signed by the complainant on a human rights bureau charge of discrimination form, on an equal employment opportunity commission (EEOC) form 5 or on such other form as may be deemed acceptable to the human rights bureau.

**I. “Determination”** means a formal decision made by the division director, relating to a complaint filed with the human rights bureau of the labor relations division of the New Mexico department of workforce solutions.

**J. “Disabled person”** means any person who has a physical

or mental disability as defined in these rules as “physical or mental disability” [~~and “physical or mental handicap”~~] as used in [~~Subsection M~~] Subsection O of Section 28-1-2 NMSA 1978, as amended.

**K. “Division”** means the labor relations division of the New Mexico department of workforce solutions.

**L. “Director”** means the director of the human rights bureau of the labor relations division, or other bureau leadership designated by the director to carry out the mission of the bureau.

**M. “Good cause”** means a substantial reason, one that affords a legal excuse, or a legally sufficient ground or reason. The bureau may consider any relevant factors to determine if good cause exists.

**N. “Hearing clerk”** means the person designated by the bureau to maintain the official record of the hearing proceedings.

**O. “Hearing officer”** means the person conducting a hearing of a matter brought before the bureau; a hearing officer may be:

(1) a member

of the commission designated by the chairperson to act as the hearing officer; [~~or~~]

(2) a hearing

officer employed by the human rights bureau of the New Mexico department of workforce solutions. The hearing officer may also be referred to as an Administrative Law Judge (ALJ); or

(3) an

employee of the labor relations division or workforce solutions department designated by the director to act as the hearing officer.

**P. “Labor organization”** means any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment.

**Q. “Major life**

**activities”** means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working, as provided in [~~Subsection N~~] Subsection P of Section 28-1-2 NMSA 1978, as amended, or as currently defined by regulations governing interpretation of the Americans with Disabilities Act of 1990, as amended.

~~[R. “Person”~~

~~means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions.]~~

~~[S.] **R. “Physical or mental [handicap” or “physical or mental] disability”**~~

~~means a physical or mental impairment that substantially limits one or more of an individual’s major life activities.~~

(1) An

individual is also considered to be physically or mentally disabled, if the individual:

(a)

has a record of a physical or mental disability; or

(b)

is regarded as having a physical or mental disability.

(2) **“Has a**

**record of such a disability”** means has a history or recorded classification of having a mental or physical impairment that substantially limits one or more major life activities.

(3) **“Is**

**regarded as having a disability”** means:

(a)

having a physical or mental impairment that does not substantially limit major life activities, but being treated by a respondent as having such a limitation;

(b)

having a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or

(c)

having none of the impairments

described above, but being treated by a respondent as having such an impairment.

~~[F:]~~ S. **“Physical or mental impairment”** is defined to include, but is not limited to, any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; endocrine; or any mental or psychological disorder, such as development disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

~~[E:]~~ T. **“Probable cause”** and **“no probable cause”**:

(1) **“Probable cause”** means that the allegations in the complaint are supported by evidence providing reasonable grounds to believe an unlawful discriminatory practice occurred, pursuant to the act.

(2) **“No probable cause”** means that the allegations in the complaint are not supported by evidence providing reasonable grounds to believe an unlawful discriminatory practice occurred, pursuant to the act.

~~[V:]~~ U. **“Protected groups”** for complaint purposes are all of the groups identified under the Acts as defined in Subsection A of this section. ~~[by the bases provided in Section 28-1-7 NMSA 1978, as amended.]~~

~~[W:]~~ V. **“Qualified disabled person with respect to employment”** means a disabled person who, with reasonable accommodation, can perform the essential functions of the job in question and shall not, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in employment under any program or activity.

~~[X:]~~ W. **“Qualified disabled person with respect to housing, accommodation, credit and acquisition or maintenance of**

**particular real property”** means a disabled person whose disability does not limit that person’s ability to fulfill the obligations of occupancy, tenancy, ownership or credit responsibilities.

~~[Y:]~~ X. **“Reasonable accommodation”** means, for employment purposes, such modifications or adaptations of the work environment, work schedule, work rules or job responsibilities, and reached through good faith efforts to explore less restrictive or less expensive alternatives ~~[of a disabled person as are necessary]~~ to enable ~~[him or her]~~ an employee to perform the essential functions of the job ~~[in question]~~ and which do not impose an undue hardship on the employer.

~~[Z:]~~ Y. **“Respondent”** means the person, company, union, association, organization, agency or any other enterprise named in a complaint as having allegedly engaged in an unlawful discriminatory practice.

~~[AA:]~~ Z. **“Serious medical condition”** means a serious health-related impairment other than a disability, which substantially limits one or more of an individual’s major life activities, as “major life activities” is defined within these rules, and which is verifiable by medical diagnosis.

(1) An individual is also considered to have a serious medical condition, if that individual:

(a) has a record of a serious health-related impairment; or

(b) is regarded as having a serious health-related impairment.

(2) **“Has a record of serious health-related impairment”** means has a history or recorded classification of having a serious medical condition that substantially limits one or more major life activities.

(3) **“Is regarded as having a serious health-related impairment”** means:

(a) having a serious medical condition that does not substantially limit

major life activities, but being treated by a respondent as having such a limitation;

(b) having a serious medical condition that substantially limits major life activities only as a result of the attitudes of others toward such impairments; or

(c) having none of the impairments described above, but being treated by a respondent as having such an impairment.

(4) The term **“serious medical condition”** is intended to apply to a serious health-related impairment that requires protection against discrimination due to the severity and duration of the impairment or due to having a record of such impairment.

~~[BB:]~~ AA. **“Sex discrimination”** is defined to include, but is not limited to, the following:

(1) **“Sexual harassment”** ~~[means any unwanted or repeated physical or verbal act that is sexual, including sexual advances, sexual conduct, verbal or nonverbal sexual suggestions, sexual ridicule or sexual innuendoes that:~~

~~(a) affects employment status relating to matters of compensation or the terms and conditions of employment;~~

~~(b) affects one’s ability to obtain credit;~~

~~(c) affects one’s ability to obtain housing, continue housing agreements; or~~

~~(d) affects one’s access to public accommodations.]~~ means unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature, that can include offensive remarks about a person’s sex, gender, gender identity or sexual orientation.

(2) **“Pregnancy, childbirth, or related medical condition”** ~~[means women people affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled for all employment-~~



related purposes, including receipt of benefits including benefits and benefit programs; further, women affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled in the areas of credit, housing and public accommodations.] means, for example, current, past, potential or intended pregnancy issues related to reproductive risk, choosing to have or not have an abortion, use of contraception, fertility treatment, or medical conditions related to pregnancy or childbirth including chestfeeding or lactation.

~~[(C)]~~ **BB.** “Unlawful discriminatory practices” means those unlawful practices and [acts] conduct specified under the Acts as defined in Subsection A of this section.

[9.1.1.7 NMAC - Rp, 9.1.1.7 NMAC, 1/1/2020; A, 1/12/2021; A, 10/10/2023]

**9.1.1.8 FILING A COMPLAINT:**

**A.** Persons who may file a complaint:

(1) any person claiming to be aggrieved by an unlawful discriminatory practice under the New Mexico Humans Rights Act as provided in Section 28-1-1 NMSA 1978 et seq. or federal anti-discrimination laws enforced by the Equal Employment Opportunity Commission (EEOC);

(2) any person claimant to be aggrieved by an employer in violation of the Criminal Offender Employment Act as provided in Section 28-2-3 and 28-2-3.1 NMSA 1978;

~~[(3)]~~ any employee claiming to be aggrieved by an employer in violation of the Caregiver Leave Act as provided in Section 50-16-3 NMSA 1978;

~~[(4)]~~ (3) any person claiming to be aggrieved by an employer in violation of the Lynn and Erin Compassionate Use Act as provided in Section 26-2B-9 NMSA 1978; or

~~[(5)]~~ (4) any person claiming to be aggrieved by an employer in violation of the Fair Pay for Women Act as provided in Section [28-2B-9] 28-23-3 or 28-23-5 NMSA 1978.

**B.** Time limit for filing: All complaints shall be filed with the bureau within 300 calendar days after the last alleged act of unlawful discrimination was committed. The bureau does not have jurisdiction over complaints that are filed more than 300 calendar days after the last alleged act of discrimination.

**C.** Form of complaint: (1)

Complainants may make, sign, and file a written complaint with the bureau individually or through a legally authorized representative.

(2) The complaint of any person claiming to be aggrieved under Paragraph (1) of Subsection A of this section shall be in writing on a human rights bureau charge of discrimination form, on an EEOC form 5, or on such other form as the human rights bureau deems acceptable.

(3) The complaint of any person claiming to be aggrieved under Paragraphs (2), (3), or (4) of Subsection A of this section may only be submitted on a human rights bureau charge form or other such form as the human rights bureau deems acceptable.

(4) The complainant may be assisted by the staff of the human rights bureau in preparing a complaint, unless the complainant is represented by legal counsel, in which case complainant’s counsel will be required to prepare and file the complaint on behalf of the complainant.

**D.** Contents of the written complaint. Each complaint shall contain:

(1) the name and current mailing address of the complainant;

(2) the name and mailing address of the respondent;

(3) a statement describing the occurrence of an unlawful discriminatory practice that the complainant alleges. This description shall include:

(a) a statement of the general nature of complainant’s claim; and

(b) an identification of the particular provisions of the state or federal statutes or of the specific regulations upon which the complainant bases the claim; and

(c) the time, date, place and nature of the occurrences alleged to be an unlawful discriminatory practice;

(4) the factual basis or grounds supporting complainant’s allegation of unlawful discriminatory practice; [and]

~~[(5)]~~ (5) the first alleged date and the most recent alleged date an unlawful discriminatory practice occurred; and

~~[(6)]~~ (6) the signature of the complainant and the date of signing.

**E.** Manner of filing the complaint:

(1) The complaint shall be deemed filed as of the date the perfected complaint is received by the bureau office. A perfected complaint contains all the information required in Subsection D of this section. If the complaint is missing any of the listed requirements, it shall be returned to the complainant or their legal representative for completion before the complaint will be deemed perfected.

(2) For the purpose of complying with the filing time limit of 300 calendar days, as provided in Subsection A of Section 28-1-10 NMSA 1978, as amended, a complaint which is first filed with any duly authorized civil rights agency holding a work sharing agreement or memorandum of understanding with the bureau shall be deemed to have been filed with the bureau as of the date on which the perfected complaint was first filed with any of these agencies.

(3) When the perfected complaint is received at the bureau office, the person accepting the perfected complaint shall stamp the complaint with the date it is received. An electronically delivered copy of the perfected complaint will be stamped and accepted as filed on the date it is received electronically.

**F. Jurisdiction:**

(1) At the time of filing, the bureau shall determine initially whether the allegations in the complaint sufficiently state a claim under the act in order to proceed with the investigation. During the investigation, the bureau may also determine, based upon the facts established, whether the bureau has jurisdiction ~~[of]~~ over the complaint.

(2) If at the time of filing or at any subsequent time it is determined that there is a lack of jurisdiction, the complaint shall be dismissed, without prejudice. The complainant shall be promptly notified of the dismissal by certified mail or electronic mail, if elected. The respondent shall be notified of the dismissal by regular-mail or electronic mail, if elected.

(3) When a disability or serious medical condition is alleged in the complaint, the complainant must offer evidence of the disability or serious medical condition during the course of the investigation. Evidence documenting a disability or serious medical condition may be provided by the written certification of a physician or other appropriate medical authority unless the existence of the disability or serious medical condition is not a matter in dispute.

**G. Notice to respondent:** Upon the filing of a perfected complaint, the bureau shall, within 10 calendar days, furnish the respondent with a copy thereof by certified mail or electronic mail, if elected.

**H. Electronic Correspondence.**

(1) A party can agree, in writing, to receive all correspondence and documents from the bureau through electronic

mail, in which case the recipient will not receive any correspondence by US mail. A person communicating with the bureau electronically bears the responsibility of ensuring that the information submitted and the methods by which the person can be contacted are accurate. It is the recipient's obligation to exercise due diligence in checking the email address of record and to notify the bureau of any change in contact information.

(2) A party may rescind the election to receive electronic correspondence at any time by submitting a written request stating that intention to the bureau.

(3) Use of electronic notification, correspondence, and document transmission constitutes reasonable and proper notice for all purposes, laws, rules, and regulations.

~~[H-]~~ **I.** Withdrawal or dismissal of the complaint and requests to reopen the case.

(1) The complainant may withdraw the complaint by submitting a written request or by completing the ~~[withdrawal]~~ form for withdrawal provided by the bureau at any time prior to the issuance of a determination. The complainant may refile a complaint by submitting a new complaint in accordance with Subsection A of 9.1.1.8 through Subsection D of 9.1.1.8 NMAC 1978.

(2) In the event that the complainant cannot be contacted for a 30-day period at the last known address or a forwarding address, or ~~[in the event that]~~ if the complainant refuses to cooperate with the bureau, the complaint ~~[shall]~~ may be dismissed without prejudice and the bureau ~~[shall]~~ may administratively close the case.

(3) If the bureau administratively closes a case, notice of case closure shall be sent to all parties to their preferred mailing or electronic address of record.

~~[3-]~~ (4) Requests for reopening a case ~~[with]~~ may be ~~[made]~~ submitted to the bureau by sending a written request to include

the reason for the request. The complainant must establish good cause to reopen the case. The director shall consider all circumstances relative to the request and determine whether the request is jurisdictional and timely made and whether good cause has been established for reopening the case. The complainant and the respondent will be notified in writing when the director decides whether the case will be reopened.

~~[4-]~~ (5) In the event of a withdrawal or closure of a complaint, the bureau shall promptly notify the respondent of such action, provided that the respondent has been notified of the complaint.

~~[F-]~~ **J.** Request for director's order of nondetermination:

(1) After the bureau's receipt of a complaint, a complainant who seeks to remove the complaint from the bureau and pursue the complaint in district court may submit a written request, to the director, any time prior to issuance of a determination and shall receive an order of nondetermination. The director may consider requests for orders of nondetermination after the closure of a case if it is determined good cause for the request exists.

(2) The director's order of nondetermination shall be deemed a final order of the bureau for purposes of exhausting administrative remedy, affording the complainant the opportunity to proceed in district court, pursuant to Section 28-1-13 NMSA 1978.

[9.1.1.8 NMAC - Rp, 9.1.1.8 NMAC, 1/1/2020; A, 1/12/2021; A, 10/10/2023]

**9.1.1.9 INVESTIGATIONS AND ALTERNATIVE DISPUTE RESOLUTION (ADR):**

**A. Investigation deadlines:**

(1) The bureau shall send the respondent a request for information and the respondent will be required to answer and submit documents within 30 calendar days from the date of the request. The deadline may be extended by the investigator for up to 20 calendar

days. Any requests for additional time beyond that must be made in writing, to the director, detailing the reason for the request, and may only be granted for good cause.

(2) When the respondent answers the complaint, the bureau shall provide the response without the exhibits to the complainant. The complainant will be required to provide a rebuttal to the response within 30 calendar days of the bureau’s correspondence. The deadline may be extended by the investigator for up to 20 calendar days. Any requests for additional time beyond that must be made in writing, to the director, detailing the reason for the request, and may only be granted for good cause. If no position statement is submitted by the respondent, the complainant may submit additional evidence to the bureau within 30 calendar days of notice.

(3) The complainant may file an amendment to the complaint ~~an~~ at any time prior to the bureau’s receipt of the respondent’s position statement ~~and exhibits~~. If the complainant wishes to amend the complaint after that time, the complainant must submit a request for withdrawal of the original complaint and file a new complaint. The new filing must be filed within 300 calendar days of the most recent alleged act of discrimination to be considered timely.

(4) If either party does not provide a response by the deadline, the bureau may conduct the investigation with the information available at the time and issue a final decision based on that evidence.

(5) If a complainant files multiple cases against the same respondent, the bureau may, in its discretion, consolidate the cases for purposes of investigation and determination any time after noticing the new charge to the respondent.

**B.** The bureau’s authority to investigate a complaint is not limited to the procedure outlined in Subsection A of this section.

**C.** Mediation:

Throughout the investigation, the bureau ~~with~~ may provide opportunity for the parties to engage in mediation discussions. Should an agreement resolving the complaint be reached through mediation, the terms shall be reduced to writing in a settlement agreement and will be signed by the parties. If a settlement agreement is signed, no determination will be issued by the director. The bureau shall ~~dismiss~~ close the complaint upon receipt of the fully-executed settlement agreement.

**D.** Failure of the respondent or the complainant to abide by a fully-executed settlement agreement will require the aggrieved party to seek enforcement of the agreement in court. [9.1.1.9 NMAC - Rp, 9.1.1.9 NMAC, 1/1/2020; A, 12/29/2020; A, 1/12/2021; A, 10/10/2023]

**9.1.1.10 DIRECTOR’S DETERMINATION OF PROBABLE CAUSE OR NO PROBABLE CAUSE AND NOTICE OF HEARING:**

**A.** After an investigation is completed, the director will issue a determination of probable or no probable cause.

**B.** If the director determines that no probable cause exists, the director shall dismiss the complaint and notify the parties of the dismissal. The complainant will be notified by certified mail or electronic mail, if elected, and the respondent will be notified by regular-mail or electronic mail, if elected. Upon dismissing the complaint, the director will advise the complainant of the right to appeal the determination in district court within 90 calendar days after receipt of the determination.

**C.** If the director determines that probable cause exists, both parties will be notified of the determination by certified mail or electronic mail, if elected. Such determination will also notify the parties of the date, time, and location of the hearing, and advise the parties that failure to appear may result in the entry of a judgment or order against the party that failed to appear.

**D.** Conciliation: The bureau will attempt to conciliate the matter. If conciliation attempts fail, the matter will be set for hearing before the commission or hearing officer, provided that the complainant has not requested a waiver of right to hearing pursuant to Subsection J of Section 28-1-10 NMSA 1978. [9.1.1.10 NMAC - Rp, 9.1.1.10 NMAC, 1/1/2020; A, 10/10/2023]

**9.1.1.11 WAIVER OF COMPLAINANT’S RIGHT TO HEARING:**

**A.** Within 60 calendar days of service of the director’s determination of probable cause, the complainant may make a written request to the director for a waiver of complainant’s right to a commission hearing and seek a trial de novo in district court, pursuant to Subsection J of Section 28-1-10 NMSA 1978, as amended.

**B.** The director shall approve a waiver request which is timely made and shall serve notice of the waiver upon the complainant and the respondent. The director’s issuance of a waiver notice shall be deemed a final order of the commission for the purpose of appeal, pursuant to Section 28-1-13 NMSA 1978, as amended.

**C.** Within 90 calendar days from the date of service of the waiver notice, the complainant may request a trial de novo, pursuant to Section 28-1-13 NMSA 1978, as amended.

**D.** After 60 calendar days from the date of service of the director’s determination of probable cause and any time prior to final adjournment of the hearing, the complainant may file a “motion for dismissal with leave to file in district court”. The motion will be deliberated and decided upon at a commission review panel. [9.1.1.11 NMAC - Rp, 9.1.1.11 NMAC, 1/1/2020; A, 10/10/2023]

**9.1.1.12 MEDIATION AND CONCILIATION PROCESSES**

**A.** Mediation prior to issuance of commission complaint:

(1) The bureau may attempt to achieve a satisfactory adjustment of the complaint by means of mediation with the complainant and the respondent.

(2) If mediation attempts are successful, the parties shall prepare and sign a written settlement agreement. If the complainant and the respondent execute a written and signed settlement agreement, they shall provide the bureau with written notification that a settlement agreement between the parties has been executed.

(3) If a settlement agreement is reached between the complainant and the respondent through bureau mediation, the executed settlement agreement shall be forwarded to the director and will serve as the parties' written notification to the director of the executed settlement agreement.

(4) Once the director has received the parties' written notification that a settlement agreement has been executed, the complaint will be [~~dismissed and the case will be~~] administratively closed. The parties will be provided with notice of [~~the dismissal of the complaint and the administrative~~] case closure. [~~of the case.~~]

(5) Failure by the respondent or the complainant to abide by a fully-executed settlement agreement will require the aggrieved party to seek enforcement of the agreement in court.

**B. Conciliation**  
process after issuance of commission complaint:

(1) If a settlement agreement is reached between the complainant and the respondent through private mediation or the conciliation process after issuance of the commission complaint, the complainant will be required to submit a motion to dismiss pursuant to this rule.

(2) The motion to dismiss will be deliberated and decided upon at a commission review panel.

(3) Following its deliberation, the commission will issue an order on the matter and notify the parties pursuant to Subsection E of Section 28-1-11 NMSA 1978. [9.1.1.12 NMAC - Rp, 9.1.1.11 NMAC, 1/1/2020; A, 1/12/2021; A, 10/10/2023]

**9.1.1.13 HEARING PREPARATION:**

~~[A. Time limits: Unless the complaint has already been dismissed or [a satisfactory adjustment] resolution of the complaint has been reached, a commission complaint shall be issued on behalf of the complainant within one year of the complainant's filing of a complaint with the bureau, as provided in Subsection G of Section 28-1-10 NMSA 1978 of the New Mexico Human Rights Act, or as such time limit may be otherwise amended by law.~~

~~(2) A hearing date will be set not more than 15 calendar days or less than 10 calendar days after service of the commission complaint, pursuant to Subsection F of Section 28-1-10 NMSA 1978 of the New Mexico Human Rights Act, or as such provision may be otherwise amended by law.]~~

**A. Issuance of commission complaint:**

(1) If, after a probable cause determination, efforts at conciliation have failed, the commission shall issue a written complaint in its own name, on behalf of the complainant, against the respondent. The commission shall set forth the alleged discriminatory practice, the section of the Acts alleged to have been violated and the relief requested.

(2) The commission complaint shall require the respondent to answer the allegations of the commission complaint by appearing at a hearing before the commission on the date, time and place specified in the commission complaint. The respondent may also file a written answer to the commission complaint.

(3) The commission complaint shall be served on the complainant and the respondent or their legal representatives by certified mail, return receipt requested. Such complaint shall advise the parties that failure to appear at the hearing may result in the entry of a judgment or order against the party that fails to appear.

(4) The complainant shall review the commission complaint and verify that the complaint sets forth the discriminatory practice that is alleged to have occurred. Any motion by the complainant to amend the commission complaint should be made as soon as possible and in advance of the hearing. If a motion to amend the complaint is made on the day the hearing is set to commence, the commission may allow the respondent additional time to prepare. The commission will not allow an amendment to the complaint which alleges a discriminatory practice that was not raised and investigated at the bureau level or that was dismissed at the bureau level.

**B. Scheduling the hearing:**

(1) Hearing date: The hearing clerk, in coordination with the commission and the hearing officer, shall schedule a hearing date which shall not be more than 15 calendar days nor less than 10 calendar days after service of the complaint.

(2) Location of hearing: Hearings shall be conducted virtually by video or telephone conference. Any party may object to a virtual hearing by submitting their objection in writing to the commission at least 30 calendar days prior to the hearing. In the event a hearing is held in-person, it will take place in the county where the respondent is doing business or where the alleged discriminatory practice occurred.

(3) Hearing mode: A hearing may be scheduled to be heard by a three-member panel of commissioners or a single hearing officer.



(4) Notice of hearing: The hearing clerk shall:

(a) serve a copy of the written commission complaint and notice of hearing upon each party;

(b) post the notice on the department of workforce solutions website; and

(c) file the following documents in the official case file: a copy of the commission complaint; a copy of the notice of hearing with affidavits of publication attached; and documentation of how and when the commission complaint and the notice of hearing was served on the parties.

~~[B:]~~ C. Case preparation for hearing:

(1) Case presentation: Each party is responsible for preparing its case for presentation to the commission or hearing officer. Each party may self-represent at the hearing or may be represented by an attorney or another qualified representative. If represented by an attorney or other qualified representative, the party must notify the bureau of such representation no less than 10 calendar days prior to the hearing by submitting an Entry of Appearance.

(2) Evidence: (a) Each party, either in person or through its attorney or other representative, may present evidence in support of its case at hearing, by calling witnesses to testify and introducing exhibits. Each party, either in person or through its attorney or other representative, may examine and cross-examine witnesses.

(b) Any materials or information contained in the bureau investigative files are not before the commission or the hearing officer at hearing, unless a party has obtained these materials before the time of hearing and seeks to introduce them as evidence at the hearing. Once a commission complaint is issued and the matter is set for hearing, the materials generally before the commission or the hearing officer are the commission

complaint, the notice of hearing, and the statement of intent to present evidence.

(c) A party’s preparation for hearing should include, but is not limited to: determining what evidence a party intends to present at hearing; identifying the witnesses whom a party wishes to call at hearing; verifying the witnesses’ availability to appear at hearing; determining whether subpoenas will be needed to secure the witnesses’ appearance at hearing, requesting issuance of subpoenas and subpoenas duces tecum, if needed; arranging for service of subpoenas; identifying materials to be introduced as exhibits through witness testimony; obtaining the materials to be introduced as exhibits; and preparing exhibits for presentation at hearing.

~~[C:]~~ D. Exhibit requirements:

(1) Marking to identify exhibits: Each party shall have its exhibits marked for identification before the hearing. Complainant’s exhibits shall be marked with numbers, for example: EXHIBIT 1, EXHIBIT 2, etc. Respondent’s exhibits shall be marked with alphabetical letters, for example: EXHIBIT A, EXHIBIT B, etc. Identification of an exhibit is to be placed on the lower right corner of the first page of each exhibit, if there is space available. If space is not available on the lower right corner, identification should be placed on the first page of the exhibit, at the top or bottom of the page where space is available. The identification number or letter of an exhibit shall remain the same, whether the exhibit is accepted or rejected. Separate documents, photographs, papers and other written or printed instruments shall each be given a separate exhibit number or exhibit letter. An exhibit consisting of more than one page shall be fastened, and each page shall be numbered.

(2) [Number of copies: Exhibits are to be provided only at the hearing and not provided to the commission or hearing officer prior to the hearing. The original

~~and six copies of each exhibit shall be provided at the commission hearing when the matter is to be heard by a three-member panel of commissioners. The original is filed with the hearing clerk, and four copies are retained by the commission for commission purposes. The two remaining copies include one copy for the opposing party and one copy for the witness testifying. When the matter is to be heard by a single hearing officer, the original and three copies of each exhibit shall be provided at the hearing.] Exhibits shall be filed with the hearing officer either electronically or by US mail and shall be provided to the opposing party at least 48 hours prior to the hearing. The commissioners or hearing officer shall not have access to the exhibits prior to the commencement of the hearing. Originals will be retained by the commission for commission purposes.~~

(3) Large exhibits: [The use of large charts and diagrams, models and other bulky items for illustrative purposes is permitted. The introduction of such large items in evidence is discouraged.] Exhibits offered in evidence should be limited to 8.5 x 11 inches, or capable of being folded and placed in 8.5 x 11 inch envelopes, unless otherwise necessary for adequate presentation of evidence or illustrative purposes.

~~[D:]~~ E. Witness identification:

(1) Request for identity of witnesses: Prior to the hearing any party is entitled to obtain and may request from another party witness information, to the extent that it is known, unless a protective order is issued to protect such information from disclosure. The following information may be requested:

(a) the names and addresses of witnesses whom a party anticipates may be called to testify at the hearing;

(b) the relationship, if any, of each witness to the party intending to call the witness; and

(c) a brief description of the general subject matter about which the witness is anticipated to testify.

(2) The witness information specified above need not be provided as to any officer, employee or agent of the party from whom the witness information is requested, unless the party responding to the request intends to call the officer, employee or agent to testify at the hearing.

(3) Response to request for identity of witnesses: A party’s request for the identity of witnesses shall be answered within 10 calendar days of service or no later than three calendar days prior to the hearing, whichever is sooner, unless otherwise ordered by the commission or the hearing officer, upon a motion for a protective order and a showing of good cause.

(4) Protective order: Upon a motion for a protective order and upon a showing of good cause, the commission or the hearing officer may grant a motion for a protective order and issue an order to protect such witness information from disclosure. If the motion for a protective order is denied, the requested information shall be disclosed.

~~[E:]~~ **E.** Subpoenas and subpoenas duces tecum:

(1) Upon application of a party showing the general relevance and reasonableness of the scope of the testimony or other evidence sought, the commission or hearing officer may issue subpoenas and subpoenas duces tecum commanding the appearance of witnesses and their production of certain specific documents or other physical evidence at the hearing upon request of a party to the proceedings.

(2) Any subpoena must name the individual or document requested with sufficient specificity to identify who or what is being subpoenaed.

(3) Service of the subpoenas and subpoenas duces tecum shall be made by the requesting party, in the same manner

as prescribed by law for civil actions in the district courts of the state of New Mexico.

(4) The cost of service and witness and mileage fees for all hearings shall be borne by the party at whose request the subpoenas and the subpoenas duces tecum are issued. The fees paid ~~[, therefore,]~~ shall be the same as those paid by the district courts of the state of New Mexico.

(5) Requests for subpoenas or subpoenas duces tecum will be submitted to the commission or hearing officer through the hearing clerk no later than 21 calendar days prior to the hearing date. Requests must be made in writing to include the name and last known address for each person for whom a subpoena is requested and shall command each person to whom it is directed to attend and give testimony or to produce enumerated documentation at the time and place of the administrative hearing or at another date as ordered by the commission or hearing officer. Requests for subpoenas duces tecum must include a separate list of documents for attachment to the subpoena.

(6) Subpoenas must be served no later than seven calendar days prior to the hearing.

(7) Objections to the subpoenas or motions concerning the subpoenas must be filed in district court as prescribed by law for civil actions in district courts in the state of New Mexico.

~~[F:]~~ **G.** Filing, service and form of documents submitted by parties:

(1) Filing of documents: Except as otherwise provided, a party shall file the originals of all documents served in the proceeding with the hearing clerk at the human rights bureau. A party shall also serve copies thereof upon all other parties. Service shall be attested by a certificate of service, indicating the date of service, the means of service, who was served and by whom service was made.

(2) Service of documents: Except as otherwise provided, all documents shall be served in person or by mail. If service is by mail, three calendar days shall be added to time allowed by these rules for filing of a responsive document.

(3) Form of motions, responses and other documents submitted to the commission: Unless otherwise provided by these rules or by order of the commission or hearing officer, all documents, except exhibits, shall comply with the following requirements:

(a) documents shall be prepared on 8.5 x 11-inch white paper;

(b) the first page of each document shall contain a centered heading, a caption beginning at the left margin which designates the parties and the case number, and a descriptive title identifying the nature and purpose of the document, as follows:

BEFORE THE HUMAN RIGHTS  
COMMISSION  
OF THE STATE OF NEW MEXICO  
(Name of Complainant),  
Complainant,  
v. HRB No. \_\_\_\_\_  
(Name of Respondent),  
Respondent,  
[DESCRIPTIVE TITLE OF THE  
DOCUMENT]

~~[G:]~~ **H.** Motions:

(1) General matters: All motions shall be submitted in writing prior to the hearing, except those made orally during the hearing ~~[, shall be in writing, shall state the grounds for the motion,]~~ and shall specify the relief sought. The commission or the hearing officer may direct that an oral motion made at hearing shall be made in writing, stating the grounds for the motion and specifying the relief sought. If the motion relies upon facts which are not in the hearing records, each motion shall be accompanied by an affidavit, certificate or other evidence relied upon. Motions shall be filed and served, as provided in these rules for the filing and service of documents.

(2) Unopposed motions: An unopposed motion shall state that the concurrence of all other parties was sought and granted. With an unopposed motion, the moving party shall also submit a proposed order, approved by all parties, for the commission's or the hearing officer's consideration.

(3) Opposed motions: Any opposed motion shall state that concurrence was sought and denied, or shall state why concurrence was not sought. An opposed motion may be accompanied by a memorandum brief in support of the motion.

(4) Response to motions: Any party upon whom an opposed motion is served shall have 10 calendar days after service of the motion to file a response unless the commission or the hearing officer directs otherwise. A non-moving party who fails to file a response within that period or within any extension of time granted by the commission or hearing officer shall be deemed to have waived any objection to the granting of that motion.

(5) Decisions: All motions shall be decided by the ~~[commission]~~ chairperson or the hearing officer without a hearing, unless the commission or the hearing officer orders otherwise. Any party may submit a written request for an order granting a hearing on a motion.

~~[H:]~~ **I.** Issuance of documents by the commission or the hearing officer: All documents issued by the commission or the hearing officer shall be filed with the hearing clerk. As soon as is practicable or otherwise provided by law, the hearing clerk shall serve copies of the documents upon all the parties ~~[in person]~~ electronically or by first-class mail.

~~[F:]~~ **J.** Statement of intent to present evidence at hearing:

(1) Filing requirement: No later than five calendar days prior to the hearing, each party shall file with the hearing clerk ~~[an original and four copies]~~ a copy of the party's statement of intent to present evidence at the hearing.

Each party shall also serve a copy of this statement on all parties of record.

(2) Content of statement: The statement of intent to present evidence shall include:

(a) the name of the party filing the statement;

(b) a witness list, including the name of each witness who will testify at hearing and an estimate of the length of time required for the direct testimony of each witness named; and

(c) ~~[a list of]~~ the exhibits, if any, to be offered into evidence at the hearing.

(3) ~~[Modifications to witness list or exhibit list after filing of statement of intent: If there are any modifications to a party's witness list or exhibit list after filing the statement of intent to present evidence, the party shall provide its modified witness list or exhibit list to the commission or hearing officer and all parties of record before the hearing or at the hearing.]~~ Any modifications to the witness list or exhibits may not be considered at the hearing by the commission or hearing officer.

[9.1.1.13 NMAC - Rp, 9.1.1.12 NMAC, 1/1/2020; A, 1/12/2021; A, 10/10/2023]

**9.1.1.14 HEARING PROCEDURES:**

~~[A:]~~ Issuance of commission complaint:

~~(1) If, after a probable cause determination, efforts at conciliation have failed, the commission shall issue a written complaint in its own name, on behalf of the complainant, against the respondent. The commission shall set forth the alleged discriminatory practice, the section of the Human Rights Act alleged to have been violated and the relief requested.~~

~~(2) The commission complaint shall require the respondent to answer the allegations of the commission complaint by appearing at a hearing before the commission on the date, time and place specified in~~

~~the commission complaint. The respondent may also file a written answer to the commission complaint.~~

~~(3) The commission complaint shall be served on the complainant and the respondent or their legal representatives by certified mail, return receipt requested. Such complaint shall advise the parties that failure to appear at the hearing may result in the entry of a judgment or order against the party that fails to appear.~~

~~(4) The complainant shall review the commission complaint and verify that the complaint sets forth the discriminatory practice that is alleged to have occurred. Any motion by the complainant to amend the commission complaint should be made as soon as possible and in advance of the hearing. If a motion to amend the complaint is made on the day the hearing is set to commence, the commission may allow the respondent additional time to prepare. The commission will not allow an amendment to the complaint which alleges a discriminatory practice that was not raised and investigated at the bureau level or that was dismissed at the bureau level.~~

~~B.~~ Scheduling the hearing:

~~(1) Hearing date: The hearing clerk, in coordination with the commission and the hearing officer, shall schedule a hearing date which shall not be more than 15 days nor less than 10 days after service of the complaint.~~

~~(2) Location of hearing: Such hearings shall be held in the county where respondent is doing business or where the alleged discriminatory practice occurred.~~

~~(3) Hearing mode: A hearing may be scheduled to be heard by a three-member panel of commissioners or a single hearing officer.~~

~~(4) Notice of hearing: The hearing clerk shall:~~

~~(a) serve a copy of the written commission complaint and notice of hearing upon each party;~~

~~(b)~~  
send copies of the notice of hearing, with a request for publication, to at least one newspaper of general circulation in the state; and

~~(c)~~  
file the following documents in the official case file: a copy of the commission complaint; a copy of the notice of hearing with affidavits of publication attached; and documentation of how and when the commission complaint and the notice of hearing was served on the parties.

~~C.~~ Hearing procedures:

~~(A)~~ **A.** Appearance and representation:

~~(1)~~ **(1)** The complainant shall be present at the hearing, may present testimony or evidence and may be represented by an attorney or other representative. The complainant or complainant's representative shall present the case supporting the complaint at hearing.

~~(2)~~ **(2)** If the complainant does not appear at the hearing after proper notice has been served, the complaint may be dismissed for failure of the complainant to appear and present the complainant's case at hearing as required in Subsections A and C of Section 28-1-11 NMSA 1978, as amended.

~~(3)~~ **(3)** The respondent to a complaint shall file a written answer to the complaint appear at the hearing, may present testimony or evidence and may be represented by an attorney or other representative. If the respondent is an entity, the respondent may designate a person to serve as its representative at the hearing. The respondent, respondent's representative or respondent's counsel may present the case responding to the complaint at hearing.

~~(4)~~ **(4)** Commission counsel, or an attorney representative from the Office of the Attorney General, may advise the commission during the hearing on legal matters and will assist in the preparation of the findings of fact, the conclusions of law and the order.

~~(2)~~ **B.** Sequence of the proceeding:

~~(1)~~ **(1)** introduction to the proceeding by the presiding commissioner or the hearing officer;

~~(2)~~ **(2)** invitation to the parties to attempt a settlement resolution prior to commencing the hearing;

~~(3)~~ **(3)** consideration of any preliminary matters or motions;

~~(4)~~ **(4)** administration of oath of the parties and the witnesses by presiding commissioner or hearing officer;

~~(5)~~ **(5)** opening statement by the complainant or the complainant's attorney or other representative;

~~(6)~~ **(6)** opening statement by the respondent or the respondent's attorney or other representative;

~~(7)~~ **(7)** presentation of the complainant's case;

~~(8)~~ **(8)** presentation of the respondent's case;

~~(9)~~ **(9)** closing argument by the complainant or the complainant's attorney or other representative;

~~(10)~~ **(10)** closing argument by the respondent or the respondent's attorney or other representative;

~~(11)~~ **(11)** instructions to the parties as to the schedule for filing findings of fact, conclusions of law, briefs or other documents with the commission following the hearing; and

~~(12)~~ **(12)** final adjournment of the hearing.

~~(C)~~ **C.** Sequestering witnesses: The commission shall sequester the witnesses from the hearing until the time of their testimony. A complainant or the designated representative for respondent will be allowed to be present throughout the hearing, even though the complainant or the designated representative for respondent may be called to testify.

~~(4)~~ **D.** Custody of evidence: Evidence introduced as exhibits at the hearing will be retained in the custody of the hearing clerk at the bureau for commission purposes.

~~(5)~~ **E.** Matters of proof: ~~(1)~~ **(1)** Burden of proof: complainant has the burden of proof.

~~(2)~~ **(2)** Standard of proof: The complainant must prove the case by a preponderance of the evidence.

~~(6)~~ **F.** Evidentiary matters at hearing:

~~(1)~~ **(1)** Formal rules of evidence not binding on the commission or hearing officer: The formal rules of evidence governing the courts of law or equity shall not bind the commission or the hearing officer in hearing the evidence, as provided in Subsection D of Section 28-1-11 NMSA 1978, as amended.

~~(2)~~ **(2)** Objections to evidence offered: A party who has an objection to the evidence offered or to procedural matters in the proceeding must raise the objection orally during the hearing. The party raising the objection must state the grounds for the objection. The ruling on the objection, made by the presiding commissioner or hearing officer, shall be made a part of the record. A party's exception to each overruled objection shall be automatic and is not waived by the party's further participation in the hearing.

~~(3)~~ **(3)** Offers of proof: Whenever there is a ruling to exclude the evidence offered, the party offering the evidence may make an offer of proof, which shall be included in the record. An offer of proof for excluded evidence consists of a brief description of the nature of the evidence excluded, the purpose for which it is offered and its relevance to the issues before the commission or hearing officer. An offer of proof for excluded documents or exhibits shall additionally include the insertion into the record of the excluded documents or exhibits. If the commission decides that a hearing officer's ruling to exclude evidence was both erroneous and prejudicial,



the commission may consider the excluded evidence and may reopen the proceedings to take such evidence.

~~(F)~~ **G.** Continuation and adjournment: The presiding commissioner or the hearing officer may continue a hearing from day to day or adjourn it to a later date.

~~(F)~~ **H.** Improper conduct: The commission or hearing officer may exclude from the hearing room any person who engages in improper conduct.

~~(F)~~ **I.** Closing arguments, briefs and findings of fact and conclusions of law:

~~(F)~~ **(1)** Closing arguments: At the hearing, a party or the party's attorney or representative may present an oral closing argument in support of the party's position. The commission or hearing officer may elect to allow the parties to present a written closing argument in addition to or in place of an oral closing argument. Written closing arguments, where applicable, shall be filed with the commission and served on all parties of record within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

~~(F)~~ **(2)** Findings of fact and conclusions of law: Each party may submit proposed findings of fact and conclusions of law to the commission within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

~~(F)~~ **(3)** Briefs and answer briefs:

~~(F)~~ **(a)** Briefs: Each party may submit a brief in support of its position, including an argument of how the law applies to the facts in the case. If a party elects to submit a brief, it shall be filed with the commission and a copy served on all parties of record within 10 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise.

~~(F)~~ **(b)** Answer briefs: When a party has filed a brief, the opposing party may submit an answer brief to the

commission or hearing officer and serve a copy on all parties of record within five calendar days of the filing of the brief, unless the commission or the hearing officer directs otherwise.

~~(F)~~ **(4)** Attorney fees:

~~(F)~~ **(a)** If the complainant is represented by private legal counsel and seeks to recover attorney fees from the respondent, complainant's counsel is required to submit an affidavit setting forth the attorney fees. The attorney affidavit shall be submitted to the commission and a copy served on the respondent within 15 calendar days after the final adjournment of the hearing, unless the commission or the hearing officer directs otherwise. The attorney affidavit shall include an itemization of fees, be signed by the attorney and be notarized.

~~(F)~~ **(b)** The respondent may submit a written objection, if any, to the attorney fees requested by the complainant. The objection to attorney fees shall be submitted to the commission and a copy served on the complainant within five calendar days after the submission of the attorney affidavit setting forth fees, unless the commission or the hearing officer directs otherwise.

~~(F)~~ **J.** Close of the hearing record: The hearing record closes following the final adjournment of the hearing, when the last time set for the submission of all documents to the commission has expired.

[9.1.1.14 NMAC - Rp, 9.1.1.12 NMAC, 1/1/2020; A, 1/12/2021; A, 10/10/2023]

**9.1.1.15 RULING AND FINAL ORDER:**

**A.** The final decision and ruling on the merits in each case is reserved to the commission or hearing officer.

**B.** Where a hearing is before a three-member panel of commissioners, the commission will announce its decision and final order orally at a public meeting within 90 calendar days, for which notice will be given. Within five business days

thereafter, the commission shall cause a written copy of the decision and final order to be sent by certified mail, return receipt requested, to each party or to the party's attorney, if any, at the attorney's address of record.

**C.** Where a hearing is conducted by a hearing officer, the hearing officer shall prepare a written report, setting forth proposed findings of fact, proposed conclusions of law and a recommended action to be taken by the commission, after the last time set for the submission of all documents following the final adjournment of a hearing, or at such other time as the commission may direct. The hearing officer's report shall be submitted for consideration by a review panel, consisting of no more than three commissioners designated by the chairperson. The commission may adopt, modify or reject the findings of fact, the conclusions of law and the recommended action proposed by the hearing officer. The commission's decision and final order will be announced orally at a public meeting, for which notice will be given. Within five business days thereafter, the commission shall cause a written copy of the decision and final order to be sent by certified mail, return receipt requested, to each party ~~and~~ or to the party's attorney, if any, at the attorney's address of record. ~~[for the party and for the party's attorney.]~~ [9.1.1.15 NMAC - Rp, 9.1.1.13 NMAC, 1/1/2020; A, 10/10/2023]

**9.1.1.16 TRANSCRIPTS:**

**A.** Upon receipt of a notice of appeal, if the hearing was transcribed, the bureau will supply as much of the transcript of the as is requested by the parties or the district court, pursuant to Subsection B of Section 28-1-13 NMSA 1978.

**B.** All costs of providing the transcript of record on appeal will be paid by the party requesting the transcript. However, nothing in these rules will be deemed as prohibiting an agreement between a complainant and a respondent concerning the cost of providing the transcript on appeal.

[9.1.1.16 NMAC - Rp, 9.1.1.14 NMAC, 1/1/2020; A, 10/10/2023]

**9.1.1.17 CONFIDENTIALITY AND PUBLIC RECORDS:**

**A.** The commission complaint, decision and orders will be considered public records. Any other information contained within a division investigation file or bureau records related to the case will not be considered public records, except as determined by law, and therefore is not available for inspection under the Inspection of Public Records Act until a determination is issued or the case is closed, at which point the entire investigation file will be considered public record. The deliberations of the commission or hearing officer are not part of an open public meeting and are not considered to be public records.

**B.** These provisions will not be applicable to the request for information about a pending case by the complainant, the respondent or their respective attorneys in that particular pending case prior to hearing. Nor do they apply to the disclosure of necessary information by the bureau to a representative of any duly authorized civil rights agency holding a work sharing agreement or memorandum of understanding with the bureau.

**C.** Requests for records under the Inspection of Public Records Act (NMSA 1978 Chapter 14, Article 2) should be submitted in writing to the record custodian of the department of workforce solutions. Documents that are part of complaints dually filed with the EEOC are not available from the department of workforce solutions pursuant to Subsection 8 of Section 14-2-1 NMSA 1978.

[9.1.1.17 NMAC - Rp, 9.1.1.15 NMAC, 1/1/2020; A, 10/10/2023]

**WORKFORCE SOLUTIONS, DEPARTMENT OF**

**This is an amendment to 11.1.2 NMAC Sections 18, 20 and 21, effective 01/1/2024.**

**11.1.2.18 JOB CLASSIFICATIONS AND DESCRIPTIONS:**

The job classifications and descriptions for public works projects shall be as follows:

**A.** Asbestos worker or heat and frost insulator: The preparation, alteration, application, erection, assembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, dismantling, reconditioning, maintenance, finishing or weatherproofing of cold or hot thermal insulations with such materials as may be specified when those materials are to be installed for thermal purpose in voids, or to create voids, or on either piping, fittings, valves, boilers, ducts, flues, tanks, vats and equipment, or on any hot or cold surfaces for the purpose of thermal control, or to be installed for sound control on mechanical devices; equipment; piping and surfaces related in an integral way to the thermal insulation of such mechanical devices, except for materials applied inside sheet metal ducts and fittings. This work also includes all labor connected with:

(1) insulation for: temperature control (excluding batt and blown-in); personnel protection or safety; prevention of condensation; fire proofing of building penetrations.

(2) distribution of, cleanup of, and removal from surfaces as described above, which surfaces will be reinsulated with (excluding demolition which is covered under the laborers classification) the materials they apply.

**B.** Boilermaker: Assembles prefabricated boiler parts and fittings to build steam boilers, tanks, vats and other vessels made of ten gauge or heavier metal, and installs catwalks, platforms, stairways and ladders which are erected on, and supported by storage tanks for liquid or gas when such tanks were erected by boilermakers, and installs all catwalks, platforms, stairways and ladders which are erected on and exclusively supported by a pressure vessel.

**C.** Bricklayer, blocklayer, stonemason: Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, etc., using brick, structural tile, concrete and other types of structural block. This classification shall include the setting of stone, marble, slate, and artificial stone. All cutting, grouting and pointing of materials listed above shall be a part of this classification. May also build or repair brick, block, or stone retaining walls, cutting or placing of brick in mortar or other similar material.

**D.** Carpenter or lather: Sets batterboards, builds and sets forms for concrete, or structural stud except as provided elsewhere. Builds and erects wood and metal products for the framing of structure or building, including bearing and non-bearing walls, framework in buildings, including partitions, floor and ceiling joists, studding, and rafters. Installs wood subflooring and hardwood flooring. Builds wood stairways, cabinets, steps, etc. Installs wood or premanufactured molding, paneling, doors, windows, etc., products and components related to office interiors - partitions, draperies, shelving, panels, doors, (metal, wood, etc.); including hardware; insulation around concrete slabs. Install pin metal or steel studs and wood furring (except on roofs). Carpenters may shoot grades for surveying and attaches "sheetrock" and similar wallboard materials to walls and ceilings. Installs insulation material in walls, ceilings, and under floors of buildings where such insulation is not laid in cement or other plastic materials. Sets all woodworking equipment and operates same. Builds forms and structural element for pre-cast and pre-stressed concrete of all types and shapes on project site. Erects self-supporting scaffolding. Installs light iron and metal furring such as rods, channels and other bars or systems to which metal lath, rock lath or other materials used as a substitute for lath are to be attached. Installs metal lath, rock lath, and other materials used as a substitute for lath. Installs metal plastering

accessories such as corner beads, door and window casing beads, metal picture mold, chair rails and other metal plastering accessories which are covered and serve as a ground or guard, except that metallic corner beads, when installed by using plastic material, shall be installed under the "plasterer" classification. Cuts wood materials using a stationary or portable power saw of one or more horsepower. Sharpens by use of files, all types of saws and saw blades used for the cutting of wood materials.

**E. Carpenter**  
(millwright): Performs work necessary to assemble, level, align, secure, dismantle, adjust and maintain permanent stationary pumps, motors, generators, turbines, fans, compressors or torque converters which require precision leveling and alignment of such equipment. Installs reduction gear boxes, fluid drives, and speed increasers, including the connection of same to pump or compressor coupling. May align and secure other direct drive motors and machines requiring precision alignment. Installation, repair, or removal of all pulleys, sheaves, sprockets, gears and flywheels including all belts, cables and chains. Fabricates or installs all templates, soleplates, grout pads and wedge blocks for all machinery requiring foundation or bolts. Installs all machinery, equipment and conveying devices in all classes of plants, factories, buildings, amusement parks, mills, shops stores, warehouses and construction or mining sites.

**F. Carpenter**  
(piledriver): Rigs piledriving equipment, signals pile rig and guides pile and leads to point pile is driven, aligns and plumbs pile using tape and level during driving; splices piles before, during and after driving, cuts off piles, realigns piles after driving. In "piledriving" operations, handles wood, metal, sheetpiling, steel H-beams, concrete, or pipe, fastens them to cable of wench or piledriver, shifts timber piles with cant hook, cleans and points pile with axe or shovel. May drill pilot holes.

**G. Cement mason**  
(composition or mastic - finishing machine operator): Finishes concrete to a specified finish and grade on footings, floors, walks, steps and all concrete surfaces by using tools of the trade such as trowels, floats, screeds, etc. Sets to grade and aligns screeds one board high. Sets to grade and aligns forms for sidewalk, curbs and gutters. Fabricate, cut, bend and tie reinforcing steel and mesh to be placed within the forms for sidewalk, curbs and gutters. Patching, filling of voids and rubbing of concrete to a specified finish, which requires the use of power tools and tools of the trade. Bushhammer and related finish procedure. Concrete saw operation when used on new construction to saw control joints. Vibrating screeds and rollers to achieve final level of concrete. Gunite, in cement mason operation, when it is less than one and one-half inches in thickness, the handling and control of the nozzle shall be the work of the "cement mason." All work involving the laser screed including the ride-on, laser-guided, vibratory screeding machine that establishes grades by laser which disperses concrete by auger and thoroughly vibrates and consolidates the concrete. Applies coloring material to concrete, also uses mastic to level and waterproof concrete, where tools of the trade are involved. Operates troweling and floating machines which are used in the finishing of concrete. Cementitious insulation, screed wet material to required thickness and darby joints to leave a surface suitable for roofing.

**H. Electrician**  
classifications and description -  
Outside:

**(1)**  
Groundman (outside): Assists "lineman" and "equipment operator" in their tasks except that the "groundman" does not climb poles or towers.

**(2)** Equipment operator (outside): Operates power driven equipment used in the erection and installation of materials and apparatus outlined under the "lineman" classification.

Includes directional boring to install underground pipe, conduit or cable.

**(3)** Lineman or technician (outside):

**(a)**  
Performs all electrical construction work outside of isolated plants and the property lines of any given property, but not electric signs, and not street electrical decorations, except when messenger or guy wire is necessary for support and when fed and controlled from the street.

**(b)**  
Street lighting, traffic signalization, and related wiring when fed and controlled from the street. All line work consisting of wood, concrete or metal (or substitutes therefore), poles or towers, including wires, cables or other apparatus supported therefrom. Line work in public, private or amusement parks.

**(c)**  
All work necessary to the assembling, installation, erection, operation, maintenance, repair, control, inspection and supervision of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts and raceways when part of distributing systems outside of buildings, railroads and outside and directly related railroad property and yards. Installing and maintaining the catenary and trolley work on railroad property, and bonding of rails. All underground ducts and cables when they are installed by and are part of the system of a distributing company, except in power stations during new construction, including ducts and cables to adjacent switch racks or substations. All outdoor substations and electrical connections up to and including the setting of transformers and all connecting of the secondary buses thereto, and all other related work.

**(4)** Cable splicer (outside): Splices or terminates power cables which are designed to be used for voltages above 2,000. Splices or terminate gas or liquid filled power cables, when part of a distribution system outside of buildings.

(5)  
Journeyman technician (outside): Limited to performing only street lighting, traffic signals, and wiring when fed and controlled from the street.

**I. Electrician**  
classifications and descriptions -  
Inside:

(1) Wireman or technician (inside): Installs wiring for automatic doors. Plans and executes the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems on commercial, industrial, and residential jobs, except electrical work which is incidental to the installation of elevators and escalators and is described under "elevator constructor". Analyzes proposed telephone and communication systems during the pre-installation stage to detect any basic conflicts in either equipment arrangements or plant facilities. Isolates trouble conditions in inoperable telephone communications systems. Installs a variety of equipment relating to telephone interconnect communication systems and devices including private branch exchange (PBX-PABX), key equipment and associated devices.

(2) Cable splicer (inside): Splices or terminates power cables which are designed to be used for voltages above 2,000. Splices or terminates gas or liquid filled power cables.

**J. Low voltage electrician classification:** Low Voltage Technician: Installs pathways (j-hooks) and wiring for low voltage cabling coax or fiber optic and terminates ends of the different types of cables levels and tests. This work includes voice, data security, access control, building automation and video surveillance. Repairs and services inter-communications systems, i.e. speakers, buzzers, microphones, signal lights or other units or components that are an integral part of such system.

**K. Elevator constructor:** Assembles and installs machinery and devices incidental to a complete elevator or escalator installation, including elevator cars, cables, counterweights, guide rails, hoisting machinery, etc. Installs all electrical wiring which is incidental to the installation of automatic elevators and escalators with the exception of power feed wires to the controller, which shall be classified as a task of "electricians". Steel trusses, girders, and supports for escalators, where riveted or welded and metal frames and bucks for elevator door openings shall be installed under the "ironworker" classification.

**L. Elevator constructor helper:** Assist elevator constructor in the performance of all phases of their work.

**M. Glazier:** Installs metal window and door frames without glass, curtain wall systems, window wall systems, cable net systems, canopy systems, structural glazing systems, unitized systems, interior glazing systems, photovoltaic panels and systems, suspended glazing systems, louvers, skylights, entranceway systems including doors and hardware, revolving and automatic door systems, patio doors, store front systems including the installation of all metals, column covers, panels and panel systems, glass hand rail systems, decorative metals as part of the glazing system, and the sealing of all architectural metal and glass systems for weatherproofing and structural reasons, using vinyl, molding, rubber, lead, sealants, silicone and all types of mastics in wood, iron, aluminum, sheet metal or vinyl sash, doors, frames or any materials of the above systems as part of the glazing systems. Installs glass, including plate and window glass, mirrors, beveled plate, rough ribbed, wire, figured, colored, art and other type glass or substitute for glass when set in sash, frames, doors, skylights, etc., when set with putty, molding or other methods which are common to the glazing trade.

**N. Ironworker:**  
(1)  
Journeyman Ironworker: Installs reinforcing iron and steel for concrete structures. Installs fabricated steel members such as girders, columns, beams, and bracing in structures to form the steel framework. Installs metal stairways, catwalks, ladders, and decking. Installs ornamental iron and steel. Erects structural steel radio and television towers. Sets wall bearing steel bar joists in building structures. Performs layout work for rods within project area. Fastens rods in place with wire or fasteners; bends or adjusts as required. Selects and places steel bars or spirals in concrete forms to reinforce concrete; fastens rods together with wire or patented fasteners; may cut rods with hack-saw or oxyacetylene torch. May bend rod, using rod bending machine, performs layout work and proper placing of steel in the concrete forms. May prefabricate reinforcement assembly for placement complete in forms. Works as a member of a group that raises and places fabricated or precast concrete beams or structural steel members, such as girders, plates, columns, and units them permanently to form a completed structural steel framework. Heats rivets, signals erection crane, splices cables, rigs equipment. May include dismantling and erecting large units of equipment. May suspension bridge cables. Erects, trims, and fits together by means of bolts and clamps, iron grills, grating, and special stairways. Erects ornamental enclosures and other iron work not included in structural ironwork. Fastens ironwork to walls of buildings by means of bolts, brackets or anchors. Fastens newel posts, balauzer, and other parts of stairways by fastening to supports or embedding them in sockets. Forges, welds, drills and cuts as needed.

(2)  
Probationary Ironworker:  
Probationary ironworkers shall be paid at the rate of [80%] eighty percent of the journeyman ironworker wage rate and may only work under this classification for no more than 30 days.



**O. Painter (brush):**

Applies paint, stain, lacquer, varnish, etc., to surfaces in, on or around building structures, using appropriate brushes, rollers, sprayers or trowels. Does preparation of surfaces to receive paint, including sandblasting, small patching, sanding and spackling. Mixes and prepares paints and other materials which are to be applied by painters. Seals, sands and varnishes hardwood flooring. Paints structural steel framework of bridges; guard rails and cables of bridges; and all other surfaces requiring paint. May erect and rig stages and platforms from which painters are to work, including swing stage scaffolding, bosun's chairs, mechanical, staging, cornice or roof hooks, scaffolding, and other devices and apparatus necessary to provide safe forking conditions for painters. Operates gasoline-powered compressor striping machine and walking type sprayers for striping parking lots, etc.

**P. Paperhanger:**

Applies wallpaper, fabric, or other materials used in the same manner as wallpaper, to the interior of rooms. Performs work necessary to prepare surfaces to receive wallpaper or other similar material including removal of old wall paper.

**Q. Drywall finisher**

or taper: Prepares drywall type construction to receive paint, texture, etc. by pointing, taping, bedding, texturing, skimming, wire brushing, stripping, wax, or acid application and finishing.

**R. Plasterer:**

Applies interior and exterior plastering of cement, stucco and stone imitation or any patented materials when cast. Applies acoustical plaster or materials used as substitutes for acoustical plaster, as well as the preparatory pointing and taping of drywall surfaces to receive these finishes. Applies scratch and brown coats on walls and ceilings where tile, mosaic or terrazzo is to be applied. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding. Install metal corner beads when stuck by using

plastic materials. Applies gunite, in plastering operations, when it is one and one-half inches in thickness, the handling and control of the nozzle should be the work of the plasterer. Spray fire proofing material on steel beams or columns. Trowel or sprayed on foam insulation on walls before stucco, etc. Patching outside concrete walls.

**S. Plumbers and pipefitters:** Fabricates and installs piping, and tubing systems, including installation of all necessary hangers and supports, which are to conduct water, steam, air, and other fluids or gases in and around buildings. Also installs vacuum piping systems. Installs drainage and sewage lines (laterals) from buildings to the point of attachment to mains. Installs plumbing fixtures, such as sinks, faucets, drinking fountains, commodes, etc. Installs refrigeration equipment. Performs cutting, welding and burning which is incidental to the work of plumbing or pipefitting, except as is described under "lead burner". May do other work in connection with the installation and testing of heating and cooling apparatus and control devices.

**T. Plumbers and pipefitters (lead burner):** Performs cutting, burning and welding operations on lead pipes, tanks, reservoirs, etc.

**U. Roofer:****(1) Roofer**

Journeyman: Installs, alters or repairs roof systems on new or existing roof decks to create a weatherproof and waterproof protective membrane, with or without insulation, using asphalt, pitch, tar, sealants, single ply or multiple ply materials, felt, shakes, shingles, roof tile, slate, coatings, urethane, urethane foam, metal or any other approved roofing materials, including the preparatory work necessary to bring such surfaces to a condition where roofing can be installed, sealed, or repaired. Includes cutting, shaping fabricating and installing or wood, metal or other approved materials for fascias, soffits, copings, cornices, canals, flashing, gutters, leaders, rainwater

downspouts, pans, prefabricated chimneys, at or near roof lines, metal flues, prefabricated roof curbs. Installs roofing insulation, and other necessary waterproofing and damp proofing on walls and floors below ground. May perform other waterproofing operations using methods which are common to the roofing trade. Handles all roofing materials at job site and performs all roofing clean-up. Tears off old roof when roof is to be replaced.

**(2) Roofer**

Helper: Roofer helpers shall be paid at the rate of [60%] sixty percent of the journeyman roofer wage rate. There is no restriction on the type of work that the roofer helper may perform. The ratio of helper to journeyman is one helper for every three journeymen.

**V. Sheet metal worker:**

Fabricates and installs heating and air conditioning ducts and other ductwork. Fabricates and installs hangers, brackets, etc., used in the installation of sheet metal, and installs grills, registers, etc., which are part of duct systems. Fabricates or installs architectural sheet metal in and around buildings, including metal panel systems, canopies, awnings, exhaust louvers, and cupolas. Installs warm air furnaces except where necessary piping for gas or oil is performed under the plumbing and pipefitting classification. Performs the testing, measuring, adjusting of air and hydronic flows in a building to meet design specifications and local building codes to ensure thermal comfort, indoor air quality, and system energy efficiency are optimized, performs periodic inspections of fire, smoke and combination fire and smoke dampers and conducts differential pressure measurements across, and force testing of stairwell egress doors and performs the functional testing and general required maintenance of smoke control systems and is responsible for recognizing the proper installation, application, and usage of smoke control systems. May install other heating and cooling devices which are in connection with duct systems.

**W.** Soft floor layer:  
Cleans and prepares floors and other surfaces to which linoleum and floor tile is to be applied. Lays carpets. Applies appropriate cement to floors and surfaces and installs materials such as sheet rubber, sheet vinyl, asphalt tile, cork tile, linoleum, rubber tile, artificial turf and other resilient floor coverings. Rolls finished floors and surfaces to smooth and press down coverings which have been applied. Mixes and pours liquid seamless floor covering on floor, gyms, etc. Installs decorative or protective trim to and adjoining the above materials including the attaching of cap strips, nosing, and slats.

**X.** Sprinkler fitter:  
Fabricates, assembles, and installs all piping and auxiliary devices which are necessary for the complete installation of sprinkling systems for fire protection in buildings.

**Y.** Tile setter: Applies glazed, unglazed, mosaic, and other ceramic tiles which are used as a surface on floors, walls, ceilings and other surfaces and which must be set to a specified grade. Applies and floats all setting beds which these tiles are set into. Levels and plumbs these tiles to the specified grade.

**Z.** Tile setter helper:  
Handles and mixes materials to be used in floating beds, generally assists tile setter by delivering materials, cleaning and caring for tools.

**AA.** Power equipment operators - group I performs the following tasks or operate the following equipment:

**(1)** Concrete paving curing machine (Bridge type): Operates self-propelled machine and operates pump on the machine which sprays curing compound on freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(2)** Fireman:  
Hand strokes or fires by gas or oil, a portable or semi-portable steam boiler, such as is used on steam shovels, pile drivers, cranes, dredges, hoisting equipment and asphalt plants.

**(3)** Oiler:  
A service man who lubricates mechanical equipment, gives signals to operator when applicable, changes oil, greases and filters, refuels equipment. May assist mechanic, head oiler or operator in assembling, setting up, adjusting, maintaining (including operation of steam cleaners) and repairing all types of construction equipment. May, when servicing equipment, drive a truck which carries fuels, oils and greases. May use the tools of the trade at and under the direction of a mechanic, head oiler or operator.

**(4)** Screedman: Manipulates handwheels or other devices to raise or lower screeds of asphalt machine. Regulated width of screed and depth of material. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

**(5)** Scale operator such as (bin-a-batch).

**(6)** Tractor (under 50 drawbar h.p. without attachments): Operates a small diesel or gasoline powered rubber-tired, farm -type tractor, with no attachments, to pull by drawbar, seed drills, etc. May oil, grease, or otherwise service and make necessary adjustments.

**(7)** Industrial locomotive brakeman: A semi-skilled operator who hooks and unhooks various cars, throws switches, operates car dumps, signals locomotive operator, manipulates controls of loading devices (hopper conveyors, etc.) and assists locomotive operator. May oil, grease or otherwise service and make necessary adjustments.

**(8)** Helpers:  
mechanic, welder, grease truck and crane oiler.

**AB.** Power equipment operators - group II performs the following tasks or operate the following equipment:

**(1)** Tractor (under 50 drawbar h.p. with attachments): Operates a small diesel or gasoline powered rubber-tired or crawler tractor. May be used with

attachments such as dozer, tampers, posthole diggers, postdrivers, etc. May be used to pull brooms, sleds, trailers, etc. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(2)** Air compressor (315 c.f.m. and over): Keeps compressor fueled, oiled, clean and ready for service. Keeps oilers and air lines working properly, full of proper oil, sets and checks valves on oiler, sets and checks air pressure, cut off valve and gauges, checks and maintains air tools, keeps moisture drained from air tanks, checks governor, sets throttle to avoid compressor damage. Checks and repairs air brakes on compressor and repairs air hose.

**(3)** Pumps (six inch intake or over): Operates water pump which pumps water for roadway, prewetting, pumping by transmission line from water source to job area or other use. May oil, grease, prime, or otherwise service and make necessary adjustment to equipment as needed.

**(4)** Mixer, concrete (one cubic yard and less): Operates a small, portable concrete mixing machine to mix sand, gravel, cement and water to make concrete. Starts power unit and does or oversees loading of materials. Controls the mixing by levers to discharge concrete from drum. This small machine is sometimes charged by shoveling in the proportions of materials directly into the mixing drum and some others have a skip into which materials are shoveled before being hoisted into the mixing drum. Rinses drum with water to remove adhering concrete. May oil, grease or otherwise service and make necessary adjustments as needed.

**(5)** Roller (sheepsfoot or pneumatic self-propelled without dozer): Operates a diesel or gasoline driven self-propelled machine used for compaction. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(6)** Service truck operator (head oiler-type B

or C work): An operator of a truck equipped with high pressure grease and oil dispensing equipment. Maintains service records and performs preventative maintenance and visual inspection. Reports vehicle discrepancies to foreman or mechanic.

(7) Screening plants: Operates a screening plant to sort and segregate material. Regulates flow of material through chute to screener. May perform other related work. May oil, grease, or otherwise service and make necessary adjustments or repairs to equipment as needed.

(8) Belt type conveyors (material and concrete): Operates an endless belt-type conveyor that is a machine designed so the belt operates between a head pulley and tail pulley which are located on the opposite ends of the conveyor frame. The belt rides on carrier rollers so formed in shape and positioned that the belt forms a trough to carry the loose material. The operator starts and stops the belt as necessary, maintains the carrier rollers and belt splices, regulates belt speed for correct loading for efficient operation and belt life, maintains belt alignment to insure the belt is not loaded on one side which results in excessive belt wear. Conveyors are used efficiently in confined areas particularly in the placement of concrete with portable type conveyors. (Conveyor systems which are part of a plant shall be operated by the plant operator). May oil, grease or otherwise service and make necessary adjustments.

(9) Concrete paving joint or saw machine or grinder span type: Operates a self-propelled machine which travels on paving form or pavement and cuts grooves for expansion and contraction joints in freshly poured concrete or cured pavement. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(10) Hoist (one drum): Operates a single drum machine powered by air, electric, gasoline or diesel. Actuates valves,

levers, brakes or other control devices which regulates linepull, hold or line release in accordance with signals received by sight, hearing or other signaling devices as necessary. Machines are used for various pulling and hoisting operations on construction work such as to hoist and lower material in various elevations or to hoist and lower material in construction and assembly. May oil, grease or otherwise service and make necessary adjustments.

(11) Air tugger

(12) Elevating

belt type loaders: Operates a self-propelled or tractor-drawn elevating grader, bucket, or belt loader. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(13) Lumber

stacker: Operates machine designed to straddle bundles or stacks of lumber or other objects suitable to be handled by this specialized machine, hoists and moves materials to various locations. May oil, grease or otherwise service and make necessary adjustments.

(14) Winch

truck: Drive a heavy duty gasoline or diesel truck equipped with a winch and gin poles or other hoisting devices. Shifts winch gears in accordance with signals from helper on ground. May service and make necessary adjustments for proper operation of equipment.

(15) Front

end loader (under two cubic yards): Operates a runner tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(16) Fork lift:

Operates a machine powered by gasoline, diesel or electric power that is equipped with a vertical hoisting and lowering device that may be canted forward and reverse of vertical center by means of control devices. Machine is equipped with fork lifting and designed to slide under

loads, machine is used for lifting and transporting loads. May oil, grease or otherwise service and make necessary adjustments.

(17) Power

plant (electric generator or welding machine): Operates a diesel or gasoline driven machine that generates A.C or D.C. current of 15 K.W. or more used for lighting and electrical power. Keeps cycle and synchronization control board in adjustment adhering to manufacturers specifications. Keeps governor relay in adjustment. Operates welding machine in bank, for arc-welding, uses armature dressing stone as required and resets welding heats as required. May oil grease or otherwise service and make necessary adjustment. May perform other related duties. (Electric power plants, when the principal use is to furnish electric power for camp sites, shall be excluded).

(18) Cat head

winch

(19) Oiler with

CDL

(20) Concrete

curbing machine

(21) Inside

and outside material and personnel elevators

(22) Industrial

locomotive motorman: An operator of gasoline, diesel or electric powered railroad locomotive used to push, pull or switch railroad cards of various designs loaded with muck, concrete, aggregate, or other applications suitable for rail transport. May oil, grease or otherwise service and make necessary adjustments.

AC. Power equipment operators - group III performs the following tasks or operate the following equipment:

(1)

Bituminous distributors

(2) Boilers

(3) Asphalt

Retort heater: Operates a stationary or portable piece of equipment designed to apply heat to a tank, tank car, or tank truck containing asphalt. Starts fire, controls heat applied to tank by regulating burners.

Starts, stops and controls flow of recirculating pumps. Maintains desired temperature in asphalt, regulates valves for discharge of asphalt from tank. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(4) Mixer,** concrete (over one cubic yard): Operates a large, portable or sometimes stationary concrete mixing machines to mix sand, gravel, cement and water to make concrete. Starts power unit and oversees the loading of proper proportions of materials into the skip and then manipulates levers that control feeding of material into mixing drum. Starts drum rotating to mix materials; manipulates lever to discharge concrete from drum, either by tilting drum forward or by opening a discharge chute. Rinses drum with water to remove adhering concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

**(5) Concrete paver mixer (single drum):** Operates a paving machine that mixes and dumps concrete, the machine consisting primarily of a skip, concrete mixer, and a boom equipped with a traveling bucket and a power plant, all mounted upon a crawler or wheel unit. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(6) Drilling machine (cable, core or rotary):** Sets up and operates a portable cable, core, diamond or rotary drill for the purpose of drilling water wells or exploratory drilling. May drill pilot holes for piling. May oil, grease, or otherwise service and make necessary adjustments.

**(7) Shaft and tunnel type equipment:**

**(a) Refrigeration:** Operates a plant designed to circulate brine or other refrigerant through piping system to freeze specified areas for purpose of drilling, trenching, boring, blasting and stabilizing formations to permit such operations. Maintains pressures, vacuum, intercooling and other related functions. May keep brine or

other refrigerants at proper levels in supply tanks.

**(b) Slusher operator:** Operates hoist as described under one or two drum hoist to raise and lower, drag and release a bucket similar to dragline bucket without a bottom in it. To move loose material into dump chute or other purposes. Sheaves to control line direction are usually secured to roof, side or face of excavation by rock bolts. May oil, grease or otherwise service and make necessary adjustments.

**(c) Jumbo form or drilling stage:** Operates a specialized machine usually mounted on rails or rubber-tired wheels which has surrounding it, expandable, retractable forms. Drilling stage consists of one or more drilling stages from which drilling operations at the phase are performed for blasting. The operator positions machine for drilling, removes it for blasting, connects and disconnects air and water lines from the source as needed. May oil, grease or otherwise service and make necessary adjustments.

**(8) Trenching machine:** Operates a power-driven machine that digs trenches for sewer, water, drainage, oil and gas pipelines, footings, etc. The trenching machine is mounted on crawler treads or rubber tires with the digging equipment usually consisting of an endless chain or wheel or edged buckets that excavate and deposit the material on a conveyor belt which in turn discharges the material at the side of the trench. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(9) Pumpcrete machine:** Operates a concrete pumping machine that pumps fresh concrete from mixer to forms that mold fresh concrete. Sets up pump, operates power unit of pump and allows fresh concrete to flow into hopper or pump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(10) Guniting machine:** Operates a machine

designed to pump dry sand and cement mixture forced under high air pressure to various areas specified for guniting treatment. May oil, grease or otherwise service and make necessary adjustments.

**(11) Concrete slip-form paving machine:** Operates a self-propelled machine with long forms attached which move along with the machine. Machine vibrates, screeds, spreads and finishes the surface. Operates a roto-mill machine (machine with plane to smooth). May oil, grease or other service and make necessary adjustments to equipment as needed.

**(12) Mechanical bull floats**

**(13) Concrete paving spreader:** Operates a self-propelled machine that rides on the paving forms. Operates controls to spread fresh concrete evenly over subgrade or in concrete forms. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(14) Concrete paving finishing machine:** Operates self-propelled machine which travels on subgrade or paving forms and levels fresh concrete to approximate grade and contour by pushing and pulling screeds over the surface. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**(15) Subgrade or base finisher:** Sets and adjusts machine to grade or string line. Operates necessary controls for grading, cutting and finishing subgrade or treated and untreated base material. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

**(16) Concrete paving sub grader:** Operates a machine that finishes subgrade. Machine runs on concrete paving forms or subgrade and is equipped with knives or blades to loosen material and eject same from subgrade. May oil, grease or otherwise service equipment as needed.



(17) Concrete paving form grader: Operates a machine that controls subgrade under forms used in concrete paving and is equipped with knives or blades to loosen dirt and eject same from the form line grade. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(18) Concrete paving gang vibrator: Operates a self-propelled machine which travels on paving forms and operates levers to lower multiple vibrator heads into freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(19) Concrete paving longitudinal float: Operates a self-propelled machine which travels on paving forms and moves levers to strike off the concrete to correct elevation. Machine has one or more screeds traveling longitudinally. Operates milling machine (makes ridges). May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(20) Bituminous finishing machines

(21) Certified forklift

(22) Asphalt distributor: Sets spray bar and operates valves and levers of distributor to control distribution of oil or bituminous liquid, also may drive truck on one-man operated distributor. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(23) Asphalt paving or laydown machine: Manipulates controls of paving machine that spreads and levels asphaltic concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

AD. Power equipment operators-group IV performs the following tasks or operates the following equipment:

(1) Front end loader (two through ten cubic yards): Operates a rubber tired or crawler-type tractor with an attached bucket

on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Rollers steel wheeled (all types): Operates a self-propelled machine with steel flat wheels which is used to compact and smooth earth fills, flexible bases, bituminous roads surfaces. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Bulldozer: Operates a tractor with a concave steel scraper blade mounted in front of the chassis to level, distribute and push earth; regulates height of blade. Uses tractor as a pusher in loading earth carrying equipment. May oil, grease or otherwise service and make minor repairs to equipment as needed.

(4) Scrapers (motor or towed): Operates a tractor or self-propelled machine to pull a steel bowl-like scoop (scraper) mounted on wheels that scrapes up earth and transports it to a designated place; manipulates necessary scraper controls. May oil, grease or otherwise service and make necessary adjustments to equipment as needed, twin bowl scraper and quad eight or nine pushers (\$.35 over base rate). Three bowl scraper (\$.60 over base rate).

(5) Batch or continuous mix plant (concrete, soil, cement or asphalt): Sets up and operates a large portable or stationary plant for batching concrete, soil-cement or asphaltic materials and aggregates; responsible for control of mixture and plant. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(6) Bobcat with hydraulic backhoe with buckets up to one (1) and one quarter cubic yards.

(7) Backhoes with buckets up to ¾ cubic yard-Type B or C work.

(8) Small Articulating Truck

AE. Power equipment operators-group V performs the following tasks or operates the following equipment:

(1) Concrete paver (double drum): Operates a paving machine that mixes and dumps concrete, the machine consisting primarily of a skip, concrete mixer and a boom equipped with a traveling bucket and a power plant, all mounted upon a crawler or wheel unit. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Hoist (two drums): Operates a two drum machine powered by air, electric, gasoline or diesel. Actuates valves, levers, brakes or other control devices which regulates linepull, hold or line release in accordance with signals received various pulling and hoisting operations on construction work such as: to hoist and lower material in various elevations; to hoist and lower material in construction and assembly. May oil, grease or otherwise service and make necessary adjustments.

(3) Cat cranes

(4) Hysters

(5) Forklifts over 20,000 lbs. lifting capacity

(6) Auto fine grader

AF. Power equipment operators-group VI performs the following tasks or operates the following equipment:

(1) Mucking machine (all types): Operates a machine designed especially to work in confined spaces, generally operated by air or electric power to minimize air pollution, underground. Rocker shovel types have front-mounted buckets that are loaded by being pushed into the material and lifted over the machine and dumped into an attached car, or lifted to a point that gravity dumps the material from the back of the loaded bucket onto a conveyor belt that runs over the machine to a dumping point or into attached car. This type mucking machine usually operates on tracks or are crawler mounted. The bucket is hinged to a boom which in turn

is hinged to a turntable on the main frame which allows the main frame to travel in one direction while the swinging action of the bucket can reach out to the sides to remove such loose material generally called muck. These machines are especially suited for underground, emptying into conveyors or into cars. May oil, grease or otherwise service and make necessary adjustments.

(2) Tractor with hydraulic backhoe.

(3) Backhoes with buckets up to one and one quarter cubic yards- Type B or C work.

(4) Service truck operator (head oiler-type A or H work): An operator of a truck equipped with high pressure grease and oil dispensing equipment, which may have gasoline and diesel fuel tanks, who lubricates, changes oil and filters and refuels equipment. Maintains service records and performs preventative maintenance and visual inspection. Reports vehicle discrepancies to foreman or mechanic.

(5) Motor grader (rough): Operates motor grader. Blade is mounted on a carrying and turning circle under the frame of the machine. Equipment is used in leveling dirt to grade and in laying asphalt and flexible base materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

AG. Power equipment operators-group VII performs the following tasks or operates the following equipment:

(1) Steam engineers

(2) Front end loader (over 10 cubic yards): Operates a rubber tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(3) Concrete pump (snorkel type)

(4) Mining machine

(5) Concrete batching plant operator

(6) Asphalt plant operator

(7) Crushing plant operator- Operates a crusher to control flow of materials through plant. Regulates flow of rock through chute to crusher. May perform other related work. May oil, grease, or otherwise service and make necessary adjustments or repairs to equipment as needed.

(8) Hot plant operator

(9) Roof Bolting Machine

(10) Shuttle Car Operator

AH. Power equipment operators-group (VIII-All shovel type equipment that does not require a State of New Mexico crane license) performs the following tasks or operates the following equipment:

(1) Side boom: Operates a diesel or gasoline powered rubber-tired or crawler-tractor on which is mounted a side boom attachment with necessary hoisting devices. Positions tractor, manipulates control levers, clutches, brakes, and other controls to raise or lower boom, raise or lower load. By tractor motivation, loads may be transported to desired location. May oil, grease or otherwise service and make necessary adjustments.

(2) Crane (crawler or mobile under ten tons): Operates crane type equipment to hoist and move materials and perform other related operations. Such equipment is used for pouring concrete, setting steel or other miscellaneous tasks for which crane type equipment is required. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Backhoes with buckets over one and one quarter cubic yards- Type B or C work.

(4) Backhoes over a 3/4 yard bucket—Type A or H work.

(5) Derrick, cableway: Operates guy, stiff leg or other derrick, cableway. (Derricks are distinguished from cranes by being stationary and being supported by cables, or structural member, but may be repositioned to higher levels as construction progresses). Derricks use a hoist as described in building hoists, two drums and up, but may vary with different designs, as the source of power for line pull, hold or release through sheaves on the particular derrick or cableway for lifting and moving materials to higher, lower, or the same levels in construction. The operator controls in accordance with signals received by sight, hearing or other signaling devices. If necessary may oil, grease or otherwise service and make necessary adjustments.

(6) Track or excavator backhoe

(7) Pipemobile

(8) Pile driver:

Operates the basic machine, and applicable hammer controls to which pile driving attachments are attached. Pile driving attachments normally consists of leads, to service as a guide for the weight, hammer or extractor. The drop hammer is a weight hoisted by cable along the leads and released to fall by gravity onto the pile. Steam, compressed air, hydraulic, sonic and diesel hammers ride along the leads resting on top of pile or pile cap striking blows on the down stroke of the hammer, from its power source, onto the pile being driven. The extractor is a steam or air hammer that strikes its blows on the upstroke of the hammer equipped with devices for attachment onto the piling to be pulled. May drill or jet pilot holes. May oil, grease or otherwise service and make necessary adjustments.

(9) Mine hoists: Operates hoists used in mining operations and in compliance with the department of mines regulations. Hoists and lowers men and materials in shafts and inclines in accordance to authorized signals. May oil, grease or otherwise service and make necessary adjustments.

(10) Motor grader (finish)

(11) Mechanic and welder: Assembles, sets up, adjust and maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers and paving equipment.

(12) Mole operator: Operates a horizontal boring machine which is the vertical rotating cutter head which deposits muck onto conveyor that passes over the machine to a dump point. The operator controls the elevation and direction and travel by hydraulic rams. The machine is a specialized piece of machinery for tunnel boring. May oil, grease or otherwise service and make necessary adjustments.

(13) Mobile pipeline inspection camera

(14) Operator or rigger

(15) Crane inspector

(16) Continuous mining machine

(17) VAC jet rodder

(18) Equipment instructor

(19) Heavy equipment robotics operator or mechanic

(20) Ultra high pressure waterjet cutting tool system operator/mechanic

(21) Vacuum blasting machine operator or mechanic

(22) Master environmental maintenance mechanic

rate per hour additional; cranes 200 feet and over \$1.00 additional; tower cranes (NM, Class I Crane License Required).

**AK.** Truck drivers group I:

(1) Pickup truck 3/4 ton or under: Drives a light truck for transporting small loads of construction materials, tools or equipment. May service and make necessary adjustments for proper operation of equipment.

(2) Service station attendant: Maintains service station. Washes, lubricates, fuels and otherwise services vehicles and equipment. Changes and repairs tires and tubes. Operates and maintains service station equipment.

(3) Swamper or rider helper: Assists truck driver. Shares with a driver the duties of loading and unloading a truck, shifting articles about on truck, handling cumbersome articles and may drive to relieve driver.

**AL.** Truck drivers-group II:

(1) Bus or taxi: Drives a bus or taxi to transport employees to and from construction project. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Dump or batch truck: Drives a truck, under eight cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(3) Flatbed (bobtail) two ton and under: Drives a truck for transporting loads of construction materials or equipment. May load and unload truck. May service and make necessary adjustments for proper operation of equipment.

**AM.** Truck drivers-group III:

(1) Dump trucks (including all highway and off highway): Drives a truck, eight cubic yards and under 16 cubic yards, for transporting loads of construction material. May service and make

necessary adjustments for proper operation of equipment.

(2) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank, under 3,000 gallons, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Flatbed (bobtail) over two tons: Drives a truck for transporting loads of construction materials or equipment. May load and unload truck. May service and make necessary adjustments for proper operation of equipment.

**AN.** Truck driver-group IV:

(1) Distributor (asphalt): Only drives truck equipped with tank and controls for regulating distribution of bituminous materials. Does not operate levers or valves (See Power Equipment Operators-Group III). May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Heavy tire repairman

(3) Lumber carrier: Drives truck that hauls logs and lumber with truck trailer or bobtail.

(4) Transit mix or agitator (two or three axle bobtail equipment): Drives a truck upon which is mounted a concrete mixer. Drives truck under loading hopper to receive sand, gravel and cement. Fills water tank and starts and stops mixer. Drives truck to location for unloading. Dumps concrete into chute leading to forms. Cleans mixer drum. May service and make necessary adjustments for proper operation of equipment.

(5) Scissor truck

(6) Trailer or semi-trailer dump: Drives a truck to which is attached a trailer or semi-trailer dump used in transporting construction materials.

(7) Field equipment servicemen

**AO.** Truck driver-group V:

(1) Dumpster or dumptor: Operator of a self-propelled, four-wheeled, rubber-tired truck type machine which is used in hauling of materials. Machine is normally used off the highway, working around rock crushers or excavation. Being reverse steer, the operator rides facing the dump-bed which is dumped by release of safety lock and sudden stop of machine, which causes off center loading of truck bed to dump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank, 3,000 to 6,000 gallons, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Lowboy, light equipment: Drives a truck to which is attached a trailer with a low frame or bed upon which light equipment or material is hauled. May service and make necessary adjustments for proper operation of equipment.

(4) Euclid type tank wagon under 6,000 gallons.

**AP.** Truck driver-group VI:

(1) Vacuum truck

(2) Dump trucks (including all highway and off highway): Drives truck, 16 cubic yards and under 22 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

**AQ.** Truck driver VII:

(1) Transit mix or agitator (semi or four axle equipment): Drives a truck upon which is mounted a concrete mixer. Drives truck under loading hopper to receive sand, gravel and cement. Fills water tank and starts and stops mixer. Drives truck to location for unloading. Dumps concrete into chute leading

to forms. Cleans mixer drum. May service and make necessary adjustments for proper operation of equipment.

(2) Flaherty truck type spreader box: Drives a self-propelled vehicle, consisting primarily of a hopper mounted on pneumatic-tired wheels, used to spread crushed aggregate on bituminous roadway material. May service and make necessary adjustments for proper operation of equipment.

(3) Slurry truck driver

(4) Bulk cement driver

(5) Semi doubles driver

(6) Four axle bobtail driver

(7) Dump trucks (including all highway and off highway): Drives truck, 22 cubic yards and under 36 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(8) Head field equipment servicemen.

**AR.** Truck driver VIII:

(1) Diesel-powered transport (non-self-loading) 10 yards and over: Drives diesel powered Euclid Turnarocker, Terra Cobra, D.W.-10, D.W.-20 Le Tourneau pulls and similar diesel powered equipment when used to haul material and assigned to a "teamster".

(2) Lowboy, heavy equipment: Drives a truck to which is attached a trailer with a low frame or bed upon which light equipment or material is hauled. May service and make necessary adjustments for proper operation of equipment.

(3) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank 6,000 gallons and over, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(4) Semi-trailer drivers (flatbed or van, tandems)

(5) Light equipment mechanic

(6) Dump trucks (including all highway and off highway): Drives truck, 36 cubic yards and over, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

**AS.** Truck driver IX:

(1) Warehouseman: Maintains warehouse for construction supplies and materials. May operate necessary equipment and machinery within warehouse area.

(2) Cardex men

(3) Expediter

(4) Lowboy (heavy equipment double gooseneck

(5) Heavy equipment mechanic

(6) Welder (body and fender man)

**AT.** Semi-skilled laborers Group II:

(1) Carpenter tender: Performs labor such as hand handling of materials used by carpenters. Assists in erecting and removing of forms, removes nails and clears lumber.

(2) Concrete worker or buggy operator: Pours and performs other work in relation to the lining with concrete. Operates buggy by pushing or pulling by hand between mixer or other source to site of work.

~~(3) Fire watch: a laborer who watches the work area for fires when craftsmen are cutting or welding.]~~

(3) Curbing machine, asphalt or cement: Operates a machine which applies asphalt or concrete along the edge of highways or parking aprons to form a small curb.

(4) Scaffold tender: Tends to the scaffold builder.

(5) Certified flagman: Supervises flag and signing personnel. Prepares revision to the traffic control plan.



(6) Bleacher seating: Unloads, moves to place of erection, assembles and installation of all stadium seating.

(7) Fence builder: Digs post holes, pours concrete for posts, sets posts, stretches fencing material.

(8) Guardrail builder: Attaches and assists in the installation of guardrails, (other than guardrails on bridges) guardrail posts, informational signs and metal fencing; including barb wire, woven wire, and chain link which is used to define right of way, medians or driving lanes or provide safety for such areas. May require the use of small hand tools such as hammer and spud wrench.

(9) Form stripper: Strips, cleans and oils all types of concrete forms.

(10) Gabian basket builders: Assembles wire baskets for rip rap.

(11) Rip rap stoneman: One who places stones into gabian baskets.

(12) Drywall, stocking and handling: Carries and handles of all materials by hand to a point adjacent to place of erection. Assists in placement of materials.

(13) Fly ash vacuum operator: Installs vacuum lines and operates nozzle of vacuum hose at power plants in the cleanup of ash.

(14) Landscaping and planter: Duties include site development, soil preparation, rototilling, fine grading, soil amending, installation of plants, seeded and sodded grasses, gravel and bark mulches. Installation of landscape sprinkler systems including landscape irrigation backflow preventers, and all components downstream including pipe, valves, low voltage control wiring, irrigation controllers, sprinkler heads, and drip components. May operate small behind and stand-on only landscape equipment (including miniskid steers with attachments). Maintenance of landscapes including weeding, mowing, and irrigation repair. Duties

do not include electrical work, fencing, concrete retaining walls or other work that is generally performed by skilled craftsmen.

(15) Manhole builder: Constructs a means of permanent access to water, electrical and sewer lines for maintenance purposes.

(16) Tool room person: manages, inspects and coordinates all tool room activities and exchanges.

(17) Rodmen: holds survey rod.

(18) Tenderers (to cement mason and plasterer): Assists in the pouring of concrete by spreading concrete, cleaning and caring of cement mason's tools, mixes mortar used in the patching of concrete. Mixes mortar for plasterers and delivers same to location where plasterers are working. Sets up scaffolding as directed by foreman where necessary, and cleans and cares for tools and equipment used in the preparation and application of plaster.

AU. Skilled laborers: Group III:

(1) Air and power tool man (not a carpenter's tool): A worker who uses a tool driven by compressed air, gas or electric power to perform such work as breaking old pavement, loosening or digging hard earth, trimming bottom and sides of trenches, breaking large rocks, driving sheeting, chipping concrete, trimming or cutting stone, calking steel plates, or compaction of earthen backfill. Install plastic and PVC linings on ponds. Rotary man operates a hand-held device to make cuts on road with a person holding a nozzle to fill cuts with oil.

(2) Asphalt raker: Distributes asphaltic road-building materials evenly over road surface by raking and brushing materials to correct thickness; may control straight edge to regulate width and depth of materials; directs "asphalt shovelers" when to add or take away material to fill low spots or to reduce high spots. Applies color to tennis courts, etc. by using a squeegee. Applies epoxy on concrete floors to seal.

(3) Asphalt heaterman: Tends a stationary or portable liquid asphalt kettle, starts fires (usually fuel oil) under the kettle, controls heat applied to the kettle by regulating dials or burners, maintains desired temperature in asphalt, and regulates valves for discharge of asphalt from kettle.

(4) Asphalt jointman: Cleans and pours asphalt joints in concrete paving with nozzle or can. Takes care of asphalt kettle heaters.

(5) Chain sawman: Operates a power driven chain saw to clear areas of timber. Falls trees, and sometimes cuts the fallen trees into short sections to facilitate their removal.

(6) Oxy or Gasoline torch operators: Uses cutting torch only for demolition work on steel or other metal structures.

(7) Cutting torch or welding torch operator or burner person: Uses cutting torch only for demolition work on steel or other metal structures.

(8) Gunit rebound men: A laborer who shoots gunit into place.

(9) Concrete power buggy operator: Drives self-propelled buggy to transport concrete from mixer or source of supply to place of deposit. Operates levers to dump load.

(10) Sandblaster: Cleans and prepares surfaces by the use of sandblasting equipment other than preparation for painting (see painter).

(11) Potman: Cleans screens and feeds sand to hopper or pot of sandblasting machine.

(12) Wagon, air track, drill and diamond driller (outside): Sets up and operates air driven drilling mechanism that drills holes into concrete or rock. Levels machine by placing timbers under wheels. Inserts and fastens drill steel in chuck. Adjusts angle of drill tower and bolts into position. Controls drilling and speed of drill by moving levers. May make other adjustments to equipment as needed.

(13) Multi-plate setter: Assembles large diameter metal culverts by bolting together semi-circular pieces of metal to form a complete circle, and bolts each section of this circle to similar sections which are placed adjacently, repeating these processes until the required length of culvert is formed.

(14) Concrete burner: Operates a devise used to burn holes, etc., through concrete. This devise consists of a consumable aluminum-magnesium rod inside a small iron pipe. Oxygen is forced through the pipe under pressure, and the end of the assembly is lighted. The concrete is melted by the intense heat of the device.

~~(15) Tenderers (to cement mason and plasterer): Assists in the pouring of concrete by spreading concrete, cleaning and caring of cement mason's tools, mixes mortar used in the patching of concrete. Mixes mortar for plasterers and delivers same to location where plasterers are working. Sets up scaffolding as directed by foreman where necessary, and cleans and cares for tools and equipment used in the preparation and application of plaster.~~

~~(16) (15)~~  
Mortar mixer and mason tender: Mechanically mixes mortar ingredients to proper consistency and delivers to mason on scaffold or at site of work. Keeps materials supplied to mason.

(17) (16)  
Batching plant scaleman: Manually operates a stationary or portable batching scale that weighs out concrete materials. Adjusts scales for required weight of the materials. Operates controls that admit materials separately from storage hoppers to weighing bins. Observes scales or indicators that show when proper amount of materials have been made. Discharges materials from weighing bin into truck or other carrier or mixer. He may measure materials by volume instead of weight.

(18) (17)  
Concrete touch-up man: Prepares the surfaces of concrete masonry which is not to be finished (using tools other

than those normally used by "cement masons") by patching holes and broken corners, and removing high spots and defective concrete.

~~(19) (18)~~  
Concrete sawman - coring machine: Operates a power driven, hand guided, water-cooled saw or diamond driller which is used to cut through slabs of concrete, except as otherwise provided elsewhere.

~~(20) Curbing machine, asphalt or cement: Operates a machine which applies asphalt or concrete along the edge of highways or parking aprons to form a small curb.~~

~~(21) (19)~~  
Metal form setter-road: Fits together, aligns and grades metal road forms for holding concrete in place on road and street surfaces. Dismantles, moves and cleans forms after concrete hardens.

(22) (20)  
Grade setter or checker: Keeps stakes and stringline set in place out in front of trenching machine so that machine will cut ditch in correct location. Sets stakes so that pipelayers can fine-grade ditch and measure from the batter board down to correct depth of ditch.

(23) (21)  
Gunit, pumpcreteman and nozzleman: Assists operator and handles the equipment and directs the placing of concrete or mortar that is moved by pressures or pneumatic equipment, such as gunit. May fine-grade and place wire mesh at times.

(24) (22)  
Vibrator operator (hand type): Lowers hose-like flexible shaft of vibrator into newly poured concrete. Starts power unit and holds shaft, allowing hammerhead on shaft to vibrate, thus compacting the concrete. Air, electric or gasoline operated vibrators are used.

(25) (23)  
Vibratory compactor (hand type): Operates hand guided vibratory or impact compactor. Adjusts levers, throttles and other devices necessary for operation.

(26) (24)  
Hod carrier: Assists brickmasons,

stonemasons and blockmasons by preparing mortar mix, either by hand or machine, delivers material to masons on scaffold, operates small material moving equipment such as power buggy, hoists, mortar mix pumps and other similar equipment. May erect and dismantle bricklayer scaffolds.

(27) (25)  
Pipelayer: Unloading, handling, distribution and installation, concrete, corrugated metal pipe and corrugated and smooth wall plastic pipe, PVC and polyethylene pipe. Receives pipe lowered from top of trench; joins pipe ends; adjusts pipe to line and grade; seals joints with cement or other sealing compound. Lowers pipe.

(28) (26)  
Plaster spreader operator: Mixes plaster to be used in a machine which is designed to apply plaster to surfaces by means of a hose. Handles and maintains hose, places and moves machine, and services and maintains machine.

(29) (27)  
Jack hammer and chipping hammer operator: Operates jackhammer, chipping hammer, whether powered by air or electric or any other means.

(30) (28)  
Tamper operator: Performs the compacting of soil using walk or stand behind equipment.

(31) (29)  
Scaffold builder: Erects and dismantles all types of scaffolding, except wood scaffolding, for job site.

(32) (30)  
Powderman tender: Carries powder or other explosive to blaster or powderman and assists by placing prepared explosive in hole, connecting lead wire to blasting machine, and performing other duties as directed.

(33) (31)  
Water pump tender: fuels and tends to all water pumps under 6" for the purpose of moving water on the job site.

(34) (32)  
Certified scissor lift or man lift operator: Person who completes competent person training certification in the operation of scissor and man lifts.

**AV.** Specialty laborer:  
Group IV:

(1) Asbestos abatement remover: A person who has proper certifications for removal of asbestos from pipes, ceiling and other parts of existing buildings, either by scraping or by using pressure by water. In addition, this definition includes a person who cleans up and disposes of asbestos after it has been removed.

(2) Toxic and hazardous waste remover: Person who has the proper certification for the removal of toxic and hazardous materials.

(3) Lead base paint remover: Person who has the proper certifications for the removal of lead base paints.

(4) Powderman and blaster: Prepares blasting material and inserts this material into predrilled holes. Performs electrical wiring necessary for detonation and assures that all charges have detonated before other workmen resume work in the area made hazardous by the charges.

(5) Pest technician (Licensed by the Bureau of Rodent Management): Technician certified for the removal and handling of rodents and pests.

(6) Radiation worker II: Person that completes proper training for work in areas containing radiation.

**AW.** Unskilled laborers:  
Group I:

(1) Chainman, stake driver, stake hopper: Carries supplies, drags chain, holds survey rod, drives stakes and assists surveyor in other related duties.

(2) Building and common laborer: A general term used on construction work covering many unskilled occupations. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer; shoveling and placing concrete; applying coats of oil to inside face of forms; stripping forms; working on rock crusher to feed trap; opening cement sacks at batch plant;

working with dirt crew to move construction layout stakes; working as flagman, signalman or spotter to control traffic; serving as dumpman; spreading hot asphaltic material over roadbed with shovel; operating hand concrete buggy or wheelbarrow; helping painter to prepare surfaces for painting and cleaning paint equipment. Does not include roofing cleanup.

(3) Concrete buggy operator (hand): Operating buggy by pushing or pulling by hand between mixer or other source to site of work.

(4) Fire watch: a laborer who watches the work area for fires when craftsmen are cutting or welding.

(4) (5) Flagman: Flagman is stationed at strategic locations to control flow of traffic by hand held flags or other hand held warning device.

(5) (6) Window washer: Cleans and washes windows.

(6) (7) Unloading of furniture and fixtures: Unloads furniture and fixtures from trucks and moves them to the place of installation or storage.

(7) (8) Heat tenders: Fuels and tends to heaters use on the job sites.

**AX.** Underground laborers: Group I:

Tunnel workers: Outside laborer, minimum tunnel, labor, dry houseman and hand muckers, top landers, trackmen.

**AY.** Underground laborers: Group II:

Chuck tender, cable or base tenders, concrete laborers, dumpmen, whirley pump operators, tenders on shotcrete, gunniting and sandblasting, tenders core and diamond drills, pot tenders, concrete specialist (1) including finishing, grouting, patching, and curing, concrete specialist tender (2), applying of concrete processing materials, concrete worker, (including all chipping and finishing underground).

**AZ.** Underground Laborers: Group III:

Shaft Miner, tunnel miner, air tugger operators, collapsible form movers and setters, machine men and bit grinders, nippers, powdermen and blasters, reinforcing steel setters, timbermen (steel or wood tunnel support, including the placement of sheeting when required), tunnel liners, plate setters, all cutting and welding incidental to miners' work, vibrator men, internal and external, unloading, stopping and starting of moran agitator cars, diamond and core drill operators, shotcrete operator, gunnite nozzelmen.

[11.1.2.18 NMAC - Rp, 11.1.2.17 NMAC, 12/30/2016; A, 1/1/2023; A, 5/19/2023; A, 1/1/2024]

**11.1.2.20 PREVAILING WAGE AND FRINGE BENEFIT AND APPRENTICESHIP CONTRIBUTION RATES:**

Pursuant to 11.1.2.13 NMAC, the director of the labor relations division of the department of workforce solutions hereby publishes the [2023] 2024 prevailing wage and fringe benefit rates and apprenticeship contributions that will apply to all wage rate decisions issued from January 1, [2023] 2024 through December 31, [2023] 2024.

**Continued Next Page**

<b>A. TYPE A: STREET, HIGHWAY, UTILITY AND LIGHT ENGINEERING</b>			
<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>	<b>Apprenticeship</b>
<b>Bricklayer/block layer/stonemason</b>	[24.46] <u>27.03</u>	[8.81] <u>10.99</u>	
<b><u>Bricklayer/block layer/stonemason: Curry, DeBaca, Quay and Roosevelt counties</u></b>	<u>23.10</u>	<u>8.98</u>	
<b><u>Bricklayer/block layer/stonemason: Dona Ana, Otero, Eddy, and Lea counties</u></b>	<u>29.56</u>	<u>14.10</u>	
<b>Carpenter/lather</b>	[27.73] <u>29.11</u>	[12.14] <u>12.79</u>	
<b>Carpenter: Los Alamos county</b>	<u>33.18</u>	<u>13.58</u>	
<b>Cement mason</b>	[18.24] <u>19.34</u>	[7.61] <u>7.41</u>	
<b>Drywall Finisher/Taper</b>	[25.82] <u>26.40</u>	[8.40] <u>8.86</u>	
<b>Glazier/Fabricator</b>	<u>21.75</u>	<u>7.10</u>	
[Glazier/Fabricator]	[21.25]	[6.70]	
[Delivery Driver]	[12.00]	[6.70]	
<b>Ironworker</b>			
Ironworker journeyman	[28.05] <u>28.49</u>	[18.30] <u>18.71</u>	
Probationary ironworker	[22.44] <u>22.79</u>	[18.30] <u>18.71</u>	
<b>Painter – Commercial</b>	[18.25] <u>21.00</u>	[8.50] <u>5.75</u>	
<b>Paper Hanger</b>	[18.25] <u>21.00</u>	[8.50] <u>5.75</u>	
<b>Plumber/pipefitter</b>	[38.63] <u>40.74</u>	[14.55] <u>15.90</u>	
<b>Electricians – outside classifications: Zone 1</b>			
Ground man	[25.43] <u>26.32</u>	[11.76] <u>12.79</u>	
Equipment operator	[36.48] <u>37.76</u>	[16.09] <u>17.13</u>	
Lineman	[46.09] <u>47.70</u>	[18.52] <u>19.92</u>	
Journeyman technician	[42.92] <u>44.42</u>	[17.73] <u>19.10</u>	
Cable splicer	[47.22] <u>48.87</u>	[18.81] <u>20.22</u>	
<b>Electricians – outside classifications: Zone 2</b>			
Ground man	[25.43] <u>26.32</u>	[11.76] <u>12.79</u>	
Equipment operator	[36.48] <u>37.76</u>	[16.09] <u>17.13</u>	
Lineman	[46.09] <u>47.70</u>	[18.52] <u>19.92</u>	
Journeyman technician	[42.92] <u>44.42</u>	[17.73] <u>19.10</u>	
Cable splicer	[47.22] <u>48.87</u>	[18.81] <u>20.22</u>	
<b>Electricians – outside classifications: Los Alamos county</b>			
Ground man	[26.15] <u>27.07</u>	[11.78] <u>12.81</u>	
Equipment Operator	[37.54] <u>38.85</u>	[16.13] <u>17.17</u>	
Lineman/Technician	[47.29] <u>48.95</u>	[18.82] <u>20.24</u>	
Journeyman technician	[44.15] <u>45.70</u>	[18.04] <u>19.42</u>	
Cable Splicer	[51.93] <u>53.75</u>	[19.98] <u>21.44</u>	
<b>Laborers</b>			
Group I – Unskilled	[15.99] <u>16.60</u>	[7.11] <u>7.30</u>	
Group II – Semi-Skilled	[15.99] <u>17.60</u>	[7.11] <u>7.30</u>	
Group III – Skilled	[17.49] <u>18.10</u>	[7.11] <u>7.30</u>	
Group IV - Specialty	[17.99] <u>18.60</u>	[7.11] <u>7.30</u>	
<b>Operators</b>			
Group I	[21.35] <u>22.42</u>	[6.74] <u>6.79</u>	
Group II	[22.38] <u>23.50</u>	[6.74] <u>6.79</u>	
Group III	[22.49] <u>23.61</u>	[6.74] <u>6.79</u>	
Group IV	[22.62] <u>24.09</u>	[6.74] <u>6.79</u>	
Group V	[22.73] <u>24.21</u>	[6.74] <u>6.79</u>	
Group VI	[22.94] <u>24.43</u>	[6.74] <u>6.79</u>	
Group VII	[23.12] <u>24.62</u>	[6.74] <u>6.79</u>	
Group VIII	[23.45] <u>25.33</u>	[6.74] <u>6.79</u>	



Group IX	[31.96] 33.56	[6.74] 6.79	
Group X	[35.65] 37.43	[6.74] 6.79	
Soft Floor Layer	21.00	[8.45] 9.20	
Truck drivers			
Group I – IX	[19.00] 19.75	[9.10] 9.15	

<b>B. TYPE B: GENERAL BUILDING</b>			
<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>	<b>Apprenticeship</b>
Asbestos workers/heat & frost insulators	[35.56] 35.86	[12.26] 12.46	.60
Asbestos workers/heat & frost insulators: Los Alamos county	[37.99] 38.29	[12.26] 12.46	.60
Boilermaker/blacksmith	35.88	32.28	.60
Boilermaker/blacksmith: San Juan county	36.83	31.88	.60
Bricklayer/block layer/stonemason	[24.97] 27.03	[9.50] 10.99	.60
<b>Bricklayer/block layer/stonemason: Curry, DeBaca, Quay, and Roosevelt counties</b>	23.10	8.98	.60
<b>Bricklayer/block layer/stonemason: Dona Ana, Otero, Eddy, and Lea</b>	26.42	8.98	.60
Carpenter/lather	[27.73] 29.11	[12.14] 12.79	.60
Carpenter: Los Alamos county	33.18	13.58	.60
Millwright/pile driver	[37.10] 39.00	[28.30] 29.40	.60
Cement mason	[23.04] 24.31	[11.30] 11.16	.60
<b>Electricians – outside classifications: Zone 1</b>			
Ground man	[25.43] 26.32	[11.76] 12.79	.60
Equipment operator	[36.48] 37.76	[16.09] 17.13	.60
Lineman/technician	[46.09] 47.70	[18.52] 19.92	.60
Cable splicer	[47.22] 48.87	[18.81] 20.22	.60
<b>Electricians – outside classifications: Zone 2</b>			
Ground man	[25.43] 26.32	[11.76] 12.79	.60
Equipment operator	[36.48] 37.76	[16.09] 17.13	.60
Lineman/technician	[46.09] 47.70	[18.52] 19.92	.60
Cable splicer	[47.22] 48.87	[18.81] 20.22	.60
<b>Electricians – outside classifications: Los Alamos county</b>			
Ground man	[26.15] 27.07	[11.78] 12.81	.60
Equipment operator	[37.54] 38.85	[16.13] 17.17	.60
Lineman/technician	[47.29] 48.95	[18.82] 20.24	.60
Cable splicer	[51.93] 53.75	[19.98] 21.44	.60
<b>Electricians – inside classifications: Zone 1</b>			
Wireman/low voltage technician	[36.75] 38.30	[12.40] 12.60	.60
Cable splicer	[40.43] 42.13	[12.51] 12.71	.60
<b>Electricians – inside classifications: Zone 2</b>			
Wireman/low voltage technician	[40.06] 41.75	[12.50] 12.70	.60
Cable splicer	[43.74] 45.58	[12.61] 12.82	.60
<b>Electricians – inside classifications: Zone 3</b>			
Wireman/low voltage technician	[42.26] 44.05	[12.57] 12.77	.60
Cable splicer	[45.94] 47.88	[12.68] 12.89	.60
<b>Electricians – inside classifications: Zone 4</b>			
Wireman/low voltage technician	[46.31] 48.26	[12.69] 12.90	.60
Cable splicer	[49.99] 52.09	[12.80] 13.01	.60
<b>Electricians – inside classifications: Dona Ana county, Hidalgo county, Luna county and Otero county</b>			
Wireman/low voltage technician	[32.07] 32.72	[9.81] 9.65	.60
Cable splicer	[32.07] 32.72	[9.81] 9.65	.60

<b>Electricians – inside classifications: Los Alamos county</b>			
Wireman/low voltage technician	[42.26] 44.05	[14.68] 14.97	.60
Cable splicer	[45.94] 47.88	[14.98] 15.28	.60
<b>Elevator constructor</b>	[48.93] 49.77	[37.49] 39.19	.60
<b>Elevator constructor helper</b>	[39.14] 34.84	[37.49] 39.19	.60
<b>Glazier/Fabricator</b>	21.75	7.10	
[–Journeyman/Fabricator]	[21.25]	[6.70]	[.60]
[Delivery driver]	[12.00]	[6.70]	[.60]
<b>Glazier: Los Alamos county</b>	[21.25] 21.75	[6.70] 7.10	.60
<b>Ironworker</b>			
Ironworker journeyman	[28.05] 28.49	[18.30] 18.71	.60
Probationary ironworker	[22.44] 22.79	[18.30] 18.71	.60
<b>Painter</b>	[18.25] 21.00	[8.50] 5.75	.60
<b>Painter: Los Alamos county</b>	[29.51] 31.18	[10.35] 11.50	.60
<b>Paper Hanger</b>	[18.25] 21.00	[8.50] 5.75	.60
<b>Paper Hanger: Los Alamos county</b>	[29.51] 32.06	[10.35] 11.50	.60
<b>Drywall Finisher/Taper – Light commercial &amp; residential</b>			
Ames tool operator	[26.82] 27.40	[8.40] 8.86	.60
Hand finisher/machine texture	[25.82] 26.40	[8.40] 8.86	.60
<b>Drywall Finisher/Taper: Los Alamos county</b>	[29.51] 31.18	[10.35] 11.50	.60
<b>Plasterer</b>	[24.34] 24.76	[9.79] 9.99	.60
<b>Plumber/pipefitter</b>	[35.11] 36.91	[13.40] 14.75	.60
<b>Roofer</b>			
Roofer journeyman	26.94	9.36	.60
Roofer helper	16.16	9.36	.60
<b>Sheet metal worker</b>			
Zone 1	[35.44] 37.50	[19.00] 19.08	.60
Zone 2 – Industrial	[36.44] 38.50	[19.00] 19.08	.60
Zone 3 – Los Alamos county	[37.44] 39.50	[19.00] 19.08	.60
<b>Soft floor layer</b>	21.00	9.20	.60
<b>Soft floor layer: Los Alamos county</b>	[29.55] 31.20	[10.45] 11.62	.60
<b>Sprinkler fitter</b>	[34.18] 35.75	[24.44] 24.56	.60
<b>Tile setter</b>	24.46	8.81	.60
<b>Tile setter helper/finisher</b>	16.53	8.81	.60
<b>Laborers</b>			
Group I – Unskilled	[19.25] 20.44	[7.93] 7.96	.60
Group II – Semi-Skilled	[19.25] 20.44	[7.93] 7.96	.60
Group III – Skilled	[20.25] 21.44	[7.93] 7.96	.60
Group IV – Specialty	[22.50] 23.69	[7.93] 7.96	.60
<b>[Masonry Laborers]</b>			
[Group I – Unskilled and Semi-Skilled]	[19.75]	[8.09]	[.60]
[Group II – Skilled]	[21.50]	[8.09]	[.60]
[Group III – Specialty]	[22.00]	[8.09]	[.60]
<b>Operators</b>			
Group I	[23.32] 24.49	[7.67] 8.22	.60
Group II	[25.48] 26.75	[7.67] 8.22	.60
Group III	[25.94] 27.24	[7.67] 8.22	.60
Group IV	[26.38] 27.70	[7.67] 8.22	.60
Group V	[26.57] 27.90	[7.67] 8.22	.60
Group VI	[26.78] 28.12	[7.67] 8.22	.60
Group VII	[26.89] 28.23	[7.67] 8.22	.60
Group VIII	[29.93] 31.43	[7.67] 8.22	.60
Group IX	[32.32] 33.94	[7.67] 8.22	.60

Group X	[35.72] 37.51	[7.67] 8.22	.60
<b>Truck drivers</b>			
Group I – VII	16.65	8.27	.60
Group VIII	16.71	8.27	.60
Group IX	18.65	8.27	.60
<b>C. TYPE C: RESIDENTIAL</b>			
<b>Trade classification</b>	<b>Base rate</b>	<b>Fringe rate</b>	<b>Apprenticeship</b>
<b>Asbestos workers/heat &amp; frost insulators</b>	[35.56] 35.86	[12.26] 12.46	.60
<b>Asbestos workers/heat &amp; frost insulators: Los Alamos county</b>	[37.99] 38.29	[12.26] 12.46	.60
<b>Boilermaker/blacksmith</b>	35.88	32.28	.60
<b>Boilermaker/blacksmith: San Juan county</b>	36.83	31.88	.60
<b>Bricklayer/block layer/stonemason</b>	[24.46] 27.03	[8.81] 10.99	.60
<b><u>Bricklayer/block layer/stonemason: Curry, DeBaca, Quay, and Roosevelt counties</u></b>	23.10	8.98	.60
<b><u>Bricklayer/block layer/stonemason: Dona Ana, Otero, Eddy and Lea counties</u></b>	26.42	8.98	.60
<b>Carpenter/lather</b>	[27.73] 29.11	[12.14] 12.79	.60
<b>Carpenter: Los Alamos county</b>	33.18	13.58	.60
<b>Cement mason</b>	[20.07] 21.27	[10.48] 11.09	.60
<b>Electricians – outside classifications: Zone 1</b>			
Ground man	[25.43] 26.32	[11.76] 12.79	.60
Equipment operator	[36.48] 37.76	[16.09] 17.13	.60
Lineman/technician	[46.09] 47.70	[18.52] 19.92	.60
Cable splicer	[47.22] 48.87	[18.81] 20.22	.60
<b>Electricians – outside classifications: Zone 2</b>			
Ground man	[25.43] 26.32	[11.76] 12.79	.60
Equipment operator	[36.48] 37.76	[16.09] 17.13	.60
Lineman/technician	[46.09] 47.70	[18.52] 19.92	.60
Cable splicer	[47.22] 48.87	[18.81] 20.22	.60
<b>Electricians – outside classifications: Los Alamos county</b>			
Ground man	[26.15] 27.07	[11.78] 12.81	.60
Equipment operator	[37.54] 38.85	[16.13] 17.17	.60
Lineman/technician	[47.29] 48.95	[18.82] 20.24	.60
Cable splicer	[51.93] 53.75	[19.98] 21.44	.60
<b>Electricians – inside classifications: Zone 1</b>			
Wireman/low voltage technician	[36.75] 38.30	[12.40] 12.60	.60
Cable splicer	[40.43] 42.13	[12.51] 12.71	.60
<b>Electricians – inside classifications: Zone 2</b>			
Wireman/low voltage technician	[40.06] 41.75	[12.50] 12.70	.60
Cable splicer	[43.74] 45.58	[12.61] 12.82	.60
<b>Electricians – inside classifications: Zone 3</b>			
Wireman/low voltage technician	[42.26] 44.05	[12.57] 12.77	.60
Cable splicer	[45.94] 47.88	[12.68] 12.89	.60
<b>Electricians – inside classifications: Zone 4</b>			
Wireman/low voltage technician	[46.31] 48.26	[12.69] 12.90	.60
Cable splicer	[49.99] 52.09	[12.80] 13.01	.60
<b>Electricians – inside classifications: Dona Ana county, Hidalgo county, Luna county and Otero county</b>			
Wireman/low voltage technician	[32.07] 32.72	[9.81] 9.65	.60
Cable splicer	[32.07] 32.72	[9.81] 9.65	.60
<b>Electricians – inside classifications: Los Alamos county</b>			

Wireman/low voltage technician	[42.26] 44.05	[14.68] 14.97	.60
Cable splicer	[45.94] 47.88	[14.98] 15.28	.60
<b>Elevator constructor</b>	[48.93] 49.77	[38.34] 39.19	.60
<b>Elevator constructor helper</b>	[39.14] 34.84	[38.34] 39.19	.60
<b>Glazier/Fabricator</b>	21.75	7.10	
[–Glazier/Fabricator]	[21.25]	[6.70]	[.60]
[–Delivery Driver]	[12.00]	[6.70]	[.60]
<b>Ironworker</b>			
Ironworker journeyman	[28.05] 28.49	[18.30] 18.71	.60
Probationary ironworker	[22.40] 22.79	[18.30] 18.71	.60
<b>Painter – Residential</b>	[13.25] 19.00	[8.50] 5.75	.60
<b>Drywall Finisher/Taper – Light commercial &amp; residential</b>			
Ames tool operator	[23.45] 24.03	[8.40] 8.86	.60
Hand finisher/machine texture	[22.45] 23.03	[8.40] 8.86	.60
<b>Paper hanger</b>	[14.25] 19.00	[8.50] 5.75	.60
<b>Plasterer</b>	[21.04] 21.49	[8.72] 8.92	.60
<b>Plumber/pipefitter</b>	[26.92] 28.04	[7.35] 7.60	.60
<b>Roofer</b>			
Roofer Journeyman	26.94	9.36	.60
Roofer Helper	16.16	9.36	.60
<b>Sheet metal worker</b>			
Zone 1	[35.44] 37.50	[19.00] 19.08	.60
Zone 2 – Industrial	[36.44] 38.50	[19.00] 19.08	.60
Zone 3 – Los Alamos county	[37.44] 39.50	[19.00] 19.08	.60
<b>Soft floor layer</b>	21.00	9.20	.60
<b>Sprinkler fitter</b>	[34.18] 35.75	[24.44] 24.56	.60
<b>Tile setter</b>	24.46	8.81	.60
<b>Tile setter help/finisher</b>	16.53	8.81	.60
<b>Laborers</b>			
Group I – Unskilled	[12.25] 13.44	[7.93] 8.16	.60
Group II – Semi-skilled	[12.25] 13.44	[7.93] 8.16	.60
Group III – Skilled	[13.25] 14.44	[7.93] 8.16	.60
Group IV – Specialty	[14.25] 15.44	[7.93] 8.16	.60
<b>Operators</b>			
Group I	[18.57] 19.50	[8.20] 8.82	.60
Group V	[20.31] 21.33	[8.20] 8.82	.60
Group VII	[24.52] 25.75	[8.20] 8.82	.60
Group VIII	[26.62] 27.95	[8.20] 8.82	.60
<b>Truck drivers</b>			
Group I – IX	20.75	6.27	.60

<b>D. TYPE H: HEAVY ENGINEERING</b>			
<b>Trade Classification</b>	<b>Base Rate</b>	<b>Fringe Rate</b>	<b>Apprenticeship</b>
<b>Asbestos workers/heat &amp; frost insulators</b>	[35.56] 35.86	[12.26] 12.46	.60
<b>Asbestos workers/heat &amp; frost insulators: Los Alamos county</b>	[37.99] 38.29	[12.26] 12.46	.60
<b>Boilermaker/blacksmith</b>	35.88	32.28	.60
<b>Boilermaker/blacksmith: San Juan county</b>	36.83	31.88	.60
<b>Bricklayer/block layer/stonemason</b>	[25.54] 27.03	[8.81] 10.99	.60
<b>Bricklayer/block layer/stonemason: Curry, DeBaca, Quay and Roosevelt counties</b>	23.10	8.98	.60
<b>Bricklayer/block layer/stonemason: Dona Ana, Otero, Eddy, and Lea counties</b>	26.42	8.98	.60
<b>Carpenter/lather</b>	[27.73] 29.11	[12.14] 12.79	.60



<b>Carpenter: Los Alamos county</b>	33.18	13.58	.60
<b>Millwright/pile driver</b>	[37.10] <u>39.00</u>	[28.30] <u>29.40</u>	.60
<b>Cement mason</b>	[22.30] <u>24.31</u>	[7.41] <u>11.16</u>	.60
<b>Electricians - outside classifications: Zone 1</b>			
Ground man	[25.43] <u>26.32</u>	[11.76] <u>12.79</u>	.60
Equipment operator	[36.48] <u>37.76</u>	[16.09] <u>17.13</u>	.60
Lineman/technician	[46.09] <u>47.70</u>	[18.52] <u>19.92</u>	.60
Cable splicer	[47.22] <u>48.87</u>	[18.81] <u>20.22</u>	.60
<b>Electricians - outside classifications: Zone 2</b>			
Ground man	[25.43] <u>26.32</u>	[11.76] <u>12.79</u>	.60
Equipment operator	[36.48] <u>37.76</u>	[16.09] <u>17.13</u>	.60
Lineman/technician	[46.09] <u>47.70</u>	[18.52] <u>19.92</u>	.60
Cable splicer	[47.22] <u>48.87</u>	[18.81] <u>20.22</u>	.60
<b>Electricians – outside classifications: Los Alamos county</b>			
Ground man	[26.15] <u>27.07</u>	[11.78] <u>12.81</u>	.60
Equipment operator	[37.54] <u>38.85</u>	[16.13] <u>17.17</u>	.60
Lineman/technician	[47.29] <u>48.95</u>	[18.82] <u>20.24</u>	.60
Cable splicer	[51.93] <u>53.75</u>	[19.98] <u>21.44</u>	.60
<b>Electricians – inside classifications: Zone 1</b>			
Wireman/low voltage technician	[36.75] <u>38.30</u>	[12.40] <u>12.60</u>	.60
Cable splicer	[40.43] <u>42.13</u>	[12.51] <u>12.71</u>	.60
<b>Electricians - inside classifications: Zone 2</b>			
Wireman/low voltage technician	[40.06] <u>41.75</u>	[12.50] <u>12.70</u>	.60
Cable splicer	[43.74] <u>45.58</u>	[12.61] <u>12.82</u>	.60
<b>Electricians - inside classifications: Zone 3</b>			
Wireman/low voltage technician	[42.26] <u>44.05</u>	[12.57] <u>12.77</u>	.60
Cable splicer	[45.94] <u>47.88</u>	[12.68] <u>12.89</u>	.60
<b>Electricians - inside classifications: Zone 4</b>			
Wireman/low voltage technician	[46.31] <u>48.26</u>	[12.69] <u>12.90</u>	.60
Cable splicer	[49.99] <u>52.09</u>	[12.80] <u>13.01</u>	.60
<b>Electricians – inside classifications: Dona Ana county, Hidalgo county, Luna county and Otero county</b>			
Wireman/low voltage technician	[32.07] <u>32.72</u>	[9.81] <u>9.65</u>	.60
Cable splicer	[32.07] <u>32.72</u>	[9.81] <u>9.65</u>	.60
<b>Electricians – inside classifications: Los Alamos county</b>			
Wireman/low voltage technician	[42.26] <u>44.05</u>	[14.68] <u>14.97</u>	.60
Cable splicer	[45.94] <u>47.88</u>	[14.98] <u>15.28</u>	.60
<b>Glazier/Fabricator</b>			
[–Glazier/Fabricator]	[21.25]	[6.70]	[.60]
[–Delivery driver]	[12.00]	[6.70]	[.60]
<b>Ironworker</b>			
Ironworker journeyman	[28.05] <u>28.49</u>	[18.30] <u>18.71</u>	.60
Probationary ironworker	[22.44] <u>22.79</u>	[18.30] <u>18.71</u>	.60
<b>Painter – Industrial</b>			
<b>Paperhanger</b>	[19.75] <u>24.00</u>	[10.77] <u>6.70</u>	.60
<b>Drywall Finisher/Taper – Industrial</b>			
Ames tool operator	[27.67] <u>28.25</u>	[8.40] <u>8.86</u>	.60
Hand finisher/machine texture	[26.67] <u>27.25</u>	[8.40] <u>8.86</u>	.60
<b>Plumber/pipefitter</b>			
<b>Roofer</b>	[38.63] <u>40.74</u>	[14.55] <u>15.90</u>	.60
Roofer journeyman	26.94	9.36	.60
Roofer helper	16.16	9.36	.60

<b>Sheet metal worker</b>	[35.44] 37.50	[19.00] 19.08	.60
<b>Operators</b>			
Group I	[23.34] 24.51	[6.74] 6.79	.60
Group II	[23.55] 24.73	[6.74] 6.79	.60
Group III	[23.78] 24.96	[6.74] 6.79	.60
Group IV	[23.93] 25.49	[6.74] 6.79	.60
Group V	[24.04] 25.60	[6.74] 6.79	.60
Group VI	[24.26] 25.84	[6.74] 6.79	.60
Group VII	[24.28] 25.86	[6.74] 6.79	.60
Group VIII	[26.44] 28.56	[6.74] 6.79	.60
Group IX	[32.87] 34.51	[6.74] 6.79	.60
Group X	[36.54] 38.37	[6.74] 6.79	.60
<b>Laborers</b>			
Group I – Unskilled	[18.34] 18.95	[7.11] 7.30	.60
Group II – Semi-Skilled	[19.09] 18.89	[7.11] 7.30	.60
Group III – Skilled	[20.60] 21.21	[7.11] 7.30	.60
Group IV- Specialty	[21.00] 21.61	[7.11] 7.30	.60
<b>Laborers – Underground</b>			
Group I	[20.25] 21.06	[6.93] 7.12	.60
Group II	[20.62] 20.86	[6.93] 7.12	.60
Group III	[20.97] 21.58	[6.93] 7.12	.60
<b>Soft Floor Layer</b>	21.00	9.20	.60
<b>Truck drivers</b>			
Group I	[19.00] 19.75	[9.10] 9.15	.60
Group II	[19.00] 19.75	[9.10] 9.15	.60
Group III	[19.00] 19.75	[9.10] 9.15	.60
Group IV	[19.00] 19.75	[9.10] 9.15	.60
Group V	[19.00] 19.75	[9.10] 9.15	.60
Group VI	[19.00] 19.75	[9.10] 9.15	.60
Group VII	[19.00] 19.75	[9.10] 9.15	.60
Group VIII	[19.00] 19.75	[9.10] 9.15	.60
Group IX	[25.00] 25.75	[9.10] 9.15	.60
<b>[Maintenance Sub-Group IX]</b>			
[Rate I]	[20.90]	[9.00]	[:60]
[Rate H]	[21.77]	[9.00]	[:60]
[ Rate III]	[22.24]	[9.00]	[:60]

[11.1.2.20 NMAC - N, 02/29/2016; Rp, 1/1/2017; A, 1/1/2018, A, 1/1/2019; A, 1/1/2020; A, 1/1/2021; A, 1/1/2022; A, 1/1/2023; A, 5/19/2023; A, 1/1/2024]

**11.1.2.21** Subsistence, zone, and incentive pay rates. All contractors are required to pay subsistence, zone, and incentive pay according to the particular trade.

**A.** Asbestos workers or heat and frost insulators

(1) Zone 1 shall consist of the area lying within the city limits of a circle whose radius is 66 miles from the city hall in Albuquerque or the city hall in El Paso - \$0.00 per day.

(2) Zone 2 shall consist of Los Alamos county - \$40.00 per day if not furnished a company owned vehicle.

(3) Zone 3 shall consist of the area lying beyond a circle whose radius is over 66 miles from the city hall in Albuquerque or the city hall in El Paso - \$85.00 per day.

**B.** Boilermakers/blacksmiths

(1) Per diem is calculated from city hall of the dispatch city or the employee’s home address, whichever is closer to the job location.

(2) Per diem is \$55.00 per day for travel between 70 and 120 miles and \$85.00 per day for travel over 120 miles.

**C.** Bricklayers

~~(1)~~ Between 70 and 120 miles, \$55.00 per day

~~(2)~~ 121 or more miles, \$70.00 per day]

**(1)** For Albuquerque area contractors, the starting point shall be at the intersection of I-40 and I-25 and shall continue to the job site. All other areas, the starting point shall be the employer's main office address.

**(2)** Between 50 and 75 miles from the starting point, \$35.00 per day.

**(3)** 76 or more miles from the starting point, \$55.00 per day.

**(4)** All covered refractory work over 75 miles from the intersection of I-40 and I-25, \$80.00 per day.

**D. Cement Masons**  
**(1)** For employees who travel to Santa Fe from Albuquerque or vice versa, \$20.00 per day.

**(2)** In all other work performed more than 50 miles from the employer's main office, \$50.00 per day.

**(3)** Mutually agreed-upon lodging or transportation paid for by the employer will substitute for subsistence pay.

**E. Drywall Finishers and Tapers:**

**(1)** \$40.00 per day (\$5.00 per hour for eight hours work) for over 60 miles over the most typically traveled route, or other mutually agreed upon suitable lodging or transportation.

**(2)** If an employee has worked the full week on four 10-hour days, the employee shall be paid the full week of per diem of \$200.00.

**(3)** Special provision for Santa Fe and Albuquerque: Employees who travel between Santa Fe and Albuquerque will be paid \$15.00 per day or other mutually agreed upon lodging or transportation.

**F. Electricians (inside classifications)**

**(1)** For Albuquerque only:

**(a)** Zone 1 is classified as being within 40 miles from the main post office.

**(b)** Zone 2 shall extend up to 10 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

**(c)** Zone 3 shall extend up to 20 miles beyond zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

**(d)** Zone 4 shall extend 20 miles or more beyond zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

**(2)** For Los Alamos county only: work performed within the county shall be compensated fifteen percent above the zone 1 journeyman rate.

**(3)** For all other counties:

**(a)** Zone 1 is:

**(i)** within six miles from the main post office for Raton, Tucumcari, and Farmington.

**(ii)** within eight miles from the main post office for Las Vegas.

**(iii)** within ten miles from the main post office for Santa Fe and Gallup.

**(iv)** within twelve miles from the main post office for Belen, Carrizozo, Clovis, Los Lunas, Portales, Roswell, Ruidoso, Artesia, Carlsbad, Hobbs, and Lovington.

**(v)** within fourteen miles from the main post office for Espanola.

**(b)** Zone 2 shall extend up to 20 miles beyond zone 1. Work performed within zone 2 shall be compensated nine percent above the journeyman rate for zone 1.

**(c)** Zone 3 shall extend up to 30 miles from zone 1. Work performed within zone 3 shall be compensated fifteen percent above the journeyman rate for zone 1.

**(d)** Zone 4 shall extend beyond 30 miles from zone 1. Work performed within zone 4 shall be compensated twenty six percent above the journeyman rate for zone 1.

**(4)** Commuting time to and from a job site at the beginning and end of each workday is not compensable. However, if workers are required to report to the shop at the start of the day or return to the shop at the end of the day, then that time spent traveling is compensable. Similarly, time spent traveling from job to job is compensable. In both cases, workers shall be paid for the time spent traveling and shall be furnished transportation by the employer. Under these conditions the Zone 1 rate and any applicable overtime will be paid.

**G. Electricians (outside classification – Zone 2):** \$50.00 per diem to be paid for work 30 miles outside of Santa Fe and 60 miles outside of Albuquerque. No per diem in Los Alamos county.

**H. Glaziers**  
**(1)** When out-of-town travel is required, the employer shall [pay the employee for] provide suitable lodging with no more than two people per room and \$20.00 per night for food.

**(2)** Employees required to use a personal vehicle for travel to a jobsite beyond a 30 mile radius of the main post office in town where the employer's shop is located shall be compensated at the current Internal Revenue Service (IRS) rate for actual mileage incurred beyond the 30 mile radius, plus their regular rate of pay for travel time.

**I. Ironworkers:**  
**(1)** Travel more than 50 miles from the interchange of Interstate 25 and Interstate 40 or from the employee's home should be paid at \$9.00 per hour.

**(2)** If travel is within Santa Fe county, travel should be paid at \$3.00 per hour.

**J. Laborers:**  
**(1)** Type A:

**(a)** Work travel between 50 and 85 miles

from the employer's primary address should be compensated at \$3.50 per hour.

**(b)**

Work travel 86 miles or greater from the employer's primary address should be compensated at \$5.00 per hour.

**(2)** Types B

and C:

~~**(a)**~~

~~Work travel under 50 miles is a "free zone";~~

~~**(b)**~~

~~The municipal limit of the city of Santa Fe is \$30.00 per day;~~

~~**(c)**~~

~~Work travel between 50 and 75 miles from the union hall to include the municipal limits of Estancia, Grants, and Socorro is \$40.00 per day;~~

~~**(d)**~~

~~All work over 75 miles from the union hall is \$50.00 per day.]~~

~~**(a)**~~

~~Work travel over 70 miles from the union halls of Albuquerque, Espanola, Farmington or Las Cruces shall be paid at \$7.00 per hour in travel pay, not to exceed 10 hours per day.~~

~~**(b)**~~

~~If an overnight stay is necessary, the employer shall pay \$40.00 per day for meals, in addition to travel pay.~~

~~**(3)** Type H –~~

~~no zone subsistence pay.~~

~~**(4)** If an~~

~~employer provides the employee transportation and mutually agreeable, suitable lodging with no more than two people in a room in areas where overnight stays are necessary, subsistence rates do not apply.~~

**K. Millwrights**

~~**(1)**~~ Work

~~travel between 76 and 150 miles should be compensated at \$50.00 per day;~~

~~**(2)**~~ Work

~~travel greater than 150 miles should be compensated at \$75.00 per day.]~~

~~**(1)** All~~

~~zone pay shall be calculated from the address of the city hall of the respective dispatch point.~~

~~**(2)** Zone 1:~~

~~Work traveled up to 45 miles from the address of the city hall of the~~

respective dispatch points is a free zone.

**(3)** Zone 2:

Work traveled between 45 miles and 100 miles shall be compensated at \$4.00 per hour above base wage.

**(4)** Zone 3:

Work traveled 101 miles or more shall be compensated at \$6.00 per hour above base wage.

**(5)** If

employer fails to provide suitable lodging, employer shall pay \$110.00 per diem.

**(6)** If an

employee's principal place of residence is within 45 road miles from the project, no subsistence or travel time shall be paid.

**L. Operating**

Engineers

**(1)** Type A

operators should be compensated for zone and subsistence as follows:

**(a)**

Work travel between 50 and 85 miles from the interchange of Interstate 25 and Interstate 40 in Albuquerque, or from the Farmington City Hall in Farmington, should be compensated at \$2.50 per hour.

**(b)**

Work travel 86 miles or more from the interchange of Interstate 25 and Interstate 40 in Albuquerque or from the Farmington City Hall in Farmington, should be compensated at \$4.00 per hour.

**(2)** Type B and

C operators:

**(a)**

Base points for operators are 30 miles and beyond:

**(i)**

Bernalillo county courthouse in Albuquerque;

**(ii)**

state capital building in Santa Fe;

**(iii)**

city hall in Farmington.

**(b)**

Zone and subsistence for Albuquerque, [and] Santa Fe, and Farmington are as follows:

**(i)**

work travel between 30 and 50 miles from the base point compensated at \$20.00 per day;

**(ii)**

work travel between 51 and 100 miles from the base point compensated at [~~\$45.00~~] \$50.00 per day;

**(iii)**

work travel over 100 miles from the base point that involves an overnight stay compensated at [~~\$75.00~~] \$100.00 per day.

**(c)**

Zone and subsistence for Los Alamos county, [~~\$50.00~~] \$100.00 per day. This takes precedence over the 50 mile radius for Santa Fe zone and subsistence.

~~**(d)**~~

~~Zone and subsistence for Farmington is as follows:~~

~~**(i)**~~

~~work travel between 35 and 75 miles from the base point compensated at \$45.00 per day;~~

~~**(ii)**~~

~~work travel over 100 miles from the base point compensated at \$75.00 per day.~~

~~**(e)** **(d)**~~

If an employer provides the employee transportation and mutually agreeable, suitable lodging in areas where overnight stays are necessary, subsistence rates do not apply.

**(3)** Type H

operators are not eligible for zone and subsistence pay.

**M. Painters**

~~**(1)**~~ Zone 1:

~~Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone 1:~~

~~**(2)**~~ Zone 2:

~~Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.~~

~~**(3)**~~ Zone 3:

~~Work travel 75 miles or more from the main post office in the town where an employee permanently resides shall be compensated at \$2.50 per hour above base pay.~~

~~**(4)**~~ When

~~the employee is required to stay overnight, the employer should provide and pay for suitable lodging.~~



~~(5) Employer will furnish transportation or gasoline for all work performed beyond the 30-mile radius that encompasses the free cities of Albuquerque, Santa Fe, or Belen.]~~

(1) When out-of-town travel is required, the employer shall provide suitable lodging with no more than two people per room and \$30.00 per day for expenses.

(2) When out-of-town travel is required and employer and employer does not provide lodging, employer shall pay \$100 per day for expenses, plus their regular rate of pay.

(3) Employees required to use a personal vehicle for travel to a jobsite beyond a 60-mile radius from their residence or the employer's shop, whichever is closest to the job, shall be compensated at the current IRS rate for actual mileage incurred beyond the 60-mile radius, plus their regular rate of pay for travel time.

(4) Employer shall furnish transportation or gasoline for all work performed beyond the 30-mile radius that encompasses the free cities of Albuquerque, Santa Fe, and Belen.

**N. Paper hangers**

**(1) Zone 1:**  
Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone 1.

**(2) Zone 2:**  
Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

**(3) Zone 3:**  
Work travel 75 miles or more from the main post office in the town where an employee permanently resides shall be compensated at \$2.50 per hour above base pay.

**(4) When the employee is required to stay overnight, the employer should provide and pay for suitable lodging.**

**(5) Employer will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe, or Belen.**

**O. Plasterers**

**(1) Employees who travel from Albuquerque to Santa Fe should be compensated at \$20.00 per day.**

**(2) Except for employees who travel from Santa Fe to Albuquerque, work travel 75 miles or more from the employer's office over the most typically traveled route should be compensated at \$5.00 per hour and capped at \$40.00 per day.**

**P. Plumbers and pipefitters**

**(1) Work travel for 90 or more miles from an employee's primary residence, and involving an overnight stay, should be compensated at \$80.00 per day.**

**(2) No zone or subsistence pay is required should the employer elect to cover the room cost.**

~~**(3) Los Alamos county workers receive \$0.80 per hour incentive pay plus base and fringe.]**~~

**Q. Roofers - work travel requiring an overnight stay should be compensated at \$35.00 per day for food. Employer should provide and pay for a suitable hotel. When employees are assigned to jobs located 60 or more miles from the employer's place of business, transportation to and from the job site must be provided.**

**R. Sheet metal workers**

**(1) Work travel 90 miles or more from the contractor's home base and employee's home, should be paid at ~~[\$80.00]~~ \$120.00 per day subsistence pay plus base and fringe, regardless of county.**

**(2) Los Alamos county: \$2.00 per hour incentive pay plus base and fringe.**

**(3) Workers living 60 or more miles from a San Juan county job site shall receive \$3.00 per hour subsistence pay plus base and fringe.**

**S. Soft floor layer**

**(1) Zone 1:**  
Base pay for an area within a 30 mile radius from the main post office in the city or town where the employee permanently resides. Albuquerque, Santa Fe, and Belen shall be considered Zone 1.

**(2) Zone 2:**  
Work travel between 30 and 75 miles from the main post office in the town where an employee permanently resides shall be compensated at \$1.00 per hour above base pay.

**(3) Zone 3:**  
Work travel 75 miles or more from the main post office in the town where an employee permanently resides shall be compensated at \$3.13 per hour above base pay.

**(4) Employer will furnish transportation or gasoline for all work performed beyond the 30 mile radius that encompasses the free cities of Albuquerque, Santa Fe, or Belen.**

**(5) When the employee is directed to report to a job site and the distance to the job site requires the employee to stay out of town overnight, the employer shall provide housing arrangements.**

**T. Sprinkler fitters**

**(1) Work travel between 60 and 80 miles from the employee's primary residence should be compensated at ~~[\$22.00]~~ \$23.00 per day.**

**(2) Work travel between 81 and 100 miles from the employee's primary residence should be compensated at ~~[\$32.00]~~ \$33.00 per day.**

**(3) Work travel of 101 miles or more from the employee's primary residence should be compensated at ~~[\$120.00]~~ \$125.00 per day.**

**(4) No zone or subsistence pay shall be paid when the employer provides daily transportation and the employee elects to travel back and forth from home. [11.1.2.21 NMAC - N, 1/1/2019; A, 1/1/2020; A, 1/1/2021; A, 1/1/2022; A, 1/1/2024]**

# 2023 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXXIV, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 5</b>	<b>January 18</b>
<b>Issue 2</b>	<b>January 19</b>	<b>January 31</b>
<b>Issue 3</b>	<b>February 2</b>	<b>February 14</b>
<b>Issue 4</b>	<b>February 16</b>	<b>February 28</b>
<b>Issue 5</b>	<b>March 2</b>	<b>March 14</b>
<b>Issue 6</b>	<b>March 16</b>	<b>March 28</b>
<b>Issue 7</b>	<b>March 30</b>	<b>April 11</b>
<b>Issue 8</b>	<b>April 13</b>	<b>April 25</b>
<b>Issue 9</b>	<b>May 4</b>	<b>May 16</b>
<b>Issue 10</b>	<b>May 18</b>	<b>May 31</b>
<b>Issue 11</b>	<b>June 1</b>	<b>June 13</b>
<b>Issue 12</b>	<b>June 15</b>	<b>June 27</b>
<b>Issue 13</b>	<b>July 7</b>	<b>July 18</b>
<b>Issue 14</b>	<b>July 20</b>	<b>July 31</b>
<b>Issue 15</b>	<b>August 3</b>	<b>August 15</b>
<b>Issue 16</b>	<b>August 17</b>	<b>August 29</b>
<b>Issue 17</b>	<b>August 31</b>	<b>September 12</b>
<b>Issue 18</b>	<b>September 14</b>	<b>September 26</b>
<b>Issue 19</b>	<b>September 28</b>	<b>October 10</b>
<b>Issue 20</b>	<b>October 12</b>	<b>October 24</b>
<b>Issue 21</b>	<b>October 26</b>	<b>November 7</b>
<b>Issue 22</b>	<b>November 9</b>	<b>November 21</b>
<b>Issue 23</b>	<b>November 22</b>	<b>December 5</b>
<b>Issue 24</b>	<b>December 7</b>	<b>December 19</b>

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