

TITLE 4 CULTURAL RESOURCES
CHAPTER 12 COMMUNITY ART RESOURCES
PART 1 GENERAL PROVISIONS

4.12.1.1 ISSUING AGENCY: Department of Cultural Affairs, New Mexico Arts Division.
[4.12.1.1 NMAC - Rp 4.12.1.1 NMAC, 11-13-2003]

4.12.1.2 SCOPE: Members of the public, artists, or organizations, public or private, who are interested in receiving funding administered by the New Mexico arts division, and members of the New Mexico arts commission.
[4.12.1.2 NMAC - Rp 4.12.1.2 NMAC, 11-13-2003]

4.12.1.3 STATUTORY AUTHORITY: Sections 18-5-7(F) NMSA 1978 authorizes the director to make rules and regulations necessary to administer the division and carry out the state statutory duties of the division.
[4.12.1.3 NMAC - Rp 4.12.1.3 NMAC, 11-13-2003]

4.12.1.4 DURATION: Permanent.
[4.12.1.4 NMAC - Rp 4.12.1.4 NMAC, 11-13-2003]

4.12.1.5 EFFECTIVE DATE: November 13, 2003, unless a later date is cited at the end of a section.
[4.12.1.5 NMAC - Rp 4.12.1.5 NMAC, 11-13-2003]

4.12.1.6 OBJECTIVE: The purpose of general provisions implementation regulations is to serve the public, employees, and the commission as a guide to the operations and policies of the New Mexico arts commission and New Mexico arts division and carry out of the purpose of the Arts Division Act.
[4.12.1.6 NMAC - Rp 4.12.1.6 NMAC, 11-13-2003]

4.12.1.7 DEFINITIONS:

A. "Appeals committee" means the designate committee of the NMA commission which reviews and makes a determination regarding an appeal brought forward by a prospective applicant after the funding recommendation has been acted on by the arts commission.

B. "Appeals process" means the appeal process whereby applicants that are reviewed by a panel and have met all eligibility requirements may appeal a decision or recommendation of an advisory panel. If an applicant believes there are grounds for an appeal following the panel review of their application, a formal letter to the executive director stating the grounds for appeal is required within thirty (30) days of receipt of funding notification if the applicant can demonstrate that the review of the application was based on criteria other than those appearing in NMA regulations or the decision was influenced by an advisory panel member or commissioner with an undisclosed conflict or interest.

C. "Application" means the written formal request for funds from NMA. An eligible application is one which is determined to be complete by staff review and is based on whether the applicant followed the published regulations, and submitted his application form and materials by the stated deadline.

D. "Arts in public places/one percent for art program" means the program which is designed to administer the "Art in Public Places Act", Section 13-4A-1 NMSA 1978, which requires that one percent of construction and renovation costs of certain public buildings be spent on the acquisition of art for those buildings; and to develop, document and promote a statewide public art collection which reflects the cultural, ethnic, and artistic diversity of New Mexico, the region and the nation. Artwork acquired through the arts in public places program are acquired for installation and display in public buildings throughout New Mexico which reflect the tastes and attitudes of the users of the buildings as well as local communities. Regulations established by NMA require that a five to eleven member committee comprised of local community members determine the type of art it wants and develop a prospectus (a call for artists). All prospectuses are published in the quarterly NMA newsletter Artspeak and are open to all artists. Works of art selected by the art selection committee must be on public display and be accessible to the general public during regular business hours.

E. "Arts commission" means same as New Mexico arts commission or commission.

F. "Conflict of interest policy" means the arts commission conflict of interest policy based on the Governmental Conduct Act, Section 10-16-1 through 10-16-16, NMSA 1978.

G. "Contract" means the contract between NMA and an artist, or other award recipient. NMA reserves the right to monitor all funding recipients to ensure that the terms and conditions of the contract are met.

H. "Governor's awards for excellence in the arts or governor's arts awards" means the awards established in 1974 which recognize the important role that artists, crafts people, and supporters of the arts play in our state. People who receive the awards are chosen for their lifetime artistic excellence and accomplishments. Corporations and major contributors are also honored for outstanding and generous support of the arts. The commission chair appoints a selection committee who make recommendations to the governor's office which are then approved by the commission.

I. "New Mexico arts commission or commission or arts commission" means the fifteen (15) member body appointed by the governor pursuant to Section 18-5-4 NMSA 1998. The mission of the commission, in conjunction with NMA, is to stimulate opportunities for artists, arts organizations, and other groups for activities or projects to provide artistic or cultural services to the state, to maintain and encourage artistic excellence, and to promote awareness of and access to the arts for all of the people of New Mexico.

J. "New Mexico arts or NMA" means the division that is within the department of cultural affairs, a state agency. The New Mexico state legislature created the NMA and the arts commission because "the general welfare of the people of this state will be promoted by giving further recognition to the arts as a vital part of our culture and heritage and as an important means of expanding the scope of our educational program".

K. "Planning and budget committee" means the committee of the commission which reviews comments, ratings and resulting rankings of the applications by advisory panels. The planning and budget committee convenes a public meeting to consider the recommendations of the advisory panels. The committee makes funding and other recommendations to the arts commission.

[4.12.1.7 NMAC - Rp 4.12.1.7 NMAC, 11-13-2003; A, 1-31-06; A, 10-16-06]

4.12.1.8 THE COMMISSION: The name of the organization shall be the New Mexico arts commission, hereinafter referred to as "commission." The commission shall function according to Section 18-5-5 NMSA 1978 as an advisory body to New Mexico arts, herein after referred to as "NMA or New Mexico arts".

[4.12.1.8 NMAC - Rp 4.12.1.8 NMAC, 11-13-2003]

4.12.1.9 MISSION: The mission of the commission, in conjunction with the NMA, is to stimulate opportunities for artists, arts organizations, and other groups for activities or projects to provide artistic or cultural services to the state, to maintain and encourage artistic excellence, and to promote awareness of and access to the arts for all of the people of New Mexico.

[4.12.1.9 NMAC - Rp 4.12.1.9 NMAC, 11-13-2003]

4.12.1.10 MEMBERSHIP: The commission shall have fifteen (15) members appointed by the governor pursuant to Section 18-5-3 NMSA 1978.

A. Members shall be appointed for terms as follows: five members shall be appointed for terms of one year, five members shall be appointed for terms of two years and five members shall be appointed for terms of three years. The first members of the commission shall be appointed on or before September 1, 1965, with the date of office of all these members to commence on the same day. After the expiration of the initial terms, all members shall be appointed for terms of three years. Vacancies resulting from the death or resignation of a member shall be filled by appointment for the un-expired portion of the term of the member creating the vacancy.

B. With the approval of a two thirds majority of a quorum present at any scheduled meeting of the commission, the chair may recommend to the governor the removal of any commissioner for chronic absenteeism or improper conduct. Chronic absenteeism shall normally consist of missing a total of three regularly scheduled commission meetings in any one calendar year.

C. Commissioners shall receive reimbursement for travel and per diem expenses in accordance with the Mileage and Per Diem Act, Section 10-8-1 NMSA 1978. Commissioners may use facilities of the NMA office only for official business of the commission and shall keep such use to a minimum to avoid interference with NMA staff.

[4.12.1.10 NMAC - Rp 4.12.1.10 NMAC, 11-13-2003]

4.12.1.11 DUTIES: The commission is advisory to the director of the NMA, to the department of cultural affairs secretary and to state government in general where not in conflict with other statutory agencies. The governor will receive general counsel on the arts from the commission and from the NMA.

A. The commission will advise the director on all NMA policies, and the director shall provide the commission with all information requisite to such advice.

B. The commission shall be consulted by the director before he approves, disapproves or modifies the distribution of federal and state program funds. The director shall provide the commission with all information requisite to such consultation.

C. The director shall keep the commission informed of the fiscal affairs of the NMA, including budget requests, appropriations and disbursements.

[4.12.1.11 NMAC - Rp 4.12.1.11 NMAC, 11-13-2003]

4.12.1.12 CONFLICT OF INTEREST: The arts commission has established a conflict of interest policy based on the Governmental Conduct Act, 10-16-1 through 10-16-18 NMSA 1978. Commission members shall not engage in any action that could be interpreted as use of position on the commission to further his own interest or the interest of any organization with which the commissioner has an influential role. Commissioners shall be familiar with and shall abide by the Governmental Conduct Act, Section 10-16-1 through 10-16-18, NMSA 1978. The policy is no commissioner or member of a commissioner's immediate family may:

A. submit an application for funds;
B. receive personal payment or benefit from NMA funds;
C. be employed by an organization requesting NMA funds;
D. submit a report or endorsement on behalf of an application with which the commissioner or a member of the commissioner's immediate family is affiliated;

E. hold a financial interest in excess of \$1,000 in a business or organization doing business with the NMA;

F. self declarations: other conflicts of interest may be resolved if the commissioner declares the conflict and abstains from discussion or voting on any application or any funding category in which a real or perceived conflict exists;

G. within one year of leaving the commission, no former commissioner may submit an application to the NMA or be employed by an applicant organization;

H. some conflicts involving commissioners or former commissioners are irreconcilable and shall be resolved either by withdrawing the application or affiliation causing the conflict or by resignation from the commission; failure to comply shall cause the chair to ask for a two-thirds consensus of the commission to recommend removal of the conflicted commissioner.

[4.12.1.12 NMAC - Rp 4.12.1.12 NMAC, 11-13-2003]

4.12.1.13 OFFICERS: The officers of the commission shall be a chair, who shall serve at the pleasure of the governor, and a vice-chairman and a secretary, who shall be elected at the annual meeting in November by a majority vote of the commission members present.

A. The vice-chair and secretary shall take office at the annual meeting at which they are elected.

B. The chair shall preside at all meetings and shall appoint the chairs and members of all committees including the planning and budget committee, subject to ratification by a majority of the commissioners present at the next regular meeting of the commission following such appointment. The chair shall also perform all procedural duties as guided by parliamentary procedure.

C. The vice-chair shall, in the event of the absence or incapacity of the chair, exercise all powers and duties of the chair during such absence or incapacity.

D. The secretary shall, with the assistance of the NMA staff, call the roll at each commission meeting and shall cause the minutes of each meeting to be kept.

E. The commission may, by a two-thirds majority of the commissioners present at a regular meeting of the commission, recommend to the governor that the commission chair be removed from office when, in the judgment of such two-thirds majority, the chair has committed nonfeasance (failure to act when there is a duty), misfeasance (negligence), or malfeasance (performance that was improper or illegal).

F. The commission may, by a two-thirds majority vote at any regular meeting, remove the vice-chair or secretary from that office where such action is, in its judgment, in the best interests of the commission.

G. The chair may fill a vacancy in the office of vice-chair or secretary by appointment until the next regular meeting of the commission.

[4.12.1.13 NMAC - Rp 4.12.1.13 NMAC, 11-13-2003]

4.12.1.14 PLANNING AND BUDGET COMMITTEE: The commission shall have a planning and budget committee, whose members shall be assigned by the chair.

- A. If any assigned member of the planning and budget committee is unable to attend a meeting of that committee, the commission chair may appoint another commissioner to serve for that meeting.
- B. The commission chair shall serve as chair of the planning and budget committee.
- C. Meetings of the planning and budget committee shall be called by the chair with fourteen days written notice of the meeting, to all planning and budget committee members, and to all commissioners.
- D. The planning and budget committee shall regularly exercise responsibility for budget oversight, long-range planning, and initial review of all grants panel recommendations, and shall make recommendations in these areas to the commission.
- E. Minutes of all meetings of the planning and budget committee shall be distributed to all commissioners prior to the next commission meeting.
[4.12.1.14 NMAC - Rp 4.12.1.14 NMAC, 11-13-2003]

4.12.1.15 OTHER COMMITTEES AND MEETINGS: There shall be various standing operations committees, corresponding to the major operations areas of the commission's responsibilities.

- A. Appeals committee, has responsibility for hearing and making recommendations on all appeals submitted by the NMA director.
- B. There shall be a nominating committee also referred to as the executive committee, with responsibility to present annually or when appropriate, for consideration and nomination, candidates for vacancies in the positions of vice-chair and secretary. Nominations may also come from the floor. Terms of office shall commence immediately.
- C. There shall be an arts award committee, with responsibility for making recommendations directly to the governor concerning recipients of the governor's awards for excellence in the arts.
- D. The commission may establish such other committees from time to time, as it deems appropriate.
- E. The annual meeting of the commission shall take place in November. The commission shall hold at least four meetings a year usually in February, June, August and November. Fourteen days written notice of the exact date, and time and location of each meeting of the commission shall be given by the NMA director or the commission chair to all commissioners and to the public. Any meeting date may be changed by approval of a majority of a quorum of the commissioners present at any regularly scheduled commission meeting, subject to the requirements of the commission's open meeting resolution.
- F. Special meetings may be called either by the commission chair or by petition of a majority of the sitting commissioners. Fourteen days notice shall be given to commissioners and the public of such special meetings. Upon receipt of a petition for a special meeting, the chair shall schedule the special meeting.
- G. The commission may designate any location within New Mexico as the place of its meeting.
- H. A quorum at any meeting of the commission shall be constituted by a majority of the commissioners. If, due to vacancies, there are fewer than 15 commissioners, a quorum shall consist of a majority of the commissioners actually holding office.
- I. Commissioners must be physically present to vote at all meetings of the commission. Voting by proxy is prohibited.
- J. The proposed agenda items for each meeting of the commission meeting shall be prepared by the NMA director in consultation with the commission chair and distributed not less than fourteen days prior to each meeting of the commission. Commissioners wishing to place an item on the proposed agenda must notify the NMA director not less than three weeks prior to the meeting. In accordance with the Open Meetings Act, commissioners may add or delete items from the agenda at the commission meeting.
- K. The commission shall follow all procedural duties using a manual of parliamentary procedure as guidance and in conformity with these regulations and the Arts Division Act.
- L. These regulations may be amended or repealed by a majority and new regulations shall be given to all commissioners. Written notice of any proposed amendments shall be given twenty-one days in advance and shall include the full text of the provision to be changed as well as the new provision.
- M. The principal office of the commission shall be the office of the NMA in Santa Fe, New Mexico.
[4.12.1.15 NMAC - Rp 4.12.1.15 NMAC, 11-13-2003]

4.12.1.16 NEW MEXICO ARTS FUNDING REGULATIONS: The most recent publication of the "New Mexico arts funding guidelines" is hereby incorporated into this rule by reference and is subject to change on a yearly basis. For the most recent publication, call New Mexico arts or visit the website at www.nmarts.org. The New Mexico arts funding guidelines describe the policies and requirements for art and art-related educational projects advertised and administered by NMA and the commission. The guidelines are applicable to all projects

advertised and contracts executed after the date this rule is promulgated by NMA and filed with the state records center.

[4.12.1.16 NMAC - Rp 4.12.1.16 NMAC, 11-13-2003; A, 12-15-2007]

HISTORY of 4.12.1 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the state records center and archives under:

NMAC 72-2, By-Laws And Rules Of Procedure September 16, 1972, filed 9-22-72

NMAC 74-1, By-Laws And Rules Of Procedure, Revised February 9, 1974, filed 3-8-74

NMAC 76-1, By-Laws And Rules Of Procedure, Revised September 12, 1976, filed 9-28-76

NMAC 79-1, By-Laws And Rules Of Procedure, Revised April 21, 1979, filed 5-18-79

NMAD 81-1, New Mexico Arts Commission By-Laws And Rules Of Procedure, filed 12-30-81

NMAD 84-1, New Mexico Arts Commission By-Laws And Rules Of Procedure, filed 1-19-84

NMAD 88-1, New Mexico Arts Division Grants Guidelines 1988-89, filed 3-28-88

NMAD 89-1, New Mexico Arts Division Grants Guidelines 1989-90, filed 1-9-89

NMAD 89-2, New Mexico Arts Commission By-Laws And Rules Of Procedure, filed 3-14-89

NMAD 89-3, New Mexico Arts Division: Arts in Education Grants Guidelines 1989-1990, filed 3-24-89

NMAD 90-1, New Mexico Arts Division 1990-91 Program Guidelines, filed 2-7-90;

NMAD 90-2, New Mexico Arts Commission By-Laws And Rules Of Procedure, filed 12-6-90

NMAD 91-1, New Mexico Arts Division 1991-92 Program Guidelines, filed 2-26-91

NMAD 91-1, Amendment 1, filed 12-20-91

NMAD 93-1, New Mexico Arts Division 1993-94 Program Guidelines, filed 1-8-93

NMAD 93-1, Amendment 1, New Mexico Arts Division 1994-95 Program Guidelines, filed 6-30-94

History of Repealed Material:

4 NMAC 12.1, General Provisions and 4 NMAC 12.2 Application Process for General Support - Repealed, 7-31-2000.

4.12.1 NMAC, General Provisions (filed 7-12-2000) - Repealed, 11-13-2003.

Other History:

NMAD 90-2, New Mexico Arts Commission By-Laws And Rules Of Procedure, filed 12-6-90 was replaced by 4 NMAC 12.1, Community Art Resources - General Provisions, effective 10-15-98.

4 NMAC 12.1, Community Art Resources - General Provisions (filed 9-30-98) and a portion of 4 NMAC 12.2, Community Art Resources - Application Process for General Support (filed 9-30-98) was replaced by 4.12.1 NMAC, General Provisions, effective 7-31-2000.

4.12.1 NMAC, General Provisions (filed 7-12-2000) was replaced by 4.12.1 NMAC, General Provisions, effective 11-13-2003.