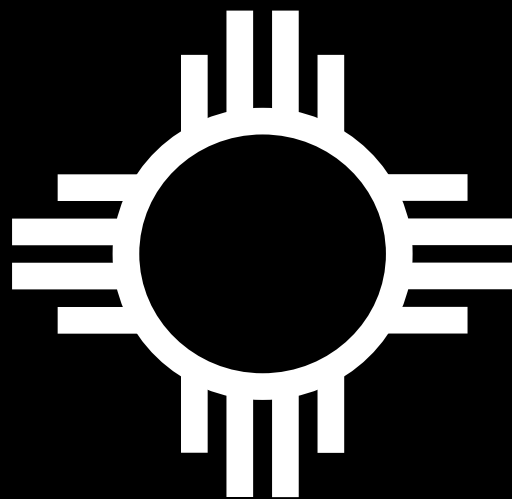


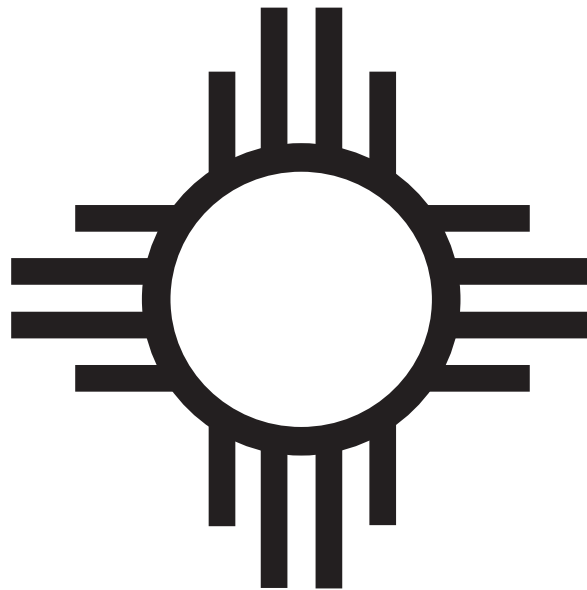
**NEW
MEXICO
REGISTER**



Volume XXVI
Issue Number 13
July 15, 2015

New Mexico Register

**Volume XXVI, Issue 13
July 15, 2015**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2015

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New Mexico Register

Volume XXVI, Issue 13

July 15, 2015

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Notices of Rulemaking and Proposed Rules

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

Notice Of Public Hearing

The Human Services Department will hold a public hearing to consider the emergency amendment to grant determination 8.102.620.9 NMAC. The hearing will be held from 9:30 A.M. – 10:30 A.M. on August 17, 2015. The hearing will be held at the Income Support Division Conference room, 2009 S. Pacheco St., Santa Fe, NM. The conference room is located in Room 120 on the lower level.

The Human Services Register Vol. 38 No. 19 outlining the regulations is available on the Human Services Department website at <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>

Individuals wishing to testify or requesting a copy of the regulations should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling 505-827-7274.

If you are a person with a disability and you require this information in an alternative format, or you require a special accommodation to participate in any HSD public hearing, program, or service, please contact the American Disabilities Act Coordinator, at 505-827-7720 or through the New Mexico Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 P.M. on the date of the hearing. Please send comments to:

Human Services Department
P.O. Box 2348, Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
HSD-isdrules@state.nm.us

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Notice Of Public Hearing to consider amendments to 8.206.400 NMAC

The New Mexico Human Services Department (the Department) Medical Assistance Division (MAD) is proposing amendments to New Mexico Administrative Code (NMAC) 8.206.400 Medicaid Eligibility – Recipients for whom Children Youth and Families Department (CYFD) has Full or Partial Responsibility. HSD is accepting public comments through August 17, 2015.

Highlights:

* Section 10 has been added to offer a Medical Assistance Programs (MAP) category of eligibility to adults who are former foster care children, who now reside in New Mexico, are under 26 years of age, and received MAP services in New Mexico or another state.

* The Department is taking this opportunity to standardize language throughout the rule which does not alter the current manner eligibility is determined.

The proposed register and the proposed amendments will be available to view on the HSD website:

<http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx> or <http://www.hsd.state.nm.us/LookingForInformation/medical-assistance-division-state-plan.aspx>.

If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD at (505) 827-7743 or toll-free at 1-888-997-2583 and ask for extension 7-7743.

A public hearing to receive testimony on this proposed rule will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road Santa Fe, NM on August 17, 2015, 11:00 AM Mountain Daylight Time (MDT).

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

comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. All comments must be received no later than August 17, 2015, 5:00 p.m. MDT.

If you are a person with a disability and you require this information in an alternative format, please contact MAD toll-free at 1-888-997-2583 and ask for extension 7-7743. In Santa Fe call (505) 827-7743. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats.

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

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Notice Of Public Hearing to consider amendments to 8.200.510 NMAC

The Human Services Department (the Department), Medical Assistance Division (MAD), is proposing amendments to 8.200.510 Medicaid Eligibility-General Recipient Polices of the New Mexico Administrative Code (NMAC). 8.200.510 NMAC was issued as an emergency rule on July 1, 2015 and is now open for public comment and a public hearing to receive testimony. The register and the proposed amendments will be available July 15, 2015, on the HSD website:

<http://www.hsd.state.nm.us/LookingForInformation/registers.aspx> or at:
<http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

If you do not have Internet access, a copy of the proposed rule may be requested by contacting MAD at (505) 827-7743.

A public hearing to receive testimony on these proposed rules will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road Santa

Fe, NM on August 17, 2015, 10 a.m. Mountain Daylight Time (MDT).

Interested parties may submit written comments directly to: Human Services Department, Office of the Secretary, ATTN: Medical Assistance Division Public Comments, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. Written, electronic and recorded comments will be given the same consideration as oral testimony made at the public hearing. All comments must be received no later than August 17, 2015, 5:00 p.m. MDT.

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 toll-free at 1-888-997-2583 and ask for extension 7-7743. In Santa Fe call (505) 827-7743. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling (505) 827-3184. The Department requests at least 10 working 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.

MINING SAFETY BOARD

Notice of Public Meeting and Hearing

The New Mexico Mining Safety Board ("MSB") hereby gives notice that the MSB will conduct a public meeting and hearing in the Auditorium of the District 3 Offices of the New Mexico Department of Transportation, 7500 Pan American Blvd. NE, Albuquerque, New Mexico 87109, on Wednesday, September 9, 2015 beginning at 1:00 p.m. The purpose of the public hearing will be to obtain input on proposed amendments to 19.6.2 NMAC (Emergency Notification).

Interested individuals may provide comments at the public hearing or submit written comments to Terence Foreback via email at tforeback@admin.nmt.edu, fax at (575) 835-5430, or directed to Terence

Foreback, State Mine Inspector, Bureau of Mine Safety, 801 Leroy Place, Socorro, NM 87801. Written comments must be received no later than 1:00 p.m. on the date of the hearing. At the conclusion of the hearing, the MSB may deliberate and vote on the proposed amendments.

Copies of the proposed amendments are available on the Bureau of Mine Safety website (<http://bmi.state.nm.us>) under the "Mining Safety Board" menu or may be obtained from Bureau of Mine Safety Records Liaison Officer Suzanne Barteau by calling (575) 835-5460 or emailing sbarteau@admin.nmt.edu.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Terence Foreback at (575) 835-5460 as soon as possible. The MSB requires at least 48 hours advance notice to provide special accommodations.

RACING COMMISSION

Notice of Rulemaking and Public Hearing

NOTICE IS HEREBY GIVEN that the New Mexico Racing Commission will hold a Regular Meeting and Rule Hearing on August 20, 2015. The hearing will be held during the Commission's regular business meeting, beginning at 8:30 a.m. with executive session. Public session will begin at 10:30 a.m. The meeting will be held in the Boardroom at 4900 Alameda Blvd. NE, Albuquerque, NM.

The purpose of the Rule Hearing is to consider adoption of the proposed amendments and additions to the following Rules Governing Horse Racing in New Mexico No. 15.2.6 NMAC; 16.47.1 NMAC and 15.2.1 NMAC. The comments submitted and discussion heard during the Rule Hearing will be considered and discussed by the Commission during the open meeting following the Rule Hearing. The Commission will vote on the proposed rules during the meeting.

Copies of the proposed rules may be obtained from Vince Mares, Executive Director, New Mexico Racing Commission, 4900 Alameda Blvd NE, Albuquerque, New Mexico 87113, (505) 222-0700. Interested persons may submit their views on the proposed rules to the

commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

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

Vince Mares
Executive Director

Dated: July 1, 2015

End of Notices of Rulemaking and Proposed Rules Section

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.

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION
CHAPTER 5 POST-SECONDARY EDUCATIONAL PROGRAMS
PART 5 CLOSURE OF PUBLIC INSTITUTIONS

5.5.5.1 ISSUING AGENCY:
 State of New Mexico Higher Education Department
 [5.5.5.1 NMAC - N, 7/15/2015]

5.5.5.2 SCOPE: Provisions of 5.5.5 NMAC apply to all public postsecondary institutions in New Mexico including, but not limited to those institutions that are members of the State Authorization Reciprocity Agreement, also known as "SARA."
 [5.5.5.2 NMAC - N, 7/15/2015]

5.5.5.3 STATUTORY AUTHORITY: Section 21-1-26 NMSA 1978.
 [5.5.5.3 NMAC - N, 7/15/2015]

5.5.5.4 DURATION:
 Permanent
 [5.5.5.4 NMAC - N, 7/15/2015]

5.5.5.5 EFFECTIVE DATE:
 July 15, 2015, unless a later date is cited at the end of a section.
 [5.5.5.5 NMAC - N, 7/15/2015]

5.5.5.6 OBJECTIVE: The objective and purpose of 5.5.5 NMAC is to protect students and student records when a public post-secondary institution in New Mexico closes by detailing the provisions institutions must adhere to when ceasing operation.
 [5.5.5.6 NMAC - N, 7/15/2015]

5.5.5.7 DEFINITIONS:

A. "Department"
 means the New Mexico higher education department.

B. "Institution" means a research or comprehensive institution, as defined in Article XII, Section 11 of

the New Mexico Constitution and branch community colleges or community colleges or technical vocational institute as defined by Section 21-13, 14 and 16 NMSA 1978.

C. "Teach out" means the arrangement for a student of a public institution that is closing to complete the student's current semester at no additional charge, and in addition, to assist the student in transferring to another institution of higher education to complete the student's academic program when feasible.
 [5.5.5.7 NMAC - N, 7/15/2015]

5.5.5.8 PROVISIONS FOR CLOSURE OF PUBLIC INSTITUTIONS:

A. A public post-secondary educational institution agrees that it will not cease operation within New Mexico without making appropriate provisions for the completion of programs by its students, if and when the institution ceases operations in New Mexico, or if and when the institution makes a substantial change of location within New Mexico.

B. An institution shall notify the department as soon as possible but in no case fewer than ninety (90) calendar days prior to terminating or moving operations in New Mexico and shall present to the department a plan that provides for the following:

- (1) completion of programs by its students;
- (2) preservation of student records, as prescribed herein; and

(3) identification of the location of a responsible agent for the school for a period of at least one (1) year following closure.

C. Prior to terminating or substantially moving operations in New Mexico, an institution shall arrange with another public or private institution(s) to complete the instruction of any currently enrolled students who will not have completed their programs at the time of closure or move. Such teach-out shall be arranged at no additional cost to the

students beyond that originally agreed to by the student.

D. The department may find teach-out arrangements are not feasible for students in one (1) or more programs offered by the institution, in which case the institution shall refund all tuition and fees paid by the students in question for the current period of enrollment and shall provide appropriate transcripts and evaluations to assist students in transferring their work to another institution.

E. If an institution discontinues its operation, the chief administrative officer shall file with the department, the original or legible true copies of all educational records required by the agency. The department may seek a court order to protect and if necessary take possession of the records.

F. The institution agrees to provide students with access to their academic transcripts in perpetuity after a student has departed from the institution. Such records shall be accessible either through the institution, a successor institution, the department or through the New Mexico state records center and archives or a comparable retrieval facility. An institution shall provide access to financial aid transcripts for at least five (5) years after a student has departed from the institution or for whatever period is required by federal law or regulation or by rules of the New Mexico student loan guarantee corporation, whichever is longest.

G. The method by which students and graduates may obtain transcripts shall be described clearly in the institution's catalog or in other documents provided to students.
 [5.5.5.8 NMAC - N, 7/15/2015]

HISTORY OF 5.5.5 NMAC:
 [RESERVED]

HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 7 TUITION AND FINANCIAL AID PART 7 CHILDREN, YOUTH AND FAMILIES WORKER LOAN REPAYMENT PROGRAM

5.7.7.1 ISSUING AGENCY:
State of New Mexico Higher Education
Department
[5.7.7.1 NMAC - N, 7/15/2015]

5.7.7.2 SCOPE: Provisions
for 5.7.7 NMAC apply to certain
professionals employed with the children
youth and families department that
are selected to participate in the loan
repayment program described in this rule.
[5.7.7.2 NMAC - N, 7/15/2015]

**5.7.7.3 STATUTORY
AUTHORITY:** Sections 9-25-8, 21-1-26
and 21-221-1 through 21-221-8, NMSA
1978.
[5.7.7.3 NMAC - N, 7/15/2015]

5.7.7.4 DURATION:
Permanent
[5.7.7.4 NMAC - N, 7/15/2015]

5.7.7.5 EFFECTIVE DATE:
July 15, 2015, unless a later date is cited
at the end of a section.
[5.7.7.5 NMAC - N, 7/15/2015]

5.7.7.6 OBJECTIVE: The
objective and purpose of 5.7.7 NMAC is
to increase the number of public service
workers in critical need positions at the
children youth and families department
through an educational loan repayment
program. The program provides
for repayment of the principal and
reasonable interest accrued on federal and
commercial loans obtained for education
purposes.
[5.7.7.6 NMAC - N, 7/15/2015]

5.7.7.7 DEFINITIONS:

A. "CYFD" means the
New Mexico children, youth, and families
department.

B. "Department"
means the New Mexico higher education
department.

**C. "Designated critical
need positions"** means positions that
have been designated by the secretary of
CYFD as positions in geographic areas
with shortages of public service workers

or where vacancies are difficult to fill.

D. "Loan" means a
grant of funds to defray the educational
expenses incidental to an education related
to the employment at CYFD, under a
contract between the federal government
or commercial lender and the worker,
requiring repayment of principal and
interest.

**E. "Public Service
Worker"** means an employee with a
completed bachelor's or master's degree,
directly related to the worker's position,
in a critical need positions and who works
directly with children and families in
either the protective services division or
juvenile justice division of CYFD.
[5.7.7.7 NMAC - N, 7/15/2015]

5.7.7.8 HIGHER EDUCATION DEPARTMENT - POWERS AND DUTIES:

A. The department
may grant a loan repayment award to
repay loans obtained for the educational
expenses of a public service worker upon
such terms and conditions as may be
imposed by rules of the department.

B. The department
and the children youth and families
department shall jointly make a full and
careful investigation of the ability and
qualifications of each applicant.
[5.7.7.8 NMAC - N, 7/15/2015]

5.7.7.9 PUBLIC SERVICE WORKER ELIGIBILITY:

A. Applicants shall
have satisfactorily completed at least
one (1) year of service past their initial
probationary year with the CYFD as a
public service worker.

B. Applicants shall not
be participants in any other federal or state
loan repayment program that provides
loan repayment assistance in exchange for
service.
[5.7.7.9 NMAC - N, 7/15/2015]

5.7.7.10 LOAN REPAYMENT AWARD CRITERIA; CONTRACT TERMS; PAYMENT:

A. The secretaries of the
department and the CYFD shall designate
a selection committee for the purpose
of review and selection of qualified
applicants.

B. Loan repayment
award criteria shall provide that:

(1) award
amounts shall be dependent upon a
specific need for the designated critical
need public service worker position
as determined by the department, the
public service worker's total education

indebtedness, and available balances in
the public service worker loan repayment
fund;

(2) preference
in making awards shall be to public
service workers who have graduated from
a New Mexico public post-secondary
educational institution;

(3) awards
shall be made to eligible public service
workers who fill a designated critical need
position;

(4) award
amounts may be modified based upon
funding availability or other special
circumstances;

(5) awards may
be distributed on a pro-rata basis for each
year of service completed; and

(6) an award
for each public service worker shall not
exceed twenty-five thousand dollars
(\$25,000) or the loan indebtedness of the
worker, whichever is less.

C. The following public
service worker education debts are not
eligible for repayment pursuant to the
Children, Youth and Families Worker
Loan Repayment Act:

(1) amounts
incurred as a result of participation in
state loan-for-service programs or other
state programs whose purpose states
that service be provided in exchange for
financial assistance;

(2) scholarships
that have a service component or
obligation;

(3) personal
loans from friends or relatives;

(4) loans that
exceed individual standard school expense
levels; and

(5) loans that
are eligible for another federal or state
loan repayment program.

D. Every loan repayment
award shall be evidenced by a contract
between the public service worker and
the department acting on behalf of the
state. The contract shall provide for the
payment by the state of a stated sum to the
public service worker's approved lender
and shall state the obligations of the
public service worker under the program,
including a minimum period of service in
a designated critical need public service
worker position, quarterly reporting
requirements, and other obligations
established by the department.

E. Public service workers
who have completed their probationary
period and serve an additional year in a
designated critical need position shall
receive credit for one (1) year for the

purpose of calculating any loan repayment award amounts.

F. The contract between a public service worker and the department shall provide that, if the public service worker does not comply with the terms of the contract, the public service worker shall reimburse the department for all loan payments made on the public service worker's behalf, plus reasonable interest at a rate to be determined by the department, unless the department finds acceptable extenuating circumstances for why the public service worker cannot comply with the terms of the contract.

G. Loan repayment awards shall be in the form of payments from the public service worker loan repayment fund directly to the federal government or commercial lender of a public service worker who has received the award and shall be considered a payment on behalf of the public service worker pursuant to the contract between the department and the public service worker. A loan repayment award shall not obligate the state or the department to the public service worker's federal government lender for any other payment and shall not be considered to create any contract between the state or the department and the lender.

H. The department, after consulting with the CYFD, shall develop policies and procedures to implement the Children, Youth and Families Worker Loan Repayment Act. The policies and procedures:

(1) shall provide a procedure for determining the amount of a loan that will be repaid for each year of service in a designated public service worker position; the maximum annual award amount shall be based on program demand and available appropriations;

(2) shall incorporate scoring criteria including but not limited to geographic area or facility served, total loan indebtedness of the worker, years of service in a critical need position, and prior loan repayment or other financial support provided to the worker; and

(3) shall provide for the disbursement of loan repayment awards to a public service worker's federal government or commercial lender in annual or other periodic installments.

[5.7.7.10 NMAC - N, 7/15/2015]

5.7.7.11 CONTRACTS AND ENFORCEMENT:

A. The general form

of a contract required pursuant to the Children, Youth and Families Worker Loan Repayment Act shall be prepared and approved by the department's general counsel, and each contract shall be signed by the public service worker and the designated representative of the department on behalf of the state.

B. The department is vested with full and complete authority and power to sue in its own name for any balance due the state from a public service worker under any such contract. [5.7.7.11 NMAC - N, 7/15/2015]

5.7.7.12 PUBLIC SERVICE WORKER LOAN REPAYMENT FUND CREATED AND METHOD OF PAYMENT:

A. The "children, youth and families worker loan repayment fund" is created in the state treasury. All money appropriated for the public service worker loan repayment program shall be credited to the fund, and any repayment of awards and interest received by the department shall be credited to the fund. Income from the fund shall be credited to the fund, and balances in the fund shall not revert to any other fund. Money in the fund is appropriated to the department for making loan repayment awards pursuant to the Children, Youth and Families Worker Loan Repayment Act.

B. All payments for loan repayment awards shall be made upon vouchers signed by the designated representative of the department and upon a warrant issued by the secretary of finance and administration. [5.7.7.12 NMAC - N, 7/15/2015]

5.7.7.13 CANCELLATION:

The department may cancel any contract made between it and a public service worker pursuant to the Children, Youth and Families Worker Loan Repayment Act for any reasonable cause deemed sufficient by the department. [5.7.7.13 NMAC - N, 7/15/2015]

5.7.7.14 REPORTS: The department shall make annual reports to the governor and the legislature prior to each regular session of its activities, the loan repayment awards granted and the title and job duties of each loan recipient. The report shall also include any contract cancellations and any enforcement actions the department has taken.

[5.7.7.14 NMAC - N, 7/15/2015]

HISTORY OF 5.7.7 NMAC: [RESERVED]

HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.32 NMAC, Section 6, 12 & 13, effective 7/15/2015.

5.7.32.6 OBJECTIVE: The objective and purpose of the New Mexico nurse educator loan-for-service program is to enhance the ability of [~~college-and-university-employed~~] current and future nursing educators to obtain bachelor's of science, master's of science and doctoral philosophy degrees. [5.7.32.6 NMAC - N, 1/15/2008; A, 7/15/2015]

5.7.32.12 LOANS: Loans can be made to students to defray expenses incurred while obtaining eligible degree under the following conditions and limitations:

A. The amount may not exceed [~~five~~] seven thousand five hundred dollars [~~(\$5,000)~~] \$7,500 per academic year. The department may set lower maximum award amounts based on the level of degree being obtained and other considerations.

B. Upon approval of the loan, a contract shall be drawn between the student and the department and signed by the student (for additional contract details see 5.7.32.14 NMAC). [5.7.32.12 NMAC - N, 1/15/2008; A, 7/15/2015]

5.7.32.13 LOAN REPAYMENT AND FORGIVENESS: All loans shall be repaid to the state together with interest or forgiven according to the following.

A. If a loan recipient fails to fulfill or is unable to commence their service obligation, the loan shall become due with interest at seven percent (7%) per year. The department, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

B. Interest will only begin to accrue if loan recipient ceases employment or fails to complete the degree program as a nurse educator prior to completing their service obligation.

C. If the borrower teaches as a nursing faculty at an eligible institution, loan principal may be forgiven according to the following formula.

(1) Loan terms less than one (1) academic year shall require one (1) academic year of practice as a nurse educator. Upon completion of first year of service, one hundred percent

(100%) of the principal shall be forgiven.

(2) Loan terms of [~~one (1)~~] two (2) academic [year] years shall require two (2) academic years of practice as a nurse educator at an eligible institution. Upon completion of the first year of service, fifty percent (50%) of the principal shall be forgiven. Upon completion of the second year of service, the remainder of the principal shall be forgiven.

(3) Loan terms of [~~two (2)~~] three (3) academic years or more shall require three (3) years of practice as a nurse educator at an eligible institution. Forty percent (40%) of the principal shall be forgiven upon completion of the first year of service as a nurse educator, thirty percent (30%) of the principal shall be forgiven upon completion of the second year of service, and the remainder of the principal shall be forgiven upon completion of the third year of service.

D. Recipients must serve a complete academic year of service in order to receive credit for that year. Service as a nurse educator while attending college courses will be credited toward the service obligation.

E. Subject to applicable statutory limitations, the department may extend or modify the foregoing repayment periods for good cause.

F. In the event it becomes necessary, the department may suspend or defer loan payments using the following provisions. The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower, and any other information as requested.

(1) If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance for a period not to exceed six (6) months. Interest will accrue during this period.

(2) The borrower may request deferment of payment obligation for a period not to exceed three (3) years for any purpose deemed acceptable by the department.

G. Loans may be prepaid at any time. Payment on a loan not in repayment status may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

H. Authorized charges and fees:

(1) Late charges: Borrower may be charged a late charge in the amount of five percent (5%) of the installment payment or five dollars (\$5.00), whichever is less, on any payment made later than ten (10) days after it is due.

(2) Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

I. Borrower has the responsibility to notify the department in advance of any change of address and of any action which necessitates reconsideration of a promissory note. [5.7.32.13 NMAC - N, 1/15/2008; A, 7/15/2015]

HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an emergency amendment to 8.102.620 NMAC, Section 9, effective 8/1/2015.

8.102.620.9 GRANT DETERMINATION:

A. **Determining the payment standard:** The payment standard shall be determined based on the eligibility standards and requirements forth in 8.102.500.8 NMAC. The payment standard also includes the special clothing allowance.

B. **Determining benefit group income:** The benefit group's net countable income considered in the payment determination shall be the sum of:

- (1) gross alien sponsor income;
- (2) countable earnings after allowable deductions and disregards of benefit group members; and
- (3) gross unearned income of benefit group members.
- (4) the net income calculation is rounded down removing the cents.

C. **Determining the grant:** A benefit group whose countable income after allowed deductions and disregards equals or exceeds the standard of need applicable to the benefit group shall not be eligible for payment. The grant shall be a monthly benefit

amount determined using the following methodology:

(1) subtract the benefit group's net countable income from the payment standard applicable to the benefit group; and

(2) further subtract the following budgetary adjustment amounts to establish the monthly benefit amount:

- (a) one person [~~\$-39~~] \$ 22
- (b) two persons [~~\$-53~~] \$ 30
- (c) three persons [~~\$-67~~] \$ 38
- (d) four persons [~~\$-80~~] \$ 46
- (e) five persons [~~\$-94~~] \$ 54
- (f) six persons [~~\$-108~~] \$ 62
- (g) seven persons [~~\$-124~~] \$ 69
- (h) eight persons [~~\$-138~~] \$ 79
- (i)

for households with nine or more benefit group members, subtract an additional [~~\$-14~~] \$ 8 for each member.

[8.102.620.9 NMAC - Rp 8.102.620.9 NMAC, 07/01/2001; A, 11/15/2007; A, 01/01/2011; A, 07/01/2013; A/E, 08/01/2015]

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

8.200.510 NMAC, Resource Standards, (filed 06/13/2014) is being repealed and replaced by 8.200.510 NMAC, Resource Standards, effective 07/01/2015.

HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 200 MEDICAID ELIGIBILITY - GENERAL RECIPIENT POLICIES PART 510 RESOURCE STANDARDS

8.200.510.1 ISSUING AGENCY: New Mexico Human Services Department (HSD). [8.200.510.1 NMAC - Rp, 8.200.510.1 NMAC, 07-01-15]

8.200.510.2 SCOPE: The rule applies to the general public.
[8.200.510.2 NMAC - Rp, 8.200.510.2 NMAC, 07-01-15]

8.200.510.3 STATUTORY AUTHORITY: The New Mexico medicaid program and other health care programs are administered pursuant to regulations promulgated by the federal department of health and human services under Title XIX of the Social Security Act as amended or by state statute. See Section 27-1-12 et seq. NMSA 1978.
[8.200.510.3 NMAC - Rp, 8.200.510.3 NMAC, 07-01-15]

8.200.510.4 DURATION: Permanent.
[8.200.510.4 NMAC - Rp, 8.200.510.4 NMAC, 07-01-15]

8.200.510.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[8.200.510.5 NMAC - Rp, 8.200.510.5 NMAC, 07-01-15]

8.200.510.6 OBJECTIVE: The objective of this rule is to provide specific instructions when determining eligibility for the medicaid program and other health care programs. Generally, applicable eligibility rules are detailed in the medical assistance division (MAD) eligibility policy manual, specifically 8.200.400 NMAC, *General Medicaid Eligibility*. Processes for establishing and maintaining MAD eligibility are detailed in the income support division (ISD) general provisions 8.100 NMAC, *General Provisions for Public Assistance Programs*.
[8.200.510.6 NMAC - Rp, 8.200.510.6 NMAC, 07-01-15]

8.200.510.7 DEFINITIONS
[RESERVED]

8.200.510.8 MISSION: To reduce the impact of poverty on people living in New Mexico by providing support services that help families break the cycle of dependency on public assistance.
[8.200.510.8 NMAC - Rp, 8.200.510.8 NMAC, 07-01-15]

8.200.510.9 GENERAL NEED DETERMINATION: To be eligible for medical assistance division (MAD) benefits, an applicant or recipient must meet specific resource and income standards based on eligibility category.
[8.200.510.9 NMAC - Rp, 8.200.510.9 NMAC, 07-01-15]

8.200.510.10 RESOURCE STANDARDS: For specific information on liquid, non-liquid and countable resources, resource exclusions, deemed resources, resource transfers or trusts see specific medical assistance programs (MAP) eligibility categories. Standards for community spouse resource allowance, medical care credit calculations and average cost for nursing facility care are included in this section.
[8.200.510.10 NMAC - Rp, 8.200.510.10 NMAC, 07-01-15]

8.200.510.11 COMMUNITY SPOUSE RESOURCE ALLOWANCE (CSRA): The CSRA standard varies based on when the applicant or recipient become institutionalized for a continuous period. The CSRA remains constant even if it was calculated prior to submission of a formal MAP application. If institutionalization began:

- A.** Between September 30, 1989 and December 31, 1989, the state maximum CSRA is \$30,000 and the federal maximum CRSA is \$60,000.
- B.** On or after January 1, 1990, the state minimum is \$31,290 and the federal maximum CSRA is \$62,580.
- C.** On or after January 1, 1991, the state minimum is \$31,290 and the federal maximum CSRA is \$66,480.
- D.** On or before January 1, 1992, the state minimum is \$31,290 and the federal maximum CSRA is \$68,700.
- E.** On or after January 1, 1993, the state minimum is \$31,290 and the federal maximum CSRA is \$70,740.
- F.** On or after January 1, 1994, the state minimum is \$31,290 and the federal maximum CSRA is \$72,660.
- G.** On or after January 1, 1995, the state minimum is \$31,290 and the federal maximum CSRA is \$74,820.
- H.** On or after January 1, 1996, the state minimum is \$31,290 and the federal maximum CSRA is \$76,740.
- I.** On or after January 1, 1997, the state minimum is \$31,290 and the federal maximum CSRA is \$79,020.
- J.** On or after January 1, 1998, the state minimum is \$31,290 and the federal maximum CSRA is \$80,760.
- K.** On or after January 1, 1999, the state minimum is \$31,290 and the federal maximum CSRA is \$81,960.
- L.** On or after January 1, 2000, the state minimum is \$31,290 and the federal maximum CSRA is \$84,120.
- M.** On or after January 1, 2001, the state minimum is \$31,290 and the federal maximum CSRA is \$87,000.
- N.** On or after January 1, 2002, the state minimum is \$31,290 and

the federal maximum CSRA is \$89,280.

O. On or after January 1, 2003, the state minimum is \$31,290 and the federal maximum CSRA is \$90,660.

P. On or after January 1, 2004, the state minimum is \$31,290 and the federal maximum CSRA is \$92,760.

Q. On or after January 1, 2005, the state minimum is \$31,290 and the federal maximum CSRA is \$95,100.

R. On or after January 1, 2006, the state minimum is \$31,290 and the federal maximum CSRA is \$99,540.

S. On or after January 1, 2007, the state minimum is \$31,290 and the federal maximum CSRA is \$101,640.

T. On or after January 1, 2008, the state minimum is \$31,290 and the federal maximum CSRA is \$104,400.

U. On or after January 1, 2009, the state minimum is \$31,290 and the federal maximum CSRA is \$109,560.

V. On or after January 1, 2010, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

W. On or after January 1, 2011, the state minimum is \$31,290 and the federal maximum CSRA remains \$109,560.

X. On or after January 1, 2012, the state minimum is \$31,290 and the federal maximum CSRA is \$113,640.

Y. On or after January 1, 2013, the state minimum is \$31,290 and the federal maximum CSRA is \$115,920.

Z. On or after January 1, 2014, the state minimum is \$31,290 and the federal maximum CSRA is \$117,240.

AA. On or after January 1, 2015, the state minimum is \$31,290 and the federal maximum CSRA is \$119,220.
[8.200.510.11 NMAC - Rp, 8.200.510.11 NMAC, 07-01-15]

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

DEDUCTION	AMOUNT
A. Personal needs allowance for institutionalized spouse	\$69.
B. Minimum monthly maintenance needs allowance (MMMNA)	\$1,991
C. The community spouse monthly income allowance (CSMIA) is calculated by subtracting the community spouse's gross income from the MMMNA:	
(I) If allowable shelter expenses of the community	

spouse exceed \$597 deduct an excess shelter allowance from community spouse's income that includes: expenses for rent; mortgage (including interest and principal); taxes and insurance; any maintenance charge for a condominium or cooperative; and an amount for utilities (if not part of maintenance charge above); use the standard utility allowance (SUA) deduction used in the food stamp program for the utility allowance.

(2) Excess

shelter allowance may not exceed a maximum of \$990.

D. Any extra maintenance allowance ordered by a court of jurisdiction or a state administrative hearing officer.

E. Dependent family member income allowance (if applicable) calculated as follows: $1/3 \times \text{MMMNA} - \text{dependent member's income}$.

F. Non-covered medical expenses.

G. The maximum total of the community spouse monthly income allowance and excess shelter deduction may not exceed \$2,981.

[8.200.510.12 NMAC - Rp, 8.200.510.12 NMAC, 07-01-15]

Continued next column

8.200.510.13 AVERAGE MONTHLY COST OF NURSING FACILITIES FOR PRIVATE PATIENTS USED IN TRANSFER OF ASSET PROVISIONS:

Costs of care are based on the date of application registration.

DATE	AVERAGE COST PER MONTH
A. July 1, 1988 - Dec. 31, 1989	\$ 1,726 per month
B. Jan. 1, 1990 - Dec. 31, 1991	\$ 2,004 per month
C. Jan. 1, 1992 - Dec. 31, 1992	\$ 2,217 per month
D. Effective July 1, 1993, for application register on or after Jan. 1, 1993	\$ 2,377 per month
E. Jan. 1, 1994 - Dec. 31, 1994	\$2,513 per month
F. Jan. 1, 1995 - Dec. 31, 1995	\$2,592 per month
G. Jan. 1, 1996 - Dec. 31, 1996	\$2,738 per month
H. Jan. 1, 1997 - Dec. 31, 1997	\$2,889 per month
I. Jan. 1, 1998 - Dec 31, 1998	\$3,119 per month
J. Jan. 1, 1999 - Dec. 31, 1999	\$3,429 per month
K. Jan. 1, 2000 - Dec. 31, 2000	\$3,494 per month
L. Jan. 1, 2001 - Dec. 31, 2001	\$3,550 per month
M. Jan. 1, 2002 - Dec. 31, 2002	\$3,643 per month
N. Jan. 1, 2003 - Dec. 31, 2003	\$4,188 per month
O. Jan. 1, 2004 - Dec. 31, 2004	\$3,899 per month
P. Jan. 1, 2005 - Dec. 31, 2005	\$4,277 per month
Q. Jan. 1, 2006 - Dec. 31, 2006	\$4,541 per month
R. Jan. 1, 2007 - Dec. 31, 2007	\$4,551 per month
S. Jan. 1, 2008 - Dec. 31, 2008	\$4,821 per month
T. Jan. 1, 2009 - Dec. 31, 2009	\$5,037 per month
U. Jan. 1, 2010 - Dec. 31, 2010	\$5,269 per month
V. Jan. 1, 2011 - Dec. 31, 2011	\$5,774 per month
W. Jan. 1, 2012 - Dec. 31, 2012	\$6,015 per month
X. Jan. 1, 2013 - Dec. 31, 2013	\$6,291 per month
Y. Jan. 1, 2014 - Dec. 31, 2014	\$6,229 per month
Z. Jan 1, 2015	\$6,659 per month.

[8.200.510.13 NMAC - Rp, 8.200.510.13 NMAC, 07-01-15]

8.200.510.14 RESOURCE AMOUNTS FOR SUPPLEMENTAL SECURITY INCOME (SSI) RELATED MEDICARE SAVINGS PROGRAMS (QMB, SLIMB/QII AND QD): The following resource standards are inclusive of the \$1,500 per person burial exclusion.

A. Individual	\$8,780;
B. Couple	\$13,930.

[8.200.510.14 NMAC - Rp, 8.200.510.14 NMAC, 07-01-15]

8.200.510.15 EXCESS HOME EQUITY AMOUNT FOR LONG-TERM CARE SERVICES:

A. Jan. 2015	\$828,000.
B. Jan. 2014	\$814,000.
C. Jan. 2013	\$802,000.
D. Jan. 2012	\$786,000.
E. Jan. 2011	\$758,000.
F. Jan. 2010	\$750,000.

[8.200.510.15 NMAC - Rp, 8.200.510.15 NMAC, 07-01-15]

HISTORY OF 8.200.510 NMAC: The material in this part was derived from that previously filed with the Commission of Public Records - State Records Center and Archives:

8 NMAC 4.MAD.500, Eligibility Policies, Income and Resource Standards; 12-30-94.

8 NMAC 4.MAD.500, Eligibility Policies, Income and Resource Standards; 6-20-95.

History of Repealed Material:

8.200.510 NMAC, Resource Standards, filed 6-13-2014 - Repealed 7-1-2015.

MINING COMMISSION

This is an amendment to 19.10.12 NMAC, Section 1210, effective 7/15/2015.

19.10.12.1210 RELEASE OF FINANCIAL ASSURANCE:

A. Release Application.
(1) The permittee may file an application with the director for the release of all or part of the financial assurance. The permittee may file [~~only one~~] multiple release [~~application~~] applications per year for each permit.

(2) The application shall describe the reclamation or closeout measures completed and shall contain an estimate of the cost of reclamation that has not been completed.

(3) At the time the release application is filed with the director, the permittee shall submit proof that the notice of application has been provided in accordance with 19.10.9.902 NMAC and 19.10.9.903 NMAC. The notice shall be considered part of any release application and shall contain: the permittee's name; permit number and approval date; notification of the precise location of the real property affected; the number of acres; the type and amount of the financial assurance filed and the portion sought to be released; the type and appropriate dates of reclamation or closeout plan performed; a description of the results achieved as they relate to the permittee's approved reclamation or closeout plan; and the name and address of the director, to whom written comments, objections, or requests for public hearings on the specific financial assurance release may be submitted pursuant to Subsection C of 19.10.12.1210 NMAC.

(4) The director shall promptly provide notice of receipt of the application for release of all or part of the financial assurance to the environment department, the office of the state engineer, the department of game and fish, the forestry division, the state historic preservation division, other agencies he deems appropriate, and if the operation is on state or federal land, to the appropriate state or federal land management agency.

B. Inspection by director. Upon receipt of the complete financial assurance release application, the director shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation or closeout measures completed. The evaluation shall

consider, among other factors, the degree of difficulty to complete any remaining reclamation. The surface owner or lessor of the real property, other state and federal agencies as listed in Subsection A, Paragraph 4 of 19.10.12.1210 NMAC above, and any other persons who have requested advance notice of the inspection shall be given notice of such inspection and may be present at the release inspection as may any other interested members of the public. The director may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the financial assurance release, for the purpose of gathering information relevant to the proceeding.

C. Public Hearing.
(1) Within 30 days from the date of the inspection, a person with an interest that is or will be adversely affected by the proposed financial assurance release may file written objections to the proposed release with the director. If written objections are filed and a hearing is requested, the director shall inform all persons who have requested notice of hearings and persons who have filed written objections in regard to the application of the time and place of the hearing at least 30 days in advance of the public hearing. The hearing shall be held in the locality of the permit area proposed for release.

(2) The date, time and location of the public hearing shall be advertised by the director in a newspaper of general circulation in the locality of the permit area once a week for two consecutive weeks. All persons who have submitted a written request in advance to the director to receive notices of hearings shall be provided notice at least 30 days prior to the hearing. The hearing procedures of 19.10.9.905 NMAC shall be followed.

D. Within 45 days from the inspection, if no public hearing is held pursuant to Subsection C of 19.10.12.1210 NMAC, or, within 45 days after a public hearing has been held pursuant to Subsection C of 19.10.12.1210 NMAC, the director shall notify in writing the permittee, the surety or other persons with an interest in the collateral who have requested notification under 19.10.12.1208 NMAC and the persons who either filed objections in writing or participants in the hearing proceedings who supplied their addresses to the director, if any, of the decision whether to release all or part of the financial assurance.

E. The director may release all or part of the financial

assurance for the entire permit area or incremental area if the director is satisfied that the reclamation or closeout plan or a phase of the reclamation or closeout plan covered by the financial assurance, or portion thereof, has been accomplished in accordance with the act, 19.10 NMAC, and the permit.

F. If the director denies the release application or portion thereof, the director shall notify the permittee, the surety, and any person with an interest in collateral as provided for in Subsection C, Paragraph 4 of 19.10.12.1208 NMAC, in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release.

G. The director may approve an application for release of financial assurance for a minimal impact operation without public notice or hearing. [7-12-94, 2-15-96; 19.10.12.1210 NMAC - Rn, 19 NMAC 10.2.12.1210, 05-15-2001; A, 12-30-03; A, 07-15-15]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 1 GENERAL PROVISIONS**

10.12.1.1 ISSUING AGENCY: Public Defender Commission
[10.12.1.1 NMAC - N, 7/1/2015]

10.12.1.2 SCOPE: Applies to all employees.
[10.12.1.2 NMAC - N, 7/1/2015]

10.12.1.3 STATUTORY AUTHORITY: Section 31-15-2.4(B) (6) NMSA 1978; Section 31-15-7 NMSA 1978; 42 U.S.C Section 12101 et seq.; Section 14: NMSA 1978, Section 14-2-1 NMSA 1978 and 42 U.S.C Section 101 et seq; Chapter 173, laws of 1997.
[10.12.1.3 NMAC - N, 7/1/2015]

10.12.1.4 DURATION: Permanent.
[10.12.1.4 NMAC - N, 7/1/2015]

10.12.1.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[10.12.1.5 NMAC - N, 7/1/2015]

10.12.1.6 OBJECTIVE: The objective of Part 1 of Chapter 12 is: to

define words and phrases used throughout Chapter 12, to cite provisions pertaining to different parts of Chapter 12, to require maintenance of employment records, and to detail provisions that do not warrant a separate part.

[10.12.1.6 NMAC - N, 7/1/2015]

10.12.1.7 DEFINITIONS:

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

B. "Anniversary date" means the date of appointment or reemployment and is changed as of the date of promotion, demotion, reduction, or change to a different classification in the same pay band. The human resource director shall resolve disputes over how an anniversary date is derived.

C. "Applicant" means any person, who has applied for a position.

D. "Board" means the disciplinary review board.

E. "Break in employment" means any period of separation of at least one workday of not being in the public defender department.

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

G. "Chief" means the chief public defender.

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

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

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

K. "Department" means the public defender department.

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

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

N. "Employer" means any authority having power to fill

positions in the department.

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

P. "Established requirements" means a position's individual job related qualification standards established by the department in accordance with the specific requirements and/or needs of the position and are subject to review by the human resource director.

Q. "Examination" means quantitative competitive assessment of qualifications, knowledge, skills, fitness and abilities of an applicant including oral or written tests.

R. "Exempt service" means at will positions in the department.

S. "Filed" means received by the office.

T. "First line supervisor" means an employee in a non-manager classification who devotes a substantial amount of work time to supervisory duties, customarily and regularly directs the work of other employees and may have the authority in the interest of the department to hire, promote, evaluate the performance of, or discipline other employees or to recommend such actions effectively but does not include an individual who performs merely routine, incidental or clerical duties, or who occasionally assumes supervisory or human resource directory roles or whose duties are substantially similar to those of subordinates, and does not include lead employees, employees who participate in peer review or occasional employee evaluation programs.

U. "Involuntary separation" means involuntary removal of an employee from the department without prejudice as provided for in 10.12.10.13 NMAC.

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

W. "Midpoint" means the salary midway between the minimum and maximum pay rates of a pay range that represents the competitive market rate for jobs of the same relative worth in

the relevant labor market(s). Midpoint represents a compa-ratio value of 1.00 or 100%.

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

Y. "Office" means the human resources bureau.

Z. "Pay range" means the range of pay rates, from minimum to maximum.

AA. "Probationer" means an employee in the department who has not completed the one-year probationary period.

BB. "Promotion" means the change of an employee from a position in one pay range to a position in a higher pay range.

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

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

EE. "Resignation" means the voluntary separation of an employee from the department.

FF. "Rules" means the rules and regulations of the public defender department.

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

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

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

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

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

[10.12.1.7 NMAC - N, 7/1/2015]

10.12.1.8 APPROVAL
AUTHORITY: Pursuant to the provision of Section 31-15-7 NMSA 1978 the chief public defender shall supervise all administrative and technical personnel activities of the department. The chief public defender may designate duties as needed.

A. The human resource director, pursuant to direction from the chief, will establish a quality assurance review program. The chief will review the quality assurance review program.

B. The human resource director shall ensure that all programs are reviewed, as outlined in the quality assurance review program, which will enable the chief to supervise all administrative and technical personnel activities of the state and ensure compliance with the rules. The human resource director shall submit the findings to the chief.

[10.12.1.8 NMAC - N, 7/1/2015]

10.12.1.9 INTERPRETATIONS: The chief shall establish a procedure for the issuance of interpretations of these rules.
 [10.12.1.9 NMAC - N, 7/1/2015]

10.12.1.10 METHOD OF SERVING NOTICE: Any notice required of the department by these rules, shall be delivered by a method that provides proof of service or attempted service.
 [10.12.1.10 NMAC - N, 7/1/2015]

10.12.1.11 COMPUTATION OF TIME:
A. In computing any period of time prescribed or allowed by these rules, the day from which period of time begins to run shall not be included. The last calendar day of the time period shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday. If the period is less than 11 days, a Saturday, Sunday or legal holiday is excluded from the computation.

B. Whenever an employee is permitted or required by these rules to respond or do some other act within a prescribed period after service of a notice or paper upon the employee and the notice or paper is served by mail or courier service, three calendar days shall be added to the prescribed period.
 [10.12.1.11 NMAC - N, 7/1/2015]

10.12.1.12 EMPLOYMENT RECORDS:
A. The office shall maintain a record of each employee's employment history in accordance with operational necessity and applicable state and federal law requirements. Employees shall have access to their own file. Employment-related confidential records shall be available for inspection by prospective employers when the employee has provided a signed release. No materials shall be placed in an employee's employment history without providing the employee with a copy. Employees may submit a written rebuttal to any material placed in their employment history. The department shall transfer the complete record of an employee's employment history upon inter-agency transfer.

B. Employment records, except confidential records, are subject to inspection by the general public. Confidential records may be inspected with the written permission of the employee or pursuant to a lawful court order.

C. For the purpose of inspection of public records under Section 14-2-1 NMSA 1978 et seq., the following material shall be regarded as confidential and exempted from public inspection: records and documentation pertaining to physical or mental illness, injury or examinations, sick leave and medical treatment of persons; records and documentation maintained for purposes of the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq.; letters of reference concerning employment, licensing, or permits; records and documentation containing matters of opinion; documents concerning infractions and disciplinary actions; performance appraisals; opinions as to whether a person should be re-employed; college transcripts; military discharge; information on the race, color, religion, sex, national origin, political affiliation, age, and disability of employees; home address and personal telephone number unless related to public business; social security number; laboratory reports or test results generated according to the provisions of 10.12.8 NMAC; and as otherwise provided by state or federal law.
 [10.12.1.12 NMAC - N, 7/1/2015]

10.12.1.13 SETTLEMENT AGREEMENTS: Any settlement agreement reached by the department and an employee to resolve a matter in dispute between them, that incorporates provisions covered by these rules, must conform to the provisions of these rules

and have the prior approval of the chief. The chief may approve a settlement agreement, which does not conform to the provisions of these rules if, in the judgment of the chief, the settlement is in the best interest of the public defender department.
 [10.12.1.13 NMAC - N, 7/1/2015]

10.12.1.14 HUMAN RESOURCE POLICIES: The department shall make human resource policies available to employees and insure that policies conform to requirements of law.
 [10.12.1.14 NMAC - N, 7/1/2015]

10.12.1.15 TRAINING AND DEVELOPMENT: The human resource director in conjunction with the training director shall establish, pursuant to direction from the chief, maintain a training and development work plan. The chief will review the training and development work plan on an annual basis.
 [10.12.1.15 NMAC - N, 7/1/2015]

10.12.1.16 SEVERABILITY: A determination by a court of competent jurisdiction that any provision of these rules is unconstitutional or invalid shall not adversely affect the constitutionality, validity or enforceability of the remaining provisions.
 [10.12.1.16 NMAC - N, 7/1/2015]

HISTORY OF 10.12.1 NMAC:
 [RESERVED]

PUBLIC DEFENDER DEPARTMENT

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 2 APPOINTMENTS

10.12.2.1 ISSUING AGENCY: Public Defender Commission
 [10.12.2.1 NMAC - N, 7/1/2015]

10.12.2.2 SCOPE: Applies to all employees.
 [10.12.2.2 NMAC - N, 7/1/2015]

10.12.2.3 STATUTORY AUTHORITY: Section 31-15-2.4(B) (6) NMSA 1978; Section 31-15-7 NMSA 1978; 42 U.S.C Section 12101 et seq.; Section 14: NMSA 1978, Section 14-2-1 NMSA 1978 and 42 U.S.C Section 101 et

seq.; Chapter 173, laws of 1997.
[10.12.2.3 NMAC - N, 7/1/2015]

10.12.2.4 DURATION:

Permanent.
[10.12.2.4 NMAC - N, 7/1/2015]

10.12.2.5 EFFECTIVE DATE:

July 1, 2015, unless a later date is cited at the end of a section.
[10.12.2.5 NMAC - N, 7/1/2015]

10.12.2.6 OBJECTIVE: The objective of Part 2 of Chapter 12 is to describe various types of appointments in the department and to describe employees' rights.

[10.12.2.6 NMAC - N, 7/1/2015]

10.12.2.7 DEFINITIONS:

A. "Career appointment" is the employment of a candidate in a position recognized by the office as permanent.

B. "Term appointment" is the employment of a candidate in a position created for a special project or program with a designated duration.

C. "Temporary appointment" is the employment of a candidate in a position created for duration of less than one year.

D. "Emergency appointment" is the employment of an apparently qualified applicant when an emergency condition exists as determined by the chief and the appropriate employment list contains no available candidates or when there may be insufficient time for the normal recruitment process to proceed and in order to address the emergency, but only as long as the emergency exists. All qualified candidates will be considered for the position including the subject of the emergency appointment when the employment list is certified by the office.

E. "Convert(ed)" means the changing of an employee to a different type of status.

[10.12.2.7 NMAC - N, 7/1/2015]

10.12.2.8 PROBATION:

A. A probationary period of one year is required of all employees unless otherwise provided for by these rules.

B. The probationary period includes all continuous employment in the department except temporary service.

C. A break in employment of at least one work day or more will require an employee to serve another probationary period upon rehire

into the department with the exception of those employees returned to work under 10.12.10.10 NMAC or 10.12.10.14 NMAC.

D. Any full-time continuous leave, except for military leave, taken during the probationary period exceeding 30 calendar days shall extend the probationary period by the number of days of leave that exceeds 30 calendar days.

E. A probationer may have their appointment expired for non-disciplinary reasons with a minimum of 24 hours written notice without right of appeal. Such employees shall be advised in writing of the reason(s) for the expiration of appointment.

[10.12.2.8 NMAC - N, 7/1/2015]

10.12.2.9 CAREER STATUS:

An employee in a career appointment attains career status beginning the day following the end of the probationary period required by 10.12.2.8 NMAC unless otherwise provided for by these rules.

[10.12.2.9 NMAC - N, 7/1/2015]

10.12.2.10 TERM STATUS:

Employees in term status who complete the one year probationary period required by 10.12.2.8 NMAC shall have all of the rights and privileges of employees in career status except that term appointments may be expired due to reduction or loss of funding or when the special project or program ends with at least 14 calendar days written notice to the employee without right of appeal.

[10.12.2.10 NMAC - N, 7/1/2015]

10.12.2.11 TEMPORARY STATUS:

Temporary appointments may be expired with at least 24 hours written notice to the employee without right of appeal.

[10.12.2.11 NMAC - N, 7/1/2015]

10.12.2.12 EMERGENCY APPOINTMENTS:

A. An emergency appointment is the employment of an apparently qualified applicant when an emergency condition exists as determined by the chief and there are no applicants available on an appropriate employment list or when there may be insufficient time for the normal recruitment process to proceed and in order to address the emergency, but only as long as the emergency exists. All qualified candidates will be considered for the position including the subject of the emergency appointment when the employment list is

certified by the office.

B. No employee may hold an emergency appointment longer than 90 calendar days in any 12-month period. The chief may make a second emergency appointment if the conditions continue to exist or additional conditions arise as set forth in Subsection A of this section.

C. Emergency appointments may be expired with at least 24 hours written notice to the employee without right of appeal.

D. An employee in emergency appointment may be converted to a career, term, or temporary status if the employee: has met the established requirements or the department certifies that the employee holds qualifications and abilities necessary for successful job performance and is performing to the department's satisfaction; and there are no better qualified candidates for the position after appropriate recruitment.

[10.12.2.12 NMAC - N, 7/1/2015]

10.12.2.13 EXPIRATION OF APPOINTMENT:

The expiration of a term, probationary, emergency or temporary appointment shall not be considered to be a layoff within the meaning of 10.12.10.9 NMAC or a dismissal within the meaning of Subsection L of 10.12.1.7 NMAC.

[10.12.2.13 NMAC - N, 7/1/2015]

10.12.2.14 ACKNOWLEDGMENT OF CONDITIONS OF APPOINTMENT:

The department shall require that a form be signed by all employees at the time of appointment acknowledging the terms and conditions of the appointment.

[10.12.2.14 NMAC - N, 7/1/2015]

HISTORY OF 10.12.2 NMAC:

[RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 3 CLASSIFICATION**

10.12.3.1 ISSUING AGENCY:

Public Defender Commission
[10.12.3.1 NMAC - N, 7/1/2015]

10.12.3.2 SCOPE: Applies to all employees

[10.12.3.2 NMAC - N, 7/1/2015]

10.12.3.3 STATUTORY AUTHORITY: Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978.
[10.12.3.3 NMAC - N, 7/1/2015]

10.12.3.4 DURATION: Permanent.
[10.12.3.4 NMAC - N, 7/1/2015]

10.12.3.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[10.12.3.5 NMAC - N, 7/1/2015]

10.12.3.6 OBJECTIVE: The objective of Part 3 of Chapter 12 is to provide for a uniform and flexible system for the classification of department positions that supports the mission of the department, is adaptable to change, ensures that all positions are assigned to their appropriate classification, and sets forth a process for implementing classification studies.
[10.12.3.6 NMAC - N, 7/1/2015]

10.12.3.7 DEFINITIONS: "Classification plan" means a document developed by the human resource director and approved by the chief that describes the chief's classification philosophy and is the foundation for ensuring consistent application of the philosophy.
[10.12.3.7 NMAC - N, 7/1/2015]

10.12.3.8 CLASSIFICATION PLAN:

A. The human resource director, pursuant to direction from the chief, shall establish, maintain and administer a classification plan for all positions throughout the department.

B. The chief establishes a classification through the review, approval and adoption of new or revised classification descriptions.

C. The human resource director may recommend the deletion of unused classification descriptions and revisions to classification descriptions if the revision does not necessitate a study.

D. The human resource director shall provide affected parties an opportunity to comment on the creation, revision, and deletion of classification descriptions prior to implementation.

E. Classification reviews, classification studies and/or classification re-evaluations may be requested by department management.
[10.12.3.8 NMAC - N, 7/1/2015]

10.12.3.9 POSITION ASSIGNMENT:
A. The human resource director shall ensure that each position in the department is assigned to the classification that best represents the duties assigned by the employer and performed by the employee.

B. When a filled position is assigned a classification with a lower pay band, in accordance with the provisions Subsection A. of 10.12.3.9 NMAC, the employee may elect to take a reduction in accordance with Subsection DD of 10.12.1.7 NMAC, or overfill the position in their current classification.

C. A position assignment decision may be appealed to the chief through the department's chain-of-command. Appeals to the chief must be in writing and include the employee's analysis of the reasons for the appeal as well as the human resource director's analysis for the reasons for reclassification of the position. The chief's decision is final and binding.
[10.12.3.9 NMAC - N, 7/1/2015]

10.12.3.10 IMPLEMENTATION OF CLASSIFICATION STUDY RESULTS:

On a date determined by the human resource director, employees affected by a classification study shall be assigned to the resulting new classification which best represents the job performed without having to meet the established requirements, unless minimum qualifications are required by law.
[10.12.3.10 NMAC - N, 7/1/2015]

HISTORY OF 10.12.3 NMAC:
[RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 4 PAY**

10.12.4.1 ISSUING AGENCY: Public Defender Commission
[10.12.4.1 NMAC - N, 7/1/2015]

10.12.4.2 SCOPE: Applies to all employees.
[10.12.4.2 NMAC - N, 7/1/2015]

10.12.4.3 STATUTORY AUTHORITY: Section 31-15-2.4(B)(6)

NMSA 1978 and Section 31-15-7 NMSA 1978; and 29 U.S.C. Sections 201 to 262.
[10.12.4.3 NMAC - N, 7/1/2015]

10.12.4.4 DURATION: Permanent.
[10.12.4.4 NMAC - N, 7/1/2015]

10.12.4.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[10.12.4.5 NMAC - N, 7/1/2015]

10.12.4.6 OBJECTIVE: The objective of Part 4 of Chapter 12 is to provide a uniform system of pay administration for employees that is externally competitive and internally equitable.
[10.12.4.6 NMAC - N, 7/1/2015]

10.12.4.7 DEFINITIONS:
A. "Alternative pay range" means the range of pay rates, from the minimum to the maximum for a classification based on the current market rate for benchmark jobs in the relevant labor market(s).

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

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

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

E. "Contributor proficiency zones" means subdivisions of the pay range that designate the employee's contribution in their job role. These proficiency zones are characterized as associate, independent and principal zones.

F. "In pay range adjustment" means movement within a pay range for demonstrated performance, skill or competency development, and/or internal alignment, which allows department management to provide salary growth within a pay range.

G. "Internal alignment" means an adjustment that addresses

pay issues involving the proximity of one employee's salary to the salaries of others in the same classification who have comparable levels of training, education and experience, duties and responsibilities, performance, knowledge, skills, abilities, and competencies, and who are appropriately placed.

H. "Normal work schedule" means a schedule established by the department, defining a start and end time for the employee.

I. "Pay plan" means a document developed by the human resource director and approved annually by the chief, that describes the chief's compensation philosophy and it is the foundation for ensuring consistent application of the philosophy

J. "Total compensation" means all forms of cash compensation and the dollar value of the employer-sponsored benefit.

[10.12.4.7 NMAC - N, 7/1/2015]

10.12.4.8 PAY PLAN:

A. The human resource director, pursuant to direction from the chief, shall establish, maintain and, administer a pay plan for all positions throughout the department, which shall include the pertinent factors that should be considered by managers for determining and justifying appropriate placement within a pay range.

B. The chief shall adopt a recognized method of job evaluation to uniformly and consistently establish the value of each level.

C. The human resource director shall conduct an annual compensation survey that includes total compensation. The comparison market shall be comprised of private and public entities within the state of New Mexico, and regional state government employers. The chief or human resource director may authorize or include additional comparison markets when deemed necessary and appropriate.

D. Prior to the end of each calendar year, the human resource director shall submit to the chief a compensation report that includes a summary of the status of the department pay system and the results of the annual compensation survey that includes total compensation. The chief shall review, adopt and submit this report to the public defender commission.

[10.12.4.8 NMAC - N, 7/1/2015]

10.12.4.9 ASSIGNMENT OF PAY RANGES: The human resource director shall appoint a job evaluation

committee composed of no less than three members including the human resource director and the deputy chief for administration. The human resource director will provide training in the job evaluation and measurement process. The committee shall apply the job evaluation and measurement process to all newly created or revised classifications.

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

B. A re-evaluation of a classification may be requested by management which, based upon their analysis, is inappropriately valued. Re-evaluations may be conducted no more than once every 24 months unless otherwise approved by the human resource director or the chief.

[10.12.4.9 NMAC - N, 7/1/2015]

1.12.4.10 ASSIGNMENT OF ALTERNATIVE PAY RANGES:

A. The human resource director may recommend to the chief the assignment of an alternative pay range(s):

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

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

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

C. The chief may assign alternative pay ranges based on the human resource director's report on comparison market surveys, or additional market survey information, to address critical recruitment/retention issues.

D. The assignments to alternative pay ranges shall be reviewed annually to determine their appropriateness. The human resource director shall recommend to the chief the continuation or removal of the alternative pay range assignments. The salary of affected employees shall be governed by Subsection H. of 10.12.4.12 NMAC.

[10.12.4.10 NMAC - N, 7/1/2015]

10.12.4.11 SALARY SCHEDULES:

A. Based on the pay

plan, the human resource director shall develop and maintain salary schedules for the department that shall consist of pay ranges.

B. No employee in the department shall be paid a salary less than neither the minimum nor greater than the maximum of their designated pay range unless otherwise authorized by the human resource director or chief, or provided for in these rules, or the employee has been transferred into the department by statute or order of a court of competent jurisdiction.

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

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

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

D. An employee's placement in the pay range will be identified by a compa-ratio value. [10.12.4.11 NMAC - N, 7/1/2015]

10.12.4.12 ADMINISTRATION OF THE SALARY SCHEDULES:

A. Entrance salary: Upon entrance to a department position, a newly-appointed employee's salary, subject to budget availability, should reflect appropriate placement within the pay range. Any entrance salary in the principal contributor zone must receive approval from the human resource director prior to appointment.

B. Legislative authorized salary increase:

(1) Subject to specific statutory authorization for

each state fiscal year, employees may be eligible for a salary increase within their assigned pay range.

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

C. Salary upon in pay range adjustment: Upon in pay range adjustment, subject to chief approval, budget availability and reflective of appropriate placement, the department may increase an employee's salary up to 10% during a fiscal year. An employee may receive more than one adjustment within a fiscal year provided the salary increases do not exceed more than 10% and the employee's base salary does not exceed the maximum of the assigned pay range. When reviewing requests for in pay range adjustments the chief will take into consideration those instances where the requesting manager has employees with a current rate of pay that falls below the minimum of their pay range.

D. Salary upon promotion: Upon promotion, an employee's salary, subject to budget availability, should reflect appropriate placement within the pay range. A salary increase of less than 5% or greater than 15% shall require approval of the chief. A salary increase greater than 15% to bring an employee's salary to the minimum of the pay range or less than 5% to prevent an employee's salary from exceeding the maximum of the pay range does not require the approval of the chief. The salary of a promoted employee shall be in accordance with Subsection B. of 1.12.4.11 NMAC.

E. Salary upon demotion: Upon demotion, an employee's salary shall be decreased to an hourly rate of pay which does not result in more than a 15% decrease from the previous salary unless a greater decrease is required to bring the salary to the maximum of the new pay range or the decrease is being made in accordance with Paragraph (2) of Subsection F of 10.12.4.12 NMAC.

F. Pay allowance for performing first line supervisor duties:
(1) The department may grant a pay allowance to an employee in a non-manager classification who accepts and consistently performs additional duties which are characteristic of a first line supervisor. The amount of the pay allowance shall reflect the supervisory responsibilities which transcend the technical responsibilities inherent in the technical occupation group and may be between 0%

and 20% above the employee's base pay rate.

(2) When the supervisor duties are no longer being performed, the department shall revert the employee to the hourly rate of pay held prior to granting the pay allowance, plus any authorized pay increases.

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

G. Salary upon intra-agency transfer:

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

(2) Employees shall be compensated, for compensatory time accumulated in accordance with the overtime provisions of the Fair Labor Standards Act (FLSA) prior to intra-agency transfer.

(3) Employees shall not be compensated, for compensatory time accumulated while exempt from the overtime provisions of the FLSA, prior to intra-agency transfer.

H. Salary upon pay range change: When a change of pay range is authorized in accordance with the provisions of 10.12.4.9 NMAC, 10.12.4.10 NMAC or 10.12.4.11 NMAC the salaries of affected employees shall be determined in accordance with Subsection C. of 10.12.4.11 NMAC. Employees whose pay range is adjusted upward or downward shall retain their current salary in the new pay range. Employees' salaries may be addressed through in pay range adjustment unless otherwise allowed by statute.

I. Salary upon reduction: The salary of employees who take a reduction may be reduced by up to 15% unless the reduction is made in accordance with Paragraph (2) of Subsection F of 10.12.4.12 NMAC. An employee's salary should reflect appropriate placement within the pay range. The chief may approve a salary reduction greater than 15% due to special circumstances that are justified in writing.

J. Salary upon return to work or reemployment: The salary of former employees who are returned to work or re-employed in accordance

with the provisions of 10.12.10 NMAC, 10.12.11 NMAC, 10.12.12 NMAC or 10.12.14 NMAC shall not exceed the hourly pay rate held at the time of separation unless a higher salary is necessary to bring the employee to the minimum of the pay range.

K. Salary upon temporary promotion: Pay for a temporary promotion shall be treated the same as a regular promotion. The department shall discontinue the temporary promotion increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

L. Temporary salary increase: The chief may grant a temporary salary increase of up to 15%, for a period not to exceed one year, from the effective date of the salary increase, for temporarily accepting and consistently performing additional duties which are characteristic of a job requiring greater responsibility/accountability and/or a higher valued job. The chief may approve temporary salary increases above the maximum of the employee's current pay range. The department shall discontinue the temporary salary increase when the temporary conditions cease to exist or at the end of the 12 month period, whichever occurs first.

M. Salary adjustment to minimum: An employee whose salary falls below the minimum of the pay range will be adjusted in accordance with Paragraph (2) of Subsection C of 10.12.4.11 NMAC.
[10.12.4.12 NMAC - N, 7/1/2015]

10.12.4.13 PAY DIFFERENTIALS:

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

(1) A temporary recruitment differential authorized under this provision shall be tied to the position and may not transfer with the employee should the employee leave that position. Payment of this differential shall be separate from the employee's base salary.

(2) A temporary recruitment differential of more than 15% of an employee's base pay or a total salary (base pay plus differential amount) that exceeds the maximum of the pay range

may be authorized if approved by the chief.

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

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

(2) A temporary retention differential of more than 15% of an employee's base pay or a total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.

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

D. Out-of-state differential: The chief may authorize an out-of-state differential to an employee up to the maximum of the pay range if the department is able to substantiate that the employee's current salary is insufficient to adequately pay an employee while working or residing out of state. Payment of this differential should be separate from the employee's base salary. A total salary (base pay plus differential amount) that exceeds the maximum of the pay range may be authorized if approved by the chief.

[10.12.4.13 NMAC - N, 7/1/2015]

10.12.4.14 OVERTIME:

A. The office is responsible for the evaluation of each employee's position and duties in order to determine their overtime status as set forth under the FLSA.

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

C. Employees have the right to appeal the determination of their overtime status in accordance with the internal complaint process to the human resource director. The human resource

director shall notify employees in writing of the appeal decision within 30 calendar days. The employee may file an appeal of the human resource director's decision to the chief within 30 calendar days of the human resource director's decision. The office shall notify employees that their appeal to the chief must be in writing and must include the reason(s) why the employee believes he or she is improperly identified for overtime coverage. The appeal must include documentation describing the work currently being performed by the employee and any other relevant information. All information contained in the appeal shall be verified by the department.

D. The office shall maintain a record on each employee containing information required by the provisions of the FLSA.

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

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

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

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

I. Paid holiday leave in accordance with the provisions of Subsection A of 10.12.4.17 NMAC, annual leave taken in accordance with the provisions of Subsection F of 10.12.7.8 NMAC, and administrative leave for voting taken in accordance with the provisions of Subsection C of 10.12.7.14 NMAC shall also count as time worked in the consideration of overtime for FLSA covered, non-exempt employees.

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

K. Employees not covered or exempt from the overtime

provisions of the FLSA may be compensated for overtime at the discretion of the chief and subject to budget availability.

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

[10.12.4.14 NMAC - N, 7/1/2015]

10.12.4.15 HOLIDAY PAY:

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

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

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

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

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

[10.12.4.15 NMAC - N, 7/1/2015]

10.12.4.16 GOVERNMENT COST SAVINGS INCENTIVE

AWARDS: The department may provide cash awards to employees with the approval of the chief in accordance with the provisions of Section 10-7-12 NMSA 1978.

[10.12.16 NMAC - N, 7/1/2015]

HISTORY OF 10.12.4 NMAC:

[RESERVED]

**PUBLIC DEFENDER
DEPARTMENT**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC
DEFENDER DEPARTMENT
PART 5 RECRUITMENT,
ASSESSMENT AND SELECTION**

10.12.5.1 ISSUING AGENCY:
Public Defender Commission
[10.12.5.1 NMAC - N, 7/1/2015]

10.12.5.2 SCOPE: Applies to all employees and candidates for vacant positions.
[10.12.5.2 NMAC - N, 7/1/2015]

10.12.5.3 STATUTORY AUTHORITY: Section 31-15-2.4(B) (6) NMSA 1978; Section 31-15-7 NMSA 1978.
[10.12.5.3 NMAC - N, 7/1/2015]

10.12.5.4 DURATION:
Permanent.
[10.12.5.4 NMAC - N, 7/1/2015]

10.12.5.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[10.12.5.5 NMAC - N, 7/1/2015]

10.12.5.6 OBJECTIVE: The objective of Part 5 of Chapter 12 is: to provide a system for the recruitment, examination and selection of applicants for employment in the department.
[10.12.5.6 NMAC - N, 7/1/2015]

10.12.5.7 DEFINITIONS:
“Open for recruitment” means soliciting applications from the general public and state employees for vacant positions and may include internal recruitment only.
[10.12.5.7 NMAC - N, 7/1/2015]

10.12.5.8 VACANT POSITIONS:

A. All vacant positions to be filled shall be open for recruitment unless otherwise authorized by the chief or provided for in these rules.

B. Positions in the department shall be filled at the assigned classification. An underfill may be approved by the chief. An authorized underfill may not exceed one year unless extended by the chief.

C. The chief may approve a position to be doublefilled for up to one year.

D. The department may

allow part-time employees to share the same position.
[10.12.5.8 NMAC - N, 7/1/2015]

10.12.5.9 RECRUITMENT:

A. The human resource director shall establish a means to effectively advertise and recruit for vacant positions within the department.

B. Any qualified applicant shall have the opportunity to compete for vacant positions open for recruitment without regard to race, color, religion, national origin, ancestry, sex, sexual orientation, age, or mental or physical disability unless based on a bona fide occupational requirement.

C. Applications shall be filed in accordance with the human resource director-established recruitment criteria, received within the prescribed time limits and be for positions open for recruitment. Where applications are received within the time limits although not completed may be allowed to be completed with the permission of the chief.
[10.12.5.9 NMAC - N, 7/1/2015]

10.12.5.10 APPLICATIONS:

A. The human resource director shall establish application procedures which include, among other things, criteria that will ensure compliance with federal and/or state law. Information on gender, ethnicity, and age of applicants shall be utilized only for affirmative action and other non-discriminatory purposes.

B. The human resource director may reject an application and not accept any application from the applicant if the applicant:

(1) has made any false statement or produced any false document in support of the application; or

(2) has directly or indirectly given, paid, offered, solicited, or accepted any money or other valuable consideration or secured or furnished any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the department.

C. An applicant whose application has been rejected may appeal to the chief in accordance with the procedures established by the human resource director. Where applications are received within the time limits although not completed may be allowed to be completed with the permission of the chief.
[10.12.5.10 NMAC - N, 7/1/2015]

10.12.5.11 EXAMINATION:

A. Security:

(1) The human resource director or hiring manager shall maintain the security of all examinations.

(2) Examinations shall be developed in conjunction with the office in accordance with established professional techniques and relevant federal laws, regulations, and guidelines. Examinations shall measure critical or important knowledge, skills, and abilities necessary for successful job performance.

(3) Except as provided below no hiring manager shall administer any examination to an applicant or employee without the examination and the examination administration having been approved by the human resource director unless otherwise authorized by statute.

(4) A hiring manager may request a description or demonstration of the skill or ability needed to perform an essential job function in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. Section 12-101 Note 29C.F.R. Part 1630.14(a) Pre-employment inquiry).

B. Exemptions from Examinations:

(1) The human resource director or hiring manager shall exempt from examinations those applicants who possess recognized licensure, registration, or certification by the state of New Mexico and who are applying for positions in the department that require such licensure, registration, or certification.

(2) The human resource director shall exempt from examinations applicants who, in the course of their duties:

(a) develop, administer, or otherwise have access to such examinations; or

(b) formerly developed or administered such examinations within a period of one year from performance of those duties.

C. Administration of Examinations: The human resource director shall advise hiring managers regarding the development and administrative procedures of all examinations.

D. Preference Points:

(1) Veterans honorably discharged from the United States armed forces and applicants currently serving in the national guard shall have five points added to their final passing numerical scores on examinations.

Veterans honorably discharged from the United States armed forces with a service-connected disability shall have 10 points added to their numerical scores on examinations. A veteran with or without a service-connected disability has his/her name placed on the employment list in accordance with numerical rating of other veterans and non-veterans.

(2) Applicants who pass the examination shall have two preference points added for each year of residency in New Mexico, not to exceed 10 points.
[10.12.5.11 NMAC - N, 7/1/2015]

10.12.5.12 SELECTION:

A. Selection shall be based solely on qualification and ability. Selection for any appointment other than an emergency appointment to positions in the department shall be justified in writing and made from employment lists.

B. The department is subject to the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978 and may take into consideration a conviction, but the conviction will not operate as an automatic bar to obtaining public employment. The department may only take into consideration a conviction after the applicant has been selected as a finalist for the position.

C. The department shall develop policies governing their use of the employment lists.

D. Employment lists shall include names of ranked candidates who have made application and met the established requirements plus any candidates certified by the New Mexico department of education, division of vocational rehabilitation, the commission for the deaf and hard of hearing, or the commission for the blind, in accordance with the provisions of Section 28-10-12 NMSA 1978.

(1) The human resource director shall certify the names of former employees who are currently receiving temporary total or permanent partial workers' compensation benefits, resultant from an injury sustained while employed in the classified service and who apply for a position in accordance with the provisions of 10.12.5.10 NMAC.

(2) The human resource director shall certify only the name(s) of former employees who are currently eligible for reemployment from a reduction in force per 10.12.10 NMAC.

E. Temporary

promotions: Employees may be temporarily promoted for a period not

to exceed the department months to a temporarily or effectively vacant position for which the department certifies that the employee holds qualifications and abilities necessary for successful job performance. At the end of the temporary promotion period, employees shall return to their former position without right of appeal.

F. Intra-agency transfers: An agency may transfer an employee without the employee's consent to a position in the same classification within the same geographic location, which is 35 miles from the boundaries of the community in which the employee is employed or if the established requirements state that willingness to accept a change of geographic location is a condition of employment.

G. Exempt to career appointments: Employment in the exempt service shall not count towards the probationary period required by Subsection A of 10.12.2.8 NMAC.

H. Emergency appointments: Emergency appointments shall be made in accordance with 10.12.2 NMAC.

I. Reduction: Employees may receive a classification reduction to a position for which the chief or human resource director certifies that the employee holds qualifications and abilities necessary for successful job performance.

J. Physical examinations: The department may require physical examinations of candidates who have been selected for appointment contingent upon their meeting the prescribed physical health standards. The costs of such physical examinations shall be borne by the department.

K. Human immunodeficiency virus-related (AIDS) test: The department shall not require a candidate or employee to take the human immunodeficiency virus-related (AIDS) test or disclose the results of same test as a condition of selection, promotion or continued employment unless the absence of human immunodeficiency virus infection is a bona fide occupational qualification for the job in question. The department must adhere to the provisions of the Human Immunodeficiency Virus Test Act, Sections 24-2B-1 to 24-2B-8 NMSA 1978 Cum. Supp. 1993.
[10.12.5.12 NMAC - N, 7/1/2015]

HISTORY OF 10.12.5 NMAC:
[RESERVED]

**PUBLIC DEFENDER
DEPARTMENT**

**TITLE 10 PUBLIC SAFETY
AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC
DEFENDER DEPARTMENT
PART 6 GENERAL
WORKING CONDITIONS**

10.12.6.1 ISSUING AGENCY:
Public Defender Commission
[10.12.6.1 NMAC - N, 7/1/2015]

10.12.6.2 SCOPE: Applies to employees
[10.12.6.2 NMAC - N, 7/1/2015]

10.12.6.3 STATUTORY AUTHORITY: Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 Section 12-5-2 NMSA 1978, Sections 24-2B-1 to 24-2B-9 NMSA 1978, 5 U.S.C. Sections 1501 to 1508.
[10.12.6.3 NMAC - N, 7/1/2015]

10.12.6.4 DURATION:
Permanent.
[10.12.6.4 NMAC - N, 7/1/2015]

10.12.6.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[10.12.6.5 NMAC - N, 7/1/2015]

10.12.6.6 OBJECTIVE: The objective of Part 6 of Chapter 12 is: to define certain acceptable activities; to prohibit certain activities and to provide legal holiday observation dates, while setting forth general working conditions for employees including employee complaint processes and readiness for work policy.
[10.12.6.6 NMAC - N, 7/1/2015]

10.12.6.7 DEFINITIONS:
"Nonpartisan election" is any election for public office when the candidate's party affiliations are neither indicated nor required.
[10.12.6.7 NMAC - N, 7/1/2015]

10.12.6.8 NEPOTISM: The department shall not permit the hiring, promotion, or direct supervision of an employee by a person who is related by blood or marriage within the third degree to the employee.
[10.12.6.8 NMAC - N, 7/1/2015]

10.12.6.9 LEGAL HOLIDAYS: Each year, prior to December 1, the chief shall publish the

dates on which legal public holidays as designated in Section 12-5-2 NMSA 1978 (Repl. Pamp. 1988) shall be observed for the next calendar year.
[10.12.6.9 NMAC - N, 7/1/2015]

10.12.6.10 PROHIBITED POLITICAL ACTIVITIES: Employees are prohibited from:

A. using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any other political purpose;

B. directly or indirectly coercing, attempting to coerce, commanding, or advising a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for a political purpose;

C. threatening to deny promotions or pay increases to any employee who does not vote for certain candidates, requiring employees to contribute a percentage of their pay to a political fund, influencing subordinate employees to buy tickets to political fund-raising dinners and similar events, advising employees to take part in political activity, and matters of a similar nature;

D. engaging in a political activity while on duty; or

E. being an officer of a political organization
[10.12.6.10 NMAC - N, 7/1/2015]

10.12.6.11 PUBLIC/ POLITICAL OFFICE:

A. Employees covered by the provisions of the Hatch Act (5 U.S.C. Sections 1501 to 1508) may not be candidates for partisan political office elections.

B. Employees not covered by the provisions of the Hatch Act (5 U.S.C. Sections 1501 to 1508) may be candidates for any partisan political office if, upon filing or accepting the nomination and during the entire campaign, they are authorized full-time continuous leave without pay.

C. Employees may be candidates for nonpartisan political office, subject to the restriction set forth in 10.12.6.11 NMAC, without taking a leave of absence without pay.

D. Employees may hold only a nonpartisan county or municipal political office during employment in the department.

E. Being a local school board member or an elected member of any post-secondary educational institution

shall not be construed as holding political office.

F. Employees running for or holding public office shall not use state equipment, facilities, property or time dedicated to employment duties to conduct campaign or public office related business. Violation of this Rule is punishable by disciplinary action pursuant to 10.12.11 NMAC and/or the criminal penalties set forth in Section 10-9-23 NMSA 1978.

[10.12.6.11 NMAC - N, 7/1/2015]

10.12.6.12 RESCISSION OF RESIGNATION:

An employee may rescind a letter of resignation within three workdays of its submission and the department must honor the rescission if it is submitted within the prescribed time limit.

[10.12.6.12 NMAC - N, 7/1/2015]

10.12.6.13 EMPLOYEE COMPLAINTS:

A. Employees are provided with an in-house method for resolving complaints. All employees are encouraged to resolve complaints at the lowest level and informally if possible. Employees are encouraged to contact the human resource director before filing a formal written complaint. A complaint may be withdrawn at any time by the initiating party. Employees who utilize the formal complaint procedure or participate in the investigation of any complaint will not be subject to retaliation for participation. The employee filing the complaint is responsible for ensuring all the time limits are followed. Time limits may be waived by the complainant at any time.

B. Complaints pursuant to these sections must be submitted in writing and must include the following information:

(1) Employee name, job title, work location, date the complaint is filed and work phone number.

(2) A description and the date of the alleged incident for which the complaint is filed.

(3) The relief requested.

(4) The employee signature.

C. The complaint procedure has three levels:

(1) Level One.
(a)

The employee shall present the complaint in writing to the immediate supervisor or to the district defender if the complaint is

against the immediate supervisor, within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint.

(b) The supervisor or district defender notifies the human resource director to coordinate investigation of the complaint and the response to the employee. The response is due ten calendar days from the date that the supervisor is made aware of the complaint. This response will be made in writing after review by the human resource director.

(c) If the complainant determines that the supervisor or district defender's decision is unsatisfactory, the employee may appeal directly to the deputy chief. The appeal is due within ten calendar days of the level one response.

(d) If the level one complaint does not receive a response within ten calendar days, the complaint shall be deemed denied and the employee may submit the complaint to the next level.

(2) Level Two.
(a)

If the complaint is against the district defender or seeks to appeal the response in level one the employee may submit the complaint to the deputy chief within ten calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint or after the response, if any, is provided in level one.

(b) The complaint should include the response received in level one, if any, and the reasons that the response was unsatisfactory.

(c) The employee or the deputy chief sends a copy of the complaint to the human resources human resource director.

(d) Where appropriate the deputy chief reviews the level one complaint and response.

(e) The deputy chief determines if additional information is necessary or if an informal meeting is appropriate and attempts to resolve the matter.

(f) The deputy chief's decision will be returned within 14 calendar days.

(g) A copy of the response will be send to the human resources human resource director.

(h) If the complainant determines that the

deputy chief's decision is unsatisfactory, the employee may appeal directly to the chief. The appeal is due within 14 calendar days of the level two response.

(i) If the level two complaint does not receive a response within 14 calendar days, the complaint shall be deemed denied and the employee may submit the complaint to the next level.

(3) Level Three.
(a)

If the complaint is against the deputy chief or seeks to appeal the response in level two the employee may submit the complaint to the chief within 10 calendar days after the complainant became aware or reasonably could have been aware, of the incident giving rise to the complaint or after the response, if any, is provided in level two.

(b) The complaint should include the previous response(s), if any, and the reason that the previous responses were unsatisfactory.

(c) A copy of the appeal is sent to the human resources human resource director.

(d) The chief determines if additional information or informal meetings are needed prior to making a final decision and responds to the complaint in writing within 21 days.

(e) A copy of the response is sent to the human resource director.

D. After exhausting internal procedures, a complainant may appeal to outside agencies.

(1) Complaints alleging discrimination may be appealed to the department of workforce solutions, human rights division within 180 calendar days of the alleged act; or

(2) to the equal employment opportunity commission within 300 calendar days of the alleged act.
[10.12.6.13 NMAC - N, 7/1/2015]

10.12.6.14 READINESS FOR WORK:

A. In accordance with Subsection A of 10.12.7.13 NMAC, employees who fail to appear for work without authorized leave or who appear for work in a condition that interferes with their ability their assignments in violation of this policy are considered absent without leave.

B. Employees are expected to be properly attired to meet the demands of the workday. District defenders or designee may establish

reasonable dress standards as approved by the chief public defender that are set forth clearly in a memorandum. An employee who arrives at work in inappropriate attire is not ready to work and may be sent home on annual leave or leave without pay to change into appropriate clothing.

C. Department employees are expected to be fully engaged in the performance of their duties during their working hours. Conducting personal business on work time should be brief, not interfere with the duties to be performed and not disruptive to co-workers or clients. Personal business may include but is not limited to phone calls, text messaging, personal emails, reading magazines or newspapers, browsing the internet, visiting with co-workers or any other personal business not related to job duties.
[10.12.6.14 NMAC - N, 7/1/2015]

10.12.6.15 DUTY TO COOPERATE WITH INVESTIGATIONS:

Allegations of violations of policies and procedures set forth by the department and/or state or federal law may require employees to participate as witnesses or potential witnesses in a variety of investigations.

A. Employees have a duty to cooperate in an investigation and are required to do so in good faith.

B. During the investigative process, witnesses or potential witnesses who are interviewed are responsible to maintain confidentiality about the content of their interviews.

C. Employees cannot be subjected to retaliation for cooperating with the department in investigations. Any employee who feels subjected to retaliation because of cooperating in an investigation should contact the human resource director immediately.

[10.12.6.15 NMAC - N, 7/1/2015]

HISTORY OF 10.12.6 NMAC:
[RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 7 ABSENCE AND LEAVE**

10.12.7.1 ISSUING AGENCY:
Public Defender Commission

[10.12.7.1 NMAC - N, 7/1/2015]

10.12.7.2 SCOPE: Applies to all employees.
[10.12.7.2 NMAC - N, 7/1/2015]

10.12.7.3 STATUTORY AUTHORITY: Section 31-15-2.4(B) (6) NMSA 1978; Section 31-15-7 NMSA 1978, Section 10-7-10 NMSA 1978; Section 13: 29 U.S.C. Sections 201 and 2601 et seq.; Section 15: Section 1-12-42 NMSA 1978, Section 17 NMSA 1978, Sections 20-4-7, 20-5-14 and 20-7-5 NMSA 1978.
[10.12.7.3 NMAC - N, 7/1/2015]

10.12.7.4 DURATION: Permanent.
[10.12.7.4 NMAC - N, 7/1/2015]

10.12.7.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[10.12.7.5 NMAC - N, 7/1/2015]

10.12.7.6 OBJECTIVE: The objective of Part 7 of Chapter 12: is to provide for the accrual and administration of leave available to employees.
[10.12.7.6 NMAC - N, 7/1/2015]

10.12.7.7 DEFINITIONS:
[RESERVED]
[10.12.7.7 NMAC - N, 7/1/2015]

10.12.7.8 ANNUAL LEAVE:
A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid Family and Medical Leave Act (FMLA) leave, or suspension without pay shall accrue annual leave at the rate of:

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

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

(3) 4.61 hours per pay period if seven years or more but less than 11 years of cumulative employment,

(4) 5.54 hours per pay period if eleven years or more but less than 15 years of cumulative employment; or

(5) 6.15 hours per pay period if 15 years or more of cumulative employment.

B. For purposes of annual leave accrual rate, any employment in the exempt service and judicial,

executive or legislative branches of New Mexico state government shall be counted in determining years of cumulative employment.

C. For purposes of annual leave accrual rate, employment in programs transferred into the department by legislation or other lawful order shall count as cumulative employment.

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

E. A maximum of 240 hours of annual leave shall be carried forward after the last pay period beginning in December.

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

G. Employees separating from the department, except by a reduction in force, shall be paid for accrued annual leave, as of the date of separation, up to a maximum of 240 hours at their current hourly rate. Employees separating from the department as the result of a reduction in force shall be paid for all accrued annual leave, as of the date of separation, at their current hourly rate.

H. The estate of an employee who dies while in employed by the department shall be paid for the employee's total accrued annual leave. [10.12.7.8 NMAC - N, 7/1/2015]

10.12.7.9 DONATION OF ANNUAL OR SICK LEAVE:

A. Employees may donate leave to another employee in the department for a medical emergency with approval of the office.

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

C. In accordance with the provisions of Section 10-7-10 NMSA 1978, the donation of sick leave is governed by the following restrictions:

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

(2) the dollar value of the transferred leave shall equal 50% of the monetary value of the total hours transferred by the donor employee;

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

employee may transfer up to 400 hours of sick leave;

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

D. The department shall maintain the following documentation:

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

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

(3) any other information which the department may reasonably require.

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

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

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

H. Donated leave shall revert to the employees who donated the leave on a prorated basis when the medical emergency ends or the employee separates from the department.

[10.12.7.9 NMAC - N, 7/1/2015]

10.12.7.10 SICK LEAVE:

A. Employees, except those on full-time educational leave with pay, absence without leave, leave without pay, unpaid FMLA leave, or suspension without pay, shall accrue sick leave at the rate of 3.69 hours per pay period.

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

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

D. An employee may use

sick leave for personal medical treatment or illness or for medical treatment or illness of a relation by blood or marriage within the third degree, or of a person residing in the employee's household. Employees affected by pregnancy, childbirth, and related medical conditions must be treated the same as persons affected by other medical conditions.

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

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

G. Former employees who were laid off and are returned to work in accordance with the provisions of 10.12.10 NMAC shall have restored the sick leave they had accrued as of the date of layoff.

H. The department may authorize an employee to use accrued sick leave to attend the funeral of a relation by blood or marriage within the third degree, or of a person residing in the employee's household.

I. Payment for accumulated sick leave:

(1) In accordance with the provisions of Section 10-7-10 NMSA 1978, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to 50% of their hourly rate of pay for up to 120 hours of sick leave. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full pay period in January or the first full pay period in July.

(2) Immediately prior to retirement from the department, employees who have accumulated 600 hours of unused sick leave are entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to 50% of their hourly rate for up to 400 hours of sick leave.

[10.12.7.10 NMAC - N, 7/1/2015]

10.12.7.11 LEAVE WITHOUT PAY:

A. Leave without pay may be approved when:

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

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

B. Leave without pay

shall not exceed 30 consecutive calendar days for employees in emergency or temporary status.

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

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

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

[10.12.7.11 NMAC - N, 7/1/2015]

10.12.7.12 FAMILY AND MEDICAL LEAVE:

A. In addition to other leave provided for in 10.12.7 NMAC eligible employees are entitled to leave in accordance with the Family and Medical Leave Act (FMLA) of 1993 (29 U.S.C. Section 2601 et seq.). Employees who have been employed by the department for at least 12 months (which need not be consecutive) and who have worked, as defined by Section 7 of the Fair Labor Standards Act (29 U.S.C. Section 201 et seq.), at least 1250 hours during the 12 month period immediately preceding the start of FMLA leave are eligible employees. In addition, employment in the exempt service, legislative or judicial branch, and classified service shall count as department employment for purposes of this rule.

B. Eligible employees are entitled to a total of 12 weeks of unpaid FMLA leave in a 12-month period, at the time of a birth or placement of a child or at the time of a serious health condition for the employee, or family members, or any qualifying exigency arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation as defined in the FMLA. The 12-month period is calculated forward from the date an employee's first FMLA leave begins.

C. An eligible employee who is the spouse, son, daughter, parent,

or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of unpaid FMLA leave in a single 12-month period to care for the service member. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. The 12 month period is calculated forward from the date an employee's first FMLA leave begins.

D. The department requires the employee to substitute any of the employee's accrued annual leave, accrued sick leave, personal leave day, accrued compensatory time, or donated leave for unpaid FMLA leave.

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

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

G. The department shall post the required FMLA notices, maintain the required employee records, and implement agency policies in accordance with the FMLA. All medical records and correspondence relating to employees and/or their families shall be considered confidential in accordance with Subsection C of 10.12.1.12 NMAC.

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

[10.12.7.12 NMAC - N, 7/1/2015]

10.12.7.13 ABSENCE WITHOUT LEAVE:

A. Employees who fail to appear for work without authorized leave or who appear for work but are in violation of department policy governing their readiness for work shall be considered to be absent without leave in accordance with 10.12.6.13 NMAC.

B. Employees shall not be paid for any periods of absence without leave and shall not accrue annual or sick leave.

[10.12.7.13 NMAC - N, 7/1/2015]

10.12.7.14 ADMINISTRATIVE LEAVE:

A. The department may authorize employees leave with pay for up

to five consecutive work days when it is in the best interests of the department to do so. Administrative leave in excess of five consecutive work days must have the prior written approval of the chief except for administrative leave granted in accordance with the provisions of 10.12.11 NMAC.

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

C. Employees who are registered voters with the permission of their supervisors may absent themselves from work for two hours for the purpose of voting between the time of the opening and the time of the closing of the polls. The supervisor may specify the hours during the period in which the voter may be absent. This leave is not available to employees whose work day begins more than two hours subsequent to the time of opening the polls or ends more than three hours prior to the time of closing the polls. Employees who chose to vote pursuant to this provision on the day of elections, may be required subject to confirmation that they voted. Employees are encouraged to use early voting and absentee voting provisions to exercise the right to vote however, voting leave shall not be used for early voting or absentee voting.

D. Employees shall be entitled to administrative leave when appearing during regularly scheduled work hours in obedience to a subpoena as a witness before a grand jury or court or before a federal or state agency. Fees received as a witness, excluding reimbursement for travel, shall be remitted to the department.

E. Employees shall be entitled to leave with pay for serving on a grand or petit jury during regularly scheduled work hours. Fees received as a juror, excluding reimbursement for travel, shall be remitted to the department. [10.12.7.14 NMAC - N, 7/1/2015]

10.12.7.15 EDUCATIONAL LEAVE:

A. The department may grant employees educational leave with or without pay to pursue special training related to their employment.

B. Employees on full-time educational leave with pay shall not accrue annual or sick leave.

C. Employees who are working part-time while on educational leave shall accrue annual and sick leave in accordance with the provisions of Subsection D of 10.12.7.8 NMAC and

Subsection B of 1.12.7.10 NMAC.

D. Employees who are granted paid educational leave for training in excess of 100 work hours in a calendar year shall agree in writing to continue with the department for a period of time equal to three times the period of the training.

[10.12.7.15 NMAC - N, 7/1/2015]

10.12.7.16 MILITARY LEAVE:

A. Members of organized reserve units or the national guard ordered to active duty training shall be given up to 15 workdays of paid military leave per federal fiscal year. These 15 workdays are in addition to other authorized leave.

B. The chief may grant members of the national guard paid military leave for active duty training, in addition to that already given by law. Such additional leave must not exceed 15 workdays per federal fiscal year.

C. Members of the state defense force shall be granted paid military leave to attend officially authorized training or instruction courses. Such leave applies only to full-time employees and must not exceed 15 workdays per federal fiscal year.

D. Members of the civil air patrol shall be granted military leave not to exceed 15 workdays per calendar year for search and rescue missions.

E. Employees on military leave with pay shall accrue annual and sick leave.

F. Employees who are members of a reserve component of the United States armed forces shall, upon request, be granted unpaid leave for the period required to perform active duty for training or inactive duty training in the United States armed forces.

G. This rule does not apply to employees in temporary or emergency status.

[10.12.7.16 NMAC - N, 7/1/2015]

10.12.7.17 PERSONAL LEAVE DAY:

A. Employees in career status are entitled to one personal leave day each calendar year. The personal leave day will be consistent with the employee's normal workday. Such leave must be requested and approved in advance.

B. The personal leave day must be taken during consecutive hours.

C. The personal leave day must be taken by December 31 or it will be lost.

D. Employees who do

not take the personal leave day shall not be paid for it upon separation from the department.

[10.12.7.17 NMAC - N, 7/1/2015]

10.12.7.18 TRANSFER OF LEAVE:

A. All accrued annual and sick leave shall be transferred when persons change status from a position in the exempt service to a non-exempt position in the department without a break in employment.

B. The department shall accept all accrued sick leave and military leave from persons who separate from the executive, judicial or legislative branches of state government and are employed in the department without a break in employment.

C. The department may accept accrued annual leave from persons who separate from the executive, judicial or legislative branches of state government and are employed in the department without a break in employment as determined by the chief.

[10.12.7.18 NMAC - N, 7/1/2015]

10.12.7.19 DONATING AN ORGAN OR BONE MARROW:

A. In accordance with the provisions of Section 24-28-3 NMSA 1978, the chief may authorize a leave of absence, not to exceed 20 workdays, to an employee for the purpose of donating an organ or bone marrow.

B. An employee may request and use donated annual or sick leave for the purpose of donating an organ or bone marrow.

C. If an employee requests donations of annual leave or sick leave but does not receive the full amount of leave needed for the donation of an organ or bone marrow, the chief may grant paid administrative leave for the remainder of the needed leave up to the maximum total of twenty workdays.

D. The chief may require verification by a physician regarding the purpose of the leave requested and information from the physician regarding the length of the leave requested.

E. Any paid leave of absence granted pursuant to this provision shall not result in a loss of compensation, seniority, annual leave, sick leave or accrued overtime for which the employee is otherwise eligible.

[10.12.7.19 NMAC - N, 7/1/2015]

HISTORY OF 10.12.7 NMAC:

[RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 8 DRUG AND ALCOHOL ABUSE**

10.12.8.1 ISSUING AGENCY: Public Defender Commission
[10.12.8.1 NMAC - N, 7/1/2015]

10.12.8.2 SCOPE: Applies to all employees.
[10.12.8.2 NMAC - N, 7/1/2015]

10.12.8.3 STATUTORY AUTHORITY: Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978.
[10.12.8.3 NMAC - N, 7/1/2015]

10.12.8.4 DURATION: Permanent.
[10.12.8.4 NMAC - N, 7/1/2015]

10.12.8.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[10.12.8.5 NMAC - N, 7/1/2015]

10.12.8.6 OBJECTIVE: The objective of Part 8 of Chapter 12 is: to provide employees with information on the effects of drug and alcohol abuse; to require drug, alcohol testing or both; and to establish required collection, screening, rehabilitative and sanction parameters.
[10.12.8.6 NMAC - N, 7/1/2015]

10.12.8.7 DEFINITIONS:
A. "Alcohol" means all consumable non-prescription substances which contain alcohol, specifically including, without limitation, spirits, wine, malt beverages, and intoxicating liquors.
B. "Aliquot" means a portion of a urine specimen used for testing.

C. "Chain of custody" refers to procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. In any dispute regarding chain of custody, the identity and integrity of the sample at issue may be established by a preponderance of the evidence.

D. "Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or metabolite in a urine specimen by gas

chromatography/mass spectrometry (GC/MS).

E. “Drug” means marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines; a metabolite of those drugs; or any non-prescription substance containing those drugs.

F. “Initial test” means an immunoassay screen which meets the requirements of the food and drug administration to eliminate negative specimens from further consideration.

G. “Medical review officer” means a New Mexico based and licensed physician knowledgeable in the medical use of prescription drugs and alcohol and the pharmacology and toxicology of illicit drugs and alcohol.

H. “Non-prescription” refers to all substances other than a substance prescribed by a doctor or licensed health professional to the employee.

I. “On duty” means any time during an employee’s regular workday or other period during which the employee is required or permitted to work by the employer, including overtime, lunch and other breaks, and anytime while operating or riding in a state vehicle.

J. “Possession” means to knowingly have, own, or have on oneself the drug, the alcohol or both.

K. “Reasonable suspicion” means a belief drawn from specific objective and articulable facts and the reasonable inferences drawn from those facts.
[10.12.8.7 NMAC - N, 7/1/2015]

10.12.8.8 SUBSTANCE ABUSE COORDINATOR:

A. The human resource director or designee shall serve as the substance abuse coordinator who shall be responsible for the department’s drug and alcohol abuse program.

B. The substance abuse coordinator shall provide drug and alcohol abuse awareness information to employees including but not limited to the:

- (1) dangers of drug and alcohol abuse;
- (2) availability of counseling, rehabilitation, and employee assistance programs; and
- (3) sanctions that may be imposed upon employees.

C. The substance abuse coordinator shall ensure that the agency has contracted or made arrangements with a medical review officer to perform the duties required by 10.12.8.14 NMAC.
[10.12.8.8 NMAC - N, 7/1/2015]

10.12.8.9 AUTHORIZED DRUG AND ALCOHOL TESTING:

A. The department shall require employees to undergo drug, alcohol testing or both if the department has a reasonable suspicion that the employee has committed drug or alcohol abuse based on, but not limited to:

(1) direct observation of the physical symptoms or manifestations of being under the influence of a drug or alcohol while on duty; such symptoms may include, but are not limited to liquor on breath, slurred speech, unsteady walk, or impaired coordination; or

(2) direct observation of the use or possession of drugs or drug paraphernalia, or the use of alcohol while on duty.

B. An employee shall submit to a reasonable suspicion drug or alcohol test provided the requesting supervisor has secured the next level supervisor’s approval, unless the requesting supervisor is the chief. The requesting supervisor shall prepare a contemporaneous memorandum outlining the details leading up to the reasonable suspicion drug or alcohol test. The memorandum shall be submitted to the substance abuse coordinator or designee within 24 hours of the request for testing.
[10.12.8.9 NMAC - N, 7/1/2015]

10.12.8.10 COLLECTION OF SPECIMENS:

A. Unless otherwise specified in these rules, urine specimens for drug testing shall be collected by a laboratory meeting state licensure requirements and certified by the substance abuse and mental health services administration or the college of American pathologists in forensic urine drug testing.

B. Breath specimens may be collected by a certified person, a medical or a laboratory facility. Should the medical or laboratory facility not be available or should the equipment fail, the substance abuse coordinator or designee shall designate another testing facility and report this referral to the human resource director within ten working days of taking the breath specimen.
[10.12.8.10 NMAC - N, 7/1/2015]

10.12.8.11 DRUG TESTS:

A. The initial and confirmatory drug tests shall be performed by a state licensed laboratory in accordance with the substance abuse and mental health services administration or the college of American pathologists

in forensic urine drug testing. The laboratory shall have the capability of performing initial and confirmatory tests for each drug or metabolite for which service is offered.

B. The following initial cutoff concentrations shall be used when screening specimens on the initial drug tests to determine whether they are negative for these seven drugs or classes of drugs.

- (1) Marijuana metabolites 75 (ng/ml)
- (2) Cocaine metabolites 150 (ng/ml)
- (3) Opiate metabolites 2,000 (ng/ml)
- (4) 6-Acetylmorphine 10 (ng/ml)
- (5) Phencyclidine (PCP) 25 (ng/ml)
- (6) Amphetamines 500 (ng/ml)
- (7) MDMA 500 (ng/ml)

C. All specimens identified as positive on the initial drug test, shall be confirmed by the laboratory at the cutoff concentration listed below for each drug. All confirmations shall be by quantitative analysis:

- (1) Marijuana metabolite - Delta - 9-tetrahydrocannabinol - 9-carboxylic acid (THCA) 25 (ng/ml)
- (2) Cocaine metabolite - Benzoylcegonine 100 (ng/ml)
- (3) Opiates:
 - (a) Morphine 2,000 (ng/ml)
 - (b) Codeine 2,000 (ng/ml)
- (4) 6-Acetylmorphine 10 (ng/ml)
- (5) Phencyclidine (PCP) 25 (ng/ml)
- (6) Amphetamines:
 - (a) Amphetamine 250 (ng/ml)
 - (b) Methamphetamine¹ 250 (ng/ml)
 - (7) MDMA (Methylenedioxyamphetamine) 250 (ng/ml)
 - (a) MDA (Methylenedioxyamphetamine) 250 (ng/ml)
 - (b) MDEA (Methylenedioxyethylamphetamine) 250 (ng/ml)
 - (8) ¹To be reported as positive for methamphetamine, a specimen must also contain

amphetamine at a concentration equal to or greater than 100 ng/ml.

D. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens reported as positive on the confirmatory test shall be reported positive for a specific drug.

E. The laboratory shall retain and place those specimens confirmed positive in properly secured long-term frozen storage for at least 365 calendar days. An agency may request the laboratory to retain the specimen for an additional period of time. If the laboratory does not receive a request to retain the specimen during the initial 365 calendar day period, the specimen may be discarded.

[10.12.8.11 NMAC - N, 7/1/2015]

10.12.8.12 ALCOHOL TESTS:

A. A test for alcohol shall be administered by a legally recognized and approved method.

B. A test by a legally recognized or approved method with results of blood alcohol content (BAC) level of .04 or more shall be deemed positive for alcohol.

C. The chief may approve a lower test result below 0.08% for blood alcohol content (BAC).

D. For employees who have undergone alcohol rehabilitation, pursuant to 10.12.8.17 NMAC, a positive test result during the 30 to 180 calendar days following the first positive test shall subject an employee to disciplinary action. Such a test may be performed by urinalysis.

[10.12.8.12 NMAC - N, 7/1/2015]

10.12.8.13 REPORTING OF TEST RESULTS:

A. Drug and alcohol test results shall be reported only to the substance abuse coordinator or designee.

B. The test report shall contain the specimen number assigned by the agency, the laboratory accession number and results of the tests. All specimens negative on the initial test or negative on the confirmatory test shall be reported as negative. Only specimens confirmed positive shall be reported positive. Results may be transmitted to the substance abuse coordinator by various means including certified mail with return receipt requested, courier service, or electronic mail in a secure area (e.g., facsimile or computer). Certified copies of all analytical results and chain-of-custody forms shall be available from

the laboratory when requested by the chief, or substance abuse coordinator or designee.

C. The substance abuse coordinator or designee shall advise employees in writing of positive test results.

D. All records pertaining to a given urine specimen shall be retained by the laboratory for a minimum of two years.

E. Only those members of management who need to know shall be made aware of the test results. Breach of confidentiality may be grounds for disciplinary action.

[10.12.8.13 NMAC - N, 7/1/2015]

10.12.8.14 EXPLANATION OF POSITIVE TEST RESULTS:

A. Employees who test positive for drugs, alcohol or both may, within two workdays of being advised of the test results, submit a written request to the human resource director or the substance abuse coordinator for a review of the test results by the medical review officer. The test results of all employees who test positive for drugs, alcohol or both shall be referred by the agency's substance abuse coordinator or designee to the medical review officer.

(1) If the employee does not request a review of the test results within two workdays, the employee waives review by the medical review officer and any retesting of the.

(2) The medical review officer shall examine any proffered or possible explanations concerning the validity of the confirmed positive test results. This action may include conducting a medical interview, review of the medical history, review of the chain of custody, and discussions with the collection or laboratory personnel. The medical review officer shall review all medical records made available by the individual when a positive test could have resulted from legally prescribed medications for medical or dental treatment. The medical review officer shall also review the results of any retest.

(a) Should any questions arise as to the accuracy or validity of a confirmed positive test result, only the medical review officer is authorized on behalf of the department to order a reanalysis of the original sample and such retests are authorized to be performed only at a laboratory that meets applicable provisions of any state licensure requirements and is certified by the substance abuse and mental health

services administration or the college of American pathologists in forensic urine drug testing.

(b) Prior to making a final decision to verify a positive test result, the medical review officer shall give the employee an opportunity to discuss the test results. The discussion between the medical review officer and the employee may be in person or by telephone.

(c) The medical review officer shall advise the chief, the human resource director or appropriate substance abuse coordinator of his or her medical conclusions from the review of the test results. If there are conflicting factual statements, the medical review officer shall not attempt to resolve that factual conflict, but shall report it along with his or her medical conclusions to the department. Similarly, the medical review officer shall not attempt to ascertain the factual correctness of any claim by the employee of involuntary ingestion of drugs or alcohol or both, but shall simply report such claims to the agency substance abuse coordinator with his or her medical opinion as to the possibility that such occurrence could have affected the test results.

B. Based upon the medical review officer's report and such other inquiries or facts as the department may consider, the department shall determine whether the explanations or challenges of the confirmed positive test results are satisfactory.

(1) If the explanations or challenges of the positive test results are unsatisfactory the department:

(a) shall provide a written explanation to the employee as to why the explanation is unsatisfactory, along with the test results, within 11 calendar days of the department's determination; and

(b) shall retain such records as confidential for one year.

(2) If the explanations or challenges of the positive test results are satisfactory the department:

(a) shall notify the employee in writing within 11 calendar days of the department's determination; and

(b) shall retain such records as confidential for one year.

[10.12.8.14 NMAC - N, 7/1/2015]

10.12.8.15 RETESTING:

Employees who tested positive for drugs

or alcohol urine tests may elect to have, at their expense, an aliquot, if any exists, of the original urine specimen retested by another laboratory that meets applicable provisions of any state licensure requirements and is certified in forensic urine drug testing by either the substance abuse and mental health services administration or the college of American pathologists. The drug testing laboratory shall arrange for the shipment of the aliquot to the laboratory of the employees' choosing. The department shall pay for the retest if the retest is negative. Any remaining samples after the appropriate times listed here may be destroyed and the final results received will remain as the final record without further right to appeal or challenge the results.
[10.12.8.15 NMAC - N, 7/1/2015]

10.12.8.16 CONFIDENTIALITY:

No laboratory reports or test results shall appear in the employee's personnel file unless he or she is subject of a disciplinary action. Laboratory reports or test results shall be placed in a special locked file maintained by the substance abuse coordinator or designee. Files relating to laboratory reports or test results maintained by the substance abuse coordinator are confidential within the meaning of 10.12.1.12 NMAC.
[10.12.8.16 NMAC - N, 7/1/2015]

10.12.8.17 REHABILITATION AND SANCTIONS:

A. Voluntary self-identification by employees:

(1) Any employee who requests referral to an employee assistance program (EAP), counseling or a drug or alcohol rehabilitation program, prior to directed to drug and alcohol testing due to reasonable suspicion shall be referred by the substance abuse counselor. Any costs for counseling or rehabilitation shall be borne by the employee.

(2) The chief may grant administrative leave to an employee to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial voluntary self-identification only.

(3) Employees are subject to drug, alcohol testing or both at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of requesting referral. Employees who test positive during this time period or fail to successfully complete such program may be subject to disciplinary action including dismissal.

The chief may allow the employee to use annual leave, sick leave, or leave without pay for additional counseling or rehabilitation after considering all factors relevant to the employee's condition and job performance history.

(4) For employees who have been required to undergo an alcohol rehabilitation program, any indication of alcohol at any level during the 30 to 180 calendar day period following the referral shall be considered a positive test result.

B. Positive reasonable suspicion testing:

(1) Employees who test positive on a reasonable suspicion drug or alcohol test or both required by these rules and do not have a satisfactory explanation for the positive test results shall be referred to an employee assistance program, counseling, or a drug or alcohol rehabilitation program.

(2) Employees are subject to drug or alcohol testing at the discretion of the substance abuse coordinator at any time between 30 and 180 calendar days of the first positive test. Any such employee who tests positive for drugs, alcohol or both between 30 and 180 calendar days of the first positive test without a satisfactory explanation or who fails to enter and successfully complete a program shall be subject to disciplinary action including dismissal.

(3) The chief may grant an employee administrative leave to participate in an employee assistance program, counseling, or a drug or alcohol rehabilitation program for up to 240 hours for the initial reasonable suspicion referral only.

C. Refusal to cooperate in testing procedure: Any employee who refuses or fails without good cause to cooperate in the drug or alcohol testing or both procedure by refusing or failing to complete the specified forms, by refusing or failing to submit a urine or breath specimen, or otherwise refuses or fails to cooperate shall be subject to disciplinary action including dismissal.

D. Possession of drugs or alcohol:

(1) Employees who illegally sell, purchase, or convey from one person or one place to another drugs or any substance in Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pam. 1994), while on duty shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.

(2) When employees, while on duty consume or have in their possession drugs, open containers of alcohol or any substance in Schedules I and II of the Controlled Substances Act, Sections 30-31-1 to 30-31-41 NMSA 1978 (Repl. Pam. 1994) without a valid prescription or as otherwise authorized by law, they shall be subject to disciplinary action including dismissal and shall be reported to the local law enforcement agency.
[10.12.8.17 NMAC - N, 7/1/2015]

HISTORY OF 10.12.8 NMAC:
[RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 9 PERFORMANCE APPRAISALS**

10.12.9.1 I SUING AGENCY:
Public Defender Commission
[10.12.9.1 NMAC - N, 7/1/2015]

10.12.9.2 SCOPE: Applies to all employees.
[10.12.9.2 NMAC - N, 7/1/2015]

10.12.9.3 STATUTORY AUTHORITY: Section 31-15-2.4(B)(6) NMSA 1978 and, Section 31-15-7 NMSA 1978.
[10.12.9.3 NMAC - N, 7/1/2015]

10.12.9.4 DURATION: Permanent.
[10.12.9.4 NMAC - N, 7/1/2015]

10.12.9.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[10.12.9.5 NMAC - N, 7/1/2015]

10.12.9.6 OBJECTIVE: The objective of Part 9 of Chapter 12 is: to provide for the regular appraisal and documentation of employee performance and review of department management compliance in conducting performance appraisals.
[10.12.9.6 NMAC - N, 7/1/2015]

10.12.9.7 DEFINITIONS:
[RESERVED]

10.12.9.8 FORM:

A. The performance and development of managers and employees shall be documented on a chief approved appraisal form that includes:

- (1) basic employee information (employee’s name, working title, employee identification number, position number, anniversary date, and the name of their immediate supervisor);
- (2) job assignments and goals;
- (3) performance rating areas; and
- (4) signature spaces for the employee, rater and reviewer to record initial, interim and final performance appraisal discussions.

B. A performance appraisal form shall be initiated within 30 calendar days of appointment, reassignment, promotion, demotion, reduction, transfer and/or the employee’s appraisal date, and shall become a part of each employee’s employment history. [10.12.9.8 NMAC - N, 7/1/2015]

10.12.9.9 PERFORMANCE APPRAISAL:

A. Managers and supervisors must successfully complete a human resource director-approved course of study on employee performance appraisal within 90 days of appointment as a supervisor.

B. The performance and development of a career employee shall include at least one interim evaluation and a final evaluation appraised by the immediate supervisor prior to the employee’s anniversary date.

C. The performance and development of a probationary employee shall be reviewed through at least two interim reviews and a final review prior to the completion of the employee’s probationary period. The performance and development of promoted employees shall be reviewed through at least two interim reviews and a final review prior to the completion of a one-year period upon promotion.

D. The appraisal of employee performance and development shall be performed by the immediate supervisor with employee input and participation. Additional input and participation from employee’s peers, customers, subordinates, or other appropriate personnel may be applied when appropriate.

E. Appraisals may be performed whenever an immediate supervisor wishes to make an employee’s performance a matter of record, upon

change of immediate supervisor, or whenever appropriate.

F. Managers and immediate supervisors who fail to comply with the provisions this rule may be subject to disciplinary action including dismissal. [10.12.9.9 NMAC - N, 7/1/2015]

10.12.9.10 REBUTTAL: Employees may submit a rebuttal to performance appraisals, which shall become a part of the performance appraisal. [10.12.9.10 NMAC - N, 7/1/2015]

10.12.9.11 REPORT TO THE CHIEF: During the fourth quarter of each calendar year the human resource director shall report to the chief on the record of each district defender, managing attorney, or other supervisor in conducting performance appraisals of their employees. All managers shall cooperate with the human resource director and provide the human resource director with such information concerning its performance appraisals as the human resource director may require. [10.12.9.11 NMAC - N, 7/1/2015]

HISTORY OF 10.12.9 NMAC: [RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 10 FURLOUGH, REDUCTION IN FORCE, REEMPLOYMENT, SEPARATION WITHOUT PREJUDICE**

10.12.10.1 ISSUING AGENCY: Public Defender Commission [10.12.10.1 NMAC - N, 7/1/2015]

10.12.10.2 SCOPE: Applies to current and former employees. [10.12.10.2 NMAC - N, 7/1/2015]

10.12.10.3 STATUTORY AUTHORITY: Section 31-15-2.4(B)(6), Section 31-15-7 NMSA 1978, Sections 28-15-1 to 28-15-3 and 38 U.S.C. Section 2021; Section 13: NMSA 1978, Section 52-1-25.1. NMSA 1978. [10.12.10.3 NMAC - N, 7/1/2015]

10.12.10.4 DURATION:

Permanent [10.12.10.4 NMAC - N, 7/1/2015]

10.12.10.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section. [10.12.10.5 NMAC - N, 7/1/2015]

10.12.10.6 OBJECTIVE: The objective of Part 10 of Chapter 12 is: to provide a system for employee furlough, and separation upon reduction in force; to provide for reemployment after military service; to provide for injured employees’ return to work, and potential separation. [10.12.10.6 NMAC - N, 7/1/2015]

10.12.10.7 DEFINITIONS:
A. “Furlough” means a temporary placement of an employee in a reduced work hour schedule, which can either be partial or full-time, for lack of work or funds.

B. “Agency hire date” means the date on which an employee’s current continuous employment with the department or its legal predecessor began. [10.12.10.7 NMAC - N, 7/1/2015]

10.12.10.8 FURLOUGH:
A. In the event of the need for a furlough, an agency shall submit a plan identifying organizational units to be affected by the furlough to the chief for approval to execute the furlough.

B. The furlough plan shall affect all employees within the organizational unit impacted to the same extent.

C. No furlough shall exceed 12 months in duration.

D. Employees shall be given at least 14 calendar days written notice of furlough, unless the time limit is waived by the chief. Notice shall be served by certified mail.

E. Employees shall be returned from furlough when the reasons for the furlough cease to exist. Wherever possible, all affected employees shall be returned at the same time, to the same extent. [10.12.10.8 NMAC - N, 7/1/2015]

10.12.10.9 REDUCTION IN FORCE:

A. The department may lay off employees only for deletion of positions, shortage of work or funds, or other reasons that do not reflect discredit on the services of the employees.

B. The human resource director shall identify organizational units for purposes of a layoff and submit a written plan to the chief. Such

organizational units may be recognized on the basis of geographic area, function, funding source, or other factors. The human resource director must define the classifications affected within the organizational unit.

C. Upon chief approval of a layoff plan, the department shall initiate a right of first refusal within the agency. All employees affected by the layoff shall be provided the following rights:

(1) employees to be affected by the reduction in force (RIF) shall be provided the right of first refusal to any position to be filled within the department for which they meet the established requirements, at the same or lower midpoint than the midpoint of the position the employee currently holds, unless there is an actual layoff candidate exercising RIF rights for that position;

(2) affected employees shall compete only with other department employees affected by the reduction in force;

(3) the list of eligible candidates for the open positions shall be comprised of those affected employees meeting the established requirements of the position;

(4) employees shall have 11 calendar days from the date of an offer to accept the position unless otherwise agreed; employees who do not accept an offer shall not lose the right of first refusal status to other positions; and

(5) the right of first refusal shall extend until the first effective date of layoff as defined in the plan.

D. The order of layoff due to reduction in force shall be by service date which is determined based upon the agency hire date. In the event of a tie, the human resource director or chief shall determine an appropriate mechanism for breaking the tie.

E. No employee in career status shall be laid off while there are term, probationary, emergency or temporary status employees in the same classification in the same organizational unit.

F. Employees in career status shall be given at least 14 calendar day's written notice of layoff. Notice shall be served by certified mail. [10.12.10.9 NMAC - N, 7/1/2015]

10.12.10.10 RETURN FROM REDUCTION IN FORCE:

A. Former employees who were in career status at the time of separation by a reduction in force shall

have reemployment rights within the department, for a six-month period, under the following provisions:

(1) former employees shall be returned to work in order of highest service date as determined by agency hire date to any position to be filled; the position must contain the same or lower midpoint as that held at the time of the former employee's separation, provided the former employee has made application for said position and meets the established requirements;

(2) offers of employment shall be made in writing and shall be delivered by a method that provides proof of service or attempted service;

(3) a former employee who is offered and accepts employment after layoff shall occupy the position within 14 calendar days of accepting the offer of employment or forfeit the right to employment; and

(4) any former employee who refuses an offer of employment or fails to respond to an offer of employment within 14 calendar days shall be removed from the employment list for the position offered.

B. Former employees returned to work according to the provisions of these rules shall have that period of time they were laid off counted as time in the department, shall hold the status of the position in accordance with 10.12.2.9 NMAC, 10.12.2.10 NMAC or 10.12.2.11 NMAC and do not have to serve a new probationary period if reemployed into career status.

[10.12.10.10 NMAC - N, 7/1/2015]

10.12.10.11 REEMPLOYMENT AFTER MILITARY SERVICE:

Any employee who separates from the classified service to enter the United States armed forces, national guard, or an organized reserve unit may be reemployed in accordance with the provisions of 38 U.S.C. Section 2021 and Sections 28-15-1 to 28-15-3 NMSA 1978.

[10.12.10.11 NMAC - N, 7/1/2015]

10.12.10.12 EARLY RETURN-TO-WORK/MODIFIED DUTY ASSIGNMENTS:

A. Employees who have been unable to work because of a compensable injury or illness under the workers' compensation act may return to work in a modified duty assignment for up to six months which may be extended for a period of up to six additional months if substantial progress in the recovery of an injured or ill employee has been

demonstrated and it has been anticipated the injured or ill employee will be able to return to full duty within the time frame of the considered extension.

B. The department shall make a good faith effort to identify and offer modified duty/return to work opportunities to injured or ill employees in accordance with the provisions of Section 52-1-25.1 NMSA 1978 and 52-3-49.1 NMSA 1978. At the department's discretion the employee may be assigned to his or her current classification with modified duties or to a temporary assignment comprised of a combination of duties from a variety of positions.

C. Employees on modified duty assignment to a temporary position shall maintain their salary and status for the duration of such temporary assignment.

[10.12.10.12 NMAC - N, 7/1/2015]

10.12.10.13 SEPARATION WITHOUT PREJUDICE:

A. Employees who have suffered an injury or illness which is compensable under the workers' compensation act and are physically or mentally unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, shall be separated from the department without prejudice provided:

(1) the employee has been afforded modified duty in accordance with these rules;

(2) the employee has reached maximum medical improvement prior to the completion of up to 12 months of modified duty; or, the employee has not reached maximum medical improvement upon the expiration of up to 12 months of modified duty;

(3) all efforts to accommodate the medical restrictions of the employee have been made and documented; and

(4) reasonable efforts to find other suitable vacant positions within the department at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position have been made for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without

reasonable accommodation.

B. Employees who have suffered an illness or injury that is not compensable under the workers' compensation act and are unable to perform the essential functions of their pre-injury/pre-illness position, with or without reasonable accommodation, as a result of the physical or mental disability created by the non-job-related injury or illness shall be separated from the department without prejudice provided:

(1) all efforts to reasonably accommodate the medical restrictions of the employee have been made and documented; and
 (2) reasonable efforts have been made to find other suitable vacant positions within the agency at the same or lower midpoint than the midpoint of the pre-injury/pre-illness position for which:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation; or
 (b) the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

C. Modified duty may be provided to employees for a period of up to four months during the separation process if required to meet the provisions of this rule.

D. Notice of contemplated separation without prejudice:

(1) to initiate the separation without prejudice of an employee who has completed the probationary period, the department shall serve a notice of contemplated separation without prejudice on the employee which: describes the circumstances which form the basis for the contemplated separation without prejudice; gives a general explanation of the evidence the agency has; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the contemplated action is; and states that the employee has 11 calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response;

(2) when the notice of contemplated separation without prejudice is served by mail, the employee receiving service shall have three additional calendar days in which to file a

response;

(3) at the time the notice of contemplated separation without prejudice is served on the employee, the department shall notify the risk management division of the general services department of the proposed separation without prejudice and submit a copy of the separation notice along with documentation to support efforts to provide modified duty and to support efforts to find other suitable vacant positions.

E. Response to notice of contemplated separation without prejudice:

(1) a representative of the employee's choosing may respond in writing to the notice of contemplated separation without prejudice on behalf of the employee and shall be subject to the same timelines stated herein and any final decision made will be binding on the employee directly;

(2) if there is a request for an oral response to the notice of contemplated separation without prejudice, the department shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the department agree in writing to an extension of time; a representative of the employee's choosing may represent the employee and shall be subject to the same timelines stated herein and any final decision made will be binding on the employee directly;

(3) the purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story; it is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to support the proposed involuntary separation without prejudice.

F. Notice of final separation without prejudice:

(1) if the employee does not respond to the notice of contemplated separation without prejudice the department shall issue a notice of final separation within 11 calendar days following the response period;

(2) if the employee has filed a written response or has been provided an opportunity for oral response, the agency shall issue a notice of final separation without prejudice no later than 11 calendar days from the date of receipt of the response;

(3) the notice of

final separation without prejudice shall:

(a) specify the action to be taken;

(b) describe the circumstances which form the basis for the separation without prejudice, which may not include allegations not included in the notice of contemplated separation without prejudice;

(c) give a general explanation of the evidence the agency has;

(d) specify when the final separation without prejudice will be effective, which must be at least 24 hours from the time of service of the notice of final separation without prejudice;

(e) inform the employee that the final separation without prejudice may be appealed to the chief with a written statement of the grounds for the appeal delivered to the human resources office in Santa Fe, New Mexico, and received by the human resource director within 30 calendar days of the effective date of the separation without prejudice; and

(f) the adjudication process is outlined in 10.12.12 NMAC.

[10.12.10.13 NMAC - N, 7/1/2015]

10.12.10.14 REEMPLOYMENT OF JOB-RELATED INJURED OR ILL FORMER EMPLOYEES:

A. A former employee who has separated from the department due to job-related injury or illness and who has received or is due to receive benefits under the Workers' Compensation Act shall have reemployment rights in accordance with the provisions of Section 52-1-50.1 NMSA 1978 and Section 52-3-49 NMSA 1978 under the following provisions:

(1) Reemployment rights under this rule are extended only to employees of the department at the time of the job-related injury or illness and are provided only for positions which contain the same or lower midpoint as that held at the time of separation.

(2) To initiate reemployment rights under this rule, the former employee must notify the human resource director in writing of their desire to be reemployed. The notification shall include the positions and locations, which the former employee is willing to accept, and an appropriate application for employment.

(3) The department must receive certification

in writing from the treating health care provider that the former employee is fit to carry out the essential functions of the position with or without reasonable accommodation without significant risk of re-injury or relapse to illness.

(4) When the department is to fill a vacant position which is a position and location indicated by the former employee, the department shall offer the job to the former employee provided:

(a) the employee meets the established requirements and can perform the essential functions of the job, either with or without reasonable accommodation, or

(b) the employee holds qualifications and abilities necessary for successful job performance and can perform the essential functions of the job, either with or without reasonable accommodation.

(5) Former employees reemployed in accordance with these provisions will hold the status of the position in accordance with these rules 10.12.2.9 NMAC, 10.12.2.10 NMAC or 10.12.2.11 NMAC and do not have to serve a probationary period if they were in career status at the time of separation.

B. The risk management division of the general services department shall be notified immediately of any injured or ill former employee who applies for a position and subsequently declines a job offer.
[10.12.10.14 NMAC - N, 7/1/2015]

HISTORY OF 10.12.10 NMAC:
[RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 11 DISCIPLINE**

10.12.11.1 ISSUING AGENCY:
Public Defender Commission
[10.12.11.1 NMAC - N, 7/1/2015]

10.12.11.2 SCOPE: Applies to all employees
[10.12.11.2 NMAC - N, 7/1/2015]

10.12.11.3 STATUTORY AUTHORITY: Section 31-15-2.4(B) (6), NMSA 1978; Section 31-15-7, NMSA 1978 and Sections 28-2-1 to 28-2-6

NMSA 1978.
[10.12.11.3 NMAC - N, 7/1/2015]

10.12.11.4 DURATION:
Permanent.
[10.12.11.4 NMAC - N, 7/1/2015]

10.12.11.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[10.12.11.5 NMAC - N, 7/1/2015]

10.12.11.6 OBJECTIVE:
The objective of Part 11 of Chapter 12 is: to provide a mechanism by which management can implement constructive, progressive steps towards solving performance or conduct problems.
[10.12.11.6 NMAC - N, 7/1/2015]

10.12.11.7 DEFINITIONS:
[RESERVED]

10.12.11.8 DISCIPLINE:
A. The primary purpose of discipline is to correct performance or conduct that is below acceptable standards, or contrary to the department's legitimate interests, in a constructive manner that promotes employee responsibility.

B. Progressive discipline shall be used whenever appropriate. Progressive discipline can range from a reminder, to an oral or written reprimand, to a suspension, demotion or dismissal. There are instances when a disciplinary action, including dismissal, is appropriate without first having imposed a less severe form of discipline.

C. Alternative methods to resolve conflicts or improve employee performance or conduct shall be utilized whenever appropriate.
[10.12.11.8 NMAC - N, 7/1/2015]

10.12.11.9 NOTICES AND COMPUTATION OF TIME:
A. Notices prescribed by 10.12.11 NMAC shall be served in accordance with the provisions of 10.12.1.10 NMAC.

B. The computation of time prescribed or allowed by 10.12.11 NMAC shall be in accordance with the provisions of 10.7.1.11 NMAC.
[10.12.11.9 NMAC - N, 7/1/2015]

10.12.11.10 JUST CAUSE:
A. An employee who has completed the probationary period required by Subsection A of 10.12.2.8 NMAC may be suspended, demoted, or dismissed only for just cause which is any behavior relating to the employee's work

that is inconsistent with the employee's obligation to the department.

B. Just cause includes, but is not limited to: inefficiency; incompetency; misconduct; negligence; insubordination; performance which continues to be unsatisfactory after the employee has been given a reasonable opportunity to correct it; absence without leave; any reasons prescribed in 10.12.8 NMAC; failure to comply with any provision of office policies and procedures after the employee has been given an opportunity to correct the conduct; failure to comply with any provisions of these Rules; falsifying official records and/or documents such as employment applications, or conviction of a felony or misdemeanor when the provisions of the Criminal Offender Employment Act, Sections 28-2-1 to 28-2-6 NMSA 1978, apply.
[10.12.11.10 NMAC - N, 7/1/2015]

10.12.11.11 PROBATIONERS AND EMPLOYEES IN EMERGENCY OR TEMPORARY STATUS:

Probationers and employees in emergency or temporary status may be suspended, demoted, or dismissed effective immediately with written notice and without right of appeal. The written notice shall advise the employee of the conduct, actions, or omissions which resulted in the suspension, demotion, or dismissal which may or may not amount to just cause.
[10.12.11.11 NMAC - N, 7/1/2015]

10.12.11.12 ADMINISTRATIVE LEAVE PENDING DISCIPLINARY ACTION:

The chief may authorize administrative leave for a period sufficient and consistent with the best interests of the department to complete a disciplinary action proceeding or investigation.
[10.12.11.12 NMAC - N, 7/1/2015]

10.12.11.13 EMPLOYEES IN CAREER STATUS:

A. Notice of contemplated action:

(1) To initiate the suspension, demotion, or dismissal of an employee in career status and an employee in term status who has completed the probationary period, a notice of contemplated action shall be served on the employee which: describes the conduct, actions, or omissions which form the basis for the contemplated disciplinary action; gives a general explanation of the evidence; advises the employee of his or her right to inspect and obtain copies of any documentary evidence relied upon; specifies what the

contemplated action is; and states that the employee has 11 calendar days from service of the notice to respond in writing to the notice or to request an opportunity for an oral response.

(2) When the notice of contemplated action is served by mail, the employee receiving service shall have three additional calendar days in which to file a response.

B. Response to notice of contemplated action:

(1) A representative of the employee's choosing, subject to some restrictions, may respond in writing to the notice of contemplated action on behalf of the employee and shall be subject to the same timelines stated herein and any final decision made will be binding on the employee directly. A member of management or human resources may not serve as a representative during a disciplinary action.

(2) If there is a request for an oral response to the notice of contemplated action, management representatives shall meet with the employee within 11 calendar days of a request for an oral response, unless the employee and the human resource director agree in writing to an extension of time.

(3) The purpose of the oral response is not to provide an evidentiary hearing but is an opportunity for the employee to present his or her side of the story. It is an initial check against mistaken decisions, essentially a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.

C. Notice of final action:

(1) If the employee does not respond to the notice of contemplated action a notice of final action shall be issued within 11 calendar days following the response period.

(2) If the employee has filed a written response or has been provided an opportunity for oral response, the department shall issue a notice of final action no later than 11 calendar days from the date of receipt of the oral or written response.

(3) The notice of final action shall:

(a) specify the final action to be taken, which may be upholding the contemplated action, a lesser form of discipline than contemplated, or no disciplinary action;

(b) describe the conduct, actions, or omissions which form the basis for the disciplinary

action, which may not include allegations not included in the notice of contemplated action;

(c) give a general explanation of the evidence the agency has;

(d) specify when the disciplinary action will be effective, which must be but no more than 30 calendar days from the time of service of the notice of final action; and

(e) inform the employee of his or her appeal rights.

(4) Appeal rights:

(a) an employee, not covered by a collective bargaining agreement, may appeal a final disciplinary action to the chief by delivering a written statement of the grounds for appeal to the human resources director at 301 North Guadalupe Street, Suite 101, Santa Fe, New Mexico 87501 no later than 30 calendar days from the issuance date of the final disciplinary action; the employee must submit a copy of the notice of final disciplinary action with the notice of appeal;

(b) an employee who is covered by a collective bargaining agreement may either appeal the final disciplinary action to the chief as stated above in Subparagraph (a) of Paragraph (4) of Subsection C of 10.12.11.13 NMAC or make an irrevocable election to appeal to an arbitrator pursuant to any collective bargaining agreement then in effect. [10.12.11.13 NMAC - N, 7/1/2015]

HISTORY OF 10.12.11 NMAC:
[RESERVED]

PUBLIC DEFENDER DEPARTMENT

**TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 12 ADJUDICATION**

10.12.12.1 ISSUING AGENCY:
Public Defender Commission
[10.12.12.1 NMAC - N, 7/1/2015]

10.12.12.2 SCOPE: Applies to all employees in career status.
[10.12.12.2 NMAC - N, 7/1/2015]

10.12.12.3 STATUTORY AUTHORITY: Section 10-15-1(H)

NMSA 1978; Section 31-15-2.4(B)(6) NMSA 1978 and Section 31-15-7 NMSA 1978.
[10.12.12.3 NMAC - N, 7/1/2015]

10.12.12.4 DURATION:
Permanent.
[10.12.12.4 NMAC - N, 7/1/2015]

10.12.12.5 EFFECTIVE DATE:
July 1, 2015, unless a later date is cited at the end of a section.
[10.12.12.5 NMAC - N, 7/1/2015]

10.12.12.6 OBJECTIVE:
The objective of Part 12 of Chapter 12 is: to provide a system for career status employees to appeal disciplinary actions.
[10.12.12.6 NMAC - N, 7/1/2015]

10.12.12.7 DEFINITIONS:
A. "Discipline Review Board" or "board" means a three member board to hear disciplinary appeals composed of one district defender, one neutral hearing officer and one employee appointed by the chief from a pool of volunteers.

B. "Chairperson" means the district defender appointed to the board.

C. "Neutral hearing officer" means a hearing officer on contract with the department selected by the chief in consultation with the pool of volunteer employees.

D. "Pool" means employees selected by each district to serve as a volunteer on the disciplinary review board.
[10.12.12.7 NMAC - N, 7/1/2015]

10.12.12.8 FILING AN APPEAL:

A. Employees who have completed the probationary period as required by Subsection A of 10.12.2.8 NMAC and have been demoted, dismissed, or suspended have the right to appeal to the discipline review board at a public hearing.

B. A notice of appeal must be in writing and filed with the human resource director no later than 30 calendar days from the effective date of the dismissal, demotion, or suspension. A copy of the notice of final action and a statement of the grounds for the appeal must accompany the notice of appeal. Appeals not filed within 30 calendar days shall be dismissed by the human resource director for lack of jurisdiction.

C. Within 15 days from the date of dismissal, an appellant may request a hearing in which to present

evidence challenging a dismissal for lack of jurisdiction. If a hearing on the dismissal is held, human resource director shall submit a recommended decision to the deputy chief which shall contain a summary of the evidence and findings of fact and conclusions of law. The deputy chief shall then issue a final decision.

D. Upon acceptance of a notice of appeal, the chief shall appoint a district defender to serve as the chairperson of the disciplinary review board. The chairperson shall issue a scheduling order directing the parties, in part, to submit to the chairperson a stipulated pre-hearing order for his/her approval, which shall contain at least: a statement of any contested facts and issues; proposed stipulation of those facts not in dispute; the relief or remedy requested by the appellant; a deadline for disclosure of all probable witnesses with a brief summary of their anticipated testimony and documentary evidence; a list of exhibits; a deadline for the completion of discovery and filing of motions; a deadline for requesting subpoenas; and whether the parties agree to participate in voluntary alternative dispute resolution.

(1) The chairperson may further revise the pre-hearing order.

(2) Any discussion concerning possible settlement of an appeal shall not be a part of the pre-hearing order and may not be introduced at the hearing.

[10.12.12.8 NMAC - N, 7/1/2015]

10.12.12.9 AGENCY WITHDRAWAL OF DISCIPLINE:

A. The department may withdraw a completed disciplinary action prior to commencement of a disciplinary review board hearing so long as the appellant is fully restored to pre-disciplinary status insofar as employment, back pay and benefits are concerned.

B. Upon department withdrawal of a disciplinary action, the chairperson may dismiss the appeal without prejudice to the department, which may reinstate disciplinary action. [10.12.12.9 NMAC - N, 7/1/2015]

10.12.12.10 CHAIRPERSON:

A. The chairperson shall not participate in any adjudicatory proceeding if, for any reason, the hearing officer cannot afford a fair and impartial hearing to either party. Either party may ask the chief public defender to disqualify the designated chairperson for cause by filing an affidavit of disqualification

within 14 calendar days of the order. The affidavit must state the particular grounds for disqualification. The designated chairperson shall rule on motions for disqualification and an appeal of the ruling may be made to the deputy chief within 14 calendar days of the hearing officer's ruling.

B. No person shall communicate concerning the merits of any pending adjudicatory proceeding with the designated chairperson or member of the disciplinary review board unless both parties or their representatives are present.

C. The chairperson may dismiss an appeal with prejudice in accordance with the provisions of a settlement agreement approved by the chairperson or upon the filing of a motion to withdraw the appeal at any time.

D. The chairperson may dismiss an appeal with prejudice upon the filing of a motion to withdraw the appeal after the deadline for the completion of discovery upon such terms and conditions as the chairperson deems proper. [10.12.12.10 NMAC - N, 7/1/2015]

10.12.12.11 CONSOLIDATION AND JOINDER:

A. The chairperson may consolidate cases in which two or more appellants have cases containing identical or similar issues.

B. The chairperson may join the appeals of an appellant who has two or more appeals pending.

C. The chairperson may consolidate or join cases if it would expedite final resolution of the cases and would not adversely affect the interests of the parties. [10.12.12.11 NMAC - N, 7/1/2015]

10.12.12.12 DISCOVERY: The chairperson has the power to compel, by subpoena or order, the production of written materials or other evidence the chairperson may deem relevant or material. The parties shall have a right to discovery limited to depositions, interrogatories, requests for production, and requests for admission and witness interviews. All discovery shall be subject to the control of the chairperson. [10.12.12.12 NMAC - N, 7/1/2015]

10.12.12.13 MOTIONS:

A. Any defense, objection, or request that can be determined on the merits prior to a hearing may be raised by motion before the deadline set by the chairperson unless good cause is shown for the delay.

B. Prior to filing the

motion, the filing party shall determine whether the non-filing party concurs with the motion. If the non-filing party concurs, the filing party shall include a stipulated order with the motion. If the non-filing party does not concur, the filing party shall indicate the non-concurrence in the motion and include a proposed order.

C. A response to a motion is due 12 calendar days from the date of filing of the motion. A reply to a response is due seven days from the date of filing the response. The response and reply schedule may also be set or modified by the chairperson.

D. Responses to any motions shall be filed according to a schedule set by the chairperson.

E. During the course of a hearing, motions may be renewed or made for the first time, if such a motion then becomes appropriate.

F. The chairperson shall rule on all motions except for dispositive motions on the merits.

[10.12.12.13 NMAC - N, 7/1/2015]

10.12.12.14 ADDITIONAL WITNESSES:

Witnesses who are not disclosed by the deadline contained in the pre-hearing order shall not be permitted to testify except for good cause shown and to prevent manifest injustice.

[10.12.12.14 NMAC - N, 7/1/2015]

10.12.12.15 SUBPOENAS:

A. The chairperson has the power to subpoena witnesses.

B. The chairperson has the power to subpoena documents or other tangible items.

C. Subpoenas shall be prepared in triplicate by the party requesting the subpoena and will be issued by the hearing officer. A copy of each subpoena shall be sent to the opposing party by the requesting party, together with a transmittal letter listing all persons subpoenaed.

D. Subpoenas shall be hand delivered unless otherwise agreed to.

E. In order to compel attendance at a hearing, the subpoena shall be received by the witness at least 72 hours prior to the time the witness is to appear. The chairperson may waive this rule for good cause shown.

F. Employees under subpoena shall be granted administrative leave as required by the provisions of Subsection D of 10.12.7.14 NMAC. [10.12.12.15 NMAC - N, 7/1/2015]

10.12.12.16 SANCTIONS:

A. The chairperson

may impose sanctions upon the parties as necessary to serve the cause of justice including, but not limited to the instances set forth below.

(1) When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, a request for admission, and/or production of witnesses, the chairperson may:

(a) draw an inference in favor of the requesting party with regard to the information sought;

(b) prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought;

(c) permit the requesting party to introduce secondary evidence concerning the information sought; or

(d) strike any part of the pleadings or other submissions of the party failing to comply with such request.

(2) The chairperson may refuse to consider any motion or other action which is not filed in a timely fashion.

B. The chairperson may issue an order to show cause why an appeal should not be dismissed for failure to prosecute, or rule either for the appellant or the appellee, so long as the merits of the case are not concerned. If the order is uncontested, the chairperson may dismiss the appeal or rule for the appellant. If the order is contested and the chairperson dismisses the appeal or rules for the appellant, such decision is appealable to the deputy chief within 14 calendar days of the order.

C. The chief may prohibit a representative from appearing before its disciplinary review board for a period of time set by the chief for good cause shown.
[10.12.12.16 NMAC - N, 7/1/2015]

10.12.12.17 NOTICE OF HEARING: Notice of hearing shall be made by certified mail with return receipt requested at least 14 calendar days prior to the hearing, unless otherwise agreed to by the parties and the hearing officer.
[10.12.12.17 NMAC - N, 7/1/2015]

10.50.12.18 HEARINGS:
A. All members of the board shall be present in person to conduct the hearing.

B. The hearing shall be open to the public unless the parties agree that it shall be closed.

C. A party may appear through a representative at any and all times during the adjudication process, provided such representative has filed a written entry of appearance.

D. The chairperson may clear the room of witnesses not under examination, if either party so requests, and of any person who is disruptive. The department is entitled to have a person, in addition to its representative, in the hearing room during the course of the hearing, even if the person will testify in the hearing.

E. The department shall present its evidence first.

F. Oral evidence shall be taken only under oath or affirmation.

G. Each party shall have the right to:

- (1) make opening and closing statements;
- (2) call and examine witnesses and introduce exhibits;
- (3) cross-examine witnesses;
- (4) impeach any witness;
- (5) rebut any relevant evidence; and
- (6) introduce evidence relevant to the choice of discipline if it was raised as an issue in the pre-hearing order.

H. The hearing shall be conducted in an orderly and informal manner without strict adherence to the rules of evidence that govern proceedings in the courts of the state of New Mexico. However, in order to support the board's decisions, there must be a residuum of legally competent evidence to support a verdict in a court of law.

I. The chairperson shall admit all evidence, including affidavits, if it is the sort of evidence upon which responsible persons are accustomed to rely in the conduct of serious affairs. The chairperson shall exclude immaterial, irrelevant, or unduly cumulative testimony.

J. If scientific, technical, or other specialized knowledge will assist the disciplinary review board to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise. In the case of evidence relating to polygraph examinations, the proponent must have followed all the provisions of Rule 11-707

NMRA.

K. The chairperson may take administrative notice of those matters in which courts of this state may take judicial notice.

L. The rules of privilege shall be effective to the extent that they are required to be recognized in civil actions in the district courts of the state of New Mexico.

M. The chairperson shall admit evidence relevant only to those allegations against the appellant included in both the notice of contemplated action and the notice of final action or which are contested issues as set forth in the pre-hearing order.

N. The hearing shall be recorded by a video and/or audio-recording device under the supervision of the chairperson. No other recording of the hearing, by whatever means, shall be permitted without the approval of the chairperson.

O. The chief shall provide for and require that the chairperson to:

- (1) appoint a signed language interpreter pursuant to the Signed Language Interpreting Practices Act, Section 61-34-1 to 61-34-17 NMSA 1978 to appellants whose hearing is so impaired that they cannot understand voice communication; appellant must provide proof of disability; and
- (2) appoint a language interpreter pursuant to the Court Interpreter Act, Section 38-10-1 to 38-10-8 NMSA 1978 for hearing participants who do not understand English well enough to understand the proceedings.
[10.12.12.18 NMAC - N, 7/1/2015]

10.12.12.19 POST-HEARING BRIEFS: The chairperson may require or permit written closing arguments, post-hearing briefs and proposed findings of fact and conclusions of law according to a scheduling order issued by the chairperson. If case law is cited, a copy of the case shall be provided to the hearing officer.
[10.12.12.19 NMAC - N, 7/1/2015]

10.12.12.20 BOARD'S DECISION: The disciplinary review board shall make a decision as soon as practicable upon conclusion of the hearing. The chairperson shall provide a copy of the recommended decision to the parties by certified mail with return receipt requested.
[10.12.12.20 NMAC - N, 7/1/2015]

10.12.12.21 EXCEPTIONS TO A DECISION:

A. The parties to a proceeding may file a request for reconsideration of a decision by citing specific exceptions with supporting briefs to a disciplinary review board's decision according to a scheduling order issued by the chairperson.

B. Copies of such exceptions and any briefs shall be served simultaneously on all parties, and a statement of such service shall be furnished to the chairperson.

C. Exceptions to a board's decision shall cite the precise substantive or procedural issue to which exceptions are taken.

D. Any exception not specifically made shall be considered waived. Any exception that fails to comply with the foregoing requirements may be disregarded. Any brief in support of exceptions shall not contain matters not related to or within the scope of the exceptions.

[10.12.12.21 NMAC - N, 7/1/2015]

10.12.12.22 DECISIONS OF THE DISCIPLINARY REVIEW BOARD:

A. As a general rule, the board shall only consider post-hearing briefs, and proposed findings of fact and conclusions of law, the board's decision, and exceptions to the decision. Where circumstances warrant, the board may review all or a portion of the record.

B. The board shall not consider any additional evidence or affidavits not in the record or pleadings not filed in accordance with the chairperson's scheduling order.

C. The board may consider the record in executive session.

D. If the board determines that the credibility of a witness is at issue, it shall review at least as much of the record as is necessary to support its decision.

[10.12.12.22 NMAC - N, 7/1/2015]

10.12.12.23 REINSTATEMENT:

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

B. In the event the board's order includes any back pay, the appellant shall provide the department with a sworn statement of gross earnings, unemployment compensation, and any

other earnings, including but not limited to disability benefits received by the appellant since the effective date of the disciplinary action. The department shall be entitled to offset earnings, unemployment compensation and any other earnings received during the period covered by the back pay award against the back pay due. The chairperson shall retain jurisdiction of the case for the purpose of resolving any disputes regarding back pay.

[10.12.12.23 NMAC - N, 7/1/2015]

10.12.12.24 REPORT OF DECISIONS:

When the board renders a final decision in an appeal, the board's decision will be available to the public pursuant to the Inspection of Public Records Act, Section 14-2-1 NMSA 1978 (as amended through 2003). Copies of the board's final order and the recommended decision shall be stored in the office, separate from personnel files, and will be available to the public when provided to the parties. The human resource director will redact any privileged and confidential information pursuant to state and federal law.

[10.12.12.24 NMAC - N, 7/1/2015]

HISTORY OF 10.12.12 NMAC: [RESERVED]**PUBLIC DEFENDER DEPARTMENT****TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 12 PUBLIC DEFENDER DEPARTMENT
PART 13 RULE MAKING****10.12.13.1 ISSUING AGENCY:**

Public Defender Commission
[10.12.13.1 NMAC - N, 7/1/2015]

10.12.13.2 SCOPE: Applies to all employees.

[10.12.13.2 NMAC - N, 7/1/2015]

10.12.13.3 STATUTORY

AUTHORITY: Section 31-15-2.4(B) (6) NMSA 1978; Section 31-15-7 NMSA 1978

[10.12.13.3 NMAC - N, 7/1/2015]

10.12.13.4 DURATION:

Permanent.

[10.12.13.4 NMAC - N, 7/1/2015]

10.12.13.5 EFFECTIVE DATE:

July 1, 2015, unless a later date is cited at the end of a section.

[10.12.13.5 NMAC - N, 7/1/2015]

10.12.13.6 OBJECTIVE:

The objective of Part 13 of Chapter 12 is: to provide a process for adoption, amendment, or repeal of a public defender commission rule.

[10.12.13.6 NMAC - N, 7/1/2015]

10.12.13.7 DEFINITIONS:

[RESERVED]

10.12.13.8 NOTICE AND COMMENT:

A. The public defender commission shall provide an opportunity for employees of the department and interested parties to comment on proposed rule changes at least 30 calendar days prior to the adoption, amendment or repeal of any rule.

B. At least 30 calendar days prior to the adoption, amendment, or repeal of any rule, the public defender commission shall publish notice of the proposed action.

(1) The notice shall be published in the New Mexico register.

(2) The notice shall be mailed to broadcast stations licensed by the federal communications commission and newspapers of general circulation that have provided a written request for such notice.

(3) The notice shall be mailed to the last known address of persons and organizations who have made a written and timely request to the department.

(4) The notice shall state where a copy of the proposed rule may be obtained.

C. The giving of the notice shall be considered complete upon mailing.

D. One copy of the full text of any proposed rule shall be made available without cost to any person or organization who requests a copy.
[10.12.13.8 NMAC - N, 7/1/2015]

10.12.13.9 HEARING:

The public defender commission shall hold a public hearing on the proposed action. Interested persons or duly authorized representatives shall have the opportunity to submit written statements or make oral presentations.

[10.12.13.9 NMAC - N, 7/1/2015]

10.12.13.10 EFFECTIVE DATE:

The public defender commission shall determine the effective date of rules, which shall be filed with the New Mexico

commission of public records.
[10.12.13.10 NMAC - N, 7/1/2015]

10.12.13.11 EMERGENCY RULES: The public defender commission may adopt, amend, or suspend a rule as an emergency, without compliance with 10.12.13.8 NMAC and 10.12.13.9 NMAC, if the public defender commission determines that it is in the public interest. An action to adopt, amend, or suspend a rule pursuant to this rule shall not be effective for longer than 120 calendar days but may be extended once for no more than an additional 60 days if the emergency still continues.
[10.12.13.11 NMAC - N, 7/1/2015]

10.12.13.12 PUBLICATION OF RULES: Rules, including emergency rules, adopted, amended, or repealed by the public defender commission shall be published in the New Mexico register.
[10.12.13.12 NMAC - N, 7/1/2015]

10.12.13.13 DEMONSTRATION PROJECTS: The public defender commission may authorize demonstration projects which may require the temporary suspension of the rules when the chief agrees to utilize such a project to improve operations.
[10.12.13.13 NMAC - N, 7/1/2015]

HISTORY OF 10.12.13 NMAC:
[RESERVED]

COMMISSION OF PUBLIC RECORDS

1 NMAC 3.2.70.2 (Recompiled 11/30/2001 to 1.12.7 NMAC), Electronic Authentication (filed 04/01/1997) is being repealed and replaced by 1.12.7 NMAC, Digital/Electronic Signature, effective 7/1/2015.

COMMISSION OF PUBLIC RECORDS

1.13.5 NMAC, New Mexico Historical Records Grant Program Guidelines (filed 11/15/2000) repealed and replaced by 1.13.5 NMAC, New Mexico Historical Records Grant Program Guidelines, effective 08/01/2015.

COMMISSION OF PUBLIC RECORDS

**TITLE 1 GENERAL GOVERNMENT
CHAPTER 12 INFORMATION TECHNOLOGY
PART 7 DIGITAL / ELECTRONIC SIGNATURE**

1.12.7.1 ISSUING AGENCY: State Commission of Public Records and State Records Administrator
[1.12.7.1 NMAC - Rp, NMAC 1.12.7.1, 7/1/2015]

1.12.7.2 SCOPE: To implement the electronic signature authority pursuant to the Public Records Act, Section 14-3-15.2 NMSA 1978 and the New Mexico Uniform Electronic Transactions Act, Section 14-16-1 et seq NMSA 1978.
[1.12.7.2 NMAC - Rp, NMAC 1.12.7.2, 7/1/2015]

1.12.7.3 STATUTORY AUTHORITY: Public Records Act, Section 14-3-15.2 NMSA 1978; Uniform Electronic Transactions Act, Section 14-16-1 et seq NMSA 1978.
[1.12.7.3 NMAC - Rp, NMAC 1.12.7.3, 7/1/2015]

1.12.7.4 DURATION: Permanent
[1.12.7.4 NMAC - Rp, NMAC 1.12.7.4, 7/1/2015]

1.12.7.5 EFFECTIVE DATE: July 1, 2015, unless a later date is cited at the end of a section.
[1.12.7.5 NMAC - Rp, NMAC 1.12.7.5, 7/1/2015]

1.12.7.6 OBJECTIVE: To establish standards for state agencies regarding the use of electronic signatures for legal signing purposes as authorized under the provisions of the Uniform Electronic Transactions Act. These rules are an adaption of the Use of Electronic Signatures in Federal Organization Transactions, Version 1.0 issued January 25, 2013.
[1.12.7.6 NMAC - Rp, NMAC 1.12.7.6, 7/1/2015]

1.12.7.7 DEFINITIONS: For purposes of this part, all terms defined in the Uniform Electronic Transactions Act, Section 14-16-1 et seq NMSA 1978 have the meanings set forth in statute. Additionally, the following terms shall

have the following meanings:

A. Terms beginning with the letter "A":
(1) "Agreement" refer to Uniform Electronic Transactions Act, Section 14-16-2(1) NMSA 1978.

(2) "Attribution" means the process of establishing or confirming that someone is the previously identified person they claim to be.
(3) "Authenticate" refer to Electronic Authentication of Documents Act, Section 14-15-3(A) NMSA 1978.

(4) "Automated transaction" refer to Uniform Electronic Transactions Act, Section 14-16-2(2) NMSA 1978.

B. Terms beginning with the letter "B":
(1) "Biometrics" means the unique physical characteristics of individuals that can be converted into digital form and then interpreted by a computer. Among these are voice patterns, fingerprints, and the blood vessel patterns present on the retina of one or both eyes.

C. Terms beginning with the letter "C":
(1) "Click wrap" means a click wrap agreement, also known as click through agreement or click wrap license, that require an end user to manifest his or her assent by clicking a button or pop-up window that says "OK" or "agree" or some similar form. A user indicates rejection by clicking "cancel" or some similar form or by closing browsing window.

(2) "Computer program" refer to Uniform Electronic Transactions Act, Section 14-16-2(3) NMSA 1978.

(3) "Contract" refer to Uniform Electronic Transactions Act, Section 14-16-2(4) NMSA 1978.

(4) "Credential" means a digital document that binds a person's identity to a token possessed and controlled by a person; data that is used to establish the claimed attributes or identity of a person or an entity. Common paper credentials include passports, birth certificates, driver's licenses and employee identification cards. Common digital credentials include user IDs and digital certificates. Credentials are a tool for authentication.

(5) "Cryptographic key" means a value used to control cryptographic operations, such as decryption, encryption, signature

generation or signature verification.

D. Terms beginning with the letter “D”:

(1) **“Digital signature”** means any electronic signature that can be used to authenticate the identity of the sender of or signer of a document, and may also ensure that the content of the sent document is unaltered.

(2) **“Digitized signature”** means a graphical image of a handwritten signature.

(3) **“Document”** refer to Electronic Authentication of Documents Act, Section 14-15-3(B) NMSA 1978.

E. Terms beginning with the letter “E”:

(1) **“Electronic”** refer to Uniform Electronic Transactions Act, Section 14-16-2(5) NMSA 1978.

(2) **“Electronic agent”** refer to Uniform Electronic Transactions Act, Section 14-16-2(6) NMSA 1978.

(3) **“Electronic authentication”** refers to Electronic Authentication of Documents Act, Section 14-15-3(C) NMSA 1978.

(4) **“Electronic record”** refer to Uniform Electronic Transactions Act, Section 14-16-2(7) NMSA 1978.

(5) **“Electronic signature”** refer to Uniform Electronic Transactions Act, Section 14-16-2(8) NMSA 1978.

F. Terms beginning with the letter “F”: [RESERVED]

G. Terms beginning with the letter “G”:

(1) **“Governmental agency”** refer to Uniform Electronic Transactions Act, Section 14-16-2(9) NMSA 1978.

H. Terms beginning with the letter “H”:

(1) **“Hash” or Hash function** means a mathematical function that takes a variable length input string and converts it to a smaller fixed-length output string, that is for all relevant purposes unique to the data used as input to the message digest function. The message digest is, in essence, a digital fingerprint of the data to which it relates.

(2) **“Hyperlink”** means any electronic link providing direct access from one distinctively marked place in a hypertext or hypermedia document to another in the same or a different document.

I. Terms beginning with the letter “I”:

(1)

“Identification” means the process of verifying and associating attributes with a particular person designated by an identifier.

(2) **“Identity”**

means the unique name of an individual person, and any associated attributes; the set of the properties of a person that allows the person to be distinguished from other persons.

(3)

“Information” refer to Uniform Electronic Transactions Act, Section 14-16-2(10) NMSA 1978.

(4)

“Information processing system” refer to Uniform Electronic Transactions Act, Section 14-16-2(11) NMSA 1978.

(5) **“Integrity”**

means a state in which information has remained unaltered from the point it was produced by a source, during transmission, storage and eventual receipt by the destination.

(6) **“Intent to sign”**

means the intent of a person that a sound, symbol or process is applied to a record in order to have a legally binding effect.

(7) **“Level of assurance”**

means the level of authentication assurance that describes the degree of certainty that a user has presented an identifier that refers to her identity.

J. Terms beginning with the letter “J”: [RESERVED]

K. Terms beginning with the letter “K”: [RESERVED]

L. Terms beginning with the letter “L”: [RESERVED]

M. Terms beginning with the letter “M”:

(1) **“Method”**

means a particular way of doing something, a means, process or manner of procedure, especially a regular and systematic way of accomplishing something and an orderly arrangement of steps to accomplish an end.

N. Terms beginning with the letter “N”:

(1) **NIST**

Special Publication 800-63 refers to the National Institute of Standards and Technology, Special Publication 800-63, Electronic Authentication Guidance.

O. Terms beginning with the letter “O”:

(1)

“Originator” refers to Electronic Authentication of Documents Act, Section 14-15-3(E) NMSA 1978.

P. Terms beginning

with the letter “P”:

(1) **“Password”**

means a secret word or string of characters that is used for authentication, to prove identity or to gain access to a record or resource. Passwords are typically character strings.

(2) **“PDF”**

or Portable Document Format refers to a file format used to present documents in a manner independent of application software, hardware, and operating systems. A PDF file encapsulates a complete description of a fixed-layout flat document, including the text, fonts, graphics, and other information needed to display it.

(3) **“Person”**

refer to Uniform Electronic Transactions Act, Section 14-16-2(12) NMSA 1978.

(4) **“Personal**

identification number (PIN) means a shared secret a person accessing a government organization’s electronic application is requested to enter, such as a password or PIN. The system checks that password or PIN against data in a database to ensure its correctness and thereby “authenticates” the user.

(5) **“Private**

key” means the code or alphanumeric sequence used to encode an electronic authentication and which is known only to its owner. The private key is the part of a key pair used to create an electronic authentication.

(6) **“Public**

key” means the code or alphanumeric sequence used to decode an electronic authentication. The public key is the part of a key pair used to verify an electronic authentication.

(7) **“Public/**

private key system” means the hardware, software, and firmware that are provided by a vendor for: (a) the generation of public/private key pairs, (b) the record abstraction by means of a secure hash code, (c) the encoding of the signature block and the record abstraction or the entire record, (d) the decoding of the signature block and the record abstraction or the entire record, and (e) the verification of the integrity of the received record.

Q. Terms beginning with the letter “Q”: [RESERVED]

R. Terms beginning with the letter “R”:

(1) **“Reason**

for signing” means the purpose statement of a person with regard to a document or electronic record that is affirmed by signing the document or record. The

reason for signing should be distinguished from the intent to sign.

(2) **“Record”** refer to Uniform Electronic Transactions Act, Section 14-16-2(13) NMSA 1978.

(3) **“Record abstraction”** means a condensed representation of a document, which condensation is prepared by use of a secure hash code; it is also known as a message digest.

(4) **“Repudiate”** and **“non-repudiation”** refer to the acts of denying or proving the origin of a document from its sender, and to the acts of denying or proving the receipt of a document by its recipient.

(5) **“Risk”** is a function of the likelihood that a given threat will exploit a potential vulnerability and have an adverse impact on an organization.

S. Terms beginning with the letter “S”:

(1) **“Secure hash code”** is a mathematical algorithm that, when applied to an electronic version of a document, creates a condensed version of the document from which it is computationally infeasible to identify or recreate the document which corresponds to the condensed version of the document without extrinsic knowledge of that correspondence.

(2) **“Security procedure”** refer to Uniform Electronic Transactions Act, Section 14-16-2(14) NMSA 1978.

(3) **“Signed”** and **“signature”** refer to Electronic Authentication of Documents Act, Section 14-15-3(G) NMSA 1978..

(4) **“Signature block”** means the portion of a document, encoded by the private key, which contains the identity of the originator and the date and time of the records creation, submittal or approval.

(5) **“Signing requirements”** means the requirements that must be satisfied to create a valid and enforceable electronic signature.

(6) **“State”** refer to Uniform Electronic Transactions Act, Section 14-16-2(15) NMSA 1978.

T. Terms beginning with the letter “T”:

(1) **“TIF”** or **“TIFF”** or **Tagged Image Format** refers to an image file format for high-quality graphics.

(2) **“Threat”** means a potential circumstance, entity or event capable of exploiting vulnerability and causing harm. Threats can come

from natural causes, human actions, or environmental conditions. A threat does not present a risk when there is no vulnerability. Vulnerability is a weakness that can be accidentally triggered or intentionally exploited.

(3) **“Token”** refers to something that a person possesses and controls (typically a cryptographic key or password) that is used to authenticate the person’s identity.

(4) **“Transaction”** refer to Uniform Electronic Transactions Act, Section 14-16-2(16) NMSA 1978.

(5) **“Transferable record”** means an electronic record that would: (a) be a note under Chapter 55, Article 3 NMSA 1978 or a document under Chapter 55, Article 7 NMSA 1978 if the electronic record were in writing; and (b) the issuer of the electronic record expressly has agreed is a transferable record.

(6) **“Trusted entity”** means an independent, unbiased third party that contributes to, or provides, important security assurances that enhance the admissibility, enforceability and reliability of information in electronic form. In a public/private key system, a trusted entity registers a digitally signed data structure that binds an entity’s name (or identity) with its public key.

U. Terms beginning with the letter “U”: [RESERVED]

V. Terms beginning with the letter “V”:

(1) **“Voice signature”** means an audio recording created by an individual who intends to sign a particular transaction (or document) and used as the electronic form of signature.

W. Terms beginning with the letter “W”: [RESERVED]

X. Terms beginning with the letter “X”: [RESERVED]

Y. Terms beginning with the letter “Y”: [RESERVED]

Z. Terms beginning with the letter “Z”: [RESERVED]

[1.12.7.7 NMAC - Rp, NMAC 1.12.7.7, 7/1/2015]

1.12.7.8 GENERAL OVERVIEW:

A. A signature, whether electronic or on paper, is the means by which a person indicates an intent to associate oneself with a document in a manner that has legal significance (e.g., to adopt or approve a specific statement regarding, or reason for signing, a document). It constitutes legally-binding

evidence of the signer’s intention with regard to a document. The reasons for signing a document will vary with the transaction, and in most cases can be determined only by examining the context in which the signature was made. Generally, a person’s reason for signing a document falls into one of the following categories:

(1) approving, assenting to, or agreeing to the information in the document or record signed (e.g., agreeing to the terms of a contract or inter-agency memorandum or indicating approval for legal sufficiency);

(2) certifying or affirming the accuracy of the information stated in the document or record signed (e.g., certifying that the statements in one’s tax return are true and correct);

(3) acknowledging access to or receipt of information set forth in the document or record signed (e.g., acknowledging receipt of a disclosure document);

(4) witnessing the signature or other act of another (e.g., notarization); or

(5) certifying the source of the information in the document or record signed (e.g., certifying data in a clinical trial record, certifying an inventory count, etc.).

B. The Uniform Electronic Transaction Act sets forth the requirements that must be satisfied by an electronic signature to establish functional equivalence to the paper-based requirement for a signature.

[1.12.7.8 NMAC - Rp, NMAC 1.12.7.8, 7/1/2015]

1.12.7.9 ELECTRONIC SIGNATURES COMPARED TO DIGITAL SIGNATURES:

A. “Electronic signature” is the term used for the electronic equivalent of a handwritten signature. It is a generic, technology- neutral term that refers to the universe of all of the various methods by which one can “sign” an electronic record. Although all electronic signatures may be represented digitally (i.e., as a series of ones and zeroes), they can take many forms and can be created by many different technologies.

B. “Digital signature” is the term used to describe the small segment of encrypted data produced when a specific mathematical process (involving a hash algorithm and public key cryptography) is applied to an electronic record.

[1.12.7.9 NMAC - Rp, NMAC 1.12.7.9, 7/1/2015]

1.12.7.10 ELECTRONIC SIGNATURE, SECURITY PROCEDURE AND SIGNING PROCESS:

A. An electronic signature is used to indicate a person's intent to associate themselves in some way to information or to a reason for signing (e.g., agreeing to the terms of a contract, acknowledging receipt of information, etc.) with legal effect. Any sound, symbol, or process that is made or adopted by a person with intent to sign a document can be used as the form of signature for purposes of creating an electronic signature. This includes, for example, a typed name, clicking on an "I Agree" button, or a cryptographically created digital signature. But the mere use of any such sound, symbol, or process does not necessarily create a legally binding electronic signature.

B. A security procedure is employed for the purpose of verifying that an electronic record, signature, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record (integrity). A digital signature can be used as both a security procedure and as a legally binding form of signature. It is important that the context make clear whether the digital signature is intended merely for purposes of attribution, integrity, or whether it is also intended to be a legally binding electronic signature.

C. A signing process is the overall set of actions, steps, and elements that is used to create a valid and enforceable electronic signature, and includes both the application to an electronic record of a form of signature (i.e., the sound, symbol, or process) to be used as the electronic signature, and one or more processes or security procedures to address the other signature requirements listed.
[1.12.7.10 NMAC - Rp, NMAC 1.12.7.10, 7/1/2015]

1.12.7.11 LEGAL REQUIREMENT FOR A SIGNATURE:

A transaction is governed by a law or regulation that requires the presence of a signature before it will be considered legally effective. A state agency must review the law applicable to each proposed transaction to determine if it requires that the transaction be "signed." If the applicable law or regulation requires a signature, then to conduct the transaction in electronic form requires an electronic signature.

[1.12.7.11 NMAC - Rp, NMAC 1.12.7.11, 7/1/2015]

1.12.7.12 TRANSACTION-BASED NEED FOR A SIGNATURE:

If there is no legal requirement for a signature on a particular type of transaction a state agency may undertake a further analysis to evaluate the desirability of incorporating a signature requirement into the transaction. An electronic signature may be desirable, even when not legally required, where there is a:

A. Need for emphasizing the seriousness of the transaction. A signature may serve to reinforce the significance of the undertaking to the party involved. It gives the transaction a more formal tone, and helps to drive home to the signing party the seriousness of what is being undertaken.

B. Need for binding a party to the transaction. If the transaction involves an intent element (e.g., agreement, approval, acknowledgment, receipt, witnessing, etc.), a signature may be useful to help formally bind a person to that reason for signing and make it more likely to be enforced (e.g., to mitigate concerns regarding repudiation).

[1.12.7.12 NMAC - Rp, NMAC 1.12.7.12, 7/1/2015]

1.12.7.13 REQUIREMENTS FOR LEGALLY BINDING ELECTRONIC SIGNATURE:

Where an electronic signature is required by law or otherwise deemed desirable, it is critical that the electronic signature and the associated signing process satisfy all of the applicable legal requirements. Generally, creating a valid and enforceable electronic signature requires satisfying the following signing requirements.

A. A person (i.e., the signer) must use an acceptable electronic form of signature. Electronic signatures can take many forms, and can be created by many different technologies. No specific technology or form of signature is required. Generally, any electronic "sound, symbol, or process" can be used as the form of signature. Examples of commonly used electronic forms of signature include, but are not limited to:

(1) Symbols such as a typed name (e.g., typed at the end of an e-mail message by the sender, or typed into a signature block on a website form by a party); digitized image of a handwritten signature that is attached to an electronic record; a shared secret (e.g., a secret code, password, or PIN) used by a person to sign the electronic record; a unique biometrics-based identifier, such as a fingerprint, voice print, or a retinal scan; or a digital signature.

(2) Sounds such

as sound recording of a person's voice expressing consent.

(3) Processes such as using a mouse to click a button or hyperlink (such as clicking an "I Agree" button); using a private key and applicable software to apply a "digital signature;" or scanning and applying a fingerprint.

B. The electronic form of signature must be executed or adopted by a person with the intent to sign the electronic record, (e.g., to indicate a person's approval of the information contained in the electronic record). A person's intent to sign is often inferred from his or her approval of the reason for signing as stated in the text of either: (i) the electronic record being signed or (ii) the surrounding signing process. For example, words appearing immediately above a blank signature line on a contract document might state "By signing below I agree to the foregoing contract terms." That statement indicates both the reason for signing (agreement to the contract) as well as the means by which a person can indicate an intent to sign (i.e., by applying the form of signature where indicated). Thus, a person indicates his or her intention to sign, for the reason stated, by signing on the applicable blank line. Likewise, text on a website might state that "By checking this box I agree to the terms of use." A person indicates his or her intention to sign, for the reason stated, by checking the box on the website.

C. The electronic form of signature must be attached to or associated with the electronic record being signed. Specifically, it must be attached to, or logically associated with, the record being signed. Satisfying this requirement requires storing the data constituting the electronic form of signature, and doing so in a way that permanently associates it with the electronic record that was signed. Where the electronic form of signature consists of a symbol or a sound (such as a typed name, a digitized image of a handwritten name, a PIN, a digital signature, a voice recording, etc.), the data representing the symbol or sound must be saved. Where the electronic form of signature consists of a process (such as clicking on an "I Agree" button), the system must be programmed so that completion of the process generates some specific data element to indicate completion of the signing process, or some other procedure (such as generation of a log record or audit trail) to record the act of signing. It is also recommended that the following additional data elements be appended to or associated with the signature data provided privacy

considerations have been taken into account:

(1) Identity of the signer or a link to the source of identifying information, such as a validated UserID, a digital certificate, a biometric database, etc.;

(2) Date and time of the signature;

(3) Method used to sign the record; and

(4) An indication of the reason for signing.

D. There must be a means to identify and authenticate a particular person as the signer. Meeting this burden of proof requires establishing a link between an identified person and the signature. An electronic form of signature may or may not provide proof of identity. Many forms of signature do not contain or directly link to the identity of the person making them (such as clicking an "I Agree" button), or if they do provide evidence of identity, such identity may not be reliable (e.g., a typed name). Other security procedures may be used to accomplish this objective. The signer's identity may be authenticated as part of an overall process of obtaining access to a website or electronic resource that includes the record to be signed. If the act of signing is performed during the session authorized by the authentication process, the signature itself is attributed to the signer because the person accessing the record for signing has been duly authenticated.

E. There must be a means to preserve the integrity of the signed record. The usability, admissibility, and provability of a signed electronic record requires procedures be undertaken to ensure the continuing integrity of both the electronic record and its electronic signature following completion of the signing process. Data integrity is concerned with the accuracy and completeness of electronic information communicated over the internet or stored in an electronic system, and with ensuring that no unauthorized alterations are made to such information either intentionally or accidentally. Ensuring "integrity" requires "guarding against improper information modification or destruction, for the full retention period of the record. Electronic records are easily altered in a manner that is not detectable. In an electronic transaction of any significance, the parties to the transaction must be confident of the integrity of the information before they rely or act on the record.

[1.12.7.13 NMAC - Rp, NMAC 1.12.7.13, 7/1/2015]

1.12.7.14 BUSINESS ANALYSIS AND RISK ASSESSMENT:

A. The selection of an electronic signature process is a business decision involving more than technical consideration. State agencies are strongly encouraged to complete and document a business analysis and risk assessment. The extent, level of detail, and format of the business analysis and risk assessment is up to the state agency. The goal is to implement a signing process that is reliable as is appropriate for the purpose in question.

B. A state agency may evaluate each factor differently and accord them different weights based on the nature and specifics of the underlying transaction. A state agency may also devise its own process for conducting and documenting a business analysis and risk assessment in the selection of an electronic signature process.

C. Business analysis. The focus of the business analysis is the business transaction that the electronic signature will support and the larger related business process. The business analysis may include the following components: overview of the business process, analysis of legal and regulatory requirement specifically related to the transaction, identification of industry standards or generally accepted practices related to the transaction, analysis of those who will use electronically signed records and related requirements, and determination of interoperability requirements including those of business partners, determination of the cost of alternative approaches.

D. Risk Assessment. The selection of an appropriate electronic signature process includes identifying the potential risks involved in a signed electronic transaction and how various electronic signature approaches can address those risks. This paragraph draws upon the national institute of standards (NIST) approach to risk assessment but is more narrowly focused on the risks inherent in a signed electronic transaction.

To assess risks, a state agency should identify and analyze: sources of threats, vulnerabilities (such as repudiation, intrusion, loss of access to records for business and legal purposes), potential impacts (such as financial, reputation and credibility, productivity), and likelihood that a threat will actually materialize.

E. Risk Matrix. A state agency may wish to develop a matrix in which risk level for each threat is determined by the relationship between the threat's likelihood and the degree

of impact against the background of existing risk reduction measures. The greatest risks are those that have extreme consequences and almost certain to occur. Conversely, a rare event with negligible consequences may be considered trivial.

F. Both the analysis of the likelihood of a successful challenge to the enforceability of a signature and the analysis of the cost or impact of an unenforceable signature should result in a "Low," "Moderate" or "High" determination.

G. The Department of Information Technology has statutory responsibility for all state-wide, executive agency information and computer systems. Given the specific and particular expertise of the Department, any state agency may defer to any determination made by the Secretary of the Department of Information and Technology as to 'business analysis', 'risk assessment', or constructing a 'risk matrix'.

[1.12.7.14 NMAC - Rp, NMAC 1.12.7.14, 7/1/2015]

1.12.7.15 ELECTRONIC FORM OF SIGNATURE:

A. Low risk transactions.

(1) For low risk transactions, any form of signature is acceptable. This includes clicking an on-screen button, checking an on-screen box, typing ones name, using a PIN number, or any other reasonable method, so long as it is clear to the signer that such act constitutes a signature, and is not being done for any other purpose.

(2) Evidence of intent to sign may be included either in the record being signed or in the on-screen signing process. Shorter or more cursory indicators of intent may be used as necessary to facilitate the signing experience, so long as it is reasonably clear to the signer that they are signing the record, not doing something else.

(3) Any method may be used to associate the signature to the records being signed. This can include establishing a process that could not be completed unless a person has signed; using a process that appends the signature date to the record signed; or establishing a database-type link between the signature date and the records signed.

(4) Any approach to identification and authentication of the signer is acceptable. This includes self-assertion of identity by the signer. Successful authentication at this level requires that the signer prove through a secure authentication protocol that they possess and control the token.

However, this level does not require cryptographic methods that block offline attacks. Refer to NIST Special Publication 800-63-2 for additional information related to electronic authentication guidelines.

(5) The system or application must be reasonably trusted to invalidate signature upon modification of the record and provide a secure method to transfer and store the signed record.

B. Moderate risk transactions.

(1) For moderate risk transactions, any electronic form of signature is acceptable. This includes clicking an on-screen box, typing ones name, using a PIN number, or any other reasonable method, so long as it is clear to the signer that such act constitutes a signature, and is not being done for any other purpose.

(2) Evidence of intent to sign may be included either in the records being signed or in the on-screen signing process. Clear evidence of intent to sign must be unmistakably provided. Shorter or more cursory indicators of intent should be avoided in favor of clear evidence of intent to facilitate the signing experience, so that it is very clear to the signer that they are signing the record.

(3) Any reasonable method may be used to associate the signature data to the records signed, or establishing a database-type link between the signature data and the records signed. The signing data can then be either attached or appended to the records signed, or a database-type link can be established between the signature data and the record signed.

(4) A single factor remote network authentication is acceptable for medium level risk transactions. There are a wide range of available authentication technologies that can be employed. For example, memorized secret tokens, pre-registered knowledge tokens, look-up secret tokens, out of band tokens and single factor one-time password devices are acceptable. This level requires cryptographic techniques and successful authentication requires that the signer prove through a secure authentication protocol that they control the token. Refer to NIST Special Publication 800-63-2 for additional information related to electronic authentication guidelines.

(5) The system or application must be reasonably trusted to invalidate signature upon modification of the record and provide a secure method to transfer and store the signed record.

C. High risk transactions.

(1) For high risk transactions, the only acceptable electronic form of signature is a cryptographically based digital signature created with a private cryptographic key that corresponds to the public key specified in a digital credential list.

(2) Evidence of intent to sign must be included both in the record being signed and in the on-screen signing process. Such evidence of intent to sign must be clearly provided in both places and make it unmistakable to the signer that they are signing the record and the reason that they are signing.

(3) A cryptographic signing process whereby a hash of the content of the record being signed is incorporated into the signature data must be used so there is an intrinsic relationship between the signature data and the record signed. The signing data can then be either attached or appended to the record signed, or a database-type link can be established between the signature data and the record signed.

(4) The signer must be identified and authenticated by reference to a digital certificate that provides at least two authentication factors or is based on proof of possession of a key through a cryptographic protocol.

(5) The system or application must be digitally signed using the identification and authentication specified in 1.12.7.15(4) NMAC that will invalidate signature upon modification of the record and provide a secure method to transfer and store the signed record. [1.12.7.15 NMAC - Rp, NMAC 1.12.7.15, 7/1/2015]

HISTORY OF 1.12.7 NMAC:

History of Repealed Material:

1 NMAC 3.2.70.2, Records - Information Technology Systems - Electronic Authentication, filed 4/1/97 - Repealed 6/30/15.

COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 13 PUBLIC RECORDS PART 5 NEW MEXICO HISTORICAL RECORDS GRANT PROGRAM GUIDELINES

1.13.5.1 ISSUING AGENCY:
State Commission of Public Records

[1.13.5.1 NMAC - Rp, 1.13.5.1 NMAC, 8/1/2015]

1.13.5.2 SCOPE: Eligible applicants include state, county, municipal and tribal government offices, political subdivisions and non-profit organizations. See 1.13.5.8 NMAC.

[1.13.5.2 NMAC - Rp, 1.13.5.2 NMAC, 8/1/2015]

1.13.5.3 STATUTORY AUTHORITY: Section 14-3-4(F) NMSA 1978 authorizes the commission to adopt regulations to carry out the purposes of the Public Records Act; Section 14-3-14 NMSA 1978 authorizes the commission, upon recommendation of the state records administrator, to appoint advisory groups to more effectively obtain the best professional thinking regarding any particular group or type of records. 36 CFR Part 1206 authorizes the commission to receive national historical publications and records commission grants to make subgrants to eligible organizations within the state in support of historical records activities.

[1.13.5.3 NMAC - Rp, 1.13.5.3 NMAC, 8/1/2015]

1.13.5.4 DURATION:
permanent

[1.13.5.4 NMAC - Rp, 1.13.5.4 NMAC, 8/1/2015]

1.13.5.5 EFFECTIVE DATE:
August 1, 2015 unless a later date is cited at the end of a section.

[1.13.5.5 NMAC - Rp, 1.13.5.5 NMAC, 8/1/2015]

1.13.5.6 OBJECTIVE:
The New Mexico historical records advisory board receives funds from the New Mexico legislature or the national historical publications and records commission to fund its historical records grant programs for improving preservation of and access to New Mexico's historical records. Subject to funding availability, grants may be awarded annually to applicants who demonstrate the ability and commitment to solving their historical records problems.

[1.13.5.6 NMAC - Rp, 1.13.5.6 NMAC, 8/1/2015]

1.13.5.7 DEFINITIONS:

A. "Access" means the availability of archives, records or manuscripts in terms of physical condition, legal permission and intellectual entry.

B. "Accession" means

a term used as both a noun and a verb for the act and procedures involved in a transfer of legal title and the taking of records or papers into the physical custody of an archival agency, records center or manuscript repository and the materials involved in such a transfer.

C. “Administrator” means the state records administrator.

D. “Archives” means the non-current records of an organization or institution preserved because of their continuing value in meeting the needs of the creating organization.

E. “Arrangement of collections” means the process and results of organizing records or manuscripts, particularly by function or activity of their creator.

F. “Collection policy” means a statement adopted by an archival agency, records center or manuscript repository to guide its accessioning and de-accessioning decisions in order to carry out its formal mission.

G. “Commission” refer to Public Records Act, Section 14-3-2(C) NMSA 1978.

H. “Data universal numbering system number” means a unique, nine digit identification number issued by Dun and Bradstreet.

I. “Deaccession” means the act, or the materials involved in the act, of a transfer out of the custody of an archives and is the opposite of accession.

J. “Documentary edition” means a published edition of documents derived directly from original records and often accompanied by editorial commentary and annotations.

K. “Evaluation” means a mechanism by which the effectiveness of the project can be measured by describing the extent to which a project’s goals have been met. Narrative, graphic or statistical methods can be used to assess the product or to analyze the process. Participant or user assessments are also helpful in some cases.

L. “Finding aid” means a descriptive device created by an archives, records center or repository to establish the size, condition, content or arrangement of a collection or record group.

M. “Non-profit organization” means any organization, which by its articles of association and bylaws prohibits acts of private inurement, that is, transferring of the organization’s earnings to persons in their private capacity; nonprofit organizations are required to use their earnings for their program activities and these earnings are

tax-exempt if the organization has met the approval of the internal revenue service as falling within a category such as 501(c) (3).

N. “Original records” means archives or public records as created by a governmental or quasi-governmental body and manuscripts such as letters, diaries, photographs or other first-hand reports.

O. “Political subdivisions” means any county; incorporated city; town or village; drainage, conservancy, irrigation, water and sanitation or other district; mutual domestic association; public water cooperative association; community ditch association; or community land grant organizes and governed pursuant to Chapter 49, Article 1 NMSA 1978.

P. “Preservation” means the provision of adequate facilities for the protection, care and maintenance of archives, records and manuscripts, particularly to promote their future availability.

Q. “Public officer” refer to Governmental Conduct Act, Section 10-16-2(I) NMSA 1978.

R. “Supply inventory” includes expenditures for furniture, fixtures, machinery, or other equipment that cost less than one thousand dollars (\$1,000) per unit.

[1.13.5.7 NMAC - Rp, 1.13.5.7 NMAC, 8/1/2015]

1.13.5.8 ELIGIBILITY:

A. To be **eligible** for an historical records grant, the applicant shall be one of the entities listed below.

(1) A governmental organization including:

(a) state agencies as prescribed in the Public Records Act; except the commission;

(b) county offices;

(c) municipal offices;

(d) political subdivisions; or

(e) tribal government offices.

(2) A non-profit organization registered with the New Mexico secretary of state, verified as such by:

(a) a copy of its tax-exempt or 501(c)(3), or equivalent, status;

(b) a copy of certification of its good standing status with the New Mexico secretary of state; and

(c) evidence that it has made provisions for the transfer of its holdings to a like organization or an appropriate repository for public access upon dissolution.

B. Previous grant recipients shall be in compliance with the stipulations of all previous awards in order to be eligible.

C. To be eligible for an historical records grant, applicants shall not be disbarred, suspended or otherwise excluded from or ineligible for participation in federal assistance programs.

[1.13.5.8 NMAC - Rp, 1.13.5.8 NMAC, 8/1/2015]

1.13.5.9 CONDITIONS FOR RECEIVING A HISTORICAL RECORDS GRANT:

A. The applicant shall:

(1) demonstrate legal custody of, or written permission from the organization that has legal custody of, historically significant original records at the time of the grant application deadline;

(2) provide a copy of its collection policy or a statement from its governing body indicating its commitment to sound practices concerning the historical material included in the project;

(3) demonstrate the ability to carry out the objective of the proposal within the grant period;

(4) describe the records, their importance in documenting New Mexico’s history and the proposed project that affects the records;

(5) include a mechanism for evaluating the impact of the project on its historical records’ environment; and

(6) provide a letter from its governing body indicating support of the project and continuation of the project’s purposes beyond the grant period.

B. Upon approval, the applicant shall become a vendor pursuant to state law.

C. Records treated in the proposed project shall be made available in New Mexico for public research to all qualified users on equal terms unless specific exemption is granted by the commission. Specific records in proposals submitted by tribal governments, for example, may be excluded from this criterion.

D. The applicant shall not charge fees for public access to

the materials in its holdings. However, reasonable fees may be charged for copying material or providing special services or facilities not provided to all researchers.

E. A person qualified by credentials or training shall carry out the objectives of the proposed project.

F. Proposals for digitization projects shall be acceptable only if they take into consideration the issue of migration to newer technologies. Digitization projects shall follow scanning guidelines specified by the commission for creating master and access copies. [1.13.5.9 NMAC - Rp, 1.13.5.9 NMAC, 8/1/2015]

1.13.5.10 TYPES OF PROJECTS FUNDED: Following are examples of projects that could be funded.

A. Preservation projects that mitigate unstable or deteriorating conditions of historical records through the identification, organization and description, conservation treatment or reformatting of the records to another medium. National historical publications and records commission funding shall not be used for the following activities:

(1) to undertake an archival project centered on the papers of an appointed or elected public official who remains in major office, or is politically active, or the majority of whose papers have not yet been accessioned in a repository; and

(2) to undertake arrangement, description or preservation projects involving federal government records that are in the custody of the national archives and records administration, in the custody of some other federal agency or that have been deposited in a non-federal institution without an agreement authorized by the national archives and records administration.

B. Access projects that promote the availability of historical records by developing finding aids, indexing significant collections, creating electronic catalog records, distributing collection guides, providing online access to finding aids, digitizing historical records and placing copies in other repositories that have agreed to accept them.

C. Regional or statewide training programs that focus on developing best practices that can be used to train staff in more than one repository or in a repository experiencing high turnover.

D. Research projects that

provide original scholarly exposition or interpretation of documentary evidence of New Mexico history based on original records or oral history and documentary edition projects that publish original records for general usage. National historical publications and records commission funding shall not be used for the following activities:

(1) to undertake oral history projects unrelated to Native Americans; and

(2) to undertake a documentary editing project to publish the papers of someone who has been deceased for fewer than 10 years.

E. Program development projects that establish or elevate standards of archival or records management practice in the applicant's repository.

F. Promotional programs such as exhibits, conferences, papers and documentaries that promote New Mexico history through the use of historical records.

[1.13.5.10 NMAC - Rp, 1.13.5.11 NMAC, 8/1/2015]

1.13.5.11 ALLOWABLE GRANT FUNDING EXPENSES:

A. Grant funds may be used to:

(1) supplement organizational staff or hire temporary staff, but cannot be used to supplant the organization's staffing budget;

(2) to purchase information technology items costing less than one thousand dollars (\$1,000) per unit;

(3) to purchase supply inventory costing less than one thousand dollars (\$1,000) per unit;

(4) to purchase office supplies costing less than one thousand dollars (\$1,000) per unit; and

(5) to pay for contractual services fees (consultants and vendors).

B. Matching funds may include:

(1) project staff's time, benefits and travel;

(2) project volunteer's time and travel; and

(3) all allowable grant funding expenses as identified in Subsection A of 1.13.5.11 NMAC.

C. Pursuant to the Governmental Conduct Act, current public officers and employees of the state and family members of the public officer or employee are not eligible to serve as paid consultants unless the consulting fee is

under one thousand dollars (\$1,000.00).

Former state officers and employees of the state are not eligible to serve as paid consultants for one year after their resignation or replacement unless the consulting fee is under one thousand dollars (\$1,000.00). The Governmental Conduct Act defines family as an individual's spouse, parents, children or siblings, by consanguinity or affinity. [1.13.5.11 NMAC - Rp, 1.13.5.12 NMAC, 8/1/2015]

1.13.5.12 FUNDING:

Depending on available funds, the maximum award is limited to eight thousand five hundred dollars (\$8,500) per applicant. Applicants shall provide a minimum match valued at twenty-five percent (25%) of the total grant award in either cash or in-kind services or materials as identified in Subsection B of 1.13.5.11 NMAC. The match shall be rendered during the project period as specified in the grant award.

[1.13.5.12 NMAC - Rp, 1.13.5.13 NMAC, 8/1/2015]

1.13.5.13 APPLICATION FOR HISTORICAL RECORDS GRANTS:

A. An applicant shall submit one completed application with original signatures and supporting documents and the number of identical copies as specified on the application. An applicant may submit attachments to support its application.

B. The following information shall be included in the application:

(1) applicant information including legal name, data universal numbering system number, address, contact name, phone number and e-mail address (if available);

(2) signature by an individual legally authorized to obligate the applicant;

(3) project title and amount of both the grant request and the proposed match;

(4) applicant's status as defined in Subsection A of 1.13.5.8 NMAC;

(5) a summary statement of no more than 200 words in length that briefly summarizes the nature and purpose of the project proposed for funding;

(6) a project description narrative limited to four pages in length submitted on the form prescribed by the administrator; the narrative shall explain the significance of the material

to be affected by the project, the scope of work to be performed and the outcome and impact that the completed project would produce;

(7) the budget and budget narrative for the project submitted on the form prescribed by the administrator;

(8) the project work plan for the project submitted on the form prescribed by the administrator; and

(9) required attachments including:

(a) project work plan;

(b) project budget;

(c) statement demonstrating the applicant's legal custody of the affected records, or written permission from the organization that has legal custody;

(d) collection policy or statement from the affected organization's governing body indicating its commitment to sound practices concerning the historical material included in the project;

(e) a letter from the affected organization's governing body indicating support of the project and continuation of the project's purposes beyond the grant period;

(f) resumes of key personnel;

(g) job descriptions of staff to be hired;

(h) contractor and vendor scopes of work and minimum qualifications; and

(i) cost proposals or quotes from each contractor and vendor.

(10) a non-profit organization must also submit:

(a) a copy of its tax-exempt or 501(c)(3), or equivalent, status;

(b) a copy of certification of its good standing status with the New Mexico secretary of state; and

(c) evidence that it has made provisions for the transfer of its holdings to a like organization or an appropriate repository for public access upon dissolution.

C. Applications shall conform to the following formatting requirements on the project description narrative: size 12 point font in times new roman and minimum one inch margins.

D. Completed applications (original and copies) shall be received by the deadline set forth in the

application.

E. Applications that do not comply with these criteria shall be rejected.
[1.13.5.13 NMAC - Rp, 1.13.5.14 NMAC, 8/1/2015]

1.13.5.14 REVIEW

PROCESS: Grant applications shall be subjected to a four-stage process.

A. First, all applications shall be screened for eligibility and compliance with 1.13.5 NMAC.

Organizations that have submitted ineligible and non-compliant applications shall be notified by commission staff.

B. Second, eligible applications shall be reviewed for technical content by commission professional staff. At this level applicants may be advised of areas that need clarification.

C. Third, eligible proposals shall be evaluated by the New Mexico historical records advisory board and ranked according to published evaluation criteria published in 1.13.5.15 NMAC.

D. Fourth, recommendations for funding shall be submitted to the administrator for consideration and final approval.
[1.13.5.14 NMAC - Rp, 1.13.5.16 NMAC, 8/1/2015]

1.13.5.15 EVALUATION

CRITERIA: Grant applications shall be evaluated on the following criteria:

A. significance of the materials;

B. scope of work;

C. outcome and impact;

D. project budget;

E. entities that have never received a historical records grant;

F. entities that have not received a historical records grant for three or more fiscal years prior to the fiscal year in which the grant period will occur; and

G. conditions identified by the national historical publications and records commission for grant recipients as outlined in the commission's federal grant award.
[1.13.5.15 NMAC - N, 8/1/2015]

1.13.5.16 POST-AWARD

REQUIREMENTS: Successful grant applicants shall comply with the following post-award requirements:

A. Register as a vendor pursuant to state law.

B. Execute a grant agreement or grant contract with the

commission.

C. Display the commission, New Mexico historical records advisory board and national historical publications and records commission logos and note financial support on all printed materials and websites promoting the grant project.

D. Where applicable, include an online publishing component to increase the public's online access to descriptive information and digital collections.

E. Submit interim reports by January 31 of the fiscal year for which the grant award is made or as required in the grant agreement or grant contract on the form prescribed by the administrator. Progress reported shall be substantially in line with the project work plan included in the grant agreement or grant contract. Any appreciable deviation from the work plan shall be justified in the progress report.

(1) If work has not been initiated as stipulated in the grant agreement or grant contract, the commission reserves the right to nullify the entire grant award.

(2) If progress reported lags substantially behind that described in the grant agreement or grant contract, the grant administrator shall review the project, consult with the grantee to determine whether timely completion of the project is feasible and make a recommendation to the administrator on continuation of the project. Based on the recommendation, the commission reserves the right to terminate the grant or require an amended scope of work and reduced award.

(3) Failure to submit the interim report by the established deadline may result in suspension of further reimbursements or payments until the report is submitted and accepted. If the report is not submitted within 30 days of the due date of the interim report, no further requests for reimbursements or payments shall be honored until the report is received.

F. Complete the scope of work and performance measures as identified in the grant agreement or grant contract no later than June 15 of the fiscal year for which the grant award is made.

G. Submit final reports and requests for reimbursement within 15 days of project completion or no later than June 30 of the fiscal year for which the grant award is made, whichever is earlier, on the form prescribed by the administrator.

H. Request funds for

reimbursement based on deliverables completed. Reimbursement requests must include original receipts for items purchased and proof of payment for contractual fees.

I. Maintain grant records for at least two years after completion of the project.

J. Complete the project within the grant period specified in the grant award.
[1.13.5.16 NMAC - Rp, 1.13.5.17 NMAC, 8/1/2015]

HISTORY OF 1.13.5 NMAC:

History of Repealed Material:

1.13.5 NMAC, New Mexico Historical Records Grant Program Guidelines, filed 11/15/2000 - Repealed 8/1/2015.

REGULATION AND LICENSING DEPARTMENT ATHLETIC TRAINERS PRACTICE BOARD

TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 3 ATHLETIC TRAINERS PART 11 LICENSURE FOR MILITARY SERVICE MEMBERS, SPOUSES AND VETERANS

16.3.11.1 ISSUING AGENCY:

Regulation and Licensing Department
New Mexico Athletic Trainers Practice
Board, Post Office Box 25101, Santa Fe,
NM 87504.

[16.3.11.1 NMAC - N, 7/23/15]

16.3.11.2 SCOPE: This part

sets forth application procedures to expedite licensure for military service members, spouses and veterans.

[16.3.11.2 NMAC - N, 7/23/15]

16.3.11.3 STATUTORY

AUTHORITY: These rules are promulgated pursuant to and in accordance with the Athletic Trainers Practice Act, Section 61-14D-1 to 61-14D-19 NMSA 1978.

[16.3.11.3 NMAC - N, 7/23/15]

16.3.11.4 DURATION:

Permanent.

[16.3.11.4 NMAC - N, 7/23/15]

16.3.11.5 EFFECTIVE DATE:

July 23, 2015, unless a later date is cited at the end of a section.

[16.3.11.5 NMAC - N, 7/23/15]

16.3.11.6 OBJECTIVE:

The purpose of this part is to expedite licensure for military service members, their spouses and veterans.

[16.3.11.6 NMAC - N, 7/23/15]

16.3.11.7 DEFINITIONS:

A. "Military service member" means a person who is serving in the armed forces of the United States or in an active reserve component of the armed forces of the United States, including the national guard.

B. "Recent veteran" means a person who has received an honorable discharge or separation from military service within the two years immediately preceding the date the person applied for an occupational or professional license pursuant to this section.

[16.3.11.7 NMAC - N, 7/23/15]

16.3.11.8 APPLICATION REQUIREMENTS:

A. Applications for registration shall be completed on a form provided by the board.

B. The applicant shall provide:

(1) a completed application and corresponding fee pursuant to 16.3.11.8 NMAC;

(2) satisfactory evidence that the applicant is currently licensed in another jurisdiction, including a branch of the United States armed forces, and holds a current license in good standing; the applicant further must provide satisfactory evidence that the applicant has met the minimal licensing requirements in that jurisdiction and that they are substantially equivalent to the licensing requirements for New Mexico licensees in counseling; and

(3) proof of honorable discharge (DD214) or military ID card or accepted proof of military spouse status.

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

[16.3.11.8 NMAC - N, 7/23/15]

16.3.11.9 RENEWAL REQUIREMENTS:

A. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance of a license set forth in 16.3.4 NMAC and for the renewal of a license set forth in 16.3.7 NMAC.

B. A license issued pursuant to this section shall be valid for

one year or until the next renewal cycle.

C. The board office mails license renewal notifications to licensees before the license expiration date. Failure to receive the renewal notification shall not relieve the licensee of the responsibility of renewing the license by the expiration date.

D. The renewal application will be available online at the board's website and in paper copy if requested from the board office and must be received at the board office on or before August 31.

E. To renew a license, the licensee must submit the following documentation on or before August 31: a completed license renewal application, proof of current cardio pulmonary resuscitation (CPR) certification, automated electronic defibrillator units (AED) certification, proof of current national athletic trainers association - board of certification (NATA-BOC) certification and the applicable renewal fee at the time of renewal.

F. A license issued pursuant to this section shall not be renewed unless the license holder satisfies the requirements for the issuance specified in 16.3.4 NMAC and for the renewal of a license specified in 16.3.7 NMAC pursuant to Chapter 61, Articles 2 through 30 NMSA 1978.

[16.3.11.9 NMAC - N, 7/23/15]

HISTORY OF 16.3.11 NMAC:

[RESERVED]

End of Adopted Rules Section

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Submittal Deadlines and Publication Dates
Volume XXVI, Issues 1-24
2015

Volume XXVI	Submittal Deadline	Publication Date
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Issue 2	January 16	January 30
Issue 3	February 2	February 13
Issue 4	February 16	February 27
Issue 5	March 2	March 16
Issue 6	March 17	March 31
Issue 7	April 1	April 16
Issue 8	April 17	April 30
Issue 9	May 1	May 14
Issue 10	May 15	May 29
Issue 11	June 1	June 16
Issue 12	June 17	June 30
Issue 13	July 1	July 15
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Issue 18	September 16	September 29
Issue 19	September 30	October 15
Issue 20	October 16	October 29
Issue 21	October 30	November 16
Issue 22	November 17	November 30
Issue 23	December 1	December 15
Issue 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rulemaking, proposed rules, adopted rules, emergency rules, and other material related to administrative law. The Commission of Public Records, Administrative Law Division, publishes the *New Mexico Register* twice a month pursuant to Section 14-4-7.1 NMSA 1978.

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