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# New Mexico Register

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

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# New Mexico Register

Volume XXVII, Issue 24

December 30, 2016

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

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**Notices of Rulemaking and Proposed Rules**

**EDUCATIONAL  
RETIREMENT BOARD**

**AMENDED NOTICE OF  
RULEMAKING AND PUBLIC  
HEARING**

**NOTICE IS HEREBY GIVEN** that the New Mexico Educational Retirement Board of Trustees will hold a rulemaking hearing on February 17, 2017. The hearing will be held during the Board’s regular business meeting at 9:00 a.m. in Mabry Hall of the Jerry Apodaca Education Building of the Public Education Department, 300 Don Gaspar, Santa Fe, NM 87501. The purpose of the rulemaking hearing is to consider adoption of proposed revisions to the following rules: 2.82.1 NMAC and 2.82.8 NMAC. The Board will vote on the proposed rules during the meeting.

A summary of the proposed revisions and copies of the proposed rules may be accessed at the ERB’s website [www.nmerb.org](http://www.nmerb.org) or by contacting Amanda Olsen at [AmandaSOlsen@state.nm.us](mailto:AmandaSOlsen@state.nm.us), 701 Camino de los Marquez, Santa Fe, New Mexico 87505 or (505) 476-6133.

Interested persons may submit their comments on the proposed rules to the Board via email at [rule.change@state.nm.us](mailto:rule.change@state.nm.us) no later than 5 p.m. on January 20, 2017. In the subject line, please indicate the number of each rule(s) for which you are providing comments. Oral comments will also be accepted at the February 17, 2017 Board meeting, subject to time limitations.

Any person with a disability who is in need of auxiliary aid or service to attend or participate in the hearing should contact Debbi Lucero at 505-827-8030 one week prior to the meeting.

**HUMAN SERVICES  
DEPARTMENT  
INCOME SUPPORT DIVISION**

**NOTICE OF PUBLIC HEARING**

The Human Service Department (HSD) will hold a public hearing to allow public comment on the proposed New Mexico Modified Combined Application Project (NMCAP) regulations published June 1, 2009. The hearing will be held on Monday, January 30, from 9:00 a.m. to 10:00 a.m., at the HSD Income Support Division (ISD) conference room, 2009 S. Pacheco Street, Santa Fe, NM. The conference room is located in Room 120 on the lower level of Pollon Plaza.

The New Mexico Human Services Department is amending regulation 8.139.503 NMAC, New Mexico Modified Combined Application Project (NMCAP). NMCAP was to increase access to the nutrition benefits offered by the Supplemental Nutrition Assistance Program (SNAP) among elderly and disabled populations receiving supplemental security income (SSI). This pilot program sunset effective, May 2014.

The Human Services Register Vol. 39 No. 21 outlining the proposed regulations is available on the HSD’s website at: <http://www.hsd.state.nm.us/LookingForInformation/income-support-division-registers.aspx>. Individuals wishing to testify or to request a copy of the proposed regulations should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87504-2348, or by calling 505-827-7254.

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 Assistant General Counsel/American Disabilities Act Coordinator, at 505-827-6201 or through the New Mexico

Relay system, at 711 or toll free at 1-800-659-1779. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals who do not wish to attend the hearing may submit written comments which must be received by 4:30 p.m. on the date of the hearing, Monday, January 30, 2017. Please send comments to:

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

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

**PUBLIC EDUCATION  
DEPARTMENT**

**NOTICE OF PROPOSED  
RULEMAKING**

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786, on January 31, 2017 from 9:00 a.m. to 11:00 a.m. The purpose of the public hearing will be to obtain input on the proposed amendment to 6.29.1.9 and 6.29.1.11 NMAC (PROCEDURAL REQUIREMENTS AND PROGRAM REQUIREMENTS).

Interested individuals may provide comments at the public hearing and/or submit written comments to Jamie Gonzales, Policy Division, via email at [rule.feedback@state.nm.us](mailto:rule.feedback@state.nm.us), fax (505) 827-6681, or directed to Jamie Gonzales, Policy Division, Jerry Apodaca Public Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501. Written comments must be received no later than 5:00 p.m. on the date of the hearing. However, the submission of written

comments as soon as possible is encouraged.

Copies of the proposed rule may be accessed on the Department's website (<http://ped.state.nm.us/>) under the "Public Notices" link, or obtained from Jamie Gonzales (505) 827-7889.

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 Mr. Scott at (505) 827-6641 as soon as possible. The NMPED requires at least ten (10) days advance notice to provide requested special accommodations.

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**PUBLIC EMPLOYEES  
RETIREMENT  
ASSOCIATION**

**NOTICE OF P.E.R.A.  
RULEMAKING**

The Public Employees Retirement Association ("PERA") will consider changes to its rules promulgated under the Public Employees Retirement Act. Changes are proposed for Public Employees Retirement Rules 2.80.200.60, 2.80.200.70 and 2.80.200.80 NMAC - Organization and Operation of the Public Employees Retirement Board to allow outsourcing of Board election services.

Copies of the draft rules are available for inspection in PERA's Office of General Counsel. Hard copies of the draft rules may be purchased for \$3.00. Written comments, inquiries or requests for copies should be directed to PERA's Office of General Counsel, 33 Plaza La Prensa, Santa Fe, New Mexico, 87507, (505) 476-9354 or 1-800-342-3422. Written comments or requests for copies may be submitted electronically to: Anita Valdez at [anita.valdez2@state.nm.us](mailto:anita.valdez2@state.nm.us). To be considered, written comments, arguments, views or relevant data should be submitted by 5:00 p.m. on Friday, February 3, 2017. The PERA

Board will review and consider all written comments addressing the proposed rule changes.

A formal rulemaking hearing will be held on Tuesday, February 14, 2017 at 9:00 a.m. in the Fabian Chavez, Jr. Board Room of the PERA Building, 33 Plaza La Prensa, Santa Fe, New Mexico. Oral comments will be taken at the public hearing. Final action on the rules will occur at a meeting of the PERA Board on Thursday, February 23, 2017.

Individuals with a disability who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing may contact Trish Winter at (505) 476-9305 or toll free at 1-800-342-3422 seven days prior to the hearing or as soon as possible.

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

**Public Rule Hearing and Regular  
Board Meeting**

The New Mexico Board of Optometry will hold a Rule Hearing on Monday, January 30, 2017. Following the Rule Hearing the New Mexico Board of Optometry will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Optometry Rule Hearing will begin at 10:00 a.m. and the Regular Meeting will convene following the rule hearing. The meetings will be held in the New Mexico State Capitol Roundhouse, 490 Old Santa Fe Trail, 3<sup>rd</sup> Floor, room number TBD at a later date, in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider proposed amendments to the following Board Rules and Regulations in: 16.16.4 NMAC Requirements for Licensure by Endorsement and 16.16.15 NMAC Management of Pain with Controlled Substances.

The Board may go into executive session pursuant to 10-15-1.H of the Open Meetings Act to discuss pending complaints and licensure issues. A final agenda for the board meeting will be available at the Board Office at least 72 hours prior to the meeting and can be obtained on the website at [www.rld.state.nm.us](http://www.rld.state.nm.us).

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico, or call (505)476-4622 after December 30, 2016 or from the Board's website [www.rld.state.nm.us/boards](http://www.rld.state.nm.us/boards). In order for the Board members to review the comments in their meeting packets prior to the meeting, persons wishing to make comments regarding the proposed rules must present them to the Board Office in writing no later than January 15, 2017. Persons wishing to present their comments at the hearing will need (10) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4622 at least two weeks prior to the meeting or as soon as possible.

Gabriella Romero, Administrator  
PO Box 25101, Santa Fe, NM 87505

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

**NOTICE TO THE PUBLIC**

**REGULAR BOARD MEETING -  
JANUARY 30<sup>th</sup> & 31<sup>st</sup>, 2017**

The New Mexico Board of Pharmacy will convene on January 30<sup>th</sup> & 31<sup>st</sup>, 2017 at 9:00 a.m. and continue until

finished in the Board of Pharmacy Conference Room located at 5500 San Antonio Dr., NE, Albuquerque, NM 87109 for the purpose of conducting a regular board meeting.

You may view and obtain copies of the agenda (tentative) starting January 25, 2017 through the board's website: [www.rld.state.nm.us/boards/pharmacy.aspx](http://www.rld.state.nm.us/boards/pharmacy.aspx).

Individuals petitioning the board regarding requests/waivers and/or interested persons wishing to comment on proposed language regarding rule hearings must submit documentation for presentation; via fax (505) 222-9845, mail or email to the Executive Director, Ben Kesner, [ben.kesner@state.nm.us](mailto:ben.kesner@state.nm.us) no later than Monday, January 25, 2017, if in attendance must provide 12 copies of the documentation for distribution to board members. (*Board staff is not required to make copies.*)

The Board will address:

Rule Hearings:

16.19.2 NMAC - EXAMINATIONS  
16.19.6 NMAC - PHARMACIES  
16.19.20 NMAC - CONTROLLED  
SUBSTANCES

Disciplinary Hearings:

CASE NO. 2015-055  
CHRISTOPHER TRUJILLO -  
RP7033

\*Executive Director's  
Report:

Any special needs accommodations for board meetings or hearings should contact Debra Wilhite, Administrative Secretary, at (505) 222-9835 or e-mail [debra.wilhite@state.nm.us](mailto:debra.wilhite@state.nm.us) as soon as possible.

\*The board may go into Executive Session to discuss these items and any other items pursuant to Section 10-15-1H(1), Section 10-15-1H(2), Section 10-15-1H(3) or Section 10-15-1H(7)

of the Open Meeting Act. Agenda items may be executed at any time during the meeting to accommodate hearings.

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## End Of Notices of Rulemaking and Proposed Rules

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## Adopted Rules

### Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico Register as provided 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.

**CULTURAL AFFAIRS,  
DEPARTMENT OF  
STATE LIBRARY**

On 10/3/2016, the secretary of the Department of Cultural Affairs and the State Librarian repealed 4.5.7 NMAC, Requirements Governing Conduct Of and Use by Patrons at the New Mexico State Library, and replace it with 4.5.7 NMAC, Requirements Governing Conduct of and Use by Patrons at the New Mexico State Library, effective January 1, 2017.

**CULTURAL AFFAIRS,  
DEPARTMENT OF  
STATE LIBRARY**

**TITLE 4 CULTURAL  
RESOURCES  
CHAPTER 5 STATE LIBRARY  
PART 7 REQUIREMENTS  
GOVERNING CONDUCT OF  
AND USE BY PATRONS AT THE  
NEW MEXICO STATE LIBRARY**

**4.5.7.1 ISSUING**  
**AGENCY:** Department of Cultural Affairs - New Mexico State Library Division.  
[4.5.7.1 NMAC - Rp, 4.5.7.1 NMAC, 1/1/2017]

**4.5.7.2 SCOPE:**  
Individuals using the resources and facilities of the New Mexico state library.  
[4.5.7.2 NMAC - Rp, 4.5.7.2 NMAC, 1/1/2017]

**4.5.7.3 STATUTORY**  
**AUTHORITY:** Section 18-2-4 NMSA 1978.  
[4.5.7.3 NMAC - Rp, 4.5.7.3 NMAC, 1/1/2017]

**4.5.7.4 DURATION:**  
Permanent.  
[4.5.7.4 NMAC - Rp, 4.5.7.4 NMAC, 1/1/2017]

**4.5.7.5 EFFECTIVE**  
**DATE:** January 1, 2017, unless a later date is cited at the end of a section.  
[4.5.7.5 NMAC - Rp, 4.5.7.5 NMAC, 1/1/2017]

**4.5.7.6 OBJECTIVE:**  
The objective of this rule is to establish requirements to maintain an environment that aids in the acquisition of knowledge through reading, writing, and quiet contemplation by the individuals using the resources and facilities of the New Mexico state library.  
[4.5.7.6 NMAC - Rp, 4.5.7.6 NMAC, 1/1/2017]

**4.5.7.7 DEFINITIONS:**

**A.** "Department" means the department of cultural affairs.

**B.** "Responsible caregiver" means a person over the age of 13 whom a parent or guardian designates as a caregiver for their child in the state library.

**C.** "State library" means the areas of the Gary Carruthers building located at 1209 Camino Carlos Rey, Santa Fe, NM 87507-5166, to which library patrons have access and for which the state library division of the department of cultural affairs has an agreement with the property control division of the general services department, which includes the administration area, the main library, the southwest room, and the library for the blind and physically handicapped, but does not include the building lobby and other areas outside the library facility.  
[4.5.7.7 NMAC - Rp, 4.5.7.7 NMAC,

1/1/2017]

**4.5.7.8 PROHIBITED CONDUCT:** This rule adopts by reference Conduct On and Use of State Property, 1.5.24 NMAC, for members of the public who are not department employees. In the event of a conflict, the provisions of this rule shall control. The following conduct is prohibited in the state library:

- A.** Harassing or threatening other persons, including but not limited to physical, sexual or verbal behavior that interferes with the others' quiet enjoyment of the state library's resources, and including attempting physical contact, staring, or stalking.
- B.** Bringing animals other than service animals.
- C.** Willfully defacing, damaging, stealing, or destroying library property or the property of others.
- D.** Bringing food or drink, other than water in enclosed receptacles.
- E.** Leaving children under the age of 10 years unattended and unsupervised. A parent, guardian, or responsible caregiver shall remain continually with a child under the age of 10 years. A parent or responsible caregiver shall at all times accompany a minor of any age with mental, physical, or emotional problems or behavioral or other issues who requires supervision in order to be safe or not disruptive.
- F.** Using sports equipment i.e., bikes, roller skates, roller blades or skateboards. These items must be placed outside or stored in lockers. If oversized items cannot be locked in a locker, they must be carried at all times.
- G.** Sleeping that impedes others from using library

spaces or resources.

**H.** Smoking.

**I.** Using cell phones and other electronic devices that are audible to others. Cell phones must be placed on silent mode. Patrons shall only make and answer calls in the building lobby areas.

**J.** Violating any civil or criminal laws or engaging in any illegal activity, including copying or downloading of electronic music, video, illustrations or text from library equipment in violation of the copyright act.

**K.** Hygiene that constitutes a nuisance to others.

**L.** Selling, soliciting, or panhandling (approaching other people or employees with items or services for sale or pleas for donations).

**M.** Unreasonably impeding the movement of others (blocking entrances, exits or aisles) or creating a safety or security hazard, such as inappropriate placement of personal belongings, leaving personal belongings unattended, or bringing items that can be used as weapons.

**N.** Creating a mess or unsanitary conditions that may constitute a health or safety hazard in the library.

**O.** Distributing or posting printed materials or literature without prior approval from library staff in accordance with state library policy.

**P.** Not wearing clothing, i.e., footwear, pants/shorts/skirt and shirts at all times.

**Q.** Entering or remaining in the state library before or after operating hours without the permission of an employee.

**R.** Viewing of or listening to pornography or sexually explicit images or sounds.

**S.** Conducting commercial business.

**T.** Downloading or installation of computer software or viruses on library equipment.

**U.** Behaving in any other manner that can reasonably be expected to disturb others (or interfere with other persons' ability to use

the state library), including but not limited to talking loudly, screaming, making excessive noise, making gestures, singing, lying on the floor, or dancing.

[4.5.7.8 NMAC - Rp, 4.5.7.8 NMAC, 1/1/2017]

**4.5.7.9 VIOLATIONS:**

Library employees may require any patron not abiding by this rule to leave the premises. If necessary, the library employee may contact the police or other law enforcement officer to remove a person who does not adhere to a library employee's directions to leave the building. The state librarian or designated staff person may deny access to any patron who violates this rule for periods of time proportionate to the severity and frequency of the violation. Failure to comply with this rule or a notice restricting access to the library may result in more lengthy restrictions or termination of library privileges, or issuance of a restraining order or a no trespass order, as provided in Section 30-14-1 NMSA 1978. A violation of law may also result in arrest and prosecution. Any patron who is denied or restricted access to the library may request in writing, within ten days of denial or restriction of access, that the state librarian reconsider the decision. The state librarian shall respond in writing to the request within 30 days. The state librarian's decision is the department's final action on the matter.

[4.5.7.9 NMAC - Rp, 4.5.7.11 NMAC, 1/1/2017]

**HISTORY OF 4.5.7 NMAC:**  
**[RESERVED]**

**HEALTH, DEPARTMENT OF**

The New Mexico Department of Health approved, at its 11/09/2016 hearing to repeal its rule 7 NMAC 4.6, Requirements Governing the Harm Reduction/Syringe Exchange Program (filed 09/17/1999) and replace it with 7.4.6 NMAC, Requirements Governing the Harm

Reduction/Syringe Exchange Program, effective 12/30/2016.

**HEALTH, DEPARTMENT OF**

**TITLE 7 HEALTH  
CHAPTER 4 DISEASE  
CONTROL  
PART 6 REQUIREMENTS  
GOVERNING THE HARM  
REDUCTION/SYRINGE  
EXCHANGE PROGRAM**

**7.4.6.1 ISSUING**

**AGENCY:** Department of Health, Public Health Division, Bureau of Infectious Diseases, 1190 St. Francis Drive, P.O. Box 26110, Santa Fe, New Mexico 87502-6110.

[7.4.6.1 NMAC - Rp, 7.4.6.1 NMAC, 12/30/2016]

**7.4.6.2 SCOPE:** These regulations govern the operation of harm reduction programs for the purpose of sterile hypodermic syringe and needle exchange, education to participants, and referral to further substance treatment pursuant to the Harm Reduction Act (Section 24-2C-1 et seq. NMSA 1978).

[7.4.6.2 NMAC - Rp, 7.4.6.2 NMAC, 12/30/2016]

**7.4.6.3 STATUTORY**

**AUTHORITY:** The statutory authority for adopting these rules is found in Subsection E of Section 9-7-6 NMSA 1978 and the New Mexico Harm Reduction Act (Section 24-2C-1 et seq. NMSA 1978), the Public Health Act (Section 24-1-3 NMSA 1978) and the Controlled Substances Act (Section 30-31-25.1A NMSA 1978).

[7.4.6.3 NMAC - Rp, 7.4.6.3 NMAC, 12/30/2016]

**7.4.6.4 DURATION:**

Permanent.

[7.4.6.4 NMAC - Rp, 7.4.6.4 NMAC, 12/30/2016]

**7.4.6.5 EFFECTIVE**

**DATE:** December 30, 2016, unless a later date is cited at the end of a

section.

[7.4.6.5 NMAC - Rp, 7.4.6.5 NMAC, 12/30/2016]

**7.4.6.6 OBJECTIVE:**

Regulations are required by the Harm Reduction Act to establish and regulate harm reduction programs including syringe exchange programs as a component to reduce the transmission of blood borne viral infections among individuals injecting substances, to offer referrals to substance use treatment, and offer participants in department of health authorized syringe exchange programs individual counseling and education to decrease the risk of transmission of blood borne diseases.

[7.4.6.6 NMAC - Rp, 7.4.6.6 NMAC, 12/30/2016]

**7.4.6.7 DEFINITIONS:**

as used in these regulations:

**A. "Authorized Harm Reduction Provider (AHRP)"**

means a public health office, community agency, service provider, individual, or other location which has applied and been accepted by the New Mexico department of health to provide harm reduction activities in accordance with the requirements of the Harm Reduction Act, these regulations and department of health protocols and guidelines.

**B. "Biohazard bag"** means the red plastic bags marked for biohazard waste containment for materials which pose no risk of skin puncture.

**C. "Blood borne pathogens"** means the hepatitis B virus (HBV), hepatitis C virus (HCV), the human immunodeficiency virus (HIV) and any other blood borne disease

**D. "Client"** means an individual who is enrolled with a department of health AHRP.

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

**F. "Harm Reduction Act"** means Section 24-2C-1 et seq. NMSA 1978.

**G. "Harm reduction activities"** means, but is not limited

to: distribution of new syringes and the collection of used syringes; disposal methods for used syringes and other potential biohazard material; education regarding substance use, needle sharing behaviors, injection techniques, and other health related topics which can reduce the transmission of blood borne pathogens and other health complications; overdose education and prevention, including the distribution of naloxone for the purpose of overdose prevention; and, provision of referrals and support to access substance use treatment.

**H. "Harm reduction program"** means the team of staff members within the department public health division who have the primary responsibility to regulate and implement the provisions of the Harm Reduction Act, these regulations, and related department protocols and guidelines.

**I. "Harm reduction session"** means when harm reduction activities are conducted or facilitated. This includes activities conducted in a fixed building location or through mobile methods; including motor vehicles, bicycles, walking, or other modes of transportation.

**J. "Harm reduction specialist"** means an employee or volunteer of an AHRP who has completed the department approved harm reduction certification curriculum.

**K. "Individuals injecting substances"** means people who inject substances into their body with syringes, or who have previously injected substances into their body with syringes.

**L. "Needle stick accident"** means an event in which a staff member, volunteer or client is inadvertently or unintentionally stuck with a syringe.

**M. "SHARPS"** also known as a biohazard waste container, means a container certified by the United States department of labor occupational safety and health administration for the disposal of used syringes, or other potentially hazardous material.

**N. "SHARPS card"** means a card issued to clients by the department of health or AHRPs which verify the client is enrolled in the syringe service program.

**O. "SHARPS ID code"** means a unique alpha-numeric code assigned to a client through the process determined by the harm reduction program.

**P. "Staff"** means employees or volunteers of an AHRP who engage in providing harm reduction activities.

**Q. "Syringe"** means a hypodermic syringe or needle, unless otherwise specified, and may be of any size or gauge.

**R. "Works"** means items utilized by clients in the process of preparing substances for injection or smoking, as distributed by an AHRP and may include: alcohol wipe pads, antibiotic ointment, ascorbic acid, cottons, gauze pads, medical gloves, and any other items as determined by the harm reduction program to help reduce the transmission of blood borne pathogens.

[7.4.6.7 NMAC - Rp, 7.4.6.7 NMAC, 12/30/2016]

**7.4.6.8 GENERAL PROVISIONS GOVERNING THE AHRP APPLICATION APPROVAL AND REVOCATION PROCESSES:**

**A.** Any entity seeking to become an AHRP must submit a written application to offer a comprehensive program of harm reduction activities to the harm reduction program. The application must include, at a minimum:

- (1) the name of the entity;
- (2) the primary contact information, including: name, telephone number and email address;
- (3) the mailing address of the entity;
- (4) definition of the geographic area to be served by the entity;
- (5) a statement confirming that if approved, the entity will participate in training and

evaluation activities as required by the harm reduction program;

(6) relevant experience in providing disease prevention services, health care services, social services or substance use treatment services to individuals injecting substances; and

(7) any other information required by the harm reduction program.

**B.** The harm reduction program shall review applications to determine whether they meet the statutory and regulatory requirements. Upon approval of the application, the entity will be authorized by the harm reduction program as an AHRP. This includes referring and facilitating access to further substance use treatment for clients when possible.

**C.** AHRPs must comply with these regulations, including safety requirements, client enrollment procedures, and confidentiality of client information. Failure to do so is grounds for revocation of the authorization to conduct harm reduction activities.

(1) A notice of noncompliance will be provided in writing by the harm reduction program to the AHRP of the failure to comply with requirements. This written notice must include the specific deficiencies.

(2) Within 10 calendar days of the notice of noncompliance, the AHRP will develop and submit to the harm reduction program a written corrective action plan to address the deficiencies. The corrective action plan shall include:

(a) steps required to correct the deficiencies; and

(b) a deadline of no more than 90 calendar days for completion.

(3) Assurance of compliance to correct the deficiencies will be determined by the harm reduction program conducting a site inspection at the end of the corrective action plan. The results of the inspection will be provided to the AHRP in writing within 10 calendar

days of the site inspection.

(a) If the AHRP has corrected the deficiencies within the time frame outlined by the corrective action plan the notice of noncompliance shall be withdrawn; or

(b) if the AHRP has not been able to correct the deficiencies within the timeframe provided in the corrective action plan, their authorization to conduct harm reduction activities will be revoked, with an effective date of 10 calendar days after the written results of the site inspection are provided to the AHRP.

(4) The AHRP may request an extension of the corrective action plan of no more than 60 days. This request for an extension must be submitted to the harm reduction program in writing within five calendar days of receiving the written results from the site inspection.

(5) At the end of the extension, an additional site inspection will be conducted to assure compliance. The results will be provided to the AHRP in writing within 10 calendar days of the site inspection.

(a) If the AHRP has corrected the deficiencies within the time frame outlined by the corrective action plan the notice of noncompliance shall be withdrawn; or

(b) If the AHRP has not been able to correct the deficiencies within the timeframe provided in the corrective action plan, its authorization to conduct harm reduction activities will be revoked, with an effective date of 10 calendar days after the written results of the site inspection are provided to the AHRP.

(6) The AHRP may submit a written appeal to the public health division director of a revocation of its authorization to conduct harm reduction activities. This appeal must be submitted within 10 calendar days of the notice of revocation.

[7.4.6.8 NMAC - Rp, 7.4.6.8 NMAC,

12/30/2016]

**7.4.6.9 AUTHORIZED HARM REDUCTION PROVIDER REQUIREMENTS:**

**A.** The AHRP must maintain a regular and predictable schedule for services in order to promote participation by clients. The AHRP should seek the input of clients and other AHRPs in the geographic area prior to determining the schedule of harm reduction sessions and locations. The schedule must be approved by the harm reduction program prior to implementation. The AHRP must notify the harm reduction program of any modifications to the schedule 30 days in advance of projected implementation. The new schedule shall not be implemented before harm reduction program approval has been received.

**B.** The AHRP may cancel a harm reduction session in the event of severe weather, threats or acts of violence, or other unforeseen emergencies which may create an unsafe environment.

**C.** The AHRP must provide information to clients about the scheduled hours, dates and locations for harm reduction sessions.

**D.** The AHRP must make available educational material to clients on the transmission and prevention of blood borne pathogens and substance use treatment options.

**E.** The AHRP shall conduct harm reduction sessions in a manner which promotes safety and does not promote loitering, unruly behavior, unlawful activities, or detracts from the safety and serenity of the neighborhood. The AHRP must notify the harm reduction program within 72 hours of any concerns or complaints received by the AHRP regarding harm reduction activities.

**F.** The AHRP must have at least two staff present, or within voice range, at all times during harm reduction sessions. Staff members conducting syringe exchange must be 18 years of age or older. Staff members may not be impaired during harm reduction sessions.

**G.** All staff must be vaccinated or immune to the hepatitis B virus unless they have a specific contraindication for receiving the hepatitis B vaccine. It is the responsibility of the AHRP to verify all staff have:

- (1) received the appropriate vaccination for hepatitis B; or
- (2) are immune to the hepatitis B virus; or
- (3) have a contraindication for receiving the hepatitis B vaccine and have signed an acknowledgement of this and release the AHRP, the harm reduction program, and department from liability with regard to the hepatitis B virus.

**H.** Staff should never directly handle used syringes, SHAPRS containers, or other biohazard materials brought by clients or community members. The individual bringing these items should deposit them directly into the appropriate container or location as directed by the staff.

**I.** Staff shall follow these regulations and the United States department of labor occupational safety and health administration standards with regard to the proper handling and legal disposal of SHARPS and other biohazard material.

**J.** AHRPs must record and report provided harm reduction activities utilizing:

- (1) daily log forms recording exchanges approved by the harm reduction program;
- (2) enrollment surveys approved by the harm reduction program; and
- (3) re-enrollment surveys approved by the harm reduction program.

**K.** The AHRP must develop and maintain an accidental needle stick protocol. If a person experiences a needle stick accident, the AHRP accidental needle stick protocol should be followed.

**L.** The AHRP is required to have a telephone, preferably with video capability,

when conducting all harm reduction activities.

**M.** The AHRP must report all unexpected harm reduction session cancellations, needle stick accidents, violent acts, incidents involving law enforcement agents, and arrests of clients or staff during a harm reduction session as soon as possible to the harm reduction program.

**N.** AHRPs must demonstrate their response to make reasonable efforts to resolve concerns raised by residents, community groups, community business people, and law enforcement agencies in the neighborhoods where services are offered.

**O.** AHRPs must maintain a copy of their authorization to conduct harm reduction activities on location while conducting harm reduction activities

**P.** AHRPs must cooperate with the department in data collection, site visits and inspections, quality assurance, and other efforts to evaluate harm reduction activities.

(1) The AHRP must keep all daily log forms, enrollment, and re-enrollment records for three years in a secure location with appropriate safeguards against theft or tampering.

(2) All AHRPs must provide the harm reduction program with the daily log forms, client enrollment, and re-enrollment surveys.

**Q.** AHRPs are encouraged to coordinate their efforts with other AHRPs to avoid duplication.  
[7.4.6.9 NMAC - N, 12/30/2016]

**7.4.6.10 CLIENT ELIGIBILITY AND ENROLLMENT:**

**A.** Any individual in New Mexico 18 years of age or older is eligible to be enrolled with an AHRP and may carry a SHARPS card to demonstrate enrollment.

**B.** Enrollment and re-enrollment of clients in an AHRP.

(1) Each new client shall be interviewed by staff

in order to complete an enrollment survey approved by the harm reduction program. All information provided to the AHRP and the harm reduction program by clients remains confidential pursuant to state and federal law.

(2) Once clients complete the initial enrollment at any AHRP they can then participate with any AHRP in the state of New Mexico. Clients do not need to re-enroll at each AHRP where they seek services.

(3) Once the enrollment survey is conducted, clients will be issued a SHARPS card.

(4) The SHARPS card shall not bear the client's name. It shall have a unique identifying SHARPS ID code assigned to each client upon enrollment. The SHARPS ID code will utilize a unique code as determined by the harm reduction program.

(5) The staff will enter an expiration date of one calendar year following the date of enrollment on the SHARPS card.

(6) Clients must re-enroll annually. At the time of re-enrollment, clients will be asked to complete a re-enrollment survey approved by the harm reduction program.

(7) Clients must be issued a new SHARPS card at the time of re-enrollment with an expiration date of one calendar year following the date of re-enrollment.

(8) At the time of enrollment and re-enrollment clients must be instructed the SHARPS card is only for the use of the person to whom the card was issued.

(9) Clients shall be informed that syringe exchange program participation will not prohibit their arrest or prosecution for the possession of residue in syringes or works, nor will it prohibit their arrest or prosecution at times other than when they are engaged in a harm reduction activity.

(10) Clients shall be offered 30 syringes plus

the number of syringes that are brought for exchange at the time they complete the enrollment or re-enrollment survey. Subsequent interactions are intended to be an exchange which trades used syringes for sterile syringes. Exceptions in the quantity of syringes exchanged may be made by staff for reasons such as: maintaining integrity of packaging; when a client states syringes have been lost, stolen, or confiscated; limited accessibility to syringe exchange programs; utilizations of syringe collection boxes; or recent release from incarceration or drug treatment facilities.

(11) Clients shall be offered SHARPS and works, if available.

[7.4.6.10 NMAC - Rp, 7.4.6.9 NMAC, 12/30/2016]

**7.4.6.11 SYRINGE EXCHANGE PROGRAM CLIENT REQUIREMENTS:**

A. Clients must provide their SHARPS ID code to staff in order to obtain new syringes.

B. Follow the department and AHRP guidelines, as informed by AHRP staff, with regard to handling and disposing of their personal SHARPS and biohazard material.

C. Client must not carry weapons or substances on them during a harm reduction session.

D. Refrain from threatening behavior and acts of violence at a harm reduction session. Failure to do so may result in suspension from the program.

[7.4.6.11 NMAC - Rp, 7.4.6.11 NMAC, 12/30/2016]

**HISTORY OF 7.4.6 NMAC:**

**History of Repealed Material:** 7 NMAC 4.6 NMAC, Requirements Governing the Harm Reduction/Syringe Exchange Program, filed 09/17/1999 - Repealed effective 12/30/2016.

**PUBLIC REGULATION COMMISSION**

The Public Regulation Commission approved, at its 10/19/2016 hearing, to repeal its rule 17.11.10 NMAC, State Rural Universal Service Fund (filed 1/19/2016) and replace it with 17.11.10 NMAC, State Rural Universal Service Fund, effective 1/1/2017.

**PUBLIC REGULATION COMMISSION**

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES CHAPTER 11 TELECOMMUNICATIONS PART 10 STATE RURAL UNIVERSAL SERVICE FUND**

**17.11.10.1 ISSUING AGENCY:** New Mexico Public Regulation Commission. [17.11.10.1 NMAC - Rp, 17.11.10.1 NMAC, 1/1/2017]

**17.11.10.2 SCOPE:** This rule applies to all entities that provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico. [17.11.10.2 NMAC - Rp, 17.11.10.2 NMAC, 1/1/2017]

**17.11.10.3 STATUTORY AUTHORITY:** Sections 8-8-4 and 63-9H-6, NMSA 1978. [17.11.10.3 NMAC - Rp, 17.11.10.3 NMAC, 1/1/2017]

**17.11.10.4 DURATION:** Permanent. [17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, 1/1/2017]

**17.11.10.5 EFFECTIVE DATE:** January 1, 2017, unless a later date is cited at the end of a section. [17.11.10.5 NMAC - Rp, 17.11.10.5 NMAC, 1/1/2017]

**17.11.10.6 OBJECTIVE:**

The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund to maintain and support at affordable rates those public telecommunications services and comparable retail alternative services provided by telecommunications carriers that have been designated as eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission.

[17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, 1/1/2017]

**17.11.10.7 DEFINITIONS:** In addition to the definitions contained in Section 63-9H-3, NMSA 1978, as used in this rule:

**A. "Access line"** means the connection of the end-user customer to the public switched network, and is not limited to wireline or any other technology.

**B. "Administrator"** means the person designated by the commission to administer the fund.

**C. "Basic local exchange rate"** means an incumbent local exchange carrier's tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service; for the purposes of this rule, the "residential" and "business" basic local exchange rates shall include any commission-mandated subscriber line charges or extended area service charges.

**D. "Carrier"** means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

**E. "Commercial mobile radio service (CMRS)"** means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit.

**F. "Commission"** means the New Mexico public regulation commission.

**G. "Contributing company"** means any carrier that

provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

**H. “Eligible telecommunications carrier (ETC)”** means an entity with New Mexico operations that provides retail telecommunications services that has been designated by the commission as eligible to receive disbursements from the fund or from the federal universal service fund.

**I. “Exempt customer”** means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico.

**J. “FCC”** means the federal communications commission.

**K. “Form 481”** means the FCC’s Form 481, 54.313/54.422 Data Collection Form, which is an annual report containing a carrier’s financial and operational data used by the FCC to validate the support, if any, that a recipient company is eligible to receive from the high-cost support mechanism and the lifeline and link up support mechanism; carriers that receive federal high-cost support must complete the 54.313 portion of Form 481, and carriers that receive lifeline and link up must complete the 54.422 portion of the form.

**L. “Fund” or “State Rural Universal Service Fund (SRUSF)”** means the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.

**M. “Imputed benchmark revenue”** means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier’s basic local exchange residential and business rates as

of July 1, 2014, multiplied by the number of basic local exchange residential and business lines served by the carrier as of December 31 of the year that precedes the year during which the revenue requirement is being determined pursuant to Subparagraph E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero.

**N. “Interexchange carrier (IXC)”** means an entity that provides intrastate toll services in New Mexico.

**O. “Intrastate retail telecommunications revenue”** means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico.

**P. “Intrastate retail telecommunications services”** means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller identification (ID); listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated

by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services.

**Q. “Intrastate switched access charge”** means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission.

**R. “Local exchange carrier (LEC)”** means an entity that provides local exchange service in New Mexico.

**S. “New Mexico operations”** means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico.

**T. “New Mexico telephone number”** means a North American numbering plan (NANP) number that provides the ability to receive calls from the public switched telephone network; and is within an area code designated to New Mexico or is a non-geographic numbering plan area (NPA) (e.g. 900) number associated with a New Mexico physical address.

**U. “Rural area”** means any unincorporated area or incorporated place of 15,000 inhabitants or less within an ETC’s authorized service area.

**V. “Service area”** means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).

**W. “Area unserved by broadband”** means a service area where at least 90 percent of the households lack access to facilities-based broadband service, either fixed or mobile, at the minimum broadband transmission speeds of 4.0 mbps download/1.0 mbps upload. An unserved area may include individual census block groups or tracts that on their own would not be considered unserved. A household has access to broadband service of the household

can readily subscribe to that service upon request.

**X. “Area underserved by broadband”** means service area where at least 50 percent of households lack access to facilities-based broadband service, either fixed or mobile, at the minimum broadband transmission speeds of 4.0 mbps download/1.0 mbps upload. An underserved area may include individual census block groups or tracts that on their own would not be considered underserved. A household has access to broadband service if the household can readily subscribe to that service upon request.

[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, 1/1/2017]

**17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:**

The commission may, upon motion of a carrier or the administrator, or upon the commission’s own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier’s tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, 1/1/2017]

**17.11.10.9 AFFORDABILITY BENCHMARK RATES:**

**A.** Effective July 1, 2015, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

(1) the residential benchmark rate shall be equal to the rate required by the federal communications commission (FCC) to maintain federal high cost support, as such rate may change from time to time;

(2) the business benchmark rate shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier on July 1, 2014, plus the amounts required to increase the carrier’s residential basic

local exchange rate on or after July 1, 2015 to match the new residential benchmark rate set forth above, up to a limit of \$35.96;

(3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;

(4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after 10 days’ notice to the carrier’s customers and the commission;

**B.** The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion.

[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, 1/1/2017]

**17.11.10.10 SELECTION OF ADMINISTRATOR:**

The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

**A.** Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

(1) is able to

be neutral and impartial;

(2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;

(3) is an affiliate of any contributing company;

(4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and

(5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

**B.** Termination of administrator’s contract: the commission may terminate the administrator’s contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.

[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, 1/1/2017]

**17.11.10.11 EXPENDITURE AUTHORIZATION:**

The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.

[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, 1/1/2017]

**17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR:**

The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

**A.** Fairly, consistently, and efficiently administer fund



collections and disbursements in accordance with commission rules and subject to commission oversight.

**B.** Establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions.

**C.** Ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes.

**D.** Establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule.

**E.** Report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require.

**F.** Prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time.

**G.** Propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies.

**H.** Create and maintain the databases necessary to administer the program and account for the funds.

**I.** Develop appropriate forms for use in collecting information from contributing companies and ETCs.

**J.** Pay administrative expenses out of the fund in accordance with the budget approved by the commission.

**K.** Petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law.

**L.** Conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 1/1/2017]

**17.11.10.13 DISPUTE**

**RESOLUTION:** The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

**A. Mediation:**

**(1)** if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;

**(2)** the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and

unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;

**(3)** the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;

**(4)** the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;

**(5)** if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

**(6)** nothing shall preclude the commission from using different mediation procedures.

**B. Arbitration:**

**(1)** a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

**(2)** the

commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within 10 days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within 10 days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any

employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

**C. Arbitration**

**Procedures:**

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within 60 days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least 10 days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record

will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp, 17.11.10.13 NMAC, 1/1/2017]

**17.11.10.14 VARIANCES AND WAIVERS:** Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

**A. General requirements:**

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

**B. Contents of the petition.** A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp, 17.11.10.14 NMAC, 1/1/2017]

**17.11.10.15 GENERAL REPORTING REQUIREMENTS:**

**A. Reports require declaration:** all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

**B. Time for reporting:** where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

**C. Reporting forms:** contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

**D. Electronic filing:** the administrator shall accept electronic reporting when practicable.

**E. Confidentiality:** the commission shall have access to all information reported to the administrator. Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in

this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

**F. The commission** may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp, 17.11.10.15 NMAC, 1/1/2017]

**17.11.10.16 REVENUE REPORTS:** Each ETC and contributing company shall submit on or before May 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications revenues for the prior calendar year.

[17.11.10.16 NMAC - Rp, 17.11.10.16 NMAC, 1/1/2017]

**17.11.10.17 OTHER REPORTS:** ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, on or before May 1 of each year, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

**A. Contributing companies,** including ETCs, shall report the number and type of New Mexico access lines and New Mexico telephone numbers subscribed to in total and within rural areas and the number of such access lines and telephone numbers that are exempt from paying the SRUSF surcharge in

total and within rural areas.

**B.** ETCs that are local exchange carriers shall report their number of intrastate switched access minutes.

**C.** Contributing companies shall report the cost of collecting universal service fund (USF) surcharges, fulfilling reporting requirements, and other administrative costs of complying with this rule.

**D.** ETCs shall report:  
**(1)** all revenues, compensation, payments, or subsidies received from all sources, including, but not limited to end-user customers, the state, and the federal government;

**(2)** all dividends or equivalents paid to shareholders, cooperative members, or others holding an ownership interest in the ETC; and

**(3)** compensation, including value of benefits, paid to the five highest-compensated employees of the carrier.

**E.** Concurrently with the annual federal ETC reporting deadline, ETCs (other than those receiving only support pursuant to 17.11.11 NMAC) shall file with the commission a report, in a form approved by commission staff, that includes information supplied by Form 481 plus New Mexico-specific Form 481 information, modified to demonstrate that the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. The report shall also include maintenance and build-out plans showing how the payments were used for the purpose stated in Subsection A of 17.11.10.27 NMAC and how they were used in conjunction with federal high cost support. If any ETC required to file information with the commission under Subsection E of 17.11.10.17 NMAC fails to comply on or before the annual federal ETC reporting deadline, the administrator shall withhold any disbursements otherwise due to the non-compliant ETC until the ETC has complied.

[17.11.10.17 NMAC - Rp, 17.11.10.17 NMAC, 1/1/2017]

**17.11.10.18 CONTACT**

**PERSONS:** All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp, 17.11.10.18 NMAC, 1/1/2017]

**17.11.10.19 ANNUAL DETERMINATION OF FUND:**

**A.** The administrator shall determine the amount of the fund annually, subject to commission approval, on or before October 1 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.

**B.** In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund size greater than that which the commission has previously established, the commission may order an adjustment to the size of the fund.

**C.** The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance.

**D.** Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

**E.** Except where the commission has established an alternative or additional amount pursuant to 17.11.10.25 NMAC, the revenue requirement for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 2014 SRUSF revenue requirement, reduced by the carrier's imputed benchmark revenue. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed

benchmark revenue.

**F.** The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 1/1/2017]

**17.11.10.20 SRUSF SURCHARGE CAP AND DETERMINATION OF RATE AND CONTRIBUTION:**

**A.** Effective as of January 1, 2017 the commission shall establish a SRUSF surcharge cap by order. The administrator shall recommend the amount of the SRUSF surcharge rate annually, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies and any other pertinent and reliable information available to the administrator or the commission, and applying the cap.

**B.** The rate recommended by the administrator shall go into effect unless modified or disapproved by the commission.

**C.** The surcharge rate shall be equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail telecommunications revenue for all contributing carriers in New Mexico, and may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the cap.

**D.** Each contributing company's monthly contribution shall equal the state rural universal service fund (SRUSF) surcharge rate multiplied by its intrastate retail telecommunications revenues in New Mexico for the month.

**E.** If, for any month the administrator finds that the fund balance is insufficient to

meet the sum of all ETCs' revenue requirements (including support pursuant to 17.11.10.25 NMAC, 17.11.10.31 NMAC, and 17.11.11 NMAC) plus administrative expenses and maintenance of a prudent fund balance, the administrator shall prorate all payments to each ETC, with the exception of payments pursuant to 17.11.10.31 NMAC and 17.11.11 NMAC. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

**F.** Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.

**G.** The cap shall remain in effect for three years. The commission shall evaluate and redetermine the cap in an appropriate proceeding to be completed two and one-half years following the effective date. The commission shall notify all contributing companies, ETCs, and the administrator of any adjustment to the cap at least three months prior to expiration of the three-year effective period, and the new SRUSF surcharge rate cap shall be in effect for a three-year period commencing upon expiration of the prior three-year effective period. Each succeeding evaluation and redetermination shall occur in the same manner as described above.

[17.11.10.20 NMAC - Rp, 17.11.10.20 NMAC, 1/1/2017]

**17.11.10.21 RECOVERY OF CONTRIBUTIONS:**

**A.** A contributing company shall recover the amount of its contributions to the fund from its end-user customers in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

**B.** A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

**C.** The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers. [17.11.10.21 NMAC - Rp, 17.11.10.21 NMAC, 1/1/2017]

**17.11.10.22 FUND DISBURSEMENTS:**

**A.** The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

**B.** The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

**C.** Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

**D.** The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

[17.11.10.22 NMAC - Rp, 17.11.10.22 NMAC, 1/1/2017]

**17.11.10.23 DESIGNATION OF ETCs:**

**A.** Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive

support from the fund.

**B.** Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

**C.** On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

**D.** Upon approval of a carrier for ETC status under these rules, the commission may, if requested, establish the carrier's support rate in accordance with the requirements of 17.11.10.25 NMAC. In determining a just and reasonable support rate for an ETC, the commission shall:

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, using the most cost-effective technologies, but also taking into consideration existing infrastructure;

(2) consider the amount of support available to the ETC through the federal universal service funds;

(3) ensure that the support rate for a competitive carrier not exceed the equivalent support received through these rules by the incumbent carrier or carriers serving the proposed service area.

**E.** On its own motion or in response to a petition, the commission may modify an ETC's support rate to reflect more current cost information or changes in service volumes.

[17.11.10.23 NMAC - Rp, 17.11.10.23 NMAC, 1/1/2017]

**17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:**

**A.** Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition for ETC designation and support rate, the petition shall:

(1) include a description of the proposed service

area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 CFR 54.207;

(2)

demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e) to be designated as a federal ETC;

(3)

demonstrate that the proposed designation is in the public interest;

(4) include the

information required by 17.11.10.25 NMAC;

(5) provide

a five-year plan demonstrating how support from the fund will be used to improve the petitioner's coverage, service quality or capacity throughout the service area for which it seeks designation;

(6)

demonstrate the petitioner's ability to remain functional in emergency situations;

(7)

demonstrate that the petitioner will satisfy consumer protection and service quality standards;

(8) offer local

usage plans comparable to those offered by incumbent local exchange carriers in the areas for which the petitioner seeks designation;

(9)

acknowledge that the petitioner may be required to provide equal access if all other ETCs in the designated area relinquish their designations;

(10)

demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;

(11) address the impact of designation of the petitioner on the size of the fund;

(12) address the unique advantages and disadvantages of the petitioner's service offering;

(13)

demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame; and

(14) provide

such other information as the

commission or the administrator may find appropriate.

**B.** A petition by an existing ETC for a support rate shall demonstrate that granting the proposed support rate is in the public interest and shall include the information required by 17.11.10.25 NMAC.

**C.** Consideration of the public interest will apply in all ETC designation and support rate proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

**D.** The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order approving either a petition for ETC designation or a petition for a support rate shall state the approved support rate.

**E.** The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

**F.** The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the fund.

[17.11.10.24 NMAC - Rp,  
17.11.10.24 NMAC, 1/1/2017]

**17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:**

**A.** An ETC serving in a high-cost area of the state may petition the commission for support from the fund when such payments are needed to ensure the widespread availability and affordability of residential local exchange service in the high-cost area of the state served by the ETC.

**B.** In addition to establishing need as described in Subsection A of this section, a petition for support based on need shall demonstrate with particularity how

the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

**C.** In support of the petition, the ETC must make available to the commission all information supplied by form 481 (or a similar abbreviated form) for the four quarters prior to the petition filing date, plus New Mexico-specific form 481 information if the form 481 information is consolidated. The commission may also require additional information from the ETC that it deems necessary, including but not limited to information relating to the ETC's revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of residential local exchange service in the ETC's high cost area in the state.

**D.** The commission shall resolve each petition for support based on need with or without a hearing no later than six months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

**E.** Companies reporting the use of funds granted by the commission under this section shall provide:

(1) Specific details of projects for which fund support is used; itemized by the categories of capital expenditures (CapEx) and the related operations expenditures (OpEx).

(a)

Project descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.

(b)

Project prioritizations of buildout plans in technical terms that include locations, maps as applicable, milestones and benchmarks to measure performance and assure compliance. The description shall

also provide project status, spending plans and metrics.

(c)

Narrative of the projects explain the current and ongoing status of completion or ready for service dates (RFS), and other pertinent facts (i.e., project delays, permit status, surveys, right of ways issues) for reporting purposes. The term ready for service (“RFS”) means a description of projects where construction is complete and the project is operational.

(2) The period

for the reporting of project details shall be semi-annual, at a minimum, to continue for the period that funds are awarded.

(3) Semi-

annual financial reporting on a project specific or company-wide basis, depending if the award is specific to network improvements and projects, or for the financial stability of the ETC receiving the award.

[17.11.10.25 NMAC - Rp, 17.11.10.25 NMAC, 1/1/2017]

**17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:**

A. If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

B. The contributing company shall pay the requested amount within 21 days of the date of the notice or seek dispute resolution as provided in this rule.

C. If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

D. Upon request by the administrator, a complaint filed by an interested party, or on its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order

requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission’s order.

E. The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1, et seq. NMSA 1978.

[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, 1/1/2017]

**17.11.10.27 USE OF FUND SUPPORT:**

A. An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 et seq., NMSA 1978, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to preserve and advance universal service, that is, to provide, at reasonable and affordable rates, access by low-income consumers and consumers, to quality telecommunications and information services, including interexchange services and advanced telecommunications and information services that are reasonably comparable to services provided in other areas.

B. If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support

for purposes other than to preserve and advance universal service, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund.

[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, 1/1/2017]

**17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:**

A. The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator’s or commission’s discretion.

B. In the normal course of business, the administrator will give at least three days’ notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp, 17.11.10.28 NMAC, 1/1/2017]

**17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND:**

The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp, 17.11.10.29 NMAC, 1/1/2017]

**17.11.10.30 ADVISORY BOARD:**

A. The commission

shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: rural incumbent telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; interexchange carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three years. Members of the board may be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

**B.** The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to

administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

**C.** The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for one year, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum. [17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, 1/1/2017]

**17.11.10.31 BROADBAND PROGRAM**

**A.** ETCs may separately apply to the commission for grants to fund the construction of facilities that are capable of providing public telecommunications services as that term is defined in Subsection N of Section 63-9H-3, NMSA 1978 including broadband internet access service, to areas unserved or underserved by broadband in the state. Each grant that is awarded will provide up to seventy five percent of the budgeted project cost with the ETC applying the remaining twenty five percent. Projects receiving any other source of third-party funding other than potential FCC high-cost

fund or connect america fund support will not be eligible.

**B.** Funding of the broadband program. Beginning in 2017, and each year thereafter, the broadband program will be funded by an amount equal to one percent of the intrastate retail telecommunications revenue that is used to determine the surcharge rate under Subsection C of 17.11.10.20 NMAC. This one percent surcharge shall be added to the surcharge rate determined pursuant to Subsection C of 17.11.10.20 NMAC. The amount of funding allocated to the broadband program shall not be subject to proration under Subsection E of 17.11.10.20 NMAC. To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the following year.

**C.** Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including, without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

(1) support broadband service at speeds of at least four mbps download/one mbps upload to all households and businesses in the proposed project area;

(2) support voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services; and

(3) Support access to emergency 911 services.

**D.** Contents of grant applications. An application for support from the broadband program shall include:

(1) a proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC;

(2) a detailed build plan setting forth a description



of the facilities to be deployed, including all costs of constructing facilities;

(3) a map showing where service and coverage will be provided; this requirement can be met by providing;

(a) for a wireline network, a map showing all homes, businesses, and other end user locations passed;

(b) for a wireless network, a coverage map generated using a radio frequency propagation tool generally used in the wireless industry;

(4) an estimate of the number of road miles and square miles to be covered;

(5) the amount of support requested from the broadband program and the amount of the applicant's financial match;

(6) a description of the technology to be deployed, including data throughput speeds to be delivered to customers;

(7) a demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC;

(8) a demonstration that the estimated revenues from the services to be offered as a result of the proposed construction would be insufficient to justify the project without support from the broadband program;

(9) a commitment to provide a minimum twenty five percent match of funds drawn from the broadband program;

(10) if the project is a wireless network deployment, a commitment to allow collocation on reasonable terms by other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program;

(11) sample terms and conditions for the service and proposed prices;

(12)

a certification by an authorized representative stating whether the applicant is receiving or applying funds from any government support for the project and affirming that all other information set forth in the application is true and correct; and

(13) any other requirements to ensure accountability as the commission may develop and approve in a proceeding to determine the form and contents of grant applications.

E. The ETC must make the following commitments and include them in its proposed application:

(1) the voice and broadband service must be offered at reasonably comparable rates for comparable services in urban areas;

(2) the voice and broadband service must be provided for at least five years following project completion;

(3) projects must be completed within two years from the date of commission approval;

(4) the ETC must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended.

(5) the ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-related complaints in a reasonable manner.

F. Procedure for awarding support from the broadband fund:

(1) Except as provided under Subsection H of 17.11.10.31 NMAC, on or before May 1 of each year, the commission shall open a 30 day window for filing applications for broadband program support for the following calendar year.

(2) The commission staff, or a third-party contractor, shall review and score all

qualified applications giving priority to unserved and underserved areas and may communicate with applicants to request additional information or clarify information presented in the application. The priority scoring of applications will be done based on the following methodology: Applications to build telecommunications network facilities will have the portion of the unserved areas in the proposal scored as priority 1, the portion of the underserved areas in the proposal scored as priority two, and the portion of the proposal that serves areas already offering broadband speeds of four mbps download and one mbps upload or greater scored as priority three. Priority one proposals will receive first priority for funding from the lowest cost priority one proposal to the highest cost priority one proposal, subject to the per year cap on funding support amounts. Priority two proposals will receive second priority for funding from the lowest cost priority two proposal to the highest cost priority two proposal, subject to the per year cap on funding support amounts. Priority three proposals will receive third priority for funding from the lowest cost priority three proposal to the highest cost priority three proposal, subject to the per year cap on funding support amounts.

(3) Interested persons may seek intervention in these proceedings, pursuant to 1.2.2.23 NMAC.

(4) On or before September 1, the commission's staff, or a third-party contractor, shall present to the commission recommendations for support awards. The applicant and any intervener may challenge such recommendations. Such recommendations shall be considered by the commission but shall not bind the commission.

(5) On or before October 1, any applicant may file with the commission a request for reconsideration of a denial of its application.

(6) On or before December 1, the commission shall approve or deny support awards

by a final order.

**G.** Conditions for disbursement of awarded funds:

(1) The awardee commits to complete construction of its project within two years from the award date.

(2) Within 30 days after project completion, the awardee shall submit a report demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) The administrator shall disburse fifty percent of the award when made, and fifty percent of the award 45 days after submission of an acceptable project completion report under Paragraph (2) of Subsection G of 17.11.10.31 NMAC. The commission may, within 30 days after submission, suspend payment by the administrator and order additional information to be provided.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, shall refund all award funds immediately and shall be subject to having its federal and state ETC designations revoked.

**H.** Renewal or sunset of broadband program. On or before January 1, 2022, the commission will initiate a proceeding to review the performance of the broadband program in light of the statutory goals for universal service. Unless the commission makes an affirmative finding that the program should be continued, the program will sunset before December 31, 2022. If the program is sunset, then funds that had not been paid out or designated to a grantee by that time will be treated as a surplus to the SRUSF when the next surcharge rate is calculated pursuant to 17.11.10.19 NMAC. If the commission determines to extend the broadband program beyond 2022, the commission shall, by no later than

July 1, 2022, determine the amount to be collected and disbursed from the broadband program for the years beyond 2022, and open a 30 day window for filing applications for broadband program support for 2023. [17.11.10.31 NMAC - Rp, 17.11.10.31 NMAC, 01/29/16]

**HISTORY OF 17.11.10 NMAC:**  
**Pre-NMAC History:** None.

**History of Repealed Material:**

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 01/01/2015.

17 NMAC 11.10, State Rural Universal Service Fund (filed 01/01/2015) repealed effective 01/29/2016.

17 NMAC 11.10, State Rural Universal Service Fund (filed 01/01/2015) repealed effective 01/01/2017.

**Other History:**

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 01/01/2015.

17.13.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/29/2016.

17.13.10 NMAC State Rural Universal Service Fund (filed 1/19/2016) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/1/2017

**REGULATION AND LICENSING DEPARTMENT**  
**ATHLETIC COMMISSION**

**This is an amendment to 15.6.1 NMAC, Section 16, effective 01/15/2017**

**15.6.1.16 INSPECTION OF PUBLIC RECORDS:** The commission operates in compliance with the Inspection of Public Records Act, NMSA 1978 Sections 14-2-1 through [14-2-16] 14-2-12.

The commission's administrator is the custodian of the commission's records. The commission may provide copies of public records upon request and upon payment of a reasonable copying fee. No person shall remove commission documents from the commission office. The commission maintains files for all applicants. Information in the applicant's file is a matter of public record except for the following:

**A.** medical reports, records of chemical dependency, physical or mental examinations;  
**B.** complaints, and investigative files obtained during the course of an investigation or processing of a complaint, and before the vote of the commission as to whether to dismiss the [compliant] complaint or to issue a notice of contemplated action as provided in the Uniform Licensing Act, NMSA 1978, Section 61-1-1 et seq., and in order to preserve the integrity of the investigation of the complaints, records and documents that reveal confidential sources, methods, information or licensees accused, but not yet charged with a violation, such records shall include evidence in any form received or compiled in connection with any such investigation of the complaint or of the licensee by or on behalf of the commission by any investigating agent or agency; upon the completion of the investigation or processing of the complaint, AND upon the decision of the commission to dismiss the complaint or to issue a notice of contemplated action, the confidentiality privilege shall dissolve, and the records, documents or other evidence pertaining to the complaint and to the investigation of the complaint shall be available for public inspection; and

**C.** any other records excepted from disclosure pursuant to the Inspection of Public Records Act. [15.6.1.16 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

**REGULATION AND LICENSING DEPARTMENT**  
ATHLETIC COMMISSION

This is an amendment to 15.6.2 NMAC, Sections 10, 19 and 24, effective 01/15/2017.

**15.6.2.10 EXECUTION OF CONTRACTS:** Contracts between an unarmed combatant and a manager, or between an unarmed combatant or manager and a licensed promoter, shall be executed on printed contract forms approved by the commission. If printed contract forms are unavailable, the commission may approve notarized contracts. All contracts must at a minimum include all agreed upon terms such as weight, allowed possible ranges of weight, number of rounds, duration of rounds, named opponent and signatures of all parties to the contract including promoter and unarmed combatant or his approved management.

[15.6.2.10 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

**15.6.2.19 TIME LIMITS FOR FILING UNARMED COMBAT CONTEST**

**CONTRACTS:** The promoter must meet the following conditions [for filing boxing contest] to file contracts with the commission for unarmed combat.

**A.** All main events and semi-main event contracts between a promoter and any licensed unarmed combatant or [manager] approved management of a licensed unarmed combatant, effecting or calling for the services of a main event or semi-main event unarmed combatant, shall be filed with the commission within seven [(7)] days after the execution of the contract, and at least within seven [(7)] days prior to any unarmed combat contest to which the contract relates.

**B.** All contracts for preliminary unarmed combatants shall be filed no later than 96 [twenty-four (24)] hours prior to any match to which they relate, unless otherwise approved by the commission or its designee.

[15.6.2.19 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015; A, 01-15-2017]

**15.6.2.24 [CONTRACTS FOR STATE CHAMPIONSHIP UNARMED COMBAT**

**CONTESTS:** All contracts for state championship unarmed combat contests must be signed at a commission meeting.

**A. Posting forfeit monies:** On the date of the contract signing, the two contestants and the licensed corporation promoting the unarmed combat contest will each post forfeit money with the commission.

**(1)** The contestants, the champion title holder and the challenger, will each deposit \$50, if their purses are not more than \$5,000.

**(2)** If the title bout purse for either contestant is more than \$5,000, that contestant must post a deposit of 10% of his guaranteed purse.

**(3)** The promoter of the title contest must deposit an amount equal to the highest amount deposited by either contestant.

**B. Posting deposits ensures contestants' appearance:** Posting of forfeit monies is to insure that each contestant will appear at the championship contest and will make the proper weight; and that the promoter will fulfill the promoter's obligations.

**C. Title bouts authorized by outside sanctioning body:** For championship title contests authorized by an outside sanctioning body (IBF, WBA, WBC, etc.) only the promoter shall be required to post a deposit equal to 10% of the total purse for both of the title bout contestants. The deposit may be waived or readjusted by the commission.

**D. If forfeit is declared:** In the event that a forfeit is declared, the deposit or deposits so forfeited will be distributed equally between the non-defaulting depositors and the New Mexico athletic commission. **[RESERVED]**

[15.6.2.24 NMAC - N, 03-23-2002;

A, 08-26-2012; Repealed, 01-15-2017]

**REGULATION AND LICENSING DEPARTMENT**  
ATHLETIC COMMISSION

This is an amendment to 15.6.3 NMAC, Sections 8, 9, 14 and 17, effective 01/15/2017.

**15.6.3.8 [PRINTING OF TICKETS:** Tickets for events regulated by the commission must be printed by a printer approved by the commission.

**A. Printing format:** The commission shall direct how the tickets will be printed and in what form they will be printed.

**(1) Purchase price of ticket:** All tickets of admission to any unarmed combat contest or exhibition shall clearly bear the purchase price upon the face of the tickets.

**(2) Reserved seat tickets:** Reserved seat tickets shall be printed with a stub to be retained by the purchaser.

**(3) General admission tickets:** General admission tickets shall be printed with a stub to be retained by the purchaser, and they shall be consecutively numbered.

**(4) Press tickets:** All tickets issued to ringside reporters or media photographers, shall be marked MEDIA. The commission will issue media passes on any requests received from the media twenty-four (24) hours in advance of the event.

**B. Different prices - different colors:** Different priced tickets must be printed on paper of different, distinctive colors unless otherwise sanctioned by the commission.

**C. New tickets - new exhibition:** A new set of tickets shall be printed for every exhibition or contest. **[RESERVED]**

[15.6.3.8 NMAC - N, 03-23-2002; A, 08-26-2012, Repealed, 01-15-2017]

**15.6.3.9 [DISTRIBUTION**

**OF TICKETS:**

~~A. Promoters and promoter corporations licensed by the commission may only sell or distribute tickets obtained from a printer approved by the commission.~~

~~B. At least twenty-four (24) hours before the tickets go on sale, a commission-approved printer must deliver to the commission a sworn manifest of all the tickets delivered to the licensed promoter or corporation, and the manifest must indicate the purchase price of the tickets. [RESERVED]~~

~~[15.6.3.9 NMAC - N, 03-23-2002; Repealed, 01-15-2017]~~

**15.6.3.14 CONDITIONS TO BE MET BEFORE TICKETS ARE SOLD OR PROMOTIONAL ACTIVITIES COMMENCE:**

The sale of tickets or promotional activities for any proposed contest or exhibition is prohibited until [the following occurs:

~~A. the commission through its director, receives and approves a completed event permit from and approves plans and statements showing the seating arrangements and the ticket prices established for each seating area; and~~

~~B. the appropriate county or municipal authority approves the aisle spacing, the exit facilities, and the location of fire extinguishers.] the commission through its director, receives and approves a completed event permit from and approves plans and statements showing the seating arrangements and the ticket prices established for each seating area.~~

~~[15.6.3.14 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]~~

**15.6.3.17 REPORTS REQUIRED BY THE COMMISSION:**

Within [seventy-two] 72 hours after the close of the event, contest, or exhibition, the authorized representative of the promoter [or promoter corporation] licensed by the commission must submit to the commission the following written reports.

A. An "athletic tax

report" showing the number of each class of tickets sold, unsold or unused; and shall:

(1) permit the commission or its designated representative to examine the following: all sold and unsold or unused tickets; stubs; coupons; the financial records of the event;

(2) permit the commission or its designated representative to investigate all other matters relating to the receipts and conduct of the box office and ticket takers; and

(3) permit the commission or its designated representative to review the ticket tally, which must conform to the manifest [issued by the commission-approved printer.]

B. An "inspectors' financial statement" for the particular contest or exhibition that must be approved and signed by the following persons:

(1) the commissioner in attendance or by the commission's designated representative in charge;

(2) the commission inspectors making the count; and

(3) the authorized representative of the licensed promoter of the event.

C. An "after contest report" that shall be submitted within seventy-two hours after the close of the contest, on forms as required by the commission. Information shall include a breakdown of all tickets sold or distributed, including but not limited to tickets sold, exchanged for goods or services, donated or complimentary. The payments made to the competitors and officials, and the manner and form in which they were compensated.

[15.6.3.17 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

**REGULATION AND LICENSING DEPARTMENT ATHLETIC COMMISSION**

This is an amendment to 15.6.4

NMAC, Sections 20 and 24, effective 01/15/2017.

**15.6.4.20 DUTY TO OBTAIN EVENT PERMITS:**

A licensed promoter must obtain an event permit prior to each professional and amateur program, match, event, contest or exhibition.

A. The commission will issue a permit upon receipt from the promoter of a completed commission-approved application, and all other required documentation.

B. The application and attachments must be approved with the commission not later than [seventy-two] 72 hours prior to the regularly scheduled meeting before the contest. The application must contain the following information and documentation:

- (1) evidence of a current promoter's license;
- (2) date of the contest;
- (3) copy of the contract for the event location;
- (4) proof of contest insurance;
- (5) name of the main event participants;
- (6) number of scheduled rounds of all unarmed combatant contests on the event card;
- (7) verification of adequate security;
- (8) verification of ambulance and medical technicians; and

(9) report on all unarmed combatants from fightfax.com or mixedmartialarts.com, or other nationally or industry recognized reporting service.

C. The promoter must provide the commission with the signed and witnessed formal contracts for the main event [boxing-contest] executed on forms supplied by the commission and executed in accordance with 15.6.2.1-19 NMAC.

D. Each applicant for an event permit agrees to grant the commission, or its authorized representative, the right to examine the books of accounts and other records of the applicant relating to

each event for which an event permit application is made.  
 [15.6.4.20 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015; A, 01-15-2017]

**15.6.4.24 LICENSE CARD REQUIRED:**

**A.** Unless otherwise approved by the commission or its designee, all participants, [whether] including but not limited to a promoter, corporation, referee, judge, matchmaker, timekeeper, corporation treasurer, unarmed combatant, professional boxer, wrestler, kick boxer or martial artist, manager, trainer, second or announcer, must be licensed by the commission no later than 96 hours prior to the event before they may participate, either directly or indirectly, in any unarmed combating, boxing, sparring, wrestling match or kick boxing exhibition.

**B.** Upon request, any participant must allow inspection of his license and federal identification card by the commission or its delegated representative.

**C.** Any participant denying inspection of his license card by the commission, or its delegated representative, shall be prohibited by the commission from participating in the event.

[15.6.4.24 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

**REGULATION AND LICENSING DEPARTMENT  
 ATHLETIC COMMISSION**

**This is an amendment to 15.6.5 NMAC, Section 8, effective 01/15/2017.**

**15.6.5.8 MEDICAL EXAMINATION AND CERTIFICATION OF CONTESTANTS REQUIRED:**

**A.** [Medical examination of non-main event or non-championship bout contestants: It shall be the duty of the licensed promoter, whether a person, party, or corporation, conducting a professional; (1) boxing, (2) sparring,

(3) wrestling, (4) martial arts, or (5) mixed martial arts event, contest, or exhibition of unarmed combat to arrange for the contestants to undergo a uniform pre-bout medical examination performed by a New Mexico licensed physician approved by the commission's medical advisory board:

**(1)** The pre-bout medical examination shall be conducted within twenty-four (24) hours prior to the contestant's entering the ring in the scheduled match or exhibition:

**(2)** The pre-bout medical examination shall include:

**(a)** negative HIV;

**(b)** negative hepatitis B, surface antigen (SA);

**(c)** negative hepatitis C antibody; and

**(d)** professional contestants must submit a dilated eye exam performed no later than 24 hours prior to any competition by an ophthalmologist, optometrist or qualified physician;

**(3)** The commission shall require proof of compliance with any medical requirements previously imposed on a participant by another commission prior to giving medical approval for a bout:

**(4)** Immediately following the examination, the physician shall file with the commission a written report of the results of the examination on a form prescribed by the commission. The physician shall certify as to the physical fitness of each contestant scheduled to participate in the match or exhibition; and deliver the completed examination report to the commission's representative and made available to the promoter of the match or exhibition before the commencement of the event

**(5)** The promoter of the match or exhibition shall prohibit any unarmed combatant from entering the ring unless he has been certified by the examining

physician to be physically fit to engage in the match or exhibition:

**(6)** It shall be unlawful for any physician to certify falsely to the physical condition of any contestant in a professional boxing or sparring match or martial arts exhibition:

**(7)** Any unarmed combatant who participates in a non-commission sanctioned event in another jurisdiction must submit to a new array of blood tests, described in Paragraph (2) of this rule, unless the unarmed combatant can prove to the commission that the non-commission sanctioned event required all combatants to submit to pre-bout blood testing in a manner similar to the commission's. Violation of this rule could result in a fine, license suspension, or license revocation:

**B.** Electrocardiogram, MRI or MRI/MRA: The commission or ringside physician may order an electrocardiogram or MRI or MRI/MRA examination when a contestant:

**(1)** has lost three or more bouts in a row by KO or TKO;

**(2)** has lost six bouts in a row; or

**(3)** has an extensive losing record in the last two years:

**C.** Test results: The results of an MRI or MRI/MRA examination will be accepted if conducted within the last five years:

**(1)** When a neurological clearance is needed for a pre-fight examination:

**(2)** When competing in a five round title fight.

**(3)** A contestant that is thirty-five years old or older.

**D.** The commission will not issue or renew the license of any applicants who wishes to compete in any sport regulated by the New Mexico athletic commission who has suffered from any type of cerebral hemorrhage:

**E.** If any applicant applying for a contestant's license has suffered a serious head injury including but not limited to

concussions the applicant must have their application for license reviewed by the commission before any license is issued or renewed:

**F. Medical examination of main event or championship bout contestants:** All contestants scheduled for main event or championship professional boxing contests shall undergo a uniform medical examination at least five days prior to the date of the contest in the same manner and procedure as set forth in Subsection A of this rule, 16.6.5.8 NMAC:

**G. Medical examination on the day of the unarmed combat event:** All unarmed combatants scheduled for unarmed combat contests in an event shall have their medical examinations conducted within forty-eight (48) hours of the bout.

**H. Cost of the medical examination:** The cost of any physical examination shall be prescribed by a schedule of fees established by the commission.

**(1)** The cost of any medical examinations of event contestants shall be paid directly to the commission by the promoter of the event.

**(2)** The physician will be paid directly by the promoter in accordance with the fees established by rule by the commission.

**I. Female unarmed combatants' pregnancy test.** All female unarmed combatants must provide a negative pregnancy test prior to each event, contest, or exhibition. Such pregnancy test shall be taken the day prior to the event, contest, or exhibition. All unarmed combatants/contestants shall submit to a uniform pre-bout medical examination performed by a New Mexico licensed physician approved by the commission within 24 hours prior to entering the ring in the scheduled match or exhibition. All unarmed combatants/contestants shall submit the required medical records no later than 96 hours before a scheduled event. It shall be the duty of the licensed promoter to

ensure compliance with this rule. All deadlines in this rule relate back to the date of the scheduled match or exhibition.

**(1) The documents required** as part of the pre-bout medical examination include:

- (a)** negative blood test results, obtained not later than six months prior to the event, for:
  - (i)** HIV;
  - (ii)** hepatitis B, surface antigen (SA);
  - (iii)** hepatitis C antibody;

**Dilated eye exam result:** Professional contestants must submit the results of a dilated eye exam performed by an ophthalmologist, optometrist or qualified physician no more than one year prior to any competition.

**Proof of compliance with any medical restrictions:** The commission requires proof of compliance with any previous medical restrictions imposed by another commission before medical approval for a bout.

**(2) Female unarmed combatants:** All female unarmed combatants must provide a negative pregnancy test within 24 hours to each event, contest, or exhibition. The pregnancy test shall be taken within those 24 hours to the event, contest, or exhibition.

**(3)** The commission or ringside physician may order an electrocardiogram, MRI or MRI/MRA examination when a contestant has either:

- (a)** lost three or more bouts in a row by KO or TKO;
- (b)** lost six bouts in a row; or
- (c)** had an extensive losing record in the last two years; MRI or MRI/MRA examination results will be accepted if conducted within five years, when:
  - (i)**

neurological clearance is needed for a pre-fight examination;

**(ii)** an unarmed combatant is competing in a five round title fight; or

**(iii)** a contestant is 35 years old or older.

**B. Certification of fitness**

**(1)** Immediately following the examination, the physician shall file with the commission a written report of the results of the examination on a form prescribed by the commission. The physician shall certify as to the physical fitness of each contestant scheduled to participate in the match or exhibition and deliver the completed examination report to the commission's representative; the completed examination report will be made available to the promoter of the match or exhibition before the commencement of the event.

**(2)** The promoter of the match or exhibition shall prohibit any unarmed combatant from entering the ring unless he has been certified by the examining physician to be physically fit to engage in the match or exhibition.

**(3)** It shall be unlawful for any physician to certify falsely to the physical condition of any contestant in a professional boxing or sparring match or martial arts exhibition.

**C. Participation in non-commission sanctioned events:** Any unarmed combatant who participates in a non-commission sanctioned event in another jurisdiction must submit to a new array of blood tests, described in Paragraph (1) of this rule, unless the unarmed combatant can prove to the commission that the non-commission sanctioned event required all combatants to submit to pre-bout blood testing in a manner similar to the commission. Violation of this rule could result in a fine, license suspension, or license revocation.

**D. Disqualifying conditions/ailments:**

**(1)** The commission will not issue or renew

the license of any applicant who wishes to compete in any sport regulated by the commission and who has suffered from any type of cerebral hemorrhage.

(2) If an applicant for a contestant license has suffered a serious head injury, including but not limited to concussions, the applicant must have the application reviewed by the commission before any license is issued or renewed.

**E. Cost of the medical examination:** The cost of any physical examination shall be prescribed by a schedule of fees established by the commission.

(1) The cost of any medical examinations of event contestants shall be paid directly to the commission by the promoter of the event.

(2) The physician will be paid directly by the promoter in accordance with the fees established by rule by the commission.

[15.6.5.8 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2015; A, 01-15-2017]

**REGULATION AND LICENSING DEPARTMENT  
ATHLETIC COMMISSION**

**This is an amendment to 15.6.7 NMAC, Section 12, effective 01/15/2017.**

**15.6.7.12 THE RING:** Any ring in which an unarmed combat contest excluding mixed martial arts or exhibition is to be conducted, must first be inspected and approved by the commission chair or his designee as having met the following requirements.

**A. Size:** The standard ring shall be at least twenty (20 x 20) square feet within the ropes, but no more than twenty-four (24 x 24) square feet, unless otherwise approved by the commission; and have no less than eighteen (18) inches of unencumbered platform surface extending from the ropes.

**B. Elevation:** The ring shall not be elevated more than four (4) feet off of the floor, and shall be provided with two sets of suitable steps for use of contestants, coaches, and officials.

**C. Ropes:** The ring ropes shall be four (4) in number with the bottom rope off-set from the other three. The bottom rope shall be between thirteen (13) and eighteen (18) inches from the ring surface. The ropes shall be no [ness] less than one (1) inch in diameter and should be covered with a soft material to avoid injury to the participants.

**D. Padding:** The ring surface shall have a smooth, firm surface covered with clean canvas or other resilient material stretched taut and laced tightly to the ring platform. Between the surface and the cover, there shall be a layer of ensolite padding or similar material, at least one (1) inch thick that extends over the entire surface inside and outside of the ropes.

**E. Ring posts:** The ring posts shall be four (4) in number and shall extend no more than fifty-eight (58) inches from the surface of the ring. Each post shall be at least eighteen (18) inches distant from the ring ropes. Ring posts and turnbuckles shall be suitably padded to insure the participants' safety.

**F. Lighting:** The ring shall be amply illuminated by overhead lights that should be so arranged that shadows shall be eliminated and discomfort from heat and glare are minimized for persons in and near the ring.

[15.6.7.12 NMAC - N, 03-23-2002; A, 08-26-2012; A, 01-15-2017]

**REGULATION AND LICENSING DEPARTMENT  
ATHLETIC COMMISSION**

**This is an amendment to 15.6.16 NMAC, Section 10, effective 01/15/2017.**

**15.6.16.10 LICENSE OR PERMIT SUSPENSION:** In addition to the power of any

commissioner to immediately suspend a license under 15.6.16.8 NMAC, the commission may suspend any license or permit it has issued by issuing a dated notice to that effect, served by certified mail, return receipt requested to the licensee or permit holder.

**A.** Such suspension shall be without any advance hearing and shall take effect upon issuance of such notice of suspension by the commission, if such suspension is necessary in the interest of protecting the health and safety of the public.

**B.** The notice shall specify the effective date and term of the suspension.

**C.** The suspended licensee or permit holder shall be provided a hearing on the matter within [twenty] 20 days of the date the notice of suspension is served. Such hearing shall be held to determine whether the suspended license or permit shall be revoked as specified in this section.

**D.** The notice of suspension must be in writing and must be served on the respondent(s) within three [(3)] business days from the date the license or permit was suspended by the commission or from the date the license or permit was suspended by a commissioner.

[15.6.16.10 NMAC - N, 03-23-2002; A, 01-15-2015; A, 01-15-2017]

**REGULATION AND LICENSING DEPARTMENT  
OSTEOPATHIC MEDICINE,  
BOARD OF**

This is Amendment to 16.17.5 NMAC, Sections 1, 3, 7, 10, 11 and 12, effective 1-16-2017.

**16.17.5.1 ISSUING AGENCY:** Regulation and Licensing Department - [NM Board of Osteopathic Medical Examiners:] New Mexico Board of Osteopathic Medicine.

[16.17.5.1 NMAC - N, 03-16-2014; A, 01-16-2017]

**16.17.5.3 STATUTORY AUTHORITY:** These rules of

practice and procedure govern the practice of osteopathic medicine in New Mexico and are promulgated pursuant to and in accordance with the Osteopathic Medicine [and Surgery] Act, Sections 61-10-1 through 61-10-23 NMSA 1978 and the Pain Relief Act, [sections 24-2D-1, NMSA thru 24-2D-6] Subsection D of Sections 24-2-1 thru 24-2-6 NMSA 1978. [16.17.5.3 NMAC - N, 03-16-2014; A, 01-16-2017]

#### 16.17.5.7 DEFINITIONS:

**A. "Acute pain"** means the normal predicted physiological response to a noxious chemical or thermal or mechanical stimulus typically associated with invasive procedures, trauma, or disease and is generally time limited.

**B. "Chronic pain"** means a pain that persists after reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically for longer than three consecutive months. "Chronic pain" does not, for the purpose of the Pain Relief Act requirements, include pain associated with a terminal condition.

**C. "Pain"** means acute or chronic pain or both.

**D. "Clinical pain expert"** means a person who by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**E. "Drug abuser"** means a person who takes a drug or drugs for other than legitimate medical purposes.

**F. "Physical dependence"** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**G. "Tolerance"** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug's effects over time.

**H. "Addiction"** is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

**I. "Prescription monitoring program"** means a centralized system to collect, monitor, and analyze electronically, for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

**J. "Prescribe"** means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber bearing the name and address of the prescriber, license classification, the name and address of the patient, the name of the drug prescribed, direction for use and the date of issue.

**K. "Administer"** means to apply a prepackaged drug directly to the body of a patient by any means.

**L. "Dispense"** means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container.

**M. "Distribute"** means to administer or supply to a patient under the direct care of the distributing physician or physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container.

**N. "Formulary"** means any dangerous drugs; including Schedule II-V controlled substances,

physicians may use in the care of patients where there is an established physician-patient relationship.

**O. "Established physician-patient relationship"** means a relationship between a physician and a patient that is for the purpose of maintaining the patient's well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the encounter.

**P. "Licensed osteopathic physician"** means an osteopathic physician licensed by the New Mexico osteopathic board of examiners to practice medicine in New Mexico.]

**A. "Acute pain"** means the normal predicted physiological response to a noxious chemical or thermal or mechanical stimulus typically associated with invasive procedures, trauma, or disease and is generally time limited.

**B. "Addiction"** is a neurobehavioral syndrome with genetic and environmental influences that results in psychological dependence on the use of substances for their psychic effects. It is characterized by behaviors that include one or more of the following: impaired control over drug use; compulsive use; continued use despite harm; and, craving. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and should not by themselves be considered addiction.

**C. "Administer"** means to apply a prepackaged drug directly to the body of a patient by any means.

**D. "Chronic pain"** means a pain that persists after



reasonable efforts have been made to relieve the pain or its cause and that continues, either continuously or episodically for longer than three consecutive months. “Chronic pain” does not, for the purpose of the Pain Relief Act requirements, include pain associated with a terminal condition.

**E. “Clinical pain expert”** means a person who by reason of specialized education or substantial relevant experience in pain management, has knowledge regarding current standards, practices and guidelines.

**F. “Delegate”** means a person designated by a practitioner for the purpose of requesting and receiving prescription monitoring program (PMP) reports for that practitioner.

**G. “Dispense”** means to deliver a drug directly to a patient and includes the compounding, labeling and repackaging of a drug from a bulk or original container.

**H. “Distribute”** means to administer or supply to a patient under the direct care of the distributing physician or physician assistant one or more doses of drugs prepackaged by a licensed pharmacist and excludes the compounding or repackaging from a bulk or original container.

**I. “Drug abuser”** means a person who takes a drug or drugs for other than legitimate medical purposes.

**J. “Established physician-patient relationship”** means a relationship between a physician and a patient that is for the purpose of maintaining the patient’s well-being. At a minimum, this relationship is established by an interactive encounter between patient and physician involving an appropriate history and physical or mental status examination sufficient to make a diagnosis and to provide, prescribe or recommend treatment, with the informed consent from the patient and availability of the physician or physician assistant or coverage for the patient for appropriate follow-up care. A medical record must be generated by the

encounter.

**K. “Formulary”** means any dangerous drugs; including Schedule II-V controlled substances, physicians may use in the care of patients where there is an established physician-patient relationship.

**L. “Licensed osteopathic physician”** means an osteopathic physician licensed by the New Mexico board of osteopathic medicine in New Mexico.

**M. “Pain”** means acute or chronic pain or both.

**N. “Physical dependence”** means a state of adaptation that is manifested by a drug-specific withdrawal syndrome that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, administration of an antagonist, or a combination of these.

**O. “Practitioner”** means a New Mexico osteopathic physician maintaining licensure pursuant to state law that allows that individual to prescribe, order, administer or dispense controlled substances to patients.

**P. “Prescribe”** means to issue an order individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber bearing the name and address of the prescriber, license classification, the name and address of the patient, the name of the drug prescribed, direction for use and the date of issue.

**Q. “Prescription monitoring program”** means a centralized system to collect, monitor, and analyze electronically for controlled substances, prescribing and dispensing data submitted by pharmacies and dispensing practitioners. The data are used to support efforts in education, research, enforcement and abuse prevention.

**R. “Tolerance”** means a state of adaptation in which exposure to a drug induces changes that result in a diminution of one or more of the drug’s effects over time. [16.17.5.7 NMAC - N, 03-16-2014; A, 01-16-2017]

**16.17.5.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:** [The intent of the New Mexico osteopathic medical board in requiring participation in the PMP is to assist practitioners in balancing the promotion of the safe use of controlled substances for the provision of medical care and services with the need to impede illegal and harmful activities involving these pharmaceuticals.

**A.** A health care practitioner who holds a federal drug enforcement administration registration and licensure to prescribe opioids shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A health care practitioner shall, before prescribing, ordering, administering or dispensing a controlled substance listed in schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when the patient is a new patient of the practitioner.

**C.** Prescription monitoring reports shall be requested and reviewed a minimum of once every six months during the continuous use of opioids for each established patient. The practitioner shall document the review of these reports.] The intent of the New Mexico board of osteopathic medicine in requiring participation in the PMP is to assist practitioners in balancing the safe use of controlled substances with the need to impede harmful and illegal activities involving these pharmaceuticals.

**A.** Any practitioner who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

**B.** A practitioner may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner’s delegate may obtain a report from the state’s prescription

monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

**C.** Before a practitioner prescribes or dispenses for the first time, a controlled substance in Schedule II, III, IV, or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

**D.** A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in Schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring reports with greater frequency than that required by this section.

**E.** A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in Schedule II, III, IV or V:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

**F.** Upon review of a prescription monitoring report for a patient, the practitioner shall identify and be aware of a patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving

opioids for more than 12 consecutive weeks;

(4) receiving more than one controlled substance analgesic;

(5) receiving opioids totaling more than 90 morphine milligram equivalents per day; or

(6) exhibiting potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

**G.** Upon recognizing any of the above conditions described in Paragraph F, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose. These steps may involve counseling the patient on known risks and realistic benefits of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.

[16.17.5.10 NMAC - N, 03-16-2014; A, 01-16-2017]

**16.17.5.11 NON-CANCER PAIN MANAGEMENT CONTINUING EDUCATION:**

This section applies to all New Mexico [osteopathic board] board of osteopathic medicine licensed physicians who hold a federal drug enforcement administration registration and licensure to prescribe opioids. Pursuant to the Pain Relief Act, in order to ensure that all such health care practitioners safely prescribe for pain management and harm reduction, the following rules shall apply.

**A.** On or before July 1, 2014 all New Mexico [osteopathic medical board] board of osteopathic

medicine licensees who hold a federal drug enforcement administration registration and licensure to prescribe opioids, shall complete no less than two continuing medical education hours in appropriate courses that include a review of 16.17.5 NMAC, management of the treatment of pain, an understanding of the pharmacology and risks of controlled substances, a basic awareness of the problems of abuse, addiction and diversion, and awareness of state and federal regulations for the prescription of controlled substances. All such courses are subject to board approval. Practitioners who have taken continuing education hours in these educational elements in the two years prior to July 1, 2014 may apply those hours toward the required two continuing education hours described in this subsection.

**B.** Beginning with the July 1, 2014 triennial renewal date, as part of the 75 continuing medical education hours required during each triennial renewal cycle, all New Mexico osteopathic board physician licensees, who hold a federal drug enforcement administration registration and license to prescribe opioids, shall be required to complete and submit six continuing education hours. Appropriate courses shall include all of the educational elements described in Subsection A of this section. All such courses are subject to board approval. These hours may be earned at any time during the three-year period immediately preceding the triennial renewal date. The two continuing medical education hours completed prior to July 1, 2014, as defined in Subsection A above, may be included as part of the required continuing medical education hours in pain management.

**C.** All New Mexico [osteopathic board] board of osteopathic medicine licensees, whether or not the New Mexico license is their first license, who hold a federal drug enforcement administration registration and license shall complete two continuing medical education hours in pain management during the first year

of licensure. These two continuing medical education hours completed prior to the first renewal may be included as part of the hours required in Subsection B above.  
[16.17.5.11 NMAC - N, 03-16-2014; A, 01-16-2017]

**16.17.5.12 NOTIFICATION:**  
In addition to the notice of procedures set forth in the State Rules Act Chapter 14, Article 14, NMSA 1978, the board shall separately notify the following persons of the Pain Relief Act and Part 17 of the New Mexico [Osteopathic board] board of osteopathic medicine rule;

- A. health care practitioners under its jurisdiction; and
- B. health care practitioners being investigated by the board in relation to the practitioner's pain management services.  
[16.17.5.12 NMAC - N, 03-16-2014; A, 01-16-2017]

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

**This is an amendment to 16.21.9 NMAC, Section 10, effective 12/30/2016.**

**16.21.9.10 PRESCRIPTION MONITORING PROGRAM (PMP) REQUIREMENTS:** The intent of the New Mexico board of podiatry in requiring participation in the PMP is to assist practitioners in balancing the promotion of the safe use of controlled substances for the provision of medical care and services with the need to impede illegal and harmful activities involving these pharmaceuticals.

A. A podiatrist who holds a federal drug enforcement administration registration and a New Mexico controlled substance registration shall register with the board of pharmacy to become a regular participant in PMP inquiry and reporting.

B. [A podiatrist shall, before prescribing, ordering,

administering or dispensing a controlled substance listed in Schedule II, III or IV, obtain a patient PMP report for the preceding 12 months when one of the following situations exists:

(1) the patient is a new patient of the podiatrist, in which situation a patient PMP report for the previous 12 months shall only be required when Schedules II, III, and IV drugs are prescribed for a period greater than 10 days; and

(2) during the continuous use of opioids by established patients a PMP shall be requested and reviewed a minimum of once every six months] A podiatrist may authorize delegate(s) to access the prescription monitoring report consistent with board of pharmacy regulation 16.19.29 NMAC. While a practitioner's delegate may obtain a report from the state's prescription monitoring program, the practitioner is solely responsible for reviewing the prescription monitoring report and documenting the receipt and review of a report in the patient's medical record.

C. Before a practitioner prescribes or dispenses for the first time, a controlled substance in schedule II, III, IV or V to a patient for a period greater than four days, or if there is a gap in prescribing the controlled substance for 30 days or more, the practitioner shall review a prescription monitoring report for the patient for the preceding 12 months. When available, the practitioner shall review similar reports from adjacent states. The practitioner shall document the receipt and review of such reports in the patient's medical record.

D. A prescription monitoring report shall be reviewed a minimum of once every three months during the continuous use of a controlled substance in schedule II, III, IV or V for each patient. The practitioner shall document the review of these reports in the patient's medical record. Nothing in this section shall be construed as preventing a practitioner from reviewing prescription monitoring

reports with greater frequency than that required by this section.

E. A practitioner does not have to obtain and review a prescription monitoring report before prescribing, ordering, or dispensing a controlled substance in schedule II, III, IV or V:

- (1) for a period of four days or less; or
- (2) to a patient in a nursing facility; or
- (3) to a patient in hospice care.

F. Upon review of a prescription monitoring report for a patient, the practitioner shall identify and be aware of a patient currently:

- (1) receiving opioids from multiple prescribers;
- (2) receiving opioids and benzodiazepines concurrently;
- (3) receiving opioids for more than twelve consecutive weeks;
- (4) receiving more than one controlled substance analgesic;
- (5) receiving opioids totaling more than 90 morphine milligram equivalents per day;
- (6) exhibiting

potential for abuse or misuse of opioids and other controlled substances, such as over-utilization, requests to fill early, requests for specific opioids, requests to pay cash when insurance is available, receiving opioids from multiple pharmacies.

G. Upon recognizing any of the above conditions described in Subsection F of 16.21.9 NMAC, the practitioner, using professional judgment based on prevailing standards of practice, shall take action as appropriate to prevent, mitigate, or resolve any potential problems or risks that may result in opioid misuse, abuse, or overdose including reporting of health care providers to their licensing board if prevailing prescribing standards are being deviated from. These steps may involve counseling the patient on known risks and realistic benefits

of opioid therapy, prescription and training for naloxone, consultation with or referral to a pain management specialist, or offering or arranging treatment for opioid or substance use disorder. The practitioner shall document actions taken to prevent, mitigate, or resolve the potential problems or risks.  
[16.21.9.10 NMAC - N, 11/01/13; A, 12/30/2016]

**REGULATION AND LICENSING DEPARTMENT**  
**REAL ESTATE APPRAISERS BOARD**

**This is an amendment to 16.62.1 NMAC, Section 7, effective 01/15/2017.**

**16.62.1.7 DEFINITIONS:**

The following rules and regulations are for the purpose of implementing the provisions of the New Mexico Real Estate Appraisers Act.

**A.** Terms starting with the letter ‘A’ are defined as follows:

(1) “Acceptable” appraisal experience includes, but is not limited to the following: fee and staff appraisal, ad valorem tax appraisal, review appraisal, market analysis, real estate counseling/consulting, highest and best use analysis and feasibility analysis. All experience claimed must be obtained after January 30, 1989, and must be in conformance with applicable national uniform standards of professional appraisal practice (USPAP). Appraisal experience acceptable toward licensing or certification must have been gained under the supervision of an appraiser who is certified at a level equal to or greater than the license or certificate the applicant is seeking.

(2) “Appraisers act” or “act” means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

(3) “Appraisal management company (AMC)” means a corporation, partnership, sole proprietorship, subsidiary, limited

liability company or other business entity that:

(a) contracts with independent appraisers to perform real estate appraisal services for clients;

(b) receives requests for real estate appraisal services from clients and for a fee paid by client, enters into an agreement with one of more independent appraisers to perform the real estate appraisal services contained in the request;

(c) otherwise serves as a third-party broker of appraisal management service between clients and appraiser.

(4) “Appraisal review” is the act or process of developing and communicating an opinion about the quality of another appraiser’s work that was performed as part of an appraisal, or an appraisal review assignment. The appraisal reviewer must have certification that corresponds with or is higher than the level of licensure required to perform the initial appraisal.

(5) “Assignment” means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement for a specified number of properties.

**B.** Terms starting with the letter ‘B’ are defined as follows: “Broker price opinion” means: an opinion by a qualifying or associate broker of the price of real estate for the purpose of marketing, selling, purchasing, leasing or exchanging the real estate or any interest therein or for the purposes of providing a financial institution with a collateral assessment of any real estate in which the financial institution has an existing or potential security interest; provided that the opinion of the price shall not be referred to or construed as an appraisal or appraisal report and shall not be used as the primary basis to determine the value of real estate for the purpose of loan origination.

**C.** Terms starting with the letter ‘C’ are defined as follows:

(1) “Complaint committee” shall

be appointed by the board. The chairperson of the committee shall be an appraiser board member. The board appointed complaint committee is for the purpose of review of complaints and shall make recommendations to the board as to its findings. No real estate appraiser organization shall have a majority membership on the committee.

(2) “Complex” means a one to four family residential property appraisal in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(3) “Content approval for distance education” non-academic credit college courses provided by a college shall be approved by the appraiser qualifications board (AQB) and the New Mexico real estate appraisers board.

**D.** Terms starting with the letter ‘D’ are defined as follows: “Duly made application” means an application to the New Mexico real estate appraisers board including Subparagraphs (a) through (g) set out below, in addition to any other requirements of the board:

(1) a completed application on the form provided by the board; the form must be signed by the applicant attesting to the truthfulness of the information provided in the application; electronic signatures shall be acceptable;

(2) letters of verification from at least three individuals who are not related to the applicant but who are acquainted personally and professionally with him/her and who can attest that the applicant is of good moral character; and is competent;

(3) a statement attesting that he/she is a native, a naturalized citizen or a legal resident of the United States;

(4) transcripts or certificates or statements showing successful completion of the required appraisal courses;

(5) a recent photograph of the applicant in which the applicant clearly is discernible;

the photograph must be at least two inches by three inches in size;

(6) a check or money order for the fees set out in 16.62.12.8 NMAC;

(7) an appraiser experience log recorded on the forms approved by the board or on another approved form, if required.

**E.** Terms starting with the letter 'E' are defined as follows:

(1) "Education advisory committee" shall be appointed by the board for the purpose of review of applications for course approval and sponsorship approval of appraiser educational offerings and shall make recommendations to the board as to its findings. Membership in a professional organization or association shall not be a prerequisite to serve on the committee. No real estate appraiser organization shall have a majority membership on the committee.

(2) "Ethics rule" emphasizes the personal and professional obligations and responsibilities of the individual appraiser.

(3) "Experience" is defined as verifiable time spent in performing tasks in accordance with the definition of "appraisal" and "appraisal assignment", as stated in the act, Section 61-30-3 NMSA 1978. Such tasks include inspecting and analyzing properties; assembling and analyzing relevant market data; forming objective opinions as to the value, quality or utility of such properties; and preparing reports or file memoranda showing data, reasoning and conclusions. Professional responsibility for the valuation function is essential for experience credit.

(4) "Experience" will be submitted to the board in the form of a log, which indicates assignment information and type, compensation status, time spent on the assignment and whether the applicant signed the report. Experience credit claimed on the log must be attested to by the supervising

appraiser. Experience logs are subject to review and request for supporting documentation.

(5) "Experience review process" is the method by which appraiser experience is approved for credit toward licensure or certification. The process includes the review of the experience log submitted by the applicant; selection of three or more entries for review of the reports and any additional file memoranda; and approval of experience hours claimed and conformance of reports with applicable national uniform standards of professional appraisal practice (USPAP) standards.

**F.** Term starting with the letter 'F' is defined as follows: "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

**G.** Terms starting with the letter 'G'. [RESERVED]

**H.** Terms starting with the letter 'H'. [RESERVED]

**I.** Terms starting with the letter 'I'. "IDECC" - international distance education certification center.

**J.** Terms starting with the letter 'J'. [RESERVED]

**K.** Terms starting with the letter 'K'. [RESERVED]

**L.** Terms starting with the letter 'L' are defined as follows:  
(1) "Licensee" means a trainee, license, residential certificate or general certificate.

(2) "Location" means the offices of the New Mexico real estate appraisers board will be located in Santa Fe, New Mexico.

**M.** Term starting with the letter 'M' is defined as follows: "Module" is an appraisal subject matter area (and required hours of coverage) as identified in the required core curriculum. All modules identified in the required core curriculum for a specific classification must be successfully completed to satisfy the educational requirements as set forth in the appraiser qualifications board (AQB) real property appraiser qualification

criteria.

**N.** Term starting with the letter 'N' is defined as follows: "Nonresident appraiser" for the purpose of 61-30-20 of the New Mexico Real Estate Appraisers Act, nonresident applicants; reciprocity, means an individual who holds a current trainee registration, license, or certificate, and is in good standing, in another state.

**O.** Terms starting with the letter 'O'. [RESERVED]

**P.** Terms starting with the letter 'P' are defined as follows:  
(1) "Practicing appraiser" means a state licensed or certified appraiser in good standing, engaged in performing appraisal assignments.

(2) "Primary business location" means the geographical location of a business where the supervisor and trainee spend the majority of their time. A trainee may perform work only in areas where the supervising appraiser has competency pursuant to USPAP.

**Q.** Terms starting with the letter 'Q'. [RESERVED]

**R.** Term starting with the letter 'R' is defined as follows: "Required core curriculum" is a set of appraisal subject matter (known as 'modules') which require a specified number of educational hours at each credential level; as set forth in the appraiser qualifications board (AQB) real property appraiser qualification criteria.

**S.** Term starting with the letter 'S' is defined as follows: "Supervisor" means a certified residential or certified general appraiser in good standing in the training jurisdiction and not subject to any disciplinary action within the last three years that affects the supervisor's legal ability to engage in appraisal practice.

**T.** Term starting with the letter 'T' is defined as follows: "Trainee" means an individual taught to become a state licensed or certified appraiser under the direct supervision of a supervising appraiser.

**U.** Term starting with the letter 'U' is defined as follows:

“Uniform standards of professional appraisal practice” (USPAP) means the uniform standard or the profession standard promulgated by the appraisal standards board of the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act and deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

V. Terms starting with the letter ‘V’. [RESERVED]

W. Term starting with the letter ‘W’ is defined as follows: “Work file” is documentation necessary to support an appraiser’s analyses, opinions, and conclusions.

X. Terms starting with the letter ‘X’. [RESERVED]

Y. Terms starting with the letter ‘Y’. [RESERVED]

Z. Terms starting with the letter ‘Z’. [RESERVED]

[1/14/00; 16.62.1.7 NMAC - Rn & A, 16 NMAC 62.1.7, 09/13/2004; A, 11/25/06; A, 06/13/08; A, 11/15/08; A, 10/16/2009; A, 08/21/2010; A, 7/10/2011; A, 01/01/2015; A, 06/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.2 NMAC, part name and Section 9, effective 01/15/2017.**

**PART 2 APPLICATION FOR [APPRENTICE] TRAINEE**

**16.62.2.9 SUPERVISING APPRAISER/TRAINEE:**

A. Supervision of trainees: An appraiser may engage a declared trainee to assist in the performance of real estate appraisals and related activities, provided the supervising real estate appraiser:

- (1) is in good standing and has been certified for at least three years;
- (2) has no more than three trainees working under his/her supervision at one time;
- (3) actively

supervises the trainee by either being physically present or by a form of electronic communication; and

(4) is competent pursuant to USPAP in all appraisals supervised.

B. Prior to the date any trainee begins performing real estate appraisal and related activities under his/her supervision, the supervisor must:

(1) inform the board of the name of the trainee on the declaration form prescribed by the board; the supervisor must also inform the board within 10 days when a trainee is no longer working under his/her supervision; and

(2) attend a supervisor/trainee education program approved by the appraisal board regarding the role of a supervisor; if continuously supervising trainees, supervisors must attend the class at least every four years; and

(3) this class may be used as part of the continuing education requirements for the biennial renewal cycle.

C. When training for residential license or residential certification the supervisor must accompany the trainee on complete interior inspections of the subject property on the first [50] 25 assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type.

D. When training for general certification the supervisor must accompany the trainee on inspections of the subject property on the first 25 non-residential assignments; after that point, the trainee may perform the inspections without the presence of the supervisor provided the trainee is competent to perform those inspections in accordance with the competency rule of USPAP for the property type and market area. [~~The supervisor and trainee must have their primary business location in New Mexico.~~]

E. The supervising

appraiser shall:

(1) review all appraisal reports and supporting data used in connection with appraisals in which the services of a trainee are utilized;

(2) certify that the report is in compliance with USPAP;

(3) maintain an experience log jointly with the appraiser trainee to ensure the experience log is accurate, current and complies with the requirements of the trainee appraiser’s credentialing jurisdiction;

(4) sign the appraisal experience log at least every 30 days and use the title “supervising appraiser” when signing;

(5) review the hours claimed on the log and address any discrepancies.

F. Appraisal experience logs shall include:

- (1) type of property;
- (2) date of report;
- (3) address of appraised property;
- (4) description of work performed by the trainee appraiser and the scope of the review and supervision of the supervisory appraiser;
- (5) number of actual work hours by the trainee appraiser on the assignment; and
- (6) the signature and state certification number of the supervising appraiser.

G. Separate appraisal logs shall be maintained for each supervising appraiser, if applicable.

H. The supervising appraiser shall not be employed by a trainee or by a company, firm or partnership in which the trainee has a controlling interest.

I. Trainees: All trainees shall perform all real estate appraisal and related activities under the immediate, active, and personal supervision of a certified real estate appraiser.

(1) All appraisal reports must be signed by

the trainee's declared supervisor. By signing the appraisal report, the certified appraiser accepts responsibility with the trainee for the content of and conclusions of the report.

(2) A trainee may assist in the performance of real estate appraisals and claim full credit for the actual hours worked on an appraisal, provided the trainee maintains a log on a form prescribed by the board.

(a) The log must detail all appraisals and related activities performed by the trainee. The hours claimed on the log must be verifiable by either signature on the report or by other written documentation in the work file.

(b) The log must be updated and signed by the supervisor at least every 30 days.

(c) The log must contain a statement affirming that both the supervising appraiser and trainee have competence as defined by USPAP.

(3) Trainees must attend a supervisor/trainee education program approved by the appraisal board before supervision begins. The trainee shall not receive appraisal experience credit for appraisals performed until the class is taken.

(4) Trainees shall assure that the supervisor has properly completed and sent the declaration form to the appraisal board on or before the day the trainee begins assisting the supervising appraiser.

(5) Trainees shall not receive appraisal experience credit for appraisal and related activities performed in violation of this section. [16.62.2.9 NMAC - N, 01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.6 NMAC, Section 8, effective 01/15/2017.**

**16.62.6.8 EXAMINATION REQUIREMENTS:** All candidates for licensure or certification must successfully complete the appraiser qualifications board endorsed uniform state certifications/licensing examination or its equivalent.

**A.** The examination will be approved by the appraisal qualifications board of the appraisal foundation and will cover standard appraisal concepts.

**B.** An applicant for licensing or certification will be denied and the results of the examination will be invalidated if: the applicant uses or possesses anything that gives the applicant an advantage other than silent, cordless, non-programmable calculator, Hewlett Packard calculator 12C or its equivalent; the applicant gives or receives any kind of aid during the examination; or someone other than the applicant takes the test or attempts to take the test for the applicant.

**C.** All calculator memories must be cleared before the examination. Operating manuals will not be allowed at the testing site.

**D.** The board will administer an examination on the New Mexico Real Estate Appraisers Act and board rules and regulations known as the state board jurisprudence examination which will require a score of seventy-two percent or more for a passing grade. This jurisprudence examination shall be taken during initial application for no charge, if this exam is failed then the exam can be taken a second time for a fee of \$95. If the second exam is failed then the application will be deemed incomplete and then referred to the board, at their next meeting, for decision.

**E.** The applicant must take the examination prescribed by

the board. [1/14/00; 16.62.6.8 NMAC - Rn & A, 16 NMAC 62.61.8, 09/13/2004; A, 06/13/08; A, 08/21/10; A, 01/15/17]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.7 NMAC, part name and Sections 8, 10, 12, 14 and 15, effective 01/15/2017.**

**PART 7 ISSUANCE/  
RENEWAL OF ~~[APPRENTICE]~~  
TRAINEE REGISTRATION/  
LICENSES/CERTIFICATES**

**16.62.7.8 INITIAL LICENSE ISSUANCE:** Initial licenses expire on April 30 in the second year of licensure. No license will be issued for longer than 24 months or less than 13 months. Applications for licensure are valid for one year from the date of receipt. [10/1/97; 16.62.7.8 NMAC - Rn & A, 16 NMAC 62.7.8, 09/13/2004; A, 01/15/2017]

**16.62.7.10 RENEWAL PROCESS:**

**A.** A completed renewal application, accompanied by the required fee as defined in 16.62.12.8 NMAC and documentation of ~~[32]~~ 28 hours of continuing education. Renewal applications must be post-marked or delivered to the board office on or before April 30 of the renewal year.

**B.** Deferrals may not be granted to credential holders, except in the case of individuals returning from active military duty. Licensees returning from active military duty may be placed in active status for a period of up to 90 days pending completion of all continuing education requirements.

**C.** The board shall audit a percentage of renewal applications each renewal period to verify the continuing education requirement has been met. The

licensee must maintain proof of continuing education courses taken for the past four years. The board reserves the right to audit a licensee's continuing education records as it deems necessary.

[10/1/97; 16.62.7.10 NMAC - Rn & A, 16 NMAC 62.7.10, 09/13/2004; A, 11/25/2006; A, 06/13/2008; A, 01/16/2011; A, 01/15/2017]

**16.62.7.12 REQUIRED CONTINUING EDUCATION:**

**A.** ~~[Thirty-two (32)]~~ Twenty-eight classroom hours of continuing education in courses approved by the board are required in each two-year renewal period. ~~[Four (4) of these hours must be achieved through a board approved renewal update course.]~~ The board also requires that the licensee take and pass the jurisprudence examination in accordance with Subsection D of 16.62.6.8 NMAC for each renewal cycle. The board will require a \$95 administrative fee to be submitted with this test for renewal.

**B.** Each license holder is required to submit a list of continuing education courses with each renewal. ~~[Continuing education requirements are pro-rated at sixteen hours per full year and 1.33 hours for each additional month of the initial licensing period. Ten (10) percent of continuing education will be audited.]~~ For continuing education cycle periods of 185 days to 365 days, 14 hours of continuing education is required. For continuing education cycle periods of less than 185 days, no hours of continuing education are required.

**C.** Effective with the first biennial renewal period and each subsequent renewal, a seven hour class in the national uniform standards of professional appraisal practice update course is required as part of the continuing education requirement. Successful completion includes passing an exam, if required, by the appraiser qualifications board (AQB).

**D.** Educational offerings taken by an individual in order to fulfill the class hour requirement for a different

classification than his/her current classification may be simultaneously counted towards the continuing education requirement of his/her current classification.

**E.** Credit towards the continuing education hour requirements for each appraiser classification may be granted only where the length of the educational offering is at least two hours. [10/1/97; 16.62.7.12 NMAC - Rn & A, 16 NMAC 62.7.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 01/16/2011; A, 01/15/2017]

**16.62.7.14 REINSTATEMENT OF EXPIRED LICENSE:**

An expired license may be reinstated within 90 days after expiration upon submission of an application, payment of the required ~~[renewal administrative reinstatement]~~ biennial renewal fee, proof of ~~[compliance with continuing education requirements]~~ completion of all required continuing education hours that would have been required if the credential holder were in an active status. The required hours must also include the most recent edition of the seven-hour national USPAP update course (or its AQB-approved equivalent), and payment of the administrative reinstatement fee. The board may, in its discretion, treat the former trainee, license or certificate holder as a new applicant and further require that the applicant be reexamined as a condition to reissue a license or certificate.

[10/1/97; 16.62.7.14 NMAC - Rn & A, 16 NMAC 62.7.14, 09/13/2004; A, 01/01/2015; A, 01/15/2017]

**16.62.7.15 CHANGE OF MAILING ADDRESS, PHYSICAL BUSINESS ADDRESS AND E-MAIL ADDRESS:**

A trainee, license or certificate holder shall report to the board in writing any change of ~~[business]~~ mailing, physical business, and e-mail address. Failure to do so within 30 days is grounds for trainee, license or certificate suspension.

[10/1/97; 16.62.7.15 NMAC - Rn & A, 16 NMAC 62.7.15, 09/13/2004;

A, 06/13/08; A, 01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.8 NMAC, Sections 9 and 12, effective 01/15/2017.**

**16.62.8.9 RELEVANCE OF COURSEWORK:**

All coursework for original trainee, licensing or certification shall be in courses closely related to real estate appraisal. The board will not accept an applicant's completion of a course of a kind, which is designed to prepare students for examination, commonly known as a "cram course". All real estate appraisal coursework credited toward original trainee, shall have been completed no more than five years prior to the date of the application filed with the board. [H] Licensure or certification shall have been completed no more than 10 years prior to the date of the application filed with the board. [3/14/00; 16.62.8.9 NMAC - Rn & A, 16 NMAC 62.8.9, 09/13/2004; A, 11/25/06; A, 01/01/2015; A, 01/15/2017]

**16.62.8.12 CONTINUING EDUCATION REQUIREMENTS:**

~~[Thirty-two (32)]~~ Twenty-eight hours of continuing education are required each biennial renewal period. Continuing education requirements for initial trainees, licenses and certificates issued for less than two full years are pro-rated as defined in 16.62.7.12 NMAC.

**A.** Individuals must successfully complete the seven hour national uniform standards of professional appraisal practice (USPAP) update course, or its equivalent as approved by the appraiser qualifications board (AQB). Successful completion includes passing an exam if required by the appraiser qualifications board (AQB).

**B.** Successful



completion of the AQB approved seven hour national USPAP update course and the ~~[four (4) hour board approved renewal update course]~~ jurisprudence examination will be required of every trainee, licensee and certificate holder as a condition of renewal in each biennial renewal. [3/14/00; 16.62.8.12 NMAC - Rn & A, 16 NMAC 62.8.12, 09/13/2004; A, 11/25/2006; A, 08/21/2010; A, 1/16/2011; A, 01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.10 NMAC, Section 8, effective 01/15/2017.**

**16.62.10.8 TEMPORARY PRACTICE PERMITS:**

**A.** All persons who engage in the business of, act in the capacity of, advertise or display in any manner or otherwise assume to engage in the business of, or act as, a state real estate appraiser must have a board license or permit.

**B.** A temporary permit may be issued to non-resident appraiser licensed and certified appraiser for the purpose of performing an appraisal or an appraisal review.

**C.** Temporary practice for an appraisal review of a New Mexico real property:

(1) The reviewing appraiser must have a New Mexico residential certification or general certification.

(2) ~~[The temporary permit must be a New Mexico residential certification or general certification that is the same or greater certification than that of the original appraiser of the appraisal.]~~ The temporary permit holder must have an active license residential, residential certification or general certification from another issuing agency that corresponds with or is higher than the level of licensure

required to perform the appraisal.

(3) In the case of a review appraiser with an opinion of value, the review appraiser must have national USPAP compliance with competency in the report.

**D.** Temporary practice for an appraisal assignment of a New Mexico real property:

(1) Pursuant to Title XI, the board shall recognize, on a temporary basis, the certification or license of a real estate appraiser issued by another state.

(2) The temporary permit may only be issued on an assignment basis. A single assignment may include one or more properties under a single contract with a single client.

(3) The out of state appraiser must comply with the national USPAP and with the board's statutes and rules.

(4) The out of state appraiser is subject to the board's jurisdiction.

**E.** Applicants shall submit a form approved by the board to include the following:

(1) verification of license history and good standing as obtained from the national registry of real estate appraisers; the board may obtain verification and certification from the ASC website;

(2) the classification of the license or certification they hold;

(3) whether they are subject to disciplinary action in the state in which they are licensed or certified; if subject to disciplinary action, submittal of a final order and letter of closer should also be submitted;

(4) a statement certifying that the applicant's business in New Mexico is temporary and will not exceed 180 days;

(5) a statement and accompanying contract identifying the specific assignment to which the temporary permit will apply;

(6) an irrevocable statement consenting that suits and actions may be commenced

against him/her in the proper court of any county of New Mexico arising from the applicant's actions as a state licensed or certified appraiser;

(7) the fee specified in 16.62.12 NMAC.

**F.** A temporary permit extension may be obtained upon the written request submitted to the board office by the temporary permit holder; a one-time 30-day extension will be granted to complete the specified assignment.

[3/15/00; 16.62.10.8 NMAC - Rn, 16 NMAC 62.10.8, 09/13/2004; A, 11/25/06; A, 10/16/09; A, 08/21/10; A, 01/01/15; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.12 NMAC, Section 8, effective 01/15/2017.**

**16.62.12.8 FEES:** All fees required under the Real Estate Appraiser Act or these regulations are non-refundable unless otherwise noted.

**A.** Application fee for a trainee is \$200, which includes the initial trainee period.

**B.** Application fee for a license is \$300, which includes the initial licensing period.

**C.** Application fee for residential certification is \$300, which includes the initial licensing period.

**D.** Application fee for general certification is \$400, which includes the initial licensing period.

**E.** The fee for all examinations will be paid directly to the company who provides the exam.

**F.** The biennial renewal fee for trainee appraisers is \$200. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$55 per year or portion of a year. Any renewal issued for less than six months will be charged \$30.

**G.** The biennial

renewal fee for licensed appraisers is \$300. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.

**H.** The biennial renewal fee for residential certified appraisers is \$300. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$110 per year or portion of a year. Any renewal issued for less than six months will be charged \$55.

**I.** The biennial renewal fee for general certified appraisers is \$355. During the implementation of the biennial renewal schedule, renewals issued for less than a two-year period will be pro-rated at \$155 per year or portion of a year. Any renewal issued for less than six months will be charged \$80.

**J.** The current fee for listing on the federal registry as charged by the appraisal subcommittee (ASC).

**K.** The application fee for a temporary practice permit is [~~\$250~~] \$200.

**L.** The fee for replacement of trainee, license or certificate is \$50.

**M.** The fee for a certificate of good standing is \$25.

**N.** Administrative reinstatement fee is \$200.

**O.** Administrative late fee is \$100.00.

**P.** Administrative fees as follows:

- (1) approved continuing education course is \$50;
- (2) approval of continuing education sponsorship is \$75;
- (3) licensee list is \$150;
- (4) state board jurisprudence examination administrative fee is \$95;

[~~(4)~~] (5) miscellaneous is \$25 up to a max of \$100.  
[2/29/96; 16.62.12.8 NMAC - Rn,

16 NMAC 62.12.8, 09/13/2004; A, 08/21/2010; A, 01/16/2011; A, 7/10/2011; A, 01/01/2015; A, 01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.13 NMAC, Section 10, effective 01/15/2017.**

**16.62.13.10 RESPONDING TO COMPLAINT:**

**A.** In response to an investigation against any person who is a trainee, licensed or certified under the Real Estate Appraisers Act, the respondent must respond within 10 business days of receipt as allowed by the Uniform Licensing Act.

**B.** Failure to respond within time frame specified may result in disciplinary action up to and including revocation of license at the discretion of the board.  
[16.62.13.10 NMAC - N, 11/25/06; A, 01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.15 NMAC, Sections 10, 11 and 12, effective 01/15/2017.**

**16.62.15.10 APPLICATION FOR REINSTATEMENT FROM RETIREMENT STATUS:**

**A.** The application for the reinstatement of a license or certificate shall provide space for the applicant to provide the board the following information:

- (1) the license number of the former trainee, license or certificate;
- (2) the full name of the applicant;
- (3) the date of the original issue; and
- (4) the date of

the applicant's retirement.

**B.** The application must be completed and returned to the board with a check or money order in an amount equivalent to all lapsed renewal fees. In addition, the applicant for reinstatement of trainee, license or certificate must offer proof sufficient to satisfy the board that he/she has taken in the calendar year immediately preceding the application for reinstatement, a minimum of 14 clock-hours per year missed in refresher courses in addition to any hours of continuing education units the applicant might have been delinquent prior to retirement. Prior to reinstatement, the applicant must show proof that he or she is current with all continuing education hours required for each year in retirement status.

**C.** The application must be completed within two years from the date the active trainee, license or certificate expired. The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

**D.** No appraiser who has retired shall reactivate his/her practice until a new trainee registration, license or certificate is received. The appraiser shall not prepare an appraisal while in retirement status.

[3/15/00; 16.62.15.10 NMAC - Rn & A, 16 NMAC 62.15.10, 09/13/2004; A, 06/13/08; A, 01/01/2015; A, 01/15/2017]

**16.62.15.11 INACTIVE STATUS**

**A.** The following criteria must be met for inactive status eligibility:

- (1) the licensee must be in good standing; and
- (2) the license must be current.

**B.** A licensee who

fails to renew a license by April 30<sup>th</sup> of any year, shall renew the license in accordance with the Appraisal Act before the licensee can be considered for inactive status.

~~C. [A licensee who wishes to be placed on inactive status shall:~~

~~(1) Notify the in writing prior to the expiration of the license or certificate. The notice will be recorded in the minutes of the board; and~~

~~(2) Pay the fees established by the board to be placed on inactive status.] A licensee who wishes to be placed on inactive status shall notify the board office in writing prior to the expiration of the license or certificate. The notice will be recorded in the minutes of the board.~~

D. A licensee on inactive status shall not engage in any activity for which registration is required.

E. Rendering or offering to render in appraisal services or engaging in the any appraisal activity while on inactive status shall be considered sufficient grounds for disciplinary action by the board.

F. When an appraiser holds an inactive license and represents himself/herself in public statements that include but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures, and public oral presentations, must disclose that with an inactive license, and shall not provide appraisal consulting.

G. Licensees on inactive status will be reported to the national registry. [16.62.15.11 NMAC - N, 01/01/2015; A, 01/15/2017]

**16.62.15.12 REINSTATEMENT FROM INACTIVE STATUS**

A. The inactive licensee may apply for reinstatement to active status within three years after trainee, license or certificate has been placed on inactive status.

The applicant shall complete an application for reinstatement to include the following:

- (1) the license number of the former apprentice/trainee, license or certificate;
- (2) the full name of the applicant;
- (3) the date of the original issue;
- (4) the date of the applicant's inactive status.

B. The application must be completed and returned to the board with a check or money order [in an amount described in 16.62.12-NMAC] for the required biennial renewal fee and administrative reinstatement fee. In addition, the applicant for reinstatement of trainee, license or certificate must provide satisfactory proof of completion of the continuing education requirements that would have been required had the credential always been active described in 16.62.8 NMAC.

C. The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application is in order and is satisfied that the applicant for reinstatement has fulfilled the requirements as specified, the board shall issue the applicant a registration, license or certificate.

D. No appraiser who has an inactive status shall reactivate his/her practice until a new trainee registration, license or certificate is received.

E. No application for inactive status will be accepted if the appraiser is under investigation or facing disciplinary proceedings.

F. If the inactive licensee applies for reinstatement to active status more than three years after trainee, license or certificate has been placed on inactive status, the applicant shall:

- (1) complete an application for reinstatement to include the following:
  - (a) the license number of the former trainee, license or certificate;
  - (b) the full name of the applicant;

- (c) the date of the original issue;
- (d) the date of the applicant's inactive status; and

- (2) take and pass the state examination.

G. The application must be completed and returned to the board with a check or money order in an amount described in 16.62.12 NMAC. In addition, the applicant for reinstatement of traineeship, license or certificate must provide satisfactory proof of completion of the continuing education requirements described in 16.62.8 NMAC in addition to classroom hours:

- (1) licensed and residential certified appraisers:
  - (a) 15 hour national USPAP;

- (b) residential market analysis and highest and best use;

- (c) residential appraiser site valuation and cost approach;

- (d) residential sales comparison and income approaches;

- (e) residential report writing and case studies.

- (2) general certified appraisers:
  - (a) 15 hour national USPAP;

- (b) general appraiser market analysis and highest and best use;

- (c) general appraiser site valuation and cost approach;

- (d) general appraiser sales comparison and income approaches;

- (e) general appraiser report writing and case studies;

- (f) general appraiser income approach.

H. The application will be reviewed by the board at its next regularly scheduled meeting. If the board finds the application in order and is satisfied that the applicant for reinstatement has fulfilled the

requirements as specified, the board shall issue the applicant a registration, license or certificate.

**I.** No appraiser who has an inactive status shall reactivate his/her practice until a new trainee registration, license or certificate is received.

**J.** No application for inactive status will be accepted if the appraiser is under investigation or facing disciplinary proceedings.

**K.** A licensee on inactive status shall not render or offer to render appraisal services or otherwise engage in the any appraisal practice until the board issues a new license.

[16.62.15.12 NMAC - N, 01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.62.16 NMAC, Section 8, effective 01/15/2017.**

**16.62.16.8 REQUIREMENTS/LIMITATIONS**

**A.** No appraiser shall advertise or procure another to advertise, nor personally solicit or procure another to personally solicit on his/her behalf or on the behalf of another, in a manner that is false, fraudulent or misleading.

**B.** No firm, group or association may advertise as being a trainee, licensed or certified. The individual members of the firm, group or association must be listed along with the scope of their [apprenticeship] trainee, licenses or certifications. Sole practitioners must include their name and the scope of their [apprenticeship] trainee, license or certificate in every advertisement.

**C.** Advertisement for appraiser individuals or firms shall conform to the ethics provisions of the uniform standards of professional appraisal practice.

[3/15/00; 16.62.16.8 NMAC - Rn & A, 16 NMAC 62.16.8, 09/13/2004; A,

01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.65.1 NMAC, Section 7, effective 01/15/2017.**

**16.65.1.7 DEFINITIONS:**

All words and terms defined in the Appraisal Management Company Registration Act have the same meaning in these rules.

**A.** Terms starting with the letter ‘A’ are defined as follows:

(1) “Act” means the Real Estate Appraisal Management Company Registration Act.

(2) “Applicant” means a company who has submitted an application to the board seeking registration.

(3) “Appraisal” means the act or process of developing an opinion of the value of real property in conformance with the uniform standards for professional appraisal practice published by the appraisal foundation.

(4) “Appraisal foundation” means the appraisal foundation incorporated as an Illinois not-for-profit corporation on November 30, 1987, and which reference is made in the federal Financial Institutions Examination Council Act of 1978, as amended by Title 11, Real Estate Appraisal Reform Amendments.”

(5) [“Appraisal management company (AMC)” means a corporation, partnership, sole proprietorship, subsidiary, limited liability company or other business entity that:

(a) ~~contracts with independent appraisers to perform real estate appraisal services for clients;~~

(b) ~~receives requests for real estate appraisal services from clients and for a fee paid by client, enters into~~

~~an agreement with one or more independent appraisers to perform the real estate appraisal services contained in the request;~~

(c) ~~otherwise serves as a third-party broker of appraisal management service between clients and appraiser.]~~

“Appraisal management company” (AMC) means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a state or 25 or more nationally within a given year.

(6) “Appraisal management services” means:

[the process of receiving a request for the performance of real estate appraisal services from a client, and for a fee paid by the client, entering into an agreement with one or more independent appraisers to perform the real estate appraisals services contained in the request.]

(a) to recruit, select, and retain appraisers;

(b) to contract with licensed and certified appraisers to perform appraisal assignments;

(c) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

(d) to review and verify the work of appraisers.

(7) “Appraisal review” the act or process of developing and communicating an opinion about the quality of another

appraiser's work that was performed as part of an appraisal, or an appraisal review.

(8) "Appraisal review report" is a report that develops or communicates an opinion about the quality of another appraiser work that was performed as part of an appraisal.

(9) "Appraisers Act" means the New Mexico Real Estate Appraisers Act as defined in Section 61-30-1 NMSA 1978.

(10) "Assignment" means one or more real estate appraisals and written appraisal report(s) covered by a single contractual agreement for a specified number of properties.

**B.** Terms starting with the letter 'B' are defined as follows:

(1) "Board" means the New Mexico real estate appraisers board.

(2) "Board file" means all documents that an AMC is required to create and maintain for the board.

**C.** Terms starting with the letter 'C' are defined as follows:

(1) "Client" means a person or entity that contracts with, or otherwise enters into an agreement with an appraisal management company for the performance of real estate appraisal services.

(2) "Complaint committee" is a board appointed committee that is composed for the purpose of reviewing complaints and making recommendation to the board as to its findings.

(3) "Controlling person" (CP) means:

(a) an owner, officer or director of a corporation, partnership, limited liability company or other business entity seeking to offer appraisal management services in this state;

(b) an individual employed, appointed or authorized by an appraisal management company that has the authority to enter into a contractual relationship with clients for the

performance of appraisal management services and that has the authority to enter into agreements with independent for the performance of real estate appraisal services; or

(c) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or polices of appraisal management companies.

(4) "Clerical review" is a non-standard three review of the completeness of the appraisal.

**D.** Terms starting with the letter 'D'. [RESERVED]

**E.** Term starting with the letter 'E' is defined as follows:  
(1)

"Employee in charge (EIC)" means a designated employee of the appraisal management company, with the responsibilities and obligations to the board set forth with these rules.

(2) "Evaluation" is a valuation permitted by the board's appraisal regulations for transactions that qualify for the appraisal threshold exception, business loan exception, or subsequent transaction exception.

**F.** Term starting with the letter 'F' is defined as follows: "FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and its amendments.

**G.** Terms starting with the letter 'G'. [RESERVED]

**H.** Terms starting with the letter 'H'. [RESERVED]

**I.** Terms starting with the letter 'I'. [RESERVED]

**J.** Terms starting with the letter 'J'. [RESERVED]

**K.** Terms starting with the letter 'K'. [RESERVED]

**L.** Terms starting with the letter 'L'. [RESERVED]

**M.** Terms starting with the letter 'M'. [RESERVED]

**N.** Term starting with the letter 'N' is defined as follows: "Nonresident appraiser" means an individual or entity that holds a current registration or license in another state.

**O.** Term starting with the letter 'O' is defined as follows: "Outsourced appraisal review" is an appraisal review conducted by a licensed appraiser who is not an employee of the AMC.

**P.** Terms starting with the letter 'P' are defined as follows.

(1) "Panel" means a group of independent appraisers that have been selected by an appraisal management company to perform real estate appraisal services for the appraisal management company.

(2) "Peer review" is an opinion as to the completeness of another appraiser's work; completed by a licensed appraiser of similar experience and qualifications for the purpose of making a recommendation to the board as to its findings.

**Q.** Terms starting with the letter 'Q'. [RESERVED]

**R.** Terms starting with the letter 'R'. [RESERVED]

**S.** Term starting with the letter 'S' is defined as follows: "Staff appraiser" is an appraiser hired by an AMC as an employee, who is licensed by the board, to act as an appraiser and is subject to these rules.

**T.** Terms starting with the letter 'T'. [RESERVED]

**U.** Term starting with the letter 'U' is defined as follows: "Uniform standards of professional appraisal practice (USPAP)" means the uniform standards or professional appraisal practice promulgated by the appraisal foundation and adopted by rules pursuant to the Real Estate Appraiser Act. USPAP deals with the procedures to be followed in which an appraisal, analysis, or opinion is communicated.

**V.** Terms starting with the letter 'V'. [RESERVED]

**W.** Term starting with the letter 'W' is defined as follows: "Work file" is documentation necessary to support an appraiser's analyses, opinions, and conclusions.

**X.** Terms starting with the letter 'X'. [RESERVED]

**Y.** Terms starting with the letter 'Y'. [RESERVED]

**Z.** Terms starting with the letter 'Z'. [RESERVED]  
[16.65.1.7 NMAC - N, 10/16/09; A, 01/01/2015; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT**  
REAL ESTATE APPRAISERS BOARD

**This is an amendment to 16.65.2 NMAC, Section 7, 11 and 13, effective 01/15/2017.**

**16.65.2.7 DEFINITIONS:** ~~[RESERVED]~~ Federally regulated financial institutions: An appraisal management company that is a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency shall not be required to register with a state.  
[16.65.2.7 NMAC - N, 01/15/2017]

**16.65.2.11 EMPLOYEE IN CHARGE (EIC) REGISTRATION REQUIREMENTS:** In order to serve as the EIC for a registered AMC, a designee shall:

- A.** not have had a license to practice as an appraiser refused, denied, canceled or revoked in this state or in any other state;
- B.** be of good moral character;
- C.** submit to a state background investigation; and
- D.** shall be responsible for;

(1) the selecting of appraisers for the performance of real estate appraisal services which includes: ensuring that each appraiser is licensed and provides a combined reporting system (CRS) identification number;

(2) have the responsibility of reviewing completed appraisals as part of the board file:

(a) shall ensure clerical review is conducted on all appraisals completed within the renewal period;

(b) shall randomly select a statistically significant number, but not less than

five percent, all fractions rounded up, of outsource appraisal reviews on appraisals completed within the renewal period;

(c) outsource appraisal reviews shall be completed by an appraiser ~~[with licensure equal to or greater than that of appraiser that is being reviewed]~~ that is certified or licensed in good standing within their state of licensure at a level that corresponds with or is higher than the level of licensure required to perform the appraisal.

(3) maintaining required documentation as part of the board file.

**E.** successfully complete a board approved 15 hour USPAP course for registration and a board approved seven hour USPAP update for renewals; the appraisal qualifications board (AQB) approved 15 hour national USPAP course and the seven hour national USPAP update course do not require prior approval by the board with proof that the course was taught by an AQB certified USPAP instructor who is also a residential or general certified appraiser; the course sponsor may certify in the form of a certificate provided to the student that the instructor meets AQB criteria; the instructor must be affiliated with a sponsor approved in at least one state of the United States.

[16.65.2.11 NMAC - N, 10/16/09; A, 01/16/11; A, 7/10/2011; A, 01/15/2017]

**16.65.2.13 AUDITS:** ~~[At the time of registration renewal, ten percent of AMC's shall be subject to audit. Audited AMC's shall be with required to submit to the board files for the 12 month period prior to renewal and any other documentation the board requests.]~~ At the time of registration or renewal the board has the right to examine the books and records of an AMC operating in the state and require the AMC to submit reports, information, and documents to the state at any time after written notice has been sent to the EIC of the AMC. Any costs incurred by the board during an audit may be attributed to the AMC.

[16.65.2.12 NMAC - N, 10/16/09; 16.65.2.13 NMAC - Rn & A, 16.65.2.12 NMAC, 01/16/11; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT**  
REAL ESTATE APPRAISERS BOARD

**This is an amendment to 16.65.3 NMAC, Sections 8, 9 and 10, effective 01/15/2017.**

**16.65.3.8 APPLICATION FOR REGISTRATION:** Incomplete application and fees will be returned to the applicant for supplementation of necessary documentation. All applicants must submit the following documentation to the board:

- A.** a completed application on a form prescribed by the board;
- B.** registration fee as provided in Part 5;
- C.** a notarized authorization for criminal background check for each person that owns, is an officer of or has a financial interest in the AMC with the prescribed fee;
- D.** a notarized authorization for criminal background check for the CP with the prescribed fee;
- E.** a notarized authorization for criminal background check for the EIC with the prescribed fee;

**F.** an irrevocable consent to service of process completed by the CP;

**G.** proof that the EIC has successfully completed an AQB approved 15 hour USPAP course.

**H.** The board will register the AMC on the federal registry maintained by the ASC and pay the fee as collected during the application process.

**I.** Upon issuance an AMC license shall be valid for no fewer than 12 months.

[16.65.3.8 NMAC - N, 10/16/09; A, 01/16/11; A, 01/15/2017]

**16.65.3.9 EXPIRATION:**

All registrations [~~will expire one year from the date on which it is issued~~] shall expire on September 30 of each year. Applications for licensure are valid for one year from the date of receipt.

[16.65.3.9 NMAC - N, 10/16/09; A, 01/15/2017]

**16.65.3.10 RENEWAL**

**PROCESS:** Incomplete applications will be returned to the applicant for supplementation of necessary documentation. All AMC's shall submit a renewal form on or before their expiration date.

**A.** Renewals shall submit proof that the EIC has successfully completed an AQB approved seven hour USPAP course.

**B.** Registrations shall be renewed on-line. If on-line renewal is a hardship the registrant must contact the board office and request an official renewal form.

**C.** On-line renewal must be completed on or before the expiration date. Completed renewal forms must be post-marked or delivered to the board office on or before the expiration date.

**D.** It is the registrant's responsibility to renew on or before the expiration date.

**E.** Incomplete renewal forms will be returned to the registrant. Returned renewal forms not completed and returned to the board office on or before the expiration date will be considered late and the registrant must pay a late fee.

**F.** Ten percent of all renewals will be audited and must submit all documentation requested by the board.

**G.** The board will register the AMC renewal with the ASC on their federal registry and pay the fee as collected during the renewal process.

[16.65.3.10 NMAC - N, 10/16/09; A, 01/16/11; A, 01/15/2017]

**REGULATION AND LICENSING DEPARTMENT  
REAL ESTATE APPRAISERS  
BOARD**

**This is an amendment to 16.65.5 NMAC, Section 8, effective 01/15/2017.**

**16.65.5.8 FEES:** All fees are non-refundable.

**A.** Initial application fee \$1000.

**B.** Renewal fee \$550.

**C.** Late renewal fee \$250.

**D.** Criminal background fee fees as currently

charged by department of public safety.

**E.** Duplicate/replacement registration \$25.

**F.** Paper list of all registrants \$150.

**G.** Electronic list of all registrants \$125.

**H.** Administrative fee \$50.

**I.** Official verification of good standing \$25.

**J.** AMC federal registration fee fee as currently charged by the appraisal subcommittee for federal registry.

[16.65.5.8 NMAC - N, 10/16/09; A, 01/15/2017]

**RETIREE HEALTH CARE AUTHORITY**

The New Mexico Retiree Health Care Authority approved, at its 11/15/2016 hearing, to repeal its rule 2.81.6 NMAC, Eligible Retiree, Spouse, Domestic Partner and Dependent Benefit Coverage Enrollment (filed 12/12/2002) and replace it with 2.81.6 NMAC, Eligible Retiree, Spouse, Domestic Partner and Dependent Benefit Coverage Enrollment, effective 01/01/2017.

**RETIREE HEALTH CARE AUTHORITY**

**TITLE 2 PUBLIC FINANCE**

**CHAPTER 81 RETIREE HEALTH CARE FUNDS  
PART 6 ELIGIBLE RETIREE SPOUSE, DOMESTIC PARTNER AND DEPENDENT BENEFIT COVERAGE ENROLLMENT**

**2.81.6.1 ISSUING**

**AGENCY:** New Mexico Retiree Health Care Authority ("NMRHCA"). [2.81.6.1 NMAC - Rp, 2.81.6.1 NMAC, 1/1/2017]

**2.81.6.2 SCOPE:** This rule applies to all eligible retirees, eligible spouses, eligible domestic partners, and eligible dependents authorized to participate in the NMRHCA coverages.

[2.81.6.2 NMAC - Rp, 2.81.6.2 NMAC, 1/1/2017]

**2.81.6.3 STATUTORY**

**AUTHORITY:** This rule is promulgated pursuant to the Retiree Health Care Act, Sections 10-7C-1 to 16 NMSA 1978.

[2.81.6.3 NMAC - Rp, 2.81.6.3 NMAC, 1/1/2017]

**2.81.6.4 DURATION:**

Permanent.

[2.81.6.4 NMAC - Rp, 2.81.6.4 NMAC, 1/1/2017]

**2.81.6.5 EFFECTIVE**

**DATE:** January 1, 2017 unless a later date is cited at the end of a section.

[2.81.6.5 NMAC - Rp, 2.81.6.5 NMAC, 1/1/2017]

**2.81.6.6 OBJECTIVE:** The objective of this rule is to establish the enrollment policy for eligible retirees, eligible spouses, eligible domestic partners, and dependents authorized to participate in the NMRHCA's coverage. The objective is to establish rules for new eligible retiree, spouse, domestic partners, and dependent enrollment, change in status enrollment for eligible dependents

and new dependent enrollment. The objective of this rule is to clarify when proof of medical insurability will be required in these cases, requiring certain documentation of retirees, spouses, domestic partners, and those claiming improper loss of coverages.

[2.81.6.6 NMAC - Rp, 2.81.6.6 NMAC, 1/1/2017]

**2.81.6.7 DEFINITIONS:**

**A. "Act"** means the Retiree Health Care Act (Sections 10-7C-1 to 16 NMSA 1978).

**B. "Domestic partner"** means a person at least 18 years of age, not married or a member of another domestic partnership, who is in an exclusive committed relationship with and for the benefit of the retiree member, and who has shared a primary residence with the retiree member for twelve or more consecutive months, is jointly responsible with the retiree member for each other's common welfare, shares joint financial obligations with the retiree member, and does not have a blood relationship with the retiree member such as to preclude marriage between them under New Mexico law.

**C. "Open enrollment period"** means any of the periods commencing January 1, 2017, and ending January 31, 2017, or commencing on January 1 and ending on January 31 of every odd-numbered year thereafter, in which an eligible retiree, eligible spouse, eligible domestic partner or dependents authorized to participate in NMRHCA's coverage may enroll into NMRHCA programs and outside of such periods an eligible retiree, eligible spouse, eligible domestic partner or eligible dependent may enroll into NMRHCA programs only upon the occurrence of a qualifying event as provided in 26 U.S.C. Section 125, as amended, and the regulations promulgated thereunder.

**D. "Termination of domestic partnership"** means the cessation of the joint and mutually responsible financial and exclusive committed relationship required for a

domestic partnership.

[2.81.6.7 NMAC - Rp, 2.81.6.7 NMAC, 1/1/2017]

**2.81.6.8 REQUIREMENTS FOR ENROLLMENT IN COVERAGES:**

An eligible retiree, spouse, domestic partner or dependent shall be enrolled pursuant to his/her actual status at the time of enrollment or at any time thereafter when a change in status occurs. A retiree may add eligible dependents at the time of acquiring them. A retiree may enroll himself/herself only, and any eligible dependents, or no eligible dependents. Each such enrollee's status must be the same for all lines of coverage (i.e. single, two party or family). An eligible spouse, domestic partner or dependent of a retiree may not be enrolled unless the eligible retiree is enrolled, except as otherwise provided by court order pursuant to the Mandatory Medical Support Act Sections 40-4C-1 to 14 NMSA 1978. A spouse, domestic partner or dependent of a deceased eligible retiree receiving a survivor's pension benefit may enroll separately. Any eligible retiree, spouse, domestic partner or dependent desiring to enroll for coverages shall meet the following requirements:

**A. Spouse, domestic partner and dependent enrollment/medical insurability:** An eligible retiree, spouse, domestic partner or dependent may enroll without evidence of medical insurability only during an open enrollment period.

**B. Eligible retiree, spouse, domestic partner, dependent change in status/enrollment:** Where an eligible retiree, spouse, domestic partner or dependent was receiving or eligible to receive group health benefit coverages through a third party and because of a change in status they lose the coverage and become ineligible for the coverage the eligible retiree, spouse, domestic partner or dependent may be enrolled without evidence of medical insurability if enrolled during an open enrollment period. If the loss of coverage due to the change in status was not caused by any

neglect or wrong doing by the eligible retiree, spouse, domestic partner or dependent, they may enroll at any time so long as they do so within 31 calendar days of the change of status. If an eligible retiree is employed by an employer offering its employees a basic plan of benefits, the coverage provided by the NMRHCA plan shall be secondary regardless of whether the retiree enrolls in his employer's plan.

**C. Domestic partner enrollment:** An eligible domestic partner may enroll upon the submittal of sworn statements of domestic partnership executed by both domestic partners on a form approved by the board.

**D. Prohibition against duplicate coverage:** An eligible retiree, spouse, domestic partner or dependent is prohibited from having duplicate coverage from the NMRHCA for any line of coverage. An eligible retiree, spouse, domestic partner or dependent is also prohibited from having retiree coverage and dependent coverage at the same time from the NMRHCA for any line of coverage.

**E. More than one eligible retiree in a family:** Where an eligible retiree, spouse, domestic partner or dependent are all three or two of them eligible retirees, either may enroll into coverage as the eligible retiree and the other be treated as an eligible spouse, domestic partner or dependent.

**F. Participation requirements for eligible retiree, spouse, domestic partner or dependent enrollment:** An eligible retiree, spouse, domestic partner or dependent is not permitted to enroll for a particular line of coverage unless the minimum participation level as determined by the NMRHCA is met.

**G. Switching coverage:** The eligible retiree, spouse, domestic partner or dependent shall all select the same line or lines of coverage and shall only be permitted to switch, add or delete coverages during an open enrollment period.

**H. Dropping**



**coverage:** An eligible retiree, spouse, domestic partner or dependent (except for dental or vision coverages) may drop any line of coverage at any time at their discretion. If they drop a line of coverage, they cannot re-enroll except as this rule permits. Members of the same family shall not be allowed to carry different lines of coverage.

**I. Dental or vision/dropping coverage:** Once enrolled in dental or vision coverages an eligible retiree, spouse, domestic partner or dependent may drop such coverages any time after enrollment. However, once a NMRHCA participant drops dental or vision coverage, that individual may not reenroll in that line of coverage until the open enrollment period immediately following the fourth anniversary of such dropped coverage. The four year waiting period does not apply to an involuntary loss of coverage and such eligible retiree, spouse, domestic partner or dependent may reenroll in that line of coverage during the next open enrollment period.

**J. Proper documentation:** Proper documentation, including evidence of medical insurability where required, must be provided by the eligible retiree, spouse, domestic partner or dependent seeking coverage within thirty-one days of the application for coverage. Coverage may be rejected where adequate proof and documentation satisfactory to the NMRHCA is not submitted in a timely manner. In the event such documentation is not timely submitted, the coverage shall not be effective and any contribution paid by the retiree, spouse, domestic partner or dependent shall be returned without interest.

**K. Eligible spouse, domestic partner dependent/open enrollment:** During an open enrollment period of eligible spouses, domestic partners, and dependents may be enrolled without evidence of medical insurability. A new spouse, domestic partner or newborn dependent of an eligible retiree is eligible for coverage from date of

birth, the date of marriage or date of submission of affidavit of domestic partnership, respectively, without providing evidence of medical insurability if the eligible retiree submits the required contribution and proper documentation within 31 calendar days of the birth, marriage or commencement of domestic partnership. Newly eligible dependents are also eligible for coverage from the date that a court order establishes their dependent status without providing evidence of medical insurability, if the eligible retiree submits the required contribution and proper documentation within 31 calendar days of the court order. In the event they fail to enroll within this period of time, they may not do so without providing evidence of medical insurability unless they subsequently enroll during an open enrollment period. Those persons considered to be a new eligible spouse, domestic partner or dependent are persons becoming related to the eligible retiree by marriage, establishment of a domestic partnership, the birth of a child, establishment of legal guardianship status and other similar situations where he or she becomes a new family member and is otherwise an eligible spouse, domestic partner or dependent under these rules.

**L. Eligible retiree, dependent, domestic partner or spouse/same coverage as eligible retiree:** The eligible spouse, domestic partner or dependent has no greater coverage than the eligible retiree participant and the eligible spouse, domestic partner or dependent can maintain coverage only to the extent that the eligible retiree participant maintains his/her coverage.

**M. Re-enrollment of eligible dependent student:** In those situations in which the eligible retiree maintains dependent coverage on an eligible dependent child under Paragraph (3) of Subsection F of Section 10-7C -4 NMSA 1978 and the child student loses coverage because the child no longer qualifies as a full time student and at some later time

the child again becomes a full time student and the student otherwise qualifies as an eligible dependent, the child may re-enroll at a time other than during an open enrollment period an eligible dependent, without evidence of medical insurability if notification and proper documentation is provided within 31 days of the change in status.

**N. Certificate of eligibility:** On certification by the executive director of the public schools insurance authority, the executive director of the public employees retirement association, the executive director of the educational retirement association or the certifying official designated by board rule of an independent public employer or other public entity, eligible retirees, spouses, domestic partners and dependents will be permitted to enroll in coverages within 31 days without proof of medical insurability. Certification shall be on a form approved by the executive director of the NMRHCA.

**O. Retirement documentation:** Employees contemplating retirement are responsible for submitting documentation prior to retirement so as to assure no break in coverage occurs.

**P. Prohibition of split coverages:** Retirees who have spouses or domestic partners who are employed by employers who offer or provide an employer benefits plan may choose to be covered by the spouses or domestic partner's employers' plan of benefits or the retiree may choose to be covered by the plan of benefits offered by the NMRHCA. Provided, however, the entire family shall be required to select to be covered under either the NMRHCA or the spouse's employer. Any responsibility for continued coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) shall be the responsibility of either the NMRHCA or the spouse or domestic partner employer coverage selected.

**Q. Coverage after marriage dissolution:** Where there

is a dissolution of marriage by decree which results in either of the former spouses no longer being eligible for coverage, that spouse shall be eligible only for such continuation of coverage as is required by COBRA.

**R. Termination of domestic partnership:** Eligibility for benefit coverage shall terminate for the non-retiree member of the domestic partnership upon the termination of the domestic partnership. The retiree member must notify the NMRHCA of the termination of his/her domestic partnership in writing, which must include the name of the former domestic partner and the effective date of the termination of the partnership, within 31 days of the termination.

[2.81.6.8 NMAC - Rp, 2.81.6.8 NMAC, 1/1/2017]

**2.81.6.9 ENROLLMENT AND ELIGIBILITY/ CONFLICT BETWEEN NMRHCA-CARRIER AGREEMENTS, NMRHCA RULES AND REGULATIONS, INDEMNITY POLICIES, HMO INDIVIDUAL SUBSCRIBER AGREEMENTS AND NMRHCA POLICY MISCOMMUNICATIONS:**

**A. Carrier contracts:**

As to questions of enrollment and eligibility, in the event there is a conflict between the carrier contract with the NMRHCA and this rule the rule will prevail.

**B. Miscommunication:**

As to questions of enrollment and eligibility, if miscommunication occurred, the party negligently communicating shall initiate action to correct the error.

**C. Dispute resolution:**

As to questions of enrollment and eligibility, disputes not resolved between the retiree and the NMRHCA or its contractors shall be submitted to and resolved by the NMRHCA executive director. Any aggrieved person may within 30 days of the executive director's decision, appeal such to the NMRHCA board and its decision shall be final, except as otherwise provided by law.

[2.81.6.9 NMAC - Rp, 2.81.6.9 NMAC, 1/1/2017]

**2.81.6.10 ENROLLMENT IN OPTIONAL, VOLUNTARY, OR SUPPLEMENTAL PLANS:**

Eligible retirees, and their spouses, domestic partners, and dependents, may enroll in optional, voluntary, or supplemental plans such as dental, vision, and life without enrolling in an NMRHCA medical plan of benefits.

The eligible retirees and their spouses, domestic partners, and dependents enrolling in such optional, voluntary, and supplemental plans shall pay a monthly premium which will cover the total cost for each benefit plan they elect to receive.

[2.81.6.10 NMAC - Rp, 2.81.6.10 NMAC, 1/1/2017]

**HISTORY OF 2.81.6 NMAC:**

**Pre-NMAC History:** The material in this part was derived from that previously filed with the State Records Center and Archives under: RHCA Rule 90-6, Retiree, Spouse and Dependent Benefit Coverage Enrollment, 6/5/1990.

**History of Repealed Material:**

2.81.6 NMAC, Eligible Retiree, Spouse, Domestic Partner and Dependent Benefit Coverage Enrollment, filed 12/12/2002 - Repealed effective 1/1/2017.

**Other History:**

2 NMAC 81.6, Retiree Spouse and Dependent Benefit Coverage Enrollment, filed 6/02/1998 is renumbered, reformatted and amended to 2.81.6 NMAC, effective 12/30/2002.

**WORKFORCE SOLUTIONS, DEPARTMENT OF**

At its public hearing on 9/7/2016, the Department of Workforce Solutions repealed its rule 11.1.2 NMAC entitled Public Works Minimum Wage Act Policy Manual and replaced it with 11.1.2 NMAC entitled Public Works Minimum Wage Act Policy Manual, effective 12/30/2016.

**WORKFORCE SOLUTIONS, DEPARTMENT OF**

**TITLE 11 LABOR AND WORKERS COMPENSATION  
CHAPTER 1 LABOR  
GENERAL PROVISIONS  
PART 2 PUBLIC WORKS  
MINIMUM WAGE ACT POLICY  
MANUAL**

**11.1.2.1 ISSUING**

**AGENCY:** New Mexico Department of Workforce Solutions, Labor Relations Division, Labor and Industrial Bureau, Public Works Section

[11.1.2.1 NMAC - Rp, 11.1.2.1 NMAC, 12/30/2016]

**11.1.2.2 SCOPE:** All contractors, subcontractors, employers or any person acting as a contractor who employs laborers or mechanics on public works projects.

[11.1.2.2 NMAC - Rp, 11.1.2.2 NMAC, 12/30/2016]

**11.1.2.3 STATUTORY**

**AUTHORITY:** Section 13-4-11 NMSA 1978 (2009).

[11.1.2.3 NMAC - Rp, 11.1.2.3 NMAC, 12/30/2016]

**11.1.2.4 DURATION:**

Permanent.

[11.1.2.4 NMAC - Rp, 11.1.2.4 NMAC, 12/30/2016]

**11.1.2.5 EFFECTIVE**

**DATE:** December 30, 2016, unless a later date is indicated at the end of section.

[11.1.2.5 NMAC - Rp, 11.1.2.5 NMAC, 12/30/2016]

**11.1.2.6 OBJECTIVE:**

The purpose of this rule is to define regulations necessary for the application of prevailing wage rates for laborers and mechanics employed on public works projects in the state including procedures for the predetermination of wages, the adoption of job classification descriptions and procedures for the disposition of appeals brought

under the Public Works Minimum Wage Act. Regulations pertaining to apprentices and permanent job classifications and descriptions for public works projects are also contained in this rule.

[11.1.2.6 NMAC - Rp, 11.1.2.6 NMAC, 12/30/2016]

**11.1.2.7 DEFINITIONS:**

**A.** “Base wage rate” means the straight time hours and hourly rate paid each laborer or mechanic.

**B.** “Craft” means a particular construction trade.

**C.** “Director” means the director of the division.

**D.** “Division” means the labor relations division of the workforce solutions department.

**E.** “Fringe benefit” means payments made by a contractor, subcontractor, employer or person acting as a contractor, if the payment has been authorized through a negotiated process or by a collective bargaining agreement, for: holidays; time off for sickness, injury, personal reasons or vacation; bonuses; authorized expenses incurred during the course of employment; health, life and accident or disability insurance; profit-sharing plans; contributions made on behalf of an employee to a retirement or other pension plan; zone, incentive, and subsistence pay and any other compensation paid to an employee other than wages, unless otherwise addressed separately in the applicable collective bargaining agreement, which shall be controlling in accordance with Subsection E of 11.1.2.12 NMAC.

**F.** “Labor organization” means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

**G.** “Locality” means one or more counties in the state of New Mexico.

**H.** “Prevailing wage

and benefits” means the hourly wage rate and other benefits as determined by the director to be received by employees for worked performed under public works projects or contracts.

**I.** “Secretary” means the secretary of the department of workforce solutions.

**J.** “Similar nature” means contract work performed on projects as defined in 11.1.2.18 NMAC.

**K.** “State” means the state of New Mexico.

**L.** “Wage” means the basic hourly rate of pay.

[11.1.2.7 NMAC - Rp, 11.1.2.7 NMAC, 12/30/2016]

**11.1.2.8 PREAMBLE:**

**A.** Every contract or project in excess of \$60,000 that the state or any political subdivision thereof is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project at wage rates and fringe benefit rates not less than those determined by the director to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

**B.** Consistent with the provisions of 11.1.2.12 NMAC the director shall determine prevailing wage rates and prevailing fringe benefit rates for respective

classes of laborers and mechanics employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominantly similar classes or classifications of laborers and mechanics for the locality of the public works project and the crafts involved.

[11.1.2.8 NMAC - Rp, 11.1.2.8 NMAC, 12/30/2016]

**11.1.2.9 RESPONSIBILITIES AND DUTIES:**

**A.** The director shall:

- (1) coordinate the administration of the Public Works Minimum Wage Act;
- (2) determine the prevailing wage and fringe benefit rates;
- (3) ensure enforcement of the payment of prevailing wages and fringe benefit rates;
- (4) adopt standard job classifications applicable on public works projects; and
- (5) adopt appropriate wage rate for all apprentices on public works projects.

**B.** The contracting agencies:

- (1) All agencies proposing to contract for work to be performed subject to this act must submit a request to the director, in the manner prescribed by the division, not less than three weeks before the advertising date, for a wage rate decision applicable to the work to be performed. The request must contain the following information:
  - (a) name, title and signature of requesting officer;
  - (b) department or agency requesting decision;
  - (c) date of request;
  - (d) full description and estimated cost of each of the several classifications of construction as set out in 11.1.2.10 NMAC;

(e) location (city or other description) of project site; and

(f) proposed advertising date and date by which bids are to be submitted.

(2) The director shall issue an electronic correspondence of the appropriate wage rate decision or decisions to the requesting agency within five working days of receipt by the director of such agency's request.

(3) The contracting agency or its agent; i.e., architect or engineer, shall electronically submit, to the director of the labor relations division the notification of award and list of subcontractors forms. Any changes or additions of subcontractors shall also be electronically submitted to the director by the contracting agency or its agent; i.e., architect or engineer within 10 business days. If the project is canceled, the contracting agency is required to notify the division electronically within 10 business days of cancellation.

(4) The contracting agency shall ensure that wage rate decisions are contained in advertised specifications for every contract subject to the Public Works Minimum Wage Act.

(5) If a collective bargaining agreement is in effect governing the service sought, that agreement will define minimum wages and benefits that must be paid in order for a bidder to be considered responsible.

(6) In order to ensure compliance by contractors and all tiers of subcontractors with the wage decisions, contracting agencies shall include in the advertised specifications and the contract between the agency and the contractor for all work subject to the terms of the Public Works Minimum Wage Act a provision requiring contractors and all tiers of subcontractors to maintain certified weekly payroll records. The director may require disclosure of any information necessary to ensure compliance by all contractors at all tiers with the requirements of the New

Mexico Public Works Minimum Wage Act.

(7) The contractual provision need not require any particular form for contractor or subcontractor payrolls; provided, all payrolls must contain the following information:

(a) the employee's full name need only appear on the first payroll on which the employee's name appears;

(b) the employee's classification (or classifications);

(c) the employee's hourly wage rate (or rates) ; the employee's hourly fringe benefits; and where applicable, the employee's overtime hourly wage rate (or rates);

(d) the daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted);

(e) the itemized deductions made;

(f) the net wages paid; and

(g) the number of the wage rate decision issued on the project by the director.

(8) The contractual provision shall require that all payrolls be numbered, starting with number one for the first payroll at the beginning of the job and continuing in numerical order until the job is completed.

(9) The contractual provision shall require that the contractor and each of his subcontractors shall submit a sworn statement of wages paid prior to the final payment on a project, which shall be substantially in the following form:

I hereby certify that the above information is correct and that all workers I employ on this public works project were paid no less than the Prevailing Wage Rate(s) as determined by the Department of Workforce Solutions, Labor Relations Division for this project as identified by the State Wage Decision Number. I understand that contractors who

violate Prevailing Wage Laws (i.e., incorrect job classification, improper payment of prevailing wages, or overtime, etc.), are subject to debarment procedures and shall be required to pay back any wages due to workers. (Ref. Labor Relations Division Public Works Minimum Wage Act Policy Manual (11.1.2 NMAC) & Public Works Minimum Wage Act (13-4-11 through 13-4-18, NMSA 1978)). I, \_\_\_\_\_, being first duly sworn on oath under penalty of perjury, swear that the foregoing information is true and correct.

Contractor's signature \_\_\_\_\_  
Date \_\_\_\_\_

Notary: Subscribed and sworn to before me at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Notary Public  
(Signature) (Date)  
My commission expires: \_\_\_\_\_

(10) The contractual provision shall require that the contractor and all subcontractors and their tiers shall maintain legible copies of the certified weekly payrolls prepared in accordance with these regulations.

(11) The sworn statement of wages paid must be filed prior to the final payment to a contractor. Bond monies and retainage will be released only to contractors who have filed sworn statements pursuant to the provisions of these regulations. Any contractor or subcontractor who files a false statement or refuses to file any statement or record required to be filed under these regulations, shall be considered as non-compliant and shall be subject to debarment proceedings. All contractors shall keep all certified payroll records for the duration of time not less than 12 months after the completion of the project that is being performed by the contractor, and subject to all other state or federal requirements for the retention of such records by the contractor.

(12) Contracting agencies shall comply

with requests from the director to inspect all projects and to inspect all documentation associated with those projects.

**C. Contractor and subcontractor**

(1)

Contractors and all contracting tiers on projects must file a sworn statement of wages paid.

(2) The

minimum wage rates must be posted by the contractor or subcontractor in a prominent, easily accessible place at the site of each particular project.

(3) The

director shall furnish the contracting agency with a poster containing the minimum wage rates. Said poster is to be forwarded to the contractor for posting at each particular project site.

(4) The

contractor and subcontractor shall comply with all requirements imposed by the Public Works Minimum Wage Act and these regulations.

[11.1.2.9 NMAC - Rp, 11.1.2.9 NMAC, 12/30/2016]

**11.1.2.10 CLASSIFICATION OF TYPES OF CONSTRUCTION:**

**A. Classifications of construction work**

(1) Type "A"

The street, highway, utility and light engineering construction classification shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields; highway bridges, median channels, and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs; canals, ditches and channels (including linings other than concrete linings); earth dams under 1,000,000 cubic yards, telephone and electrical transmission lines and site preparations which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, including appurtenances

thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line, or more than five feet from a building or heavy engineering structure, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction to the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure. Furthermore, this limitation will not apply to independent main lines and service out-lets (stub-out regardless of proximity to building or heavy engineering structure; construction and installation of pipelines (except cross-country transportation mainline pipelines), including municipal-type utility distribution pipelines, for the distribution of petroleum and natural gas, up to the first metering station or connection with the transportation mainline pipeline; provided, "First metering station or connection" means that point which divides cross-country transportation mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.

(2) Type "B"

The general building classification shall include the construction, alteration, repair and demolition of buildings, including office buildings, warehouses, industrial and commercial buildings, institutional and public buildings and all air-conditioning, conduit, heating and other mechanical and electrical works and site preparation for buildings or heavy engineering projects under this classifications; except that construction, alteration, repair and demolition of buildings under the scope of this classification shall not include construction, alteration, repair and demolition of buildings under the class "C" classification of Subsection A of 11.1.2.10 NMAC, of these regulations; stadia; and shall include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included

within the property line or less than five feet from the building or heavy engineering structure, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure.

(3) Type "C"

The residential building construction classification shall include the site preparation and construction, alteration; repair and demolition of residential buildings and shall include all structures intended for residential occupancy, be it by owners of said properties or tenants, including, but not limited to, single detached buildings, duplexes, tri-plexes, quad-plexes, residential condominium buildings, apartment buildings not to exceed four stories in height; and shall include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included within the property line or less than five feet from the building, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction to the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure.

(4)

Type "H" The heavy engineering construction classification shall include construction, alteration, repair and demolition of heavy engineering work such as railroad and geothermal projects, power generating plants, pump stations, natural gas compressing stations; covered reservoirs and sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of 1,000,000 cubic yards or over; radio towers, ovens, furnaces, kiln, silos, shafts and tunnels (other than highway shafts and tunnels), hydroelectric projects; and well drilling, telephone and electrical transmission lines which are part of general building

and heavy engineering projects; mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other rocket-type missiles; construction and installation of cross-country transportation mainline pipelines for the distribution of petroleum or natural gas, up to the first metering station or connection with the distribution pipelines; provided, "first metering station or connection" means that point which divides cross-country transportation mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.

**B.** On contracts which involve more than one classification of construction, as defined in 11.1.2.10 NMAC the director shall issue predeterminations, including therein the appropriate wage rates for each classification of construction where none of the classifications comprises 80% of the total contract cost. Where one classification comprises eighty percent or more of the total contract cost, the predetermined rate for that classification shall be used for the entire contract.

[11.1.2.10 NMAC - Rp, 11.1.2.10 NMAC, 12/30/2016]

**11.1.2.11 ADOPTION OF STANDARD JOB CLASSIFICATIONS AND DESCRIPTIONS:**

**A.** The director has adopted the standard job classifications and descriptions as set forth in 11.1.2.18 NMAC. Existing job classifications and descriptions shall remain effective until superseded on the effective date of newly adopted standard job classifications and descriptions.

**B.** The director may seek the assistance of contractors, contractors' associations, labor organizations, interested parties, and public officers in establishing standard job classifications and descriptions.

(1) Any person wishing to add, delete or modify

a standard job classification and description shall submit a request in the manner prescribed by the division containing the proposed classification and description.

(2)

Any proposal for a standard job classification and description shall contain the following clearly defined information:

(a)

occupational title;

(b)

a description of the physical duties to be performed by a laborer or mechanic having such a classification;

(c)

evidence of existing prevailing rates of pay, including fringe benefits;

(d) evidence that the proposed classification is used in the type of contract work for which the classification is proposed; and

(e)

such other justification as the director may deem advisable.

[11.1.2.11 NMAC - Rp, 11.1.2.11 NMAC, 12/30/2016]

**11.1.2.12 PREDETERMINATION OF WAGE RATES:**

**A.** Not later than July 30 of each year, interested parties may submit to the director for consideration collective bargaining agreements and other data collected during the preceding 12 month period. Submissions must be made as provided in the following subparagraphs:

(1) Collective

bargaining agreements filed with the division must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury, and which:

(a)

certifies that the agreement filed is fully executed and in effect, unless it is a signed original agreement or photocopy thereof, or a printed copy of a fully executed agreement showing the names of the signatory parties or associations except in the case of a printed agreement the

director may require certification; and

(b)

names or otherwise identifies all New Mexico counties within the jurisdiction of the local union or unions signatory to the agreement;

(2) Interested

parties wishing submit information for employees not covered by a collective bargaining agreement must provide the following information to the division on a form to be furnished by the director: name and address of the employer or interested party, the number of hours worked by workers in each classification, the classification of each worker, the hourly rate actually paid each worker, the project type, the fringe benefit rate actually paid each worker, and, if practical, the counties in which work was performed. The information filed with the division must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury. The director shall consider any information provided during the 12 month period preceding June 30 of each year. Information from sources other than applicable collective bargaining agreements shall only be considered consistent with the provisions of the Public Works Minimum Wage Act.

**B.** The director may, consistent with the methodology set forth in Subsection D of 11.1.2.12 NMAC, determine that the rate established by a collective bargaining agreement is the general prevailing wage rate for each craft, classification or type of worker for any project in which a collective bargaining agreement has been filed with the division in accordance with 11.1.2.12 NMAC and that collective bargaining agreement covers the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.18 NMAC.

**C.** In setting the general prevailing wage rate, the director shall give due regard to information obtained during the director's determination of the

prevailing wage rates and the prevailing fringe benefit rates and may consider the written data, personal opinions and arguments of interested parties where no applicable collective bargaining agreement is submitted.

**D.** For each classification the general prevailing wage rate shall be determined as follows:

(1) If a collective bargaining agreement covering the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.18 NMAC has been filed with the division in accordance with 11.1.2.12 NMAC, then the collective bargaining agreement establishes the general prevailing wage rate except as provided in Paragraph (2) of Subsection D of 11.1.2.12 NMAC.

(2) If the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined in a locality because no collective bargaining agreements exist, then the director shall determine the prevailing wage rates and prevailing fringe benefit rates for the same or most similar class or classification of laborer or mechanic in the nearest and most similar neighboring locality in which collective bargaining agreements exist.

**E.** The director shall determine the employers' contribution requirements under the provisions of the Public Works Apprentice and Training Act, and that information shall be part of all public works construction projects.

**F.** In order to protect the privacy of employees with respect to whom any wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligations under the Public Works Minimum Wage Act, neither the labor and industrial commission nor the director or any member of the director's staff, shall disclose to any person the employee's social security number or date of birth with respect to whom wage information is received,

submitted, or otherwise in the possession of the director without having received the prior written consent of the employee.

[11.1.2.12 NMAC- Rp, 11.1.2.12 NMAC, 12/30/2016]

**11.1.2.13 PROCEDURE FOR ADOPTION OF WAGE RATES:**

**A.** When the director has determined the proposed prevailing wage and fringe benefit rates applicable in the state for public works projects in accordance with Subsection D of 11.1.2.12 NMAC, the proposed prevailing wage and fringe benefit rates shall be subject to a public hearing before the secretary or a hearing officer designated by the secretary.

**B.** The time, date and place of said public hearing will be established at the discretion of the secretary. Notice of the subject matter, the action proposed to be taken, the time, date and place of the public hearing, the manner in which interested persons may present their views, and the method by which copies of the proposed rates may be obtained, shall be published once at least 30 days prior to the hearing date in a newspaper of general circulation. Such notice shall also be mailed by the director to all known interested parties at least 30 days prior to the hearing date along with a copy of the proposed rates. Interested parties shall include without limitation the state highway department, incorporated cities and counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the Act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section. Any objections to the proposed prevailing wage rates may be communicated to the director by an interested party either orally at such public hearing or in writing delivered

to the director or the director's designee on or before the date of such public hearing.

**C.** The director shall consider fully all data, views, or arguments submitted in support of or in opposition to the proposed prevailing wage and fringe benefit rates before deciding to approve, modify or reject the prevailing wage and fringe benefit rates proposed by the director for public works projects.

**D.** The adoption of wage and fringe benefit rates by the director shall constitute an "action" which shall be appealable to the labor and industrial commission, sitting as the appeals board, pursuant to Subsection A of Section 13-4-15 NMSA 1978, and as described in 11.1.2.17 NMAC.

(1) Consistent with the right of appeal granted to any interested person by Section 13-4-15, NMSA 1978, the director shall not adopt the issued wage rates for 15 days following their issuance, while an appeal, if any, to the labor and industrial commission, sitting as the appeals board, is pending, or before the effective date of the decision by the labor and industrial commission pursuant to Subsection D of 11.1.2.17 NMAC.

(2) The labor and industrial commission is designated, pursuant to Section 9-26-6, NMSA 1978, to hear appeals of the adoption of wage rates and shall conduct such appeals and render its decision pursuant to the procedures described in 11.1.2.17 NMAC.

**E.** The adopted prevailing wage rates shall not be effective until they have been filed in accordance with the State Rules Act. [11.1.2.13 NMAC- Rp, 11.1.2.13 NMAC, 12/30/2016]

**11.1.2.14 EFFECTIVE DATE OF WAGE RATES:**

**A.** The wage and fringe benefit rates become effective once they are adopted and published, in accordance with 11.1.2.13 NMAC.

**B.** If an appeal is filed pursuant to Subsection D of 11.1.2.13 NMAC, then the director

shall adopt the wage rates, as modified by the labor and industrial commission, following expiration of the stays provided by Paragraph (2) of Subsection D of 11.1.2.13 NMAC.

C. Except as provided in Subsection D of 11.1.2.14 NMAC, each discrete public works project shall be governed by one wage and fringe rate decision, which shall remain effective for the duration of the project.

D. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new wage determination becomes effective provided that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least 10 days prior to the date on which bids are to be submitted. Wage and fringe rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least 10 days' notice before the date bids are to be submitted.

E. All decisions will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the director.

F. The procurement of services pursuant to state price agreements or other methods that serve to establish long-term pre-determination of the price of services shall not have an impact on the obligations of contract agencies and contractors to adhere to the requirements of the Public Works Minimum Wage Act and these regulations.

[11.1.2.14 NMAC - Rp, 11.1.2.14 NMAC, 12/30/2016]

**11.1.2.15 PROCEDURE FOR INVESTIGATION OF VIOLATIONS:**

A. When a violation is reported or detected, the director shall convey all relevant information to the contracting agency. The director has a non-discretionary duty, once probable cause of a violation is found, to request all payroll records in question

from either the subcontractor or the prime contractor and the contractor or subcontractor shall provide legible copies of the requested certified payroll records within 10 business days, when requested by the director.

(1) The director shall investigate a complaint filed by any adversely affected interested party or that party's agent regarding violations of the Public Works Minimum Wage Act, as long as the complaint is received by the director before the contract is closed out between the contracting agency and the prime contractor on any public works project. (Closed out is defined as: when the contracting agency has made final payment on the project).

(2) The provisions of this subsection do not limit any worker's right to make a claim for payment of prevailing wages, nor do the provisions of this subsection diminish the prime's or subcontractor's duty to cooperate with the division.

(3) If the contractor or subcontractor has not complied with the director's request for certified payroll records or if the director determines that a violation of the Public Works Minimum Wage Act has occurred and not been rectified, payment to the contractor in proportion to that owed to the non-compliant contractor or subcontractor, shall be withheld by the contracting agency until compliance has been secured pursuant to the certification procedure outlined in Subsection A and B of Section 13-4-14 NMSA 1978. The contracting agency may, if necessary, request the attorney general, through the director to take legal action to ensure compliance with the act and the regulations contained herein.

B. In the event voluntary compliance by the contractor cannot be achieved, the director and the contracting agency shall undertake appropriate enforcement action as provided in the Public Works Minimum Wage Act.

C. Any adversely affected interested party or that party's

agent may appeal any determination, finding or action of the director to the labor and industrial commission pursuant to the procedures set forth in 11.1.2.17 NMAC.

[11.1.2.15 NMAC - Rp, 11.1.2.15 NMAC, 12/30/2016]

**11.1.2.16 PROCEDURE FOR ENFORCEMENT ACTIONS:**

A. The director may cancel, revoke, or suspend the registration of any party required to be registered pursuant to the Public Works Minimum Wage Act for failure to comply with the registration requirements or for good cause, pursuant to Section 13-4-14.2 NMSA 1978.

B. The director shall determine when good cause exists to cancel, revoke, or suspend the registration of any party. A determination of good cause to cancel, revoke, or suspend the registration of any party may include, but is not limited to, frequent or substantive violations of the Public Works Minimum Wage Act.

C. The director shall include the name of a person or firm who has willfully violated the Public Works Minimum Wage Act on a list to be distributed to all departments of the state, pursuant to Section 13-4-14 NMSA 1978.

D. Prior to taking any enforcement action pursuant to Subsections A, B, or C of 11.1.2.16 NMAC, the director shall provide a notice of contemplated action to the party setting out the basis for the proposed enforcement action.

(1) The notice of contemplated action from the director shall be provided at least 15 days prior to any final enforcement action taken by the director.

(2) Any party who receives a notice of contemplated action may provide a written response to the director for consideration prior to the director's final enforcement action.

(3) The director shall consider the written response provided by a party prior to taking any final enforcement action.



(4) After consideration of the response, the director may continue with the final enforcement action as proposed in the notice of contemplated action.

**E.** Any final enforcement action by the director in cancelling, revoking, or suspending the registration of any party or including the names of persons or firms who have willfully violated the Act on a list to be distributed to all department of the state, may be appealed pursuant to Section 13-4-15 NMSA 1978 and 11.1.2.17 NMAC. [11.1.2.16 NMAC - N, 12/31/2016]

**11.1.2.17 PROCEDURE FOR DISPOSITION OF APPEALS:**

**A.** Purpose and scope: The regulations contained in this part set out the procedures by which appeals may be filed, and by which the labor and industrial commission, sitting as the appeals board, hears and decides appeals pursuant to Section 13-4-15 NMSA 1978. The intent of this part is to clarify and implement the responsibilities and rights of all interested parties as set out in the Public Works Minimum Wage Act, Sections 13-4-11 through 13-4-17 NMSA 1978

**B.** Filing the appeal:  
 (1) The notice of appeal shall, consistent with Subsection A of Section 13-4-15 NMSA 1978, be filed with the director within 15 days after a determination, finding, rule, or regulation has been issued or any other action taken, and notice of the action has been given pursuant to Subsection B of 11.1.2.13 NMAC of these rules and regulations or otherwise. The filing of the notice of appeal shall immediately stay the effectiveness of the determination, finding or action appealed from.

(2) The appellant shall, within 10 days after filing the appeal, file with the labor and industrial commission, sitting as the appeals board, in care of the office of the director, a concise statement of all determinations, findings or actions of the director with which the appellant disagrees and from which

the appeal is taken, and a brief setting forth the reasons and authorities on which the appeal is based. Five copies of the said statement and brief shall be filed with the labor and industrial commission, sitting as the appeals board.

(3) Within 10 days after the filing of the statement and brief described in Subsection B of 11.1.2.17 NMAC, the director shall file by way of an answer, with the labor and industrial commission, sitting as the appeals board, his justification and authorities relied upon for the determination, findings, or action being appealed from. Five copies of the said answer shall be filed with the labor and industrial commission, sitting as the appeals board, and one copy shall be served upon the appellant.

(4) Any interested person other than the appellant, directly affected by the determination, finding or action of the director, such as, contractors, contracting agencies, labor organizations and contractors' associations, may intervene and file a statement and a brief in support of his position, in the manner provided in Paragraph (2) of Subsection B of 11.1.2.17 NMAC supra, and may participate in the hearing conducted by the labor and industrial commission, sitting as the appeals board, as described in Subsection C of 11.1.2.17 NMAC.

(5) The labor and industrial commission, sitting as the appeals board, shall furnish copies of the statements, briefs, and answers filed in the appeal to the attorney general, and may request the attorney general to appoint independent counsel to represent it at the hearing.

**C.** Conducting the hearing:

(1) The hearing shall, consistent with Subsection C of Section 13-4-15 NMSA 1978, be conducted by the labor and industrial commission, sitting as the appeals board, within 40 days after the filing of the appeal.

(2) The labor and industrial commission, sitting

as the appeals board, shall decide all matters brought before it by a quorum which shall consist of two members. Prior to a hearing, the commission shall designate a chairman who shall conduct the meetings and rule on the admissibility of all evidence submitted by and objections of any participant.

(3) The labor and industrial commission, sitting as the appeals board, shall not be required to follow strict rules of evidence and shall have authority to admit any evidence which it concludes has probative value, but irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(4) The labor and industrial commission, sitting as the appeals board, shall make its decision as to the validity or invalidity of the determination, finding, or action of the director based on substantial evidence on the whole record made before it. The appellant shall present his case first, subject to opportunity to present evidence in rebuttal.

**D.** Decision by the labor and industrial commission:

(1) The labor and industrial commission, sitting as the appeals board, shall, pursuant to Subsection C of Section 13-4-15 NMSA 1978, within 10 days after the close of the hearing, enter its decision and produce a concise statement of the principal reasons upon which the decision is based and promptly mail copies of the decision and statement to the participants at the hearing.

(2) The effective date of the decision by the labor and industrial commission, sitting as the appeals board, shall be stayed until 30 days after issuing the decision and statement, and may be further stayed pending review in a district court pursuant to Subsection D of Section 13-4-15 NMSA 1978, if and as determined by the court.

**E.** Decisions of the labor and industrial commission may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[11.1.2.17 NMAC - Rp, 11.1.2.16 NMAC, 12/30/2016]

**11.1.2.18 JOB CLASSIFICATIONS AND DESCRIPTIONS:**

The job classifications and descriptions for public works projects shall be as follows:

**A. Asbestos worker/heat and frost insulator:** The preparation, alteration, application, erection, assembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, dismantling, reconditioning, maintenance, finishing or weatherproofing of cold or hot thermal insulations with such materials as may be specified when those materials are to be installed for thermal purpose in voids, or to create voids, or on either piping, fittings, valves, boilers, ducts, flues, tanks, vats and equipment, or on any hot or cold surfaces for the purpose of thermal control, or to be installed for sound control on mechanical devices; equipment; piping and surfaces related in an integral way to the thermal insulation of such mechanical devices, except for materials applied inside sheet metal ducts and fittings. This work also includes all labor connected with:

(1) insulation for: temperature control (excluding batt, blown-in and sprayed-on insulation); personnel protection/safety; prevention of condensation; fire proofing of building penetrations.

(2) distribution of, cleanup of, and removal from surfaces as described above, which surfaces will be reinsulated with (excluding demolition which is covered under the laborers classification) the materials they apply.

**B. Boilermaker:** Assembles prefabricated boiler parts and fittings to build steam boilers, tanks, vats and other vessels made of ten gauge or heavier metal, and installs catwalks, platforms, stairways and ladders which are erected on, and supported by storage tanks for liquid or gas when such tanks were erected by boilermakers, and installs

all catwalks, platforms, stairways and ladders which are erected on and exclusively supported by a pressure vessel.

**C. Bricklayer, blocklayer, stonemason:** Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, etc., using brick, structural tile, concrete and other types of structural block. This classification shall include the setting of stone, marble, slate, and artificial stone. All cutting, grouting and pointing of materials listed above shall be a part of this classification. May also build or repair brick, block, or stone retaining walls, cutting or placing of brick in mortar or other similar material.

**D. Carpenter/lather:** Sets batterboards, builds and sets forms for concrete, or structural stud except as provided elsewhere. Builds and erects wood and metal products for the framing of structure or building, including bearing and non-bearing walls, framework in buildings, including partitions, floor and ceiling joists, studding, and rafters. Installs wood subflooring and hardwood flooring. Builds wood stairways, cabinets, steps, etc. Installs wood or premanufactured molding, paneling, doors, windows, etc., products and components related to office interiors - partitions, draperies, shelving, panels, doors, (metal, wood, etc.); including hardware; insulation around concrete slabs. Install pin metal or steel studs and wood furring (except on roofs). Carpenters may shoot grades for surveying and attaches "sheetrock" and similar wallboard materials to walls and ceilings. Installs insulation material in walls, ceilings, and under floors of buildings where such insulation is not laid in cement or other plastic materials. Sets all woodworking equipment and operates same. Builds forms and structural element for pre-cast and pre-stressed concrete of all types and shapes on project site. Erects wood, self-supporting scaffolding. Installs light iron and metal furring such as rods, channels and other bars or systems to which metal lath, rock lath or other materials

used as a substitute for lath are to be attached. Installs metal lath, rock lath, and other materials used as a substitute for lath. Installs metal plastering accessories such as corner beads, door and window casing beads, metal picture mold, chair rails and other metal plastering accessories which are covered and serve as a ground or guard, except that metallic corner beads, when installed by using plastic material, shall be installed under the "plasterer" classification. Cuts wood materials using a stationary or portable power saw of one or more horsepower. Sharpens by use of files, all types of saws and saw blades used for the cutting of wood materials.

**E. Carpenter (millwright):** Performs work necessary to assemble, level, align, secure, dismantle, adjust and maintain permanent stationary pumps, motors, generators, turbines, fans, compressors or torque converters which require precision leveling and alignment of such equipment. Installs reduction gear boxes, fluid drives, speed increasers, including the connection of same to pump or compressor coupling. May align and secure other direct drive motors and machines requiring precision alignment. Installs, repairs, or removal of all pulleys, sheaves, sprockets, gears and flywheels including all belts, cables and chains. Fabricates and or installs all templates, soleplates, grout pads and wedge blocks for all machinery requiring foundation or bolts. Installs all machinery, equipment and conveying devices in all classes of plants, factories, buildings, amusement parks, mills, shops stores, warehouses and construction or mining sites.

**F. Carpenter (piledriver):** Rigs piledriving equipment, signals pile rig and guides pile and leads to point pile is driven, aligns and plumbs pile using tape and level during driving; splices piles before, during and after driving, cuts off piles, realigns piles after driving. In "piledriving" operations, handles wood, metal, sheetpiling, steel

H-beams, concrete, or pipe, fastens them to cable of wench or piledriver, shifts timber piles with cant hook, cleans and points pile with axe or shovel. May drill pilot holes.

**G. Cement mason** (composition or mastic - finishing machine operator): Finishes concrete to a specified finish and grade on footings, floors, walks, steps and all concrete surfaces by using tools of the trade such as trowels, floats, screeds, etc. Sets to grade and aligns screeds one board high. Sets to grade and aligns forms for sidewalk, curbs and gutters. Fabricate, cut, bend and tie reinforcing steel and mesh to be placed within the forms for sidewalk, curbs and gutters. Patching, filling of voids and rubbing of concrete to a specified finish, which requires the use of power tools and tools of the trade. Bushhammer and related finish procedure. Concrete saw operation when used on new construction to saw control joints. Vibrating screeds and rollers to achieve final level of concrete. Gunite, in cement mason operation, when it is less than one and one-half inches in thickness, the handling and control of the nozzle shall be the work of the "cement mason." All work involving the laser screed including the ride-on, laser-guided, vibratory screeding machine that establishes grades by laser which disperses concrete by auger and thoroughly vibrates and consolidates the concrete. Applies coloring material to concrete, also uses mastic to level and waterproof concrete, where tools of the trade are involved. Operates troweling and floating machines which are used in the finishing of concrete. Cementitious insulation, screed wet material to required thickness and darby joints to leave a surface suitable for roofing. May perform other related duties pertaining to concrete construction.

**H. Electrician** classifications and description - Outside:

(1) Groundman (outside): Assists "lineman" and "equipment operator" in their tasks except that the "groundman" does not climb poles or

towers.

(2) Equipment operator (outside): Operates power driven equipment used in the erection and installation of materials and apparatus outlined under the "lineman" classification. Includes directional boring to install underground pipe, conduit or cable.

(3) Lineman or technician (outside):

(a) Performs all electrical construction work outside of isolated plants and the property lines of any given property, but not electric signs, and not street electrical decorations, except when messenger or guy wire is necessary for support and when fed and controlled from the street.

(b) Street lighting and wiring when fed and controlled from the street. All line work consisting of wood, concrete or metal (or substitutes therefore), poles or towers, including wires, cables or other apparatus supported therefrom. Line work in public, private or amusement parks.

(c) All work necessary to the assembling, installation, erection, operation, maintenance, repair, control, inspection and supervision of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts and raceways when part of distributing systems outside of buildings, railroads and outside and directly related railroad property and yards. Installing and maintaining the catenary and trolley work on railroad property, and bonding of rails. All underground ducts and cables when they are installed by and are part of the system of a distributing company, except in power stations during new construction, including ducts and cables to adjacent switch racks or substations. All outdoor substations and electrical connections up to and including the setting of transformers and all connecting of the secondary buses thereto, and all other related work.

(4) Cable splicer (outside): Splices or terminates power cables which are designed to

be used for voltages above 2,000. Splices or terminate gas or liquid filled power cables, when part of a distribution system outside of buildings.

**I. Electrician** classifications and descriptions - Inside:

(1) Wireman or technician (inside): Installs wiring for automatic doors. Plans and executes the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems on commercial, industrial, and residential jobs, except electrical work which is incidental to the installation of elevators and escalators and is described under "elevator constructor". Analyzes proposed telephone and communication systems during the pre-installation stage to detect any basic conflicts in either equipment arrangements or plant facilities. Isolated trouble conditions in inoperable telephone communications systems. Installs a variety of equipment relating to telephone interconnect communication systems and devices including private branch exchange (PBX-PABX), key equipment and associated devices.

(2) Cable splicer (inside): Splices or terminates power cables which are designed to be used for voltages above 2,000. Splices or terminates gas or liquid filled power cables.

**J. Low voltage electrician** classification: Installer/ Technician: Installs pathways (j-hooks) for low voltage cabling coax or fiber optic and terminates ends of the different types of cables levels and tests. This work includes voice, data security, access control, building automation and video surveillance. Repairs and services inter-communications systems, i.e. speakers, buzzers, microphones, signal lights or other units or component that are an integral part of such system.

**K. Elevator**

constructor: Assembles and installs machinery and devices incidental to a complete elevator or escalator installation, including elevator cars, cables, counterweights, guide rails, hoisting machinery, etc. Installs all electrical wiring which is incidental to the installation of automatic elevators and escalators with the exception of power feed wires to the controller, which shall be classified as a task of "electricians". Steel trusses, girders, and supports for escalators, where riveted or welded and metal frames and bucks for elevator door openings shall be installed under the "ironworker" classification.

**L. Elevator constructor**

helper: Assist elevator constructor in the performance of all phases of their work.

**M. Glazier: Installs**

metal window and door frames without glass, curtain wall systems, window wall systems, cable net systems, canopy systems, structural glazing systems, unitized systems, interior glazing systems, photovoltaic panels and systems, suspended glazing systems, louvers, skylights, entranceway systems including doors and hardware, revolving and automatic door systems, patio doors, store front systems including the installation of all metals, column covers, panels and panel systems, glass hand rail systems, decorative metals as part of the glazing system, and the sealing of all architectural metal and glass systems for weatherproofing and structural reasons, using vinyl, molding, rubber, lead, sealants, silicone and all types of mastics in wood, iron, aluminum, sheet metal or vinyl sash, doors, frames or any materials of the above systems as part of the glazing systems. Installs glass, including plate and window glass, mirrors, beveled plate, rough ribbed, wire, figured, colored, art and other type glass or substitute for glass when set in sash, frames, doors, skylights, etc., when set with putty, molding or other methods which are common to the glazing trade.

**N. Ironworker: Installs**

reinforcing iron and steel for concrete structures. Installs fabricated steel members such as girders, columns, beams, and bracing in structures to form the steel framework. Installs metal stairways, catwalks, ladders, and decking. Installs ornamental iron and steel. Erects structural steel radio and television towers. Sets wall bearing steel bar joists in building structures. Performs layout work for rods within project area. Fastens rods in place with wire or fasteners; bends or adjusts as required. Selects and places steel bars or spirals in concrete forms to reinforce concrete; fastens rods together with wire or patented fasteners; may cut rods with hack-saw or oxyacetylene torch. May bend rod, using rod bending machine, performs layout work and proper placing of steel in the concrete forms. May prefabricate reinforcement assembly for placement complete in forms. Works as a member of a group that raises and places fabricated or precast concrete beams or structural steel members, such as girders, plates, columns, and units them permanently to form a completed structural steel framework. Heats rivets, signals erection crane, splices cables, rigs equipment. May include dismantling and erecting large units of equipment. May spinsuspension bridge cables. Erects, trims, and fits together by means of bolts and clamps, iron grills, grating, and special stairways. Erects ornamental enclosures and other iron work not included in structural ironwork. Fastens ironwork to walls of buildings by means of bolts, brackets or anchors. Fastens newel posts, balauzer, and other parts of stairways by fastening to supports or embedding them in sockets. Forges, welds, drills and cuts as needed. May perform other Ironworker related duties.

**O. Painter (brush):**

Applies paint, stain, lacquer, varnish, etc., to surfaces in, on or around building structures, using appropriate brushes, rollers, sprayers or trowels. Does preparation of surfaces to receive paint, including sandblasting, small patching, sanding and spackling. Mixes and prepares

paints and other materials which are to be applied by painters. Seals, sands and varnishes hardwood flooring. Paints structural steel framework of bridges; guard rails and cables of bridges; and all other surfaces requiring paint. May erect and rig stages and platforms from which painters are to work, including swing stage scaffolding, bosun's chairs, mechanical, staging, cornice or roof hooks, scaffolding, and other devices and apparatus necessary to provide safe forking conditions for painters. Operates gasoline-powered compressor striping machine and walking type sprayers for striping parking lots, etc. May perform other Painter related duties.

**P. Paperhanger:**

Applies wallpaper, fabric, or other materials used in the same manner as wallpaper, to the interior of rooms. Performs work necessary to prepare surfaces to receive wallpaper or other similar material including removal of old wall paper.

**Q. Drywall finisher/**

taper: Prepares drywall type construction to receive paint, texture, etc. by pointing, taping, bedding, texturing, skimming, wire brushing, stripping, wax, or acid application and finishing.

**R. Plasterer: Applies**

interior and exterior plastering of cement, stucco and stone imitation or any patented materials when cast. Applies acoustical plaster or materials used as substitutes for acoustical plaster, as well as the preparatory pointing and taping of drywall surfaces to receive these finishes. Applies scratch and brown coats on walls and ceilings where tile, mosaic or terrazzo is to be applied. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding. Install metal corner beads when stuck by using plastic materials. Applies gunite, in plastering operations, when it is one and one-half inches in thickness, the handling and control of the nozzle should be the work of the plasterer. Spray fire proofing material on steel beams/columns. Trowel or sprayed on foam insulation on walls before

stucco, etc. Patching outside concrete walls. May perform other plasterer related duties.

**S. Plumbers and pipefitters:** Fabricates and installs piping, and tubing systems, including installation of all necessary hangers and supports, which are to conduct water, steam, air, and other fluids or gases in and around buildings. Also installs vacuum piping systems. Installs drainage and sewage lines (laterals) from buildings to the point of attachment to mains. Installs plumbing fixtures, such as sinks, faucets, drinking fountains, commodes, etc. Installs refrigeration equipment. Performs cutting, welding and burning which is incidental to the work of plumbing or pipefitting, except as is described under "lead burner". May do other work in connection with the installation and testing of heating and cooling apparatus and control devices.

**T. Plumbers and pipefitters (lead burner):** Performs cutting, burning and welding operations on lead pipes, tanks, reservoirs, etc.

**U. Roofer:** Installs, Installs alters or repairs roof systems on new or existing roof decks to create a weatherproof and waterproof protective membrane, with or without insulation, using asphalt, pitch, tar, sealants, single ply or multiple ply materials, felt, shakes, shingles, roof tile, slate, coatings, urethane, urethane foam, metal or any other approved roofing materials, including the preparatory work necessary to bring such surfaces to a condition where roofing can be installed, sealed, or repaired. Includes cutting, shaping fabricating and installing or wood, metal or other approved materials for fascias, soffits, copings, cornices, canals, flashing, gutters, leaders, rainwater downspouts, pans, prefabricated chimneys, at or near roof lines, metal flues, prefabricated roof curbs. Installs roofing insulation, and other necessary waterproofing and damp proofing on walls and floors below ground. May perform other water-proofing operations using methods which are common to the

roofing trade. Handles all roofing materials at job site and performs all roofing clean-up. Tears off old roof when roof is to be replaced.

**V. Sheet metal worker:** Fabricates and installs heating and air conditioning ducts and other ductwork. Fabricates and installs hangers, brackets, etc., used in the installation of sheet metal, and installs grills, registers, etc., which are part of duct systems. Fabricates or installs architectural sheet metal in and around buildings, including metal panel systems, canopies, awnings, exhaust louvers, and cupolas. Installs warm air furnaces except where necessary piping for gas or oil is performed under the plumbing and pipefitting classification. May install other heating and cooling devices which are in connection with duct systems.

**W. Soft floor layer:** Cleans and prepares floors and other surfaces to which linoleum and floor tile is to be applied. Lays carpets. Applies appropriate cement to floors and surfaces and installs materials such as sheet rubber, sheet vinyl, asphalt tile, cork tile, linoleum, rubber tile, artificial turf and other resilient floor coverings. Rolls finished floors and surfaces to smooth and press down coverings which have been applied. Mixes and pours liquid seamless floor covering on floor, gyms, etc. Installs decorative or protective trim to and adjoining the above materials including the attaching of cap strips, nosing, and slats.

**X. Sprinkler fitter:** Fabricates, assembles, and installs all piping and auxiliary devices which are necessary for the complete installation of sprinkling systems for fire protection in buildings.

**Y. Tile setter:** Applies glazed, unglazed, mosaic, and other ceramic tiles which are used as a surface on floors, walls, ceilings and other surfaces and which must be set to a specified grade. Applies and floats all setting beds which these tiles are set into. Levels and plumbs these tiles to the specified grade.

**Z. Tile setter helper:**

Handles and mixes materials to be used in floating beds, generally assists tile setter by delivering materials, cleaning and caring for tools, and such other tasks or may be directed by the "tile setter".

**AA. Power equipment operators - group I:**

(1) **Concrete paving curing machine (Bridge type):** Operates self-propelled machine and operates pump on the machine which sprays curing compound on freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) **Fireman:** Hand strokes or fires by gas or oil, a portable or semi-portable steam boiler, such as is used on steam shovels, pile drivers, cranes, dredges, hoisting equipment and asphalt plants.

(3) **Oiler:** A service man who lubricates mechanical equipment, gives signals to operator when applicable, changes oil, greases and filters, refuels equipment. May assist mechanic, head oiler or operator in assembling, setting up, adjusting, maintaining (including operation of steam cleaners) and repairing all types of construction equipment. May, when servicing equipment, drive a truck which carries fuels, oils and greases. May use the tools of the trade at and under the direction of a mechanic, head oiler or operator.

(4) **Screedman:** Manipulates handwheels or other devices to raise or lower screeds of asphalt machine. Regulated width of screed and depth of material. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(5) **Scale operator** such as (bin-a-batch).

(6) **Tractor** (under 50 drawbar h.p. without attachments): Operates a small diesel or gasoline powered rubber-tired, farm -type tractor, with no attachments, to pull by drawbar, seed drills, etc. May oil, grease, or otherwise service and make necessary adjustments.

(7) **Industrial**

locomotive brakeman: A semi-skilled operator who hooks and unhooks various cars, throws switches, operates car dumps, signals locomotive operator, manipulates controls of loading devices (hopper conveyors, etc.) and assists locomotive operator. May oil, grease or otherwise service and make necessary adjustments.

(8) Helpers: mechanic, welder, grease truck and crane oiler.

**AB.** Power equipment operators - group II

(1) Tractor (under 50 drawbar h.p. with attachments): Operates a small diesel or gasoline powered rubber-tired or crawler tractor. May be used with attachments such as dozer, tampers, posthole diggers, postdrivers, etc. May be used to pull brooms, sleds, trailers, etc. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Air compressor (315 c.f.m. and over): Keeps compressor fueled, oiled, clean and ready for service. Keeps oilers and air lines working properly, full of proper oil, sets and checks valves on oiler, sets and checks air pressure, cut off valve and gauges, checks and maintains air tools, keeps moisture drained from air tanks, checks governor, sets throttle to avoid compressor damage. Checks and repairs air brakes on compressor and repairs air hose.

(3) Pumps (six inch intake or over): Operates water pump which pumps water for roadway, prewetted, pumping by transmission line from water source to job area or other use. May oil, grease, prime, or otherwise service and make necessary adjustment to equipment as needed.

(4) Mixer, concrete (one cubic yard and less): Operates a small, portable concrete mixing machine to mix sand, gravel, cement and water to make concrete. Starts power unit and does or oversees loading of materials. Controls the mixing by levers to discharge concrete from drum. This small machine is

sometimes charged by shoveling in the proportions of materials directly into the mixing drum and some others have a skip into which materials are shoveled before being hoisted into the mixing drum. Rinses drum with water to remove adhering concrete. May oil, grease or otherwise service and make necessary adjustments as needed.

(5) Roller (sheepsfoot or pneumatic self-propelled without dozer): Operates a diesel or gasoline driven self-propelled machine used for compaction. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(6) Service truck operator (head oiler-type b/c work): An operator of a truck equipped with high pressure grease and oil dispensing equipment. Maintains service records and performs preventative maintenance and visual inspection. Reports vehicle discrepancies to foreman or mechanic.

(7) Screening plants: Operates a screening plant to sort and segregate material. Regulates flow of material through chute to screener. May perform other related work. May oil, grease, or otherwise service and make necessary adjustments or repairs to equipment as needed.

(8) Belt type conveyors (material and concrete): Operates an endless belt-type conveyor that is a machine designed so the belt operates between a head pulley and tail pulley which are located on the opposite ends of the conveyor frame. The belt rides on carrier rollers so formed in shape and positioned that the belt forms a trough to carry the loose material. The operator starts and stops the belt as necessary, maintains the carrier rollers and belt splices, regulates belt speed for correct loading for efficient operation and belt life, maintains belt alignment to insure the belt is not loaded on one side which results in excessive belt wear. Conveyors are used efficiently in confined areas particularly in the placement

of concrete with portable type conveyors. (Conveyor systems which are part of a plant shall be operated by the plant operator). May oil, grease or otherwise service and make necessary adjustments.

(9) Concrete paving joint or saw machine or grinder span type: Operates a self-propelled machine which travels on paving form or pavement and cuts grooves for expansion and contraction joints in freshly poured concrete or cured pavement. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(10) Hoist (one drum): Operates a single drum machine powered by air, electric, gasoline or diesel. Actuates valves, levers, brakes or other control devices which regulates linepull, hold or line release in accordance with signals received by sight, hearing or other signaling devices as necessary. Machines are used for various pulling and hoisting operations on construction work such as to hoist and lower material in various elevations or to hoist and lower material in construction and assembly. May oil, grease or otherwise service and make necessary adjustments.

(11) Air tugger:

(12) Elevating belt type loaders: Operates a self-propelled or tractor-drawn elevating grader, bucket, or belt loader. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(13) Lumber stacker: Operates machine designed to straddle bundles or stacks of lumber or other objects suitable to be handled by this specialized machine, hoists and moves materials to various locations. May oil, grease or otherwise service and make necessary adjustments.

(14) Winch truck: Drive a heavy duty gasoline or diesel truck equipped with a winch and gin poles or other hoisting devices. Shifts winch gears in accordance with signals from helper on ground. May service and make necessary adjustments for proper

operation of equipment.  
 (15) Front end loader (under two cubic yards): Operates a runner tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(16) Fork lift: Operates a machine powered by gasoline, diesel or electric power that is equipped with a vertical hoisting and lowering device that may be canted forward and reverse of vertical center by means of control devices. Machine is equipped with fork lifting and designed to slide under loads, machine is used for lifting and transporting loads. May oil, grease or otherwise service and make necessary adjustments.

(17) Power plant (electric generator or welding machine): Operates a diesel or gasoline driven machine that generates A.C or D.C. current of 15 K.W. or more used for lighting and electrical power. Keeps cycle and synchronization control board in adjustment adhering to manufacturers specifications. Keeps governor relay in adjustment. Operates welding machine in bank, for arc-welding, uses armature dressing stone as required and resets welding heats as required. May oil grease or otherwise service and make necessary adjustment. May perform other related duties. (Electric power plants, when the principal use is to furnish electric power for camp sites, shall be excluded).

(18) Cat head winch:

(19) Oiler with CDL:

(20) Concrete curbing machine:

(21) Inside and outside material and personnel elevators:

(22) Industrial locomotive motorman: An operator of gasoline, diesel or electric powered railroad locomotive used to push, pull

or switch railroad cards of various designs loaded with muck, concrete, aggregate, or other applications suitable for rail transport. May oil, grease or otherwise service and make necessary adjustments.

AC. Power equipment operators - group II

(1) Bituminous distributors:

(2) Boilers:

(3) Asphalt

Retort heater: Operates a stationary or portable piece of equipment designed to apply heat to a tank, tank car, or tank truck containing asphalt. Starts fire, controls heat applied to tank by regulating burners. Starts, stops and controls flow of recirculating pumps. Maintains desired temperature in asphalt, regulates valves for discharge of asphalt from tank. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(4) Mixer, concrete (over one cubic yard):

Operates a large, portable or sometimes stationary concrete mixing machines to mix sand, gravel, cement and water to make concrete. Starts power unit and oversees the loading of proper proportions of materials into the skip and then manipulates levers that control feeding of material into mixing drum. Starts drum rotating to mix materials; manipulates lever to discharge concrete from drum, either by tilting drum forward or by opening a discharge chute. Rinses drum with water to remove adhering concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(5) Concrete paver mixer (single drum): Operates a paving machine that mixes and dumps concrete, the machine consisting primarily of a skip, concrete mixer, and a boom equipped with a traveling bucket and a power plant, all mounted upon a crawler or wheel unit. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(6) Drilling machine (cable, core or rotary): Sets up and operates a portable cable,

core, diamond or rotary drill for the purpose of drilling water wells or exploratory drilling. May drill pilot holes for piling. May oil, grease, or otherwise service and make necessary adjustments.

(7) Shaft and tunnel type equipment:

(a) Refrigeration: Operates a plant designed to circulate brine or other refrigerant through piping system to freeze specified areas for purpose of drilling, trenching, boring, blasting and stabilizing formations to permit such operations. Maintains pressures, vacuum, intercooling and other related functions. May keep brine or other refrigerants at proper levels in supply tanks.

(b) Slusher operator: Operates hoist as described under one or two drum hoist to raise and lower, drag and release a bucket similar to dragline bucket without a bottom in it. To move loose material into dump chute or other purposes. Sheaves to control line direction are usually secured to roof, side or face of excavation by rock bolts. May oil, grease or otherwise service and make necessary adjustments.

(c) Jumbo form or drilling stage: Operates a specialized machine usually mounted on rails or rubber-tired wheels which has surrounding it, expandable, retractable forms. Drilling stage consists of one or more drilling stages from which drilling operations at the phase are performed for blasting. The operator positions machine for drilling, removes it for blasting, connects and disconnects air and water lines from the source as needed. May oil, grease or otherwise service and make necessary adjustments.

(8) Trenching machine: Operates a power-driven machine that digs trenches for sewer, water, drainage, oil and gas pipelines, footings, etc. The trenching machine is mounted on crawler treads or rubber tires with the digging equipment usually consisting of an endless chain or wheel or edged

buckets that excavate and deposit the material on a conveyor belt which in turn discharges the material at the side of the trench. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(9) Pumpcrete machine: Operates a concrete pumping machine that pumps fresh concrete from mixer to forms that mold fresh concrete. Sets up pump, operates power unit of pump and allows fresh concrete to flow into hopper or pump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(10) Gunit machine: Operates a machine designed to pump dry sand and cement mixture forced under high air pressure to various areas specified for gunit treatment. May oil, grease or otherwise service and make necessary adjustments.

(11) Concrete slip-form paving machine: Operates a self-propelled machine with long forms attached which move along with the machine. Machine vibrates, screeds, spreads and finishes the surface. Operates a roto-mill machine (machine with plane to smooth). May oil, grease or other service and make necessary adjustments to equipment as needed.

(12) Mechanical bull floats:

(13) Concrete paving spreader: Operates a self-propelled machine that rides on the paving forms. Operates controls to spread fresh concrete evenly over subgrade or in concrete forms. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(14) Concrete paving finishing machine: Operates self-propelled machine which travels on subgrade or paving forms and levels fresh concrete to approximate grade and contour by pushing and pulling screeds over the surface. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(15) Subgrade or base finisher: Sets and adjusts

machine to grade or string line. Operates necessary controls for grading, cutting and finishing subgrade or treated and untreated base material. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(16) Concrete paving sub grader: Operates a machine that finishes subgrade. Machine runs on concrete paving forms or subgrade and is equipped with knives or blades to loosen material and eject same from subgrade. May oil, grease or otherwise service equipment as needed.

(17) Concrete paving form grader: Operates a machine that controls subgrade under forms used in concrete paving and is equipped with knives or blades to loosen dirt and eject same from the form line grade. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(18) Concrete paving gang vibrator: Operates a self-propelled machine which travels on paving forms and operates levers to lower multiple vibrator heads into freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(19) Concrete paving longitudinal float: Operates a self-propelled machine which travels on paving forms and moves levers to strike off the concrete to correct elevation. Machine has one or more screeds traveling longitudinally. Operates milling machine (makes ridges). May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(20) Bituminous finishing machines:

(21) Certified forklift:

(22) Asphalt distributor: Sets spray bar and operates valves and levers of distributor to control distribution of oil or bituminous liquid, also may drive truck on one-man operated distributor. May oil, grease or otherwise service and make necessary

adjustments to equipment as needed.  
(23) Asphalt paving or laydown machine:

Manipulates controls of paving machine that spreads and levels asphaltic concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

AD. Power equipment operators-group IV:

(1) Front end loader (two through ten cubic yards): Operates a rubber tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Rollers steel wheeled (all types): Operates a self-propelled machine with steel flat wheels which is used to compact and smooth earth fills, flexible bases, bituminous roads surfaces. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Bulldozer: Operates a tractor with a concave steel scraper blade mounted in front of the chassis to level, distribute and push earth; regulates height of blade. Uses tractor as a pusher in loading earth carrying equipment. May oil, grease or otherwise service and make minor repairs to equipment as needed.

(4) Scrapers (motor or towed): Operates a tractor or self-propelled machine to pull a steel bowl-like scoop (scraper) mounted on wheels that scrapes up earth and transports it to a designated place; manipulates necessary scraper controls. May oil, grease or otherwise service and make necessary adjustments to equipment as needed, twin bowl scraper and quad eight or nine pushers (\$0.35 over base rate). Three bowl scraper (\$0.60 over base rate).

(5) Batch or continuous mix plant (concrete, soil, cement or asphalt): Sets up and operates a large portable or stationary plant for batching concrete, soil-cement or asphaltic materials and



aggregates; responsible for control of mixture and plant. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(6) Bobcat

with hydraulic backhoe with buckets up to one and one quarter cubic yards.

(7) Backhoes

with buckets up to three-quarter cubic yard-Type B/C work.

(8) Small

Articulating Truck

**AE.** Power equipment operators-group V:

(1) Concrete

paver (double drum): Operates a paving machine that mixes and dumps concrete, the machine consisting primarily of a skip, concrete mixer and a boom equipped with a traveling bucket and a power plant, all mounted upon a crawler or wheel unit. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Hoist

(two drums): Operates a two drum machine powered by air, electric, gasoline or diesel. Actuates valves, levers, brakes or other control devices which regulates linepull, hold or line release in accordance with signals received various pulling and hoisting operations on construction work such as: to hoist and lower material in various elevations; to hoist and lower material in construction and assembly. May oil, grease or otherwise service and make necessary adjustments.

(3) Cat cranes:

(4) Hysters:

(5) Forklifts

over 20,000 lbs. lifting capacity:

(6) Auto fine

grader:

**AF.** Power equipment operators-group VI:

(1) Mucking

machine (all types): Operates a machine designed especially to work in confined spaces, generally operated by air or electric power to minimize air pollution, underground. Rocker shovel types have front-mounted buckets that are loaded by being pushed into the material and lifted over the machine and dumped into an attached car, or lifted to a point

that gravity dumps the material from the back of the loaded bucket onto a conveyor belt that runs over the machine to a dumping point or into attached car. This type mucking machine usually operates on tracks or are crawler mounted. The bucket is hinged to a boom which in turn is hinged to a turntable on the main frame which allows the main frame to travel in one direction while the swinging action of the bucket can reach out to the sides to remove such loose material generally called muck. These machines are especially suited for underground, emptying into conveyors or into cars. May oil, grease or otherwise service and make necessary adjustments.

(2) Tractor

with hydraulic backhoe.

(3) Backhoes

with buckets up to one and one quarter cubic yards- Type B/C work.

(4) Service

truck operator (head oiler-type a/h work): An operator of a truck equipped with high pressure grease and oil dispensing equipment, which may have gasoline and diesel fuel tanks, who lubricates, changes oil and filters and refuels equipment. Maintains service records and performs preventative maintenance and visual inspection. Reports vehicle discrepancies to foreman or mechanic.

(5) Motor

grader (rough): Operates motor grader. Blade is mounted on a carrying and turning circle under the frame of the machine. Equipment is used in leveling dirt to grade and in laying asphalt and flexible base materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

**AG.** Power equipment operators-group VII:

(1) Steam

engineers:

(2) Front

end loader (over 10 cubic yards): Operates a rubber tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service

and make necessary adjustments to equipment as needed.

(3) Concrete

pump (snorkel type):

(4) Mining

machine:

(5) Concrete

batching plant operator:

(6) Asphalt

plant operator:

(7) Crushing

plant operator- Operates a crusher to control flow of materials through plant. Regulates flow of rock through chute to crusher. May perform other related work. May oil, grease, or otherwise service and make necessary adjustments or repairs to equipment as needed.

(8) Hot plant

operator:

(9) Roof

bolting machine:

(10) Shuttle car

operator:

**AH.** Power equipment operators-group VIII - All shovel type equipment that does not require a state of New Mexico crane license:

(1) Side boom:

Operates a diesel or gasoline powered rubber-tired or crawler-tractor on which is mounted a side boom attachment with necessary hoisting devices. Positions tractor, manipulates control levers, clutches, brakes, and other controls to raise or lower boom, raise or lower load. By tractor motivation, loads may be transported to desired location. May oil, grease or otherwise service and make necessary adjustments.

(2) Crane

(crawler or mobile under ten tons):

Operates crane type equipment to hoist and move materials and perform other related operations. Such equipment is used for pouring concrete, setting steel or other miscellaneous tasks for which crane type equipment is required. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Backhoes

with buckets over one and one quarter cubic yards- Type B/C work.

(4) Backhoes

over a three-quarter yard bucket- Type A/H work.

(5) Derrick, cableway: Operates guy, stiff leg or other derrick, cableway. (Derricks are distinguished from cranes by being stationary and being supported by cables, or structural member, but may be repositioned to higher levels as construction progresses). Derricks use a hoist as described in building hoists, two drums and up, but may vary with different designs, as the source of power for line pull, hold or release through sheaves on the particular derrick or cableway for lifting and moving materials to higher, lower, or the same levels in construction. The operator controls in accordance with signals received by sight, hearing or other signaling devices. If necessary may oil, grease or otherwise service and make necessary adjustments.

(6) Track or excavator backhoe:

(7) Pipemobile:

(8) Pile driver:

Operates the basic machine, and applicable hammer controls to which pile driving attachments are attached. Pile driving attachments normally consists of leads, to service as a guide for the weight, hammer or extractor. The drop hammer is a weight hoisted by cable along the leads and released to fall by gravity onto the pile. Steam, compressed air, hydraulic, sonic and diesel hammers ride along the leads resting on top of pile or pile cap striking blows on the down stroke of the hammer, from its power source, onto the pile being driven. The extractor is a steam or air hammer that strikes its blows on the upstroke of the hammer equipped with devices for attachment onto the piling to be pulled. May drill or jet pilot holes. May oil, grease or otherwise service and make necessary adjustments.

(9) Mine hoists: Operates hoists used in mining operations and in compliance with the department of mines regulations. Hoists and lowers men and materials in shafts and inclines in accordance to authorized signals. May oil, grease or otherwise service and make necessary adjustments.

(10) Motor grader (finish):  
(11) Mechanic and welder: Assembles, sets up, adjust and maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers and paving equipment.

(12) Mole operator: Operates a horizontal boring machine which is the vertical rotating cutter head which deposits muck onto conveyor that passes over the machine to a dump point. The operator controls the elevation and direction and travel by hydraulic rams. The machine is a specialized piece of machinery for tunnel boring. May oil, grease or otherwise service and make necessary adjustments.

(13) Mobile pipeline inspection camera:

(14) Operator/rigger:

(15) Crane inspector:

(16) Continuous mining machine:

(17) VAC jet rodder:

(18) Equipment instructor:

(19) Heavy equipment robotics operator/mechanic:

(20) Ultra high pressure waterjet cutting tool system operator/mechanic:

(21) Vacuum blasting machine operator/mechanic:

(22) Master environmental maintenance mechanic:

**AI.** Power equipment operators-group IX: Hydraulic cranes with less than 150 feet of boom and over ten tons but less than 100 tons lifting capacity including boom trucks (NM, Class II, license required).

**AJ.** Power equipment operators-group X: Hydraulic cranes and boom trucks (100 tons and over); cranes and draglines with booms and jibs over 150 feet through 199 feet; \$0.75 above base rate per hour additional; cranes 200 feet and over \$1.00 additional; tower cranes (NM, Class I Crane License Required).

**AK.** Truck drivers group I:

(1) Pickup truck three-quarter ton or under: Drives a light truck for transporting small loads of construction materials, tools or equipment. May service and make necessary adjustments for proper operation of equipment.

(2) Service station attendant: Maintains service station. Washes, lubricates, fuels and otherwise services vehicles and equipment. Changes and repairs tires and tubes. Operates and maintains service station equipment.

(3) Swamper or rider helper: Assists truck driver. Shares with a driver the duties of loading and unloading a truck, shifting articles about on truck, handling cumbersome articles and may drive to relieve driver.

**AL.** Truck drivers-group II:

(1) Bus or taxi: Drives a bus or taxi to transport employees to and from construction project. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed.

(2) Dump or batch truck: Drives a truck, under eight cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(3) Flatbed (bobtail) two ton and under: Drives a truck for transporting loads of construction materials or equipment. May load and unload truck. May service and make necessary adjustments for proper operation of equipment.

**AM.** AM. Truck drivers-group III:

(1) Dump trucks (including all highway and off highway): Drives a truck, eight cubic yards and under 16 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(2) Tank truck: Drives a truck or truck with trailer

or semi-trailer, on which is mounted a tank, under 3,000 gallons, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Flatbed (bobtail) over two tons: Drives a truck for transporting loads of construction materials or equipment. May load and unload truck. May service and make necessary adjustments for proper operation of equipment.

**AN.** Truck driver-group IV:

(1) Distributor (asphalt): Only drives truck equipped with tank and controls for regulating distribution of bituminous materials. Does not operate levers or valves (See power equipment operators-Group III). May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Heavy tire repairman:

(3) Lumber carrier: Drives truck that hauls logs and lumber with truck trailer or bobtail.

(4) Transit mix or agitator (two or three axle bobtail equipment): Drives a truck upon which is mounted a concrete mixer. Drives truck under loading hopper to receive sand, gravel and cement. Fills water tank and starts and stops mixer. Drives truck to location for unloading. Dumps concrete into chute leading to forms. Cleans mixer drum. May service and make necessary adjustments for proper operation of equipment.

(5) Scissor truck:

(6) Trailer or semi-trailer dump: Drives a truck to which is attached a trailer or semi-trailer dump used in transporting construction materials.

(7) Field equipment servicemen:

**AO.** Truck driver-group V:

(1) Dumpster or dumpton: Operator of a self-

propelled, four-wheeled, rubber-tired truck type machine which is used in hauling of materials. Machine is normally used off the highway, working around rock crushers or excavation. Being reverse steer, the operator rides facing the dump-bed which is dumped by release of safety lock and sudden stop of machine, which causes off center loading of truck bed to dump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(2) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank, 3,000 to 6,000 gallons, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(3) Lowboy, light equipment: Drives a truck to which is attached a trailer with a low frame or bed upon which light equipment or material is hauled. May service and make necessary adjustments for proper operation of equipment.

(4) Euclid type tank wagon under 6,000 gallons.

**AP.** Truck driver-group VI:

(1) Vacuum truck:

(2) Dump trucks (including all highway and off highway): Drives truck, 16 cubic yards and under 22 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

**AQ.** Truck driver VII:

(1) Transit mix or agitator (semi or four axle equipment): Drives a truck upon which is mounted a concrete mixer. Drives truck under loading hopper to receive sand, gravel and cement. Fills water tank and starts and stops mixer. Drives truck to location for unloading. Dumps concrete into chute leading to forms. Cleans mixer drum. May service and make necessary adjustments for proper operation of equipment.

(2) Flaherty truck type spreader box: Drives a self-propelled vehicle, consisting primarily of a hopper mounted on pneumatic-tired wheels, used to spread crushed aggregate on bituminous roadway material. May service and make necessary adjustments for proper operation of equipment.

(3) Slurry truck driver:

(4) Bulk cement driver:

(5) Semi doubles driver:

(6) Four axle bobtail driver:

(7) Dump trucks (including all highway and off highway): Drives truck, 22 cubic yards and under 36 cubic yards, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.

(8) Head field equipment servicemen.

**AR.** Truck driver VIII:

(1) Diesel-powered transport (non-self-loading) 10 yds. and over: Drives diesel powered Euclid Turnarocker, Terra Cobra, D.W.-10, D.W.-20 Le Tourneau pulls and similar diesel powered equipment when used to haul material and assigned to a "teamster".

(2) Lowboy, heavy equipment: Drives a truck to which is attached a trailer with a low frame or bed upon which light equipment or material is hauled. May service and make necessary adjustments for proper operation of equipment.

(3) Tank truck: Drives a truck or truck with trailer or semi-trailer, on which is mounted a tank 6,000 gallons and over, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed.

(4) Semi-trailer drivers (flatbed or van, tandems):

(5) Light

equipment mechanic:  
 (6) Dump trucks (including all highway and off highway): Drives truck, 36 cubic yards and over, for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment.  
**AS.** Truck driver IX:  
 (1) Warehouseman: Maintains warehouse for construction supplies and materials. May operate necessary equipment and machinery within warehouse area.  
 (2) Cardex men:  
 (3) Expediter:  
 (4) Lowboy (heavy equipment double gooseneck):  
 (5) Heavy equipment mechanic:  
 (6) Welder (body and fender man):  
**AT.** Semi-skilled laborers:  
 (1) Carpenter tender: Performs labor such as hand handling of materials used by carpenters. Assists in erecting and removing of forms, removes nails and clears lumber.  
 (2) Concrete worker/buggy operator: Pours and performs other work in relation to the lining with concrete. Operates buggy by pushing or pulling by hand between mixer or other source to site of work.  
 (3) Fire watch: a laborer who watches the work area for fires when craftsmen are cutting or welding.  
 (4) Scaffold tender: Tends to the scaffold builder.  
 (5) Certified flagman: Supervises flag and signing personnel. Prepares revision to the traffic control plan.  
 (6) Bleacher seating: Unloads, moves to place of erection, assembles and installation of all stadium seating.  
 (7) Fence builder: Digs post holes, pours concrete for posts, sets posts, stretches fencing material and performs all aspects of building fences of all types.

(8) Guardrail builder: Attaches and assists in the installation of guardrails, (other than guardrails on bridges) guardrail posts, informational signs and metal fencing; including barb wire, woven wire, and chain link which is used to define right of way, medians or driving lanes or provide safety for such areas. May require the use of small hand tools such as hammer and spud wrench.  
 (9) Form stripper: Strips, cleans and oils all types of concrete forms.  
 (10) Gabian basket builders: Assembles wire baskets for rip rap.  
 (11) Rip rap stoneman: One who places stones into gabian baskets.  
 (12) Drywall, stocking and handling: Carries and handles of all materials by hand to a point adjacent to place of erection. Assists in placement of materials.  
 (13) Fly ash vacuum operator: Installs vacuum lines and operates nozzle of vacuum hose at power plants in the cleanup of ash.  
 (14) Landscaping and planter: Duties include site development, soil preparation, rototilling, fine grading, soil amending, installation of plants, seeded and sodded grasses, gravel and bark mulches. Installation of landscape sprinkler systems including landscape irrigation backflow preventers, and all components downstream including pipe, valves, low voltage control wiring, irrigation controllers, sprinkler heads, and drip components. May operate small behind and stand-on only landscape equipment (including miniskid steers with attachments). Maintenance of landscapes including weeding, mowing, and irrigation repair. Duties do not include electrical work, fencing, concrete retaining walls or other work that is generally performed by skilled craftsmen.  
 (15) Manhole builder: Constructs a means of permanent access to water, electrical and sewer lines for maintenance

purposes.  
 (16) Tool room person: manages, inspects and coordinates all tool room activities and exchanges.  
 (17) Rodmen: holds survey rod.  
**AU.** Skilled laborers:  
 (1) Air and power tool man (not a carpenter's tool): A worker who uses a tool driven by compressed air, gas or electric power to perform such work as breaking old pavement, loosening or digging hard earth, trimming bottom and sides of trenches, breaking large rocks, driving sheeting, chipping concrete, trimming or cutting stone, calking steel plates, or compaction of earthen backfill. Install plastic and PVC linings on ponds. Rotary man operates a hand-held device to make cuts on road with a person holding a nozzle to fill cuts with oil.  
 (2) Asphalt raker: Distributes asphaltic road-building materials evenly over road surface by raking and brushing materials to correct thickness; may control straight edge to regulate width and depth of materials; directs "asphalt shovelers" when to add or take away material to fill low spots or to reduce high spots. Applies color to tennis courts, etc. by using a squeegee. Applies epoxy on concrete floors to seal.  
 (3) Asphalt heaterman: Tends a stationary or portable liquid asphalt kettle, starts fires (usually fuel oil) under the kettle, controls heat applied to the kettle by regulating dials or burners, maintains desired temperature in asphalt, and regulates valves for discharge of asphalt from kettle.  
 (4) Asphalt jointman: Cleans and pours asphalt joints in concrete paving with nozzle or can. Takes care of asphalt kettle heaters.  
 (5) Chain saw-man: Operates a power driven chain saw to clear areas of timber. Falls trees, and sometimes cuts the fallen trees into short sections to facilitate their removal.  
 (6) Oxy/

Gasoline torch operators: Uses cutting torch only for demolition work on steel or other metal structures.

(7) Cutting torch/welding torch operator or burner person: Uses cutting torch only for demolition work on steel or other metal structures.

(8) Gunite rebound men: A laborer who shoots gunite into place.

(9) Concrete power buggy operator: Drives self-propelled buggy to transport concrete from mixer or source of supply to place of deposit. Operates levers to dump load.

(10) Sandblaster: Cleans and prepares surfaces by the use of sandblasting equipment other than preparation for painting (see painter).

(11) Potman: Cleans screens and feeds sand to hopper or pot of sandblasting machine.

(12) Wagon, air track, drill and diamond driller (outside): Sets up and operates air driven drilling mechanism that drills holes into concrete or rock. Levels machine by placing timbers under wheels. Inserts and fastens drill steel in chuck. Adjusts angle of drill tower and bolts into position. Controls drilling and speed of drill by moving levers. May make other adjustments to equipment as needed.

(13) Multi-plate setter: Assembles large diameter metal culverts by bolting together semi-circular pieces of metal to form a complete circle, and bolts each section of this circle to similar sections which are placed adjacently, repeating these processes until the required length of culvert is formed.

(14) Concrete burner: Operates a devise used to burn holes, etc., through concrete. This devise consists of a consumable aluminum-magnesium rod inside a small iron pipe. Oxygen is forced through the pipe under pressure, and the end of the assembly is lighted. The concrete is melted by the intense heat of the device.

(15) Tenderers

(to cement mason and plasterer): Assists in the pouring of concrete by spreading concrete, cleaning and caring of cement mason's tools, mixes mortar used in the patching of concrete, and performs other tasks as may be directed by cement masons or plasterer. Mixes mortar for plasterers and delivers same to location where plasterers are working. Sets up scaffolding as directed by foreman where necessary, and cleans and cares for tools and equipment used in the preparation and application of plaster.

(16) Mortar mixer and mason tender: Mechanically mixes mortar ingredients to proper consistency and delivers to mason on scaffold or at site of work. Keeps materials supplied to mason and assists according to directions of mason.

(17) Batching plant scaleman: Manually operates a stationary or portable batching scale that weighs out concrete materials. Adjusts scales for required weight of the materials. Operates controls that admit materials separately from storage hoppers to weighing bins. Observes scales or indicators that show when proper amount of materials have been made. Discharges materials from weighing bin into truck or other carrier or mixer. He may measure materials by volume instead of weight.

(18) Concrete touch-up man: Prepares the surfaces of concrete masonry which is not to be finished (using tools other than those normally used by "cement masons") by patching holes and broken corners, and removing high spots and defective concrete.

(19) Concrete sawman-coring machine: Operates a power driven, hand guided, water-cooled saw or diamond driller which is used to cut through slabs of concrete, except as otherwise provided elsewhere.

(20) Curbing machine, asphalt or cement: Operates a machine which applies asphalt or concrete along the edge of highways or parking aprons to form a small curb.

(21) Metal form setter-road: Fits together, aligns and grades metal road forms for holding concrete in place on road and street surfaces. Dismantles, moves and cleans forms after concrete hardens.

(22) Grade setter/checker: Keeps stakes and stringline set in place out in front of trenching machine so that machine will cut ditch in correct location. Sets stakes so that pipelayers can fine-grade ditch and measure from the batter board down to correct depth of ditch.

(23) Gunite, pumpcreteman and nozzleman: Assists operator and handles the equipment and directs the placing of concrete or mortar that is moved by pressures or pneumatic equipment, such as gunite. May fine-grade and place wire mesh at times.

(24) Vibrator operator (hand type): Lowers hose-like flexible shaft of vibrator into newly poured concrete. Starts power unit and holds shaft, allowing hammerhead on shaft to vibrate, thus compacting the concrete. Air, electric or gasoline operated vibrators are used.

(25) Vibratory compactor (hand type): Operates hand guided vibratory or impact compactor. Adjusts levers, throttles and other devices necessary for operation.

(26) Hod carrier: Assists brickmasons, stonemasons and blockmasons by preparing mortar mix, either by hand or machine, delivers material to masons on scaffold, operates small material moving equipment such as power buggy, hoists, mortar mix pumps and other similar equipment. May erect and dismantle bricklayer scaffolds.

(27) Pipelayer: Unloading, handling, distribution and installation, concrete, corrugated metal pipe and corrugated and smooth wall plastic pipe, PVC and polyethylene pipe. Receives pipe lowered from top of trench; joins pipe ends; adjusts pipe to line and grade; seals joints with cement or other

sealing compound.  
 (28) Plaster spreader operator: Mixes plaster to be used in a machine which is designed to apply plaster to surfaces by means of a hose. Handles and maintains hose, places and moves machine, and services and maintains machine.

(29) Jack hammer and chipping hammer operator: Operates jackhammer, chipping hammer, whether powered by air or electric or any other means.

(30) Tamper operator: Performs the compacting of soil using walk/stand behind equipment.

(31) Scaffold builder: Erects and dismantles all types of scaffolding, except wood scaffolding, for job site.

(32) Powderman tender: Carries powder or other explosive to blaster or powderman and assists by placing prepared explosive in hole, connecting lead wire to blasting machine, and performing other duties as directed.

(33) Water pump tender: fuels and tends to all water pumps under six inches for the purpose of moving water on the job site.

(34) Certified scissor lift/man lift operator: Person who completes competent person training certification in the operation of scissor and man lifts.

**AV. Specialty laborer:**  
 (1) Asbestos abatement remover: A person who has proper certifications for removal of asbestos from pipes, ceiling and other parts of existing buildings, either by scraping or by using pressure by water. In addition, this definition includes a person who cleans up and disposes of asbestos after it has been removed.

(2) Toxic and hazardous waste remover: Person who has the proper certification for the removal of toxic and hazardous materials.

(3) Lead base paint remover: Person who has the proper certifications for the removal of lead base paints.

(4) Powderman

and blaster: Prepares blasting material and inserts this material into predrilled holes. Performs electrical wiring necessary for detonation and assures that all charges have detonated before other workmen resume work in the area made hazardous by the charges.

(5) Pest technician (Licensed by the Bureau of Rodent Management): Technician certified for the removal and handling of rodents and pests.

(6) Radiation worker II: Person that completes proper training for work in areas containing radiation.

**AW. Unskilled laborers:**  
 (1) Chainman, stake driver, stake hopper: Carries supplies, drags chain, holds survey rod, drives stakes and assists surveyor in other related duties.

(2) Building and common laborer: A general term used on construction work covering many unskilled occupations. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer; shoveling and placing concrete; applying coats of oil to inside face of forms; stripping forms; working on rock crusher to feed trap; opening cement sacks at batch plant; lowering pipe into ditch for pipelayers; working with dirt crew to move construction layout stakes; working as flagman, signalman or spotter to control traffic; serving as dumpman; spreading hot asphaltic material over roadbed with shovel; operating hand concrete buggy or wheelbarrow; helping painter to prepare surfaces for painting and cleaning paint equipment.

(3) Concrete buggy operator (hand): Operating buggy by pushing or pulling by hand between mixer or other source to site of work.

(4) Flagman: Flagman is stationed at strategic locations to control flow of traffic by hand held flags or other hand held warning device.

(5) Window washer: Cleans and washes windows.

(6) Unloading

of furniture and fixtures: Unloads furniture and fixtures from trucks and moves them to the place of installation or storage.

(7) Heat tenders: Fuels and tends to heaters use on the job sites.  
 [11.1.2.18 NMAC - Rp, 11.1.2.17 NMAC, 12/30/2016]

**11.1.2.19 APPRENTICES:**  
**A. Requirements of apprentices:**

(1) All apprentices shall be properly indentured.

(2) Apprentices used on public works projects shall be in training and in compliance under registered apprenticeship standards and written apprenticeship agreements, and their employment shall be in accordance with the provisions of such apprenticeship standards and apprenticeship agreements.

(3) Every apprentice shall be employed only at the work of the trade to which he is indentured.

(4) Certification showing registration status of apprentices must accompany the first full payroll on which each apprentice first appears. Certification on any registered apprentice shall be made by the contractor, and verification may be obtained from the labor relations division, apprenticeship office.

**B. Method of establishing apprentice wage rates:**  
 Every apprentice shall be paid a wage rate applicable to his craft and classification in accord with the wage rates established by the approved apprenticeship program.

[11.1.2.19 NMAC - Rp, 11.1.2.19 NMAC, 12/30/2016]

**11.1.2.20 PREVAILING WAGE AND FRINGE BENEFIT RATES:**

Pursuant to 11.1.2.13 NMAC, the department of workforce solutions hereby publishes the attached proposed 2017 prevailing wage and fringe benefit rates that will apply to all wage rate decisions issued from January 1, 2017 to December 31, 2017.

**A. Type A: street, highway, utility and light engineering**

<b>Trade classification</b>	<b>Base rate</b>	<b>Fringe rate</b>
Bricklayer/blocklayer/stonemason	23.46	8.40
Carpenter/lather	23.75	9.27
Cement mason	17.42	6.35
Ironworker	26.50	14.32
Painter (brush/roller/spray)	16.60	5.78
Plumber/pipefitter	22.84	7.48
<b>Electricians outside classifications</b>		
Groundman	21.81	10.92
Equipment operator	31.31	13.39
Lineman/wireman or tech	36.83	14.82
Cable splicer	40.51	15.38
<b>Laborers</b>		
Group I	12.20	5.30
Group II	12.50	5.30
Group III	12.90	5.30
<b>Operators</b>		
Group I	16.69	6.03
Group II	17.44	6.03
Group III	17.55	6.03
Group IV	17.63	6.03
Group V	17.75	6.03
Group VI	17.89	6.03
Group VII	18.27	6.03
Group VIII	18.50	6.03
Group IX	25.45	6.03
Group X	28.35	6.03
<b>Truck drivers</b>		
Group I	16.00	7.02
Group II	16.00	7.02
Group III	16.00	7.02
Group IV	16.00	7.02

**B. Type B: general building**

<b>Trade classification</b>	<b>Base rate</b>	<b>Fringe rate</b>
Asbestos worker - heat & frost insulator	31.26	11.11
Boilermaker	21.77	3.98
Bricklayer/blocklayer/stonemason	23.46	7.66
Carpenter/lather	23.75	8.77
Cement mason	19.96	9.57
<b>Electricians</b>		
<b>Outside classifications</b>		
Groundman	21.81	10.70

Equipment operator	31.31	13.08
Lineman/tech	36.83	14.45
Cable splicer	40.51	15.38
<b>Inside classifications</b>		
Wireman/technician	30.00	10.15
Cable splicer	33.00	10.24
<b>Sound classifications</b>		
Installer	23.39	8.31
Technician	28.95	7.52
Soundman	27.01	8.31
Elevator constructor	38.37	28.08
Elevator constructor helper	26.86	28.08
Glazier	20.15	4.35
Ironworker	26.50	13.68
Painter (brush/roller/spray)	16.60	5.38
Paper hanger	16.60	5.38
Drywall finisher/taper	23.75	8.77
Plasterer	21.66	7.93
Plumber/pipefitter	28.87	10.83
Roofer	15.18	0.50
Sheetmetal worker	28.28	15.91
Soft floor layer	23.75	8.77
Sprinkler fitter	28.90	18.82
Tile setter	23.46	7.66
Tile setter helper/finisher	15.53	7.66
<b>Laborers</b>		
Group I	16.09	5.38
Group II	16.74	5.38
Group III	17.71	5.38
Group IV	19.94	5.38
<b>Operators</b>		
Group I	19.96	6.10
Group II	21.97	6.10
Group III	22.40	6.10
Group IV	22.81	6.10
Group V	22.98	6.10
Group VI	23.18	6.10
Group VII	23.29	6.10
Group VIII	26.10	6.10
Group IX	28.32	6.10
Group X	31.48	6.10
<b>Truck drivers</b>		
Group I	14.76	6.25



Group II	15.00	6.25
Group III	15.50	6.25
Group IV	15.51	6.25
Group V	15.60	6.25
Group VI	15.75	6.25
Group VII	15.90	6.25
Group VIII	16.11	6.25
Group IX	16.32	6.25

**C. Type C: residential**

<b>Trade classification</b>	<b>Base rate</b>	<b>Fringe rate</b>
Asbestos worker - heat & frost insulator	31.26	11.11
Boilermaker	21.77	3.98
Bricklayer/blocklayer/stonemason	23.46	7.66
Carpenter/lathe	23.75	8.77
Millwright/piledriver	31.00	19.37
Cement mason	16.81	8.71
<b>Electricians</b>		
<b>Outside classifications</b>		
Groundman	21.81	10.70
Equipment operator	31.31	13.08
Lineman/tech	36.83	14.45
Cable splicer	40.51	15.38
<b>Inside classifications</b>		
Wireman/technician	30.00	10.15
Cable splicer	33.00	10.24
<b>Sound classifications</b>		
Installer	10.00	1.01
Technician	28.95	7.52
Soundman	13.62	1.01
Elevator constructor	38.37	28.08
Elevator constructor helper	26.86	28.08
Glazier	20.15	4.35
Ironworker	13.00	6.16
Painter (brush/roller/spray)	11.75	5.38
Paper hanger	12.75	5.38
Drywall finisher/taper	23.75	8.77
Plasterer	18.24	6.86
Plumber/pipefitter	22.84	6.63
Roofer	13.96	1.87
Sheetmetal worker	28.28	15.91
Soft floor layer	23.75	8.77
Sprinkler fitter	28.90	18.82
Tile setter	23.46	7.66

Tile setter help/finisher	16.04	7.66
<b>Laborers</b>		
Group I	14.55	5.38
Group II	15.45	5.38
Group III	16.35	5.38
Group IV	17.25	5.38
<b>Operators</b>		
Group I	11.82	5.55
Group V	13.01	5.55
Group VII	15.91	5.55
Group VIII	17.37	5.55
<b>Truck drivers</b>		
Group I	14.88	0.00
Group II	15.00	0.00
Group III	15.08	0.00
Group IV	15.20	0.00
Group V	15.25	0.00
Group VI	15.35	0.00
Group VII	15.45	0.00
Group VIII	15.59	0.00
Group IX	15.74	0.00

**D. Type H: heavy engineering**

Trade classification	Base rate	Fringe rate
Asbestos worker - heat & frost insulator	31.26	11.11
Boilermaker	18.50	3.31
Bricklayer/blocklayer/stonemason	23.46	7.66
Carpenter/lather	23.75	8.77
Millwright/piledriver	31.00	19.37
Cement mason	21.00	9.38
<b>Electricians</b>		
<b>Outside classifications</b>		
Groundman	21.81	10.70
Equipment operator	31.31	13.08
lineman/ technician	36.83	14.45
Cable splicer	40.51	15.38
<b>Inside classifications</b>		
Wireman/ technician	30.00	10.15
Cable splicer	33.00	10.24
Glazier	20.15	4.35
Ironworker	26.50	13.68
Painter (brush/roller/spray)	21.25	6.73
Plumber/pipefitter	31.76	11.55
Roofer	19.56	11.34

Sheetmetalworker	28.28	15.91
<b>Operators</b>		
Group I	17.67	6.03
Group II	18.76	6.03
Group III	19.41	6.03
Group IV	19.62	6.03
Group V	19.68	6.03
Group VI	19.82	6.03
Group VII	19.94	6.03
Group VIII	21.38	6.03
Group IX	26.45	6.03
Group X	29.35	6.03
<b>Laborers</b>		
Group I	18.00	5.05
Group II	19.18	5.05
Group III	19.53	5.05
Group IV	19.94	5.05
Group V	20.30	5.05
Group VI	19.03	5.05
Group VII	19.18	5.05
Group VIII	19.43	5.05
Group IX	19.63	5.05
Group X	20.30	5.05
<b>Truck drivers</b>		
Group I	16.00	7.06
Group II	16.00	7.06
Group III	16.00	7.06
Group IV	16.00	7.06
Group V	16.00	7.06
Group VI	16.00	7.06
Group VII	16.00	7.06
Group VIII	16.06	7.06
Group IX	16.41	7.06

[11.1.2.20 NMAC - Rp, 11.1.2.20 NMAC, 12/30/2016]

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**Continued On The Following Page**

**HISTORY OF 11.1.2 NMAC:**

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

SLC 69-1, Interim Job Classifications, filed 7/23/69.

SLC 69-2, Job Classifications and Descriptions for Public Works in New Mexico, filed 8/4/69.

SLC 69-4, Permanent Job Classifications and Descriptions for Public Works in New Mexico, filed 9/10/69.

LID 88-2, Permanent Job Classifications and Descriptions for Public Works in New Mexico, filed 11/4/88.

SLC 72-1, Rules and Regulations for Implementing the New Mexico Public Works Minimum Wage Act, filed 5/31/72.

SLC 76-1, Rules and Regulations to Implement the New Mexico Minimum Wage Act, filed 1/14/76.

SLC 79-2, Rules and Regulations under the New Mexico Public Works Minimum Works Act, filed 6/4/79.

LID 88-1, Rules and Regulations under the New Mexico Public Works Minimum Wage Act, filed 11/4/88.

LID 89-1, Rules and Regulations under the New Mexico Public Works Minimum Wage Act, filed 9/25/89.

**History of Repealed Material:**

11.1.2 NMAC, Public Works Minimum Wage Act Policy Manual, filed 8/15/98, repealed effective 12/30/2016.

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**End Of Adopted Rules**

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**Other Material Related To Administrative Law**

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**PUBLIC RECORDS,  
COMMISSION OF**

The Administrative Law Division, on behalf of the State Records Administrator, hereby gives notice that, effective January 1, 2017 and pursuant to amendments to 1.13.2 and 1.24.15 NMAC, the cost of publishing in the New Mexico Register increases from **\$2.50 per columnar inch** to **\$3.00 per columnar inch**.

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**End Of Other  
Material Related To  
Administrative Law**

# 2017 New Mexico Register

## Submittal Deadlines and Publication Dates

### Volume XXVII, Issues 1-24

<b>Issue</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
<b>Issue 1</b>	<b>January 5</b>	<b>January 17</b>
<b>Issue 2</b>	<b>January 19</b>	<b>January 31</b>
<b>Issue 3</b>	<b>February 2</b>	<b>February 14</b>
<b>Issue 4</b>	<b>February 16</b>	<b>February 28</b>
<b>Issue 5</b>	<b>March 2</b>	<b>March 14</b>
<b>Issue 6</b>	<b>March 16</b>	<b>March 28</b>
<b>Issue 7</b>	<b>March 30</b>	<b>April 11</b>
<b>Issue 8</b>	<b>April 13</b>	<b>April 25</b>
<b>Issue 9</b>	<b>April 27</b>	<b>May 16</b>
<b>Issue 10</b>	<b>May 18</b>	<b>May 30</b>
<b>Issue 11</b>	<b>June 1</b>	<b>June 13</b>
<b>Issue 12</b>	<b>June 15</b>	<b>June 27</b>
<b>Issue 13</b>	<b>June 29</b>	<b>July 11</b>
<b>Issue 14</b>	<b>July 13</b>	<b>July 25</b>
<b>Issue 15</b>	<b>July 27</b>	<b>August 15</b>
<b>Issue 16</b>	<b>August 17</b>	<b>August 29</b>
<b>Issue 17</b>	<b>August 31</b>	<b>September 12</b>
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<b>Issue 21</b>	<b>November 2</b>	<b>November 14</b>
<b>Issue 22</b>	<b>November 16</b>	<b>November 28</b>
<b>Issue 23</b>	<b>November 30</b>	<b>December 12</b>
<b>Issue 24</b>	<b>December 14</b>	<b>December 26</b>

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