

TITLE 4 CULTURAL RESOURCES
CHAPTER 51 MUSEUM OF NEW MEXICO
PART 57 GOVERNANCE OF THE PORTAL PROGRAM AT THE PALACE OF THE GOVERNORS STATE HISTORY MUSEUM

4.51.57.1 ISSUING AGENCY: Department of Cultural Affairs and Museum of New Mexico Board of Regents.

[4.51.57.1 NMAC - Rp, 4.51.57.1 NMAC, 12/27/2018]

4.51.57.2 SCOPE: Museum of New Mexico, palace of the governors state history museum division and program applicants and participants.

[4.51.57.2 NMAC - Rp, 4.51.57.2 NMAC, 12/27/2018]

4.51.57.3 STATUTORY AUTHORITY: Subsection E of Section 9-4A-6 NMSA 1978 of the Cultural Affairs Department Act authorizes the secretary of the department of cultural affairs to make and adopt such reasonable procedural rules as necessary to carry out the duties of the department and its divisions. Subsections G and I of Section 18-3-3 NMSA 1978 authorize the board of regents to adopt such rules as may be appropriate to carry out the provisions of its statutory powers and duties, including the duty to cooperate with individuals to the extent necessary to establish and maintain the museum and its programs.

[4.51.57.3 NMAC - Rp, 4.51.57.3 NMAC, 12/27/2018]

4.51.57.4 DURATION: Permanent.

[4.51.57.4 NMAC - Rp, 4.51.57.4 NMAC, 12/27/2018]

4.51.57.5 EFFECTIVE DATE: 12/27/2018, unless a later date is cited at the end of a section.

[4.51.57.5 NMAC - Rp, 4.51.57.5 NMAC, 12/27/2018]

4.51.57.6 OBJECTIVE: The objective of this rule is to govern and regulate the operation of the program, including the quality and authenticity of items offered for sale on the portal of the museum. These rules are not in any way an assumption of responsibility by the division, the board of regents, or the secretary of the department of cultural affairs for the actions or representations made by participants.

[4.51.57.6 NMAC - Rp, 4.51.57.6 NMAC, 12/27/2018]

4.51.57.7 DEFINITIONS:

- A.** “Add-on” means a new or additional product offered in the program.
- B.** “Applicant” means an individual who submits an application to be a participant pursuant to these rules.
- C.** “Application” means the form used by the division for applicants to apply to participate in the program.
- D.** “Board of regents” means the board of regents of the museum of New Mexico.
- E.** “Child” means a son or daughter.
- F.** “Coordinator” means the division employee assigned by the director to serve as the liaison between the participants and the director.
- G.** “Demonstration” means the process by which applicants and participants demonstrate the ability to make the product(s) that applicants wish to sell in the program.
- H.** “Demonstration report” means the form described in 4.51.57.10 NMAC.
- I.** “Director” means the director of the division or the director’s designee.
- J.** “Dishonest” means obtaining an unfair advantage during the election of portal committee members and officers or during the drawing, and includes, but is not limited to, taking two or more chips at the same time away from the drawing receptacle, getting in line for the morning draw after the duty officer has closed the line, drawing a numbered chip and giving the chip to another participant or member from a different household, or having more than one person from the same household in line for the morning draw or claiming more than one space per household on any given day.

- K.** “Division” means the palace of the governors state history museum division.
- L.** “Duty officer” means a portal committee member assigned by the portal committee to monitor the program area on a particular day.
- M.** “Findings” shall have the meaning given in Section 30-33-4 of the IACSA.
- N.** “Good standing” means a participant who sells in the program area at least once a year and is not on suspension or termination from the program.
- O.** “Household member” means a participant who resides in the same residence as another participant and who is related by blood, marriage, or adoption to the other participant and includes a(n) spouse, parent, legal guardian, grandparent, son or daughter, grandchild, sibling, cousin, aunt, uncle, niece, nephew, and in-law.
- P.** “Identity badge” means the museum issued identification card for program participants.
- Q.** “Indian market” means the event held annually by the southwest association of Indian arts during the third weekend in August.
- R.** “Inspection” means the examination by one or more portal committee members of products displayed by a participant for sale to ensure compliance with these rules.
- S.** “IACSA” means the Indian Arts and Crafts Sales Act, Sections 30-33-1 through 30-33-11 NMSA 1978.
- T.** “Maker’s Mark” means a symbol that applicants or participants use to identify their products.
- U.** “Minor children” means a person under the age of 18.
- V.** “Monitoring form” means a written report completed by a portal committee member that documents violation(s) of these rules by a participant.
- W.** “Museum” means the palace of the governors state history museum.
- X.** “Native American” means any person who is an enrolled member of a Native American tribe as evidenced by a tribal enrollment card or certified tribal records, or any person who can meet the minimum qualifications for services offered by the United States government to Native Americans because of their special status as Native Americans as evidenced by a certificate of degree of Native American blood card.
- Y.** “Native American handmade” means any product in which the entire shaping and forming of the product from raw materials and its finishing and decoration were accomplished by Native American hand labor and manually controlled methods that permit the maker to control and vary the construction, shape, design or finish of each part of each individual product, but does not exclude the use of findings, hand tools and equipment for buffing, polishing, grinding, drilling, sawing or sewing and other processes approved by regulations adopted under the IACSA.
- Z.** “Native American tribe” means any tribe, band, nation, Alaska native village or other organized group or community that is eligible for the special programs and services provided by the United States government to Native Americans because of their status as Native Americans, or any tribe that has been formally recognized as a Native American tribe by a state legislature.
- AA.** “Parent” means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the participant when the participant was a son or daughter.
- BB.** “Participant” means an individual that has successfully completed the application process and has been accepted as an artist in the program.
- CC.** “Participant file” means the official program file which is a collection of papers, materials and documents relating to the individual program participant, and shall include, at a minimum, current address and contact information, proof that a participant is eligible and qualified to be a participant, e.g., application, documentation of demonstration, proof of tribal enrollment, clear description and picture of mark, a signed statement of responsibility, release, and agreement to participate in the portal program, and any disciplinary actions. A participant may review their file by making an appointment with the portal coordinator or director.
- DD.** “Portal committee” means the group of participants that monitors, in conjunction with the director coordinator, the daily operation of the program and the applicants’ and participants’ compliance with these rules.
- EE.** “Product” means Native American arts and crafts and traditional food stuffs offered for sale in the program that meet the requirements of these rules.
- FF.** “Program” means all activities that comprise the selection of participants and selling of products under these rules.
- GG.** “Program area” means the area described in 4.51.57.13 NMAC.
- HH.** “Reprimand” means the written notice or admonition to a participant of misconduct and the potential consequences of further misconduct.
- II.** “Son or daughter” means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.

JJ. “Space” means a designated area within the program area which is assigned, pursuant to this rule, to a participant to sell participant(s)’s product(s).

KK. “Spanish market” means the event held annually by the Spanish colonial art society during the third weekend of July.

LL. “Spouse” means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either was entered into in a State that recognizes such marriages or if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

MM. “Statement of responsibility, release, and agreement to participate in the portal program” is a statement signed by a participant acknowledging that in exchange for being allowed to participate in the portal program, the participant agrees to abide by applicable department policies and rules.

NN. “Suspension” means temporarily revoking of a portal participant’s privilege to sell participant’s products for a defined period of time, no less than one day and no more than twelve months.

OO. “Termination” means permanently revoking a participant’s privilege to sell products in the program.

PP. “These rules” means 4.51.57 NMAC, Governance of the Portal Program at the Palace of the Governors State History Museum.

[4.51.57.7 NMAC - Rp, 4.51.57.7 NMAC, 12/27/2018]

4.51.57.8 RESOLUTIONS:

A. Whereas, the presence of Native American artists and artisans at the museum is an integral part of the history, tradition and function of the museum; and

B. Whereas, the museum of New Mexico has determined that reserving the museum portal for the display and sale of New Mexico Native American products not only helps preserve traditional aspects of New Mexico Native American culture but is also educational to the visiting public because it provides the public the opportunity for contact with New Mexico Native American artists and artisans in a historically relevant context;

C. Now, therefore, be it resolved by the board of regents and the secretary of the department of cultural affairs that the display and sale of handmade Native American art at the museum shall be governed as described in these rules.

[4.51.57.8 NMAC - Rp, 4.51.57.8 NMAC, 12/27/2018]

4.51.57.9 ADMINISTRATION OF THE PROGRAM:

A. The director shall designate a coordinator in consultation with the portal committee. The director or coordinator shall oversee the program in consultation with the portal committee. The portal committee, director, or coordinator may request the assistance of the Indian affairs department, the all-pueblo governor’s council, the museum of Indian arts and culture, and other tribal entities of New Mexico.

(1) The coordinator shall serve as liaison between the participants, and the division and director in conjunction with the portal committee.

(2) The coordinator shall maintain the official records and files of the portal program including participant files and applications, demonstration reports, correspondence, forms, and financial records. Official records and files are the property of the division. The portal committee shall have access to files of the portal program.

(3) The portal committee with the coordinator may develop and schedule educational activities and events and perform other duties as assigned by the director.

B. The division shall provide interpretive materials on the history and culture of New Mexico, Native Americans and on the tradition of the program.

C. The division shall make a reasonable effort to consult with the portal committee before removing a participant but reserves the absolute right to immediately remove participants for conduct or behavior that poses an immediate threat to others or for other emergency situations Permanent removal from the program is subject to the procedures outlined in 4.51.57.15 NMAC.

[4.51.57.9 NMAC - Rp, 4.51.57.14 NMAC, 12/27/2018]

4.51.57.10 PARTICIPANT QUALIFICATIONS AND APPLICATION PROCESS:

A. Qualification.

(1) To qualify as a participant artist in the program, an individual shall be 18 years of age or older, shall be Native American and shall be from a federally recognized tribe or pueblo of New Mexico.

(2) The director may, after consulting with the portal committee, allow in writing for a waiver of the requirement that a participant be a member of a New Mexico pueblo or tribe subject to such conditions as the director deems appropriate. The director, in consultation with the portal committee, shall issue such waivers in writing and grant them only to Native Americans when a waiver is consistent with the purpose of the program to present and preserve the historic Native American cultures of New Mexico.

B. Application process. No one shall sell in the program area until the director has approved the individual to be a participant based on an application, a demonstration, and the portal committee's recommendation.

(1) **Application.** Qualified individuals shall submit an application. The applicant shall submit the following in the application: name, contact information, emergency contacts, a proposed mark; proof of tribal enrollment; a signed statement of responsibility, release, and agreement to participate in the portal program; and any other information requested by the coordinator.

(2) **Demonstration.** An applicant shall demonstrate, at the applicant's studio or residence and with the applicant's own tools or equipment, the making of the applicant's product(s), including any add-ons, to establish that the product(s) meet the quality and authenticity standards of 4.51.57.16 NMAC. However, if there is an excess of twenty applicants in backlog, the director, in consultation with the portal committee, has discretion to authorize demonstrations away from an applicant's studio or residence provided the applicant uses the applicant's own tools. An applicant may, however, use borrowed equipment when such equipment cannot be easily transported.

(a) The applicant shall perform the demonstration in the presence of at least two portal committee members who shall evaluate the applicant's products. The portal committee members shall not be persons related by blood, marriage, or adoption, which includes a(n) spouse, parent, legal guardian, grandparent, son or daughter, grandchild, sibling, cousin, aunt, uncle, niece, or nephew of the participant. The director or coordinator may also witness the demonstration.

(b) The portal committee members who are present shall prepare, review, and sign a demonstration report before the members depart from the applicant's residence or studio. The demonstration report shall contain the name of the artist, the address where the demonstration occurred, date of demonstration, the observed product(s), methodology and materials, a detailed narrative, and photographs of the applicant making the product, if permitted by the applicant. The portal committee members shall submit the demonstration report to the coordinator by the following portal committee meeting.

(c) **Subsequent demonstration(s).** The portal committee may require a subsequent demonstration before or after an applicant becomes a participant. Reasons for a subsequent demonstration(s) may include, but are not limited to, a request by the applicant for a demonstration, unclear or missing information from a demonstration report, request for add-on, absence from the program for a year or more, or questions regarding the quality or authenticity of work.

(d) The portal coordinator and the portal committee will maintain a list of those applicants waiting to demonstrate. Only completed applications will be placed on this list and demonstrations will be scheduled in a manner that is most efficient for those who will be witnessing the demonstration.

(e) If the portal committee, portal coordinator or the director is unable to contact an applicant for any reason, the applicant's name will be placed on an inactive status list that may be maintained by the portal committee and portal coordinator. If the applicant contacts the portal committee, portal coordinator or the director at a later date, the applicant's name will be placed at the end of the demonstration waiting list.

(f) Whenever possible, a portal committee member shall not witness a demonstration by a fellow tribal member without the presence of another unaffiliated tribal member, the portal coordinator or the director.

(g) If the portal committee determines that the assistance of former portal committee members is needed with witnessing demonstrations, then with the director or coordinator's approval, those former portal committee members in good standing selected to help may witness demonstrations. However, if former portal committee members are enlisted to assist with witnessing a demonstration, at least one current portal committee member must also be present to witness the demonstration.

(3) No action of any type shall be taken on new applications or applications that require a demonstration during two months prior to the annual meeting. The director may waive this two month moratorium. This moratorium does not apply to actions taken in regard to violations of portal program rules. The portal committee shall begin conducting demonstrations and considering new applications after reviewing waiting list.

(4) The portal committee shall recommend to the director an applicant's approval or

disapproval as a participant upon completion of the applicant's demonstration. The director shall approve or deny and sign the application, noting the decision. If an application is denied, the director shall state the reasons on the application. The coordinator shall then notify the applicant and the portal committee of the application's status.

(5) Appeal. An applicant aggrieved by a denial of an application under these rules may appeal the decision to the director. The applicant shall submit the appeal in writing within 10 calendar days of the director's decision and shall clearly and concisely explain why the denial was inappropriate. A decision of the director upholding the denial shall be the department of cultural affairs' final action in the matter.

(6) Participant status. Acceptance into the program does not make a participant an employee or agent of the division.

C. Good standing. Participants must be in good standing to continue to be eligible to vote in elections and run for election to the portal committee.

[4.51.57.10 NMAC - Rp, 4.51.57.11 NMAC, 12/27/2018]

4.51.57.11 THE PORTAL COMMITTEE:

A. Purpose. The portal committee shall be composed of up to ten active members and four alternates, who shall be appointed and elected pursuant to this section. The purpose of the portal committee includes, but is not limited to, monitoring the daily operations of the program for compliance with these rules, evaluating applications, and presenting participants' concerns and issues to the coordinator. In order to ensure diversity and broad representation, the portal committee shall be comprised of representatives from not less than five tribes or pueblos.

B. Selection.

(1) At the annual meeting, the director or coordinator shall oversee the election of new portal committee members and officers.

(2) Participants shall elect 14 participants who are present at the annual meeting to be portal committee members and alternates. Subject to Subsection A of 4.51.57.11 NMAC, the 10 participants who receive the highest number of votes shall be members of the portal committee. The four participants who receive the highest number of votes after the members of the portal committee have been selected shall serve as alternates.

(3) The membership shall elect three officers (chair, vice-chair, and secretary). The director or coordinator shall accept nominations from the floor for portal committee officers. The director shall close the nominations at the director's discretion. In the case of a tie, the coordinator shall break the tie.

C. Portal committee responsibilities.

(1) Portal committee members shall carry out their duties to the best of their abilities and in a professional manner.

(2) Portal committee members shall agree to abide by the code of conduct in 4.51.57.17 NMAC of these rules and shall carry out their duties and activities in conformity with these rules.

(3) The portal committee shall ensure fair and equitable treatment of all applicants and participants, without regard to tribal affiliation, political affiliation, family relations, age, gender, sexual orientation, religious affiliation, or other legally protected status. Members shall not disregard certain rules nor shall they selectively enforce these rules.

(4) Portal committee members shall serve as duty officers on a rotating basis in accordance with the monthly duty officer schedule prepared by the portal committee secretary.

(5) The portal committee may form subcommittees as necessary to address specific issues and to assist the portal committee as a whole.

(6) The chairman shall preside at all portal committee meetings and work with the coordinator to organize and plan the business of the portal committee and the program.

(7) The vice-chairman shall serve as the chair in the chair's absence.

(8) The secretary shall keep the minutes of the portal committee meetings. The secretary shall submit meeting minutes to the coordinator by the next portal committee meeting.

(9) The secretary shall produce a monthly "duty officer schedule" and distribute it to the portal committee before the first day of each month. The secretary shall assign duty days by distributing the days as evenly and equitably as possible and by listing one or more portal committee members for duty each day.

(10) Unless a portal committee member's absence is approved by the portal committee chair, each portal committee member shall attend all portal committee meetings and perform various tasks to enable the portal committee to fulfill its duties and purposes.

(11) In order to allow for new program participants, the portal committee shall conduct at least 10 demonstrations for new applicants each year between portal committee elections if at least 10 applicants submit complete applications, in addition to add-ons.

(12) The portal committee shall assist participants in presenting the traditional and educational aspects of the program to the public.

(13) The portal committee shall monitor the daily operations of the program and assist the division in enforcing these rules and other applicable policies by serving as duty officers on a rotating basis.

(14) In the event of a resignation or removal of a portal committee member, the portal committee shall appoint another participant to serve on the portal committee observing alternate protocol. The appointed participant shall resume any duties of the outgoing member, including assigned duty officer days.

D. Resignation. If a portal committee member is unable to complete the portal committee member's term, the portal committee member shall submit a letter of resignation to the portal committee and the division.

E. Removal.

(1) If a portal committee member fails to fulfill the duties of a portal committee member, the portal committee shall try to assist the member to improve the member's participation and involvement before asking the member to resign. Examples of failing to fulfill a portal committee member's duties include but are not limited to missing two or more portal committee meetings within a one-year term, missing a scheduled duty officer day, failing to enforce or to fairly enforce these rules, failing to conduct inspections while serving as duty officer, and refusing to assist a duty officer.

(2) If a portal committee member is asked but refuses to resign, the portal committee may make a recommendation in writing to the director that the portal committee member be removed from the portal committee.

(3) Participants may make a recommendation in writing to the director through a petition, signed by at least fifty percent or more of the number of participants that attended the prior annual meeting, that a portal committee member be removed from the portal committee.

(4) A portal committee member who is aggrieved by removal from the portal committee may file an appeal in accordance with Subsection C of 4.51.57.15 NMAC.
[4.51.57.11 NMAC - Rp, 4.51.57.13 NMAC, 12/27/2018]

4.51.57.12 MEETINGS:

A. Annual Meeting. The purpose of the annual meeting is to give participants an opportunity to express issues of concern and to make recommendations regarding the program to the director.

(1) The annual meeting shall be held on a day in October, at a place to be provided by the division. The annual meeting shall be open to the public, and the coordinator should announce the meeting at least 30 days in advance.

(2) The director shall chair the annual meeting and shall work directly with the portal committee in the conduct of the meeting.

(3) The program shall not be conducted during the annual meeting, but shall open when the annual meeting is officially adjourned.

(4) Only participants with an identity badge and who are in good standing and in attendance at the annual meeting may cast a vote on matters taken to vote, including the election of the portal committee pursuant to 4.51.57.11 NMAC.

(5) If revisions to these rules are proposed, the portal committee and the coordinator shall make copies of the existing and proposed rules available for explanation and discussion.

(6) Rule proposal suggestions will be brought to and discussed with the portal committee prior to any draft compilation that is presented to the membership for consideration.

B. Committee meetings. The purpose of portal committee meetings is to discuss program matters.

(1) The portal committee shall meet at least twice a month or at their discretion and shall coordinate the location and times of meetings with the coordinator.

(2) In order to make any decision other than whether a quorum has been met, the portal committee shall have a quorum present, comprised of six portal committee members. Once a quorum is present, a vote shall be based upon a simple majority of portal committee members present.

(3) The director or coordinator may attend all portal committee meetings and may address the portal committee at any time.

(4) Any portal committee member who cannot attend a meeting shall notify the chair at least 24 hours prior to the meeting unless an emergency prevents the member from notifying the chair sooner.

(5) Committee meetings shall be open to all participants except when a participant requests privacy because of an anticipated discussion of a private matter such as a discipline.

C. Special meetings. The director or coordinator may schedule special meetings of the participants for matters or topics not addressed during the annual or monthly meeting.
[4.51.57.12 NMAC - Rp, 4.51.57.12 NMAC, 12/27/2018]

4.51.57.13 DAILY OPERATION: Within the program area defined below, the division permits a program involving the daily sales of Native American handmade products by qualified participants, subject to the following conditions. All participants are subject to all rules and conditions starting at 7:00 a.m.

A. Program area. The participants shall conduct the program upon the brick surface area under the portal that extends four feet from the southern wall of the museum and in between the plane of the eastern wall and the plane of the western wall of the same.

(1) The program shall not use the area extending west seven feet across from the museum's main entrance.

(2) During times of repair to the portal area, peak sales, or other circumstances, the director or coordinator may designate supplemental or alternate selling locations within the perimeter of the museum.

B. Spaces. The program area shall be divided into a number of spaces, each six feet deep from the wall and three feet, six inches wide along the wall. One space shall be situated against the banco (bench) and curb on each side of the portal at the corner structures.

(1) Participants shall obtain their own spaces; that is, no one may obtain a space for another participant. This includes moving other participant's cloths, intimidating other members out of claiming a space, etc.

(2) The first space west of the building entrance is reserved for the designated duty officer.

(3) Household members shall share a space. A household shall only use one space.

(4) Two participants may voluntarily agree to share one space, provided that both are present at the start of the draw. Both participants will be set up by 10:00 a.m. The primary space holder must remain until 12:00 p.m. (excluding emergencies). Should the primary space holder return later than 11:00 a.m., the space becomes vacant.

(5) The following spaces cannot be shared: 64, 65, 70, and 71.

C. Hours and dates of operation: The program shall commence each day at 7:00 a.m. according to the duty officer's timepiece and shall terminate upon departure of the last participant from the program area even on days without a drawing. Beginning at 7:00 a.m., participants may place their cloths along the curb opposite the space they want, and may claim that space at 8:00 a.m. if no drawing is held. Any participant arriving after 8:00 a.m. shall set up immediately.

(1) A participant shall not set up prior to 8:00 a.m., and shall be completely set up by 10:00 a.m. Adding additional items after 10:00 a.m. is prohibited.

(2) No participant shall sell in the program area during Spanish market, Indian market, and during days or time periods that the director determines that museum needs preclude sales in the program area for reasons including, but not limited to, program area renovations.

D. Duty officer. Duty officers shall monitor the program and be responsible for assigning spaces, conducting inspections, and fulfilling other duties described herein.

(1) Committee members' duty days shall be on which they are assigned according to the monthly duty officer schedule prepared by the portal committee secretary.

(2) The duty officer shall be present at the program area by no later than 7:45 a.m. and shall remain on duty until at least 3:00 p.m. If the duty officer must leave before 3:00 p.m., the duty officer shall make arrangements with another portal committee member or alternate to serve as the duty officer.

(3) A portal committee member shall make arrangements with another portal committee member when they are unable to serve as duty officer.

(a) If a scheduled duty officer fails to make arrangements for another portal committee member or alternate to serve in the duty officer's place, any active portal committee member may serve as duty officer for that day. If more than one active portal committee member wishes to serve as duty officer, the portal committee shall hold a drawing to determine which one shall serve as duty officer for the day.

(b) If no portal committee members are present, an alternate portal committee member may volunteer as the duty officer. If more than one alternate portal committee member wishes to serve as duty officer, a drawing shall be held to determine which one shall serve as duty officer for the day. If no portal committee members or alternates are available, a former portal committee member may serve as duty officer. An extra set of draw materials will be available.

(4) The duty officer shall conduct inspections of participants' products in accordance with these rules.

(a) The duty officer shall document any violations observed during an inspection on a monitoring form. The participant and duty officer shall sign the monitoring form. The duty officer's signature shall serve as verification that the information on the monitoring form accurately represents what the duty officer observed. The participant's signature does not serve as an admission to the alleged violation, but acknowledges that the duty officer discussed the alleged violation with the participant.

(b) The duty officer shall explain the alleged violation and discuss the violation with the participant in a private manner, away from other participants. The duty officer shall include another portal committee member as a witness to the discussion.

(5) A duty officer may sell products while on duty if possible while also successfully completing all the duty officer's responsibilities and may request assistance from other portal committee members to accomplish their required duties.

(6) A duty officer's household member may occupy the duty officer's designated space while the duty officer fulfills the duty officer's duties.

(7) The duty officer shall immediately notify the coordinator or division security if a participant or member of the public behaves in a disruptive or dangerous manner

E. Drawing. The duty officer shall hold a drawing when there are more participants than available spaces. On these occasions, the duty officer shall count participants who are present at 8:00 a.m. and put a chip for each participant into a drawing receptacle. This receptacle shall contain numbered chips that correspond with the available spaces, except for the duty officer's space, as well as blank chips. Each participant shall draw a chip, one participant at a time.

(1) If all participants have drawn chips and all the numbered chips have not been drawn, the portal committee shall assign the space to the next participant on the waiting list. This includes spaces that are immediately abandoned by choice.

(2) Participants arriving after the draw may not share spaces, but may have their names added to the waiting list in the order of their appearance to be eligible for assignment to vacated vending spaces.

(3) Attempting to create an unfair advantage during the drawing is grounds for discipline. An example may be deliberately drawing more than one chip or trading chips.

F. Waiting list. The duty officer shall keep a waiting list for vending spaces vacated during the day. Participants, including those who arrived after all of the spaces were vacated, participated in the draw or arrived at the portal after the draw for vending spaces, shall notify the duty officer if they would like their name added to the waiting list. The duty officer shall add participant names in the order of receipt.

G. Abandonment.

(1) Any participant who leaves the participant's space, including half spaces, for a period exceeding one hour has abandoned that space. The duty officer shall assign the first person on the waiting list the first vacated space. If the first person is not present when a space has been vacated, the duty officer shall assign the second participant on the waiting list the vacated space, and so on until the waiting list has been exhausted.

(2) When a participant abandons a space and leaves items behind, the duty officer may remove a participant's cloth and merchandise. The duty officer shall turn over the cloth and merchandise to the coordinator. The division, the coordinator, and the portal committee do not assume any responsibility for merchandise left unattended.

H. Director oversight. Should the portal committee or duty officer fail to operate the program as described in this section, the director may take the measures necessary to ensure the program continues to operate that day.

[4.51.57.13 NMAC - N, 12/27/2018]

4.51.57.14 PARTICIPANT RULES: Each participant shall accept and abide by these rules. Failure to abide by these rules shall result in discipline, up to and including suspension or termination from the program or ejection from the portal committee. Each participant accepts the division's absolute right to require a participant to leave the program area if the participant is not acting in a manner consistent with these rules.

A. Participants shall only sell products that are Native American handmade except as expressly provided otherwise by these rules. In addition, participants shall comply with the quality and authenticity standards in 4.51.57.16 NMAC, the IACSA, and the federal Indian Arts and Crafts Act of 1990 (P.L. 101-644).

B. A participant shall include the same maker's mark on all products offered for sale in the program by that participant. The maker's mark shall be approved and on file with the coordinator. The director or coordinator may issue a waiver from the requirement that all products include a maker's mark, giving exceptions to this rule, notably for some types of beadwork, extremely small pieces of metal jewelry, or pottery after consulting

with the portal committee.

C. Each participant shall display his or her identity badge while selling in the program area or while engaged in other program activities. The first time a participant forgets the identity badge, the duty officer shall issue a warning and place it in the participant's file. The second time a participant forgets the identity badge is grounds for disciplinary action pursuant to 4.51.57.15 NMAC. Participants shall not use identity badges in a fraudulent or unauthorized manner. If a participant needs a new identity badge, the division shall charge a \$5.00 replacement fee. Identity badges are the property of the division and shall be surrendered upon the division's request. Identity badges are not transferable.

D. No tables or elevated stands are permitted. A six inch height limit will be observed.

E. Participants shall not hang or place anything on walls or posts in the program area.

F. Participants shall keep their areas clean while vending and shall remove any trash in their area before they depart. Participants may not be absent from their space for more than one hour.

G. When vending in the program, participants may only use electronic devices, such as credit card machines, when such devices are required for a sale. Participants shall keep mobile electronic devices silent at all times and shall not talk on such devices. Participants shall leave the program area before using mobile devices.

H. Participants shall completely cover their products with a cloth when they leave their space, regardless of the participant's reason for leaving.

I. Participants shall be respectful of the public and not disrupt the program, pedestrians, participants, or division staff members.

J. Participants shall not possess, be influenced by, or use alcohol or illegal drugs in the program area.

K. Participants shall not possess weapons of any kind in the program area.

L. Participants may have an assistant who shall also be a participant and from the same household. The assistant shall sit with the participant within that participant's assigned space.

M. A participant shall not engage other participants who are not members of the participant's household to sell nor shall any participant solicit sales for another within the program area.

N. A participant shall only sell products demonstrated and approved as part of the participant's application process and products made by household members.

(1) Waivers: The director may allow a waiver of the requirement that all items sold by a participant be from the same household.

(2) Such waivers shall be written, issued for a limited, renewable time period, and granted only to those participants who for health reasons are no longer able to sell products in the program area and whose economic livelihood would otherwise be destroyed. In doing so, however, the director may stipulate such conditions or restrictions as are needed to ensure that the waiver is consistent with the intent of the program, preserving and exhibiting New Mexican Native American arts and crafts. The exceptions made in each case shall be considered unique to that case and not applicable to any other case.

O. Participants shall submit to the portal coordinator changes to their name, address, phone number or other contact information within three months of any change.

P. Due to safety concerns, minor children are not allowed to accompany participants while setting up, selling and packing in the program area vicinity, except during the children's art festival, when minor children age five to 17 may participate.

Q. Each participant is solely responsible for accepting payment.

(1) No participant shall accept any payment prior to delivery of the item. Cash-on-delivery (C.O.D.) orders are permitted.

(2) The portal committee and the division are not liable for participants' use of credit card machines or the outcome of transactions resulting from the use of credit card machines.

[4.51.57.14 NMAC - Rp, 4.51.57.15 NMAC, 12/27/2018]

4.51.57.15 RULE VIOLATIONS:

A. Disciplines. The portal committee, duty officer, and coordinator shall consider the circumstances surrounding a reported rule violation, such as the severity of the violation, the number of times the violation has occurred, and any previous violations, to determine the appropriate discipline. If the coordinator determines that a violation of these rules likely occurred, the coordinator shall issue a verbal warning, written reprimand, or notice of contemplated suspension or termination from the program portal committee.

(1) If the coordinator issues a written reprimand to a participant, the participant may respond in writing and the coordinator shall retain that response in the participant's file.

(2) If the coordinator issues a written notice of contemplated suspension or termination from

the program, or removal from the portal committee, the coordinator shall mail a copy to the participant's address on file or hand deliver the notice to the participant. The notice shall document the contemplated penalty; the effective date(s); the conduct or other basis for the disciplinary action; reference to the relevant provision of these rules; any previous incidents or efforts to inform the participant of the need for change or improvement; and the process and time limitations for presenting exculpatory evidence or mitigating circumstances.

(3) A participant may present exculpatory evidence or mitigating circumstances during the portal committee's next meeting. The coordinator shall make a record of the meeting in the form of an audio recording, transcript, or neutral third-party report.

(4) After the meeting, the portal committee may determine a participant's suspension or termination from the program or a portal committee member's removal from the portal committee.

(5) If the portal committee suspends or terminates a participant from the program or removes a portal committee member from the portal committee, the coordinator shall issue written notice of the penalty by mailing a copy to the participant's address on file or hand delivering the notice to the participant, along with written findings of fact, and the process and time limitations for appealing the discipline.

(6) Written notices of verbal warnings, reprimands, or suspensions shall remain in a participant's file indefinitely, subject to records retention requirements. Termination notices shall remain in a participant's file indefinitely, subject to records retention requirements.

B. Penalty guidelines.

(1) Minor offenses. Minor offenses may be determined by the portal committee and may sometimes warrant a verbal and/or written warning that may be placed in a participant's file. Resolution will be sought to deter the participant from repeating an offense.

(2) When determining whether an offense may be classified by degree (minor, moderate, serious), the portal committee will consider such things as frequency of occurrence, authenticity matters, harassment and any relevant issues which may assist in classifying an offense.

(3) Each participant found to have committed any violation will be extended every courtesy of respect while the portal committee examines every available fact. A just and fair examination will be performed protecting each individual's right to due process.

(4) Criminal activities under the portal may be grounds for immediate termination.

C. Appeals. Any participant who is aggrieved by a suspension or termination from the program or removal from the portal committee may appeal the penalty to the director. Upon an appeal under this section, the director may enforce or alter penalties issued by the coordinator.

(1) A participant shall have 10 calendar days from the date of the issued notice of discipline to appeal that discipline in writing. All appeals shall clearly and concisely explain why the imposed discipline is inappropriate. The coordinator shall place a copy of the notice and the participant's appeal, if any, in the participant's file.

(2) Suspensions or terminations from the program shall not begin until the participant's appeal has been acted upon by the director.

(3) The director shall review the portal committee's recommendation along with the participant's appeal and file before accepting, rejecting, or altering the portal committee's recommendation.

(4) A participant may appeal the director's decision in writing to the secretary of the department of cultural affairs within 10-calendar days; the secretary has discretionary review, meaning the secretary does not have to review the matter. The secretary's review shall be limited to the findings of fact and other parts of the record developed as directed in 4.51.57.15 NMAC. The secretary's decision not to review the matter or to deny the appeal is the department of cultural affairs' final action on the matter.

(5) Nothing in these rules shall eliminate the right of the division to immediately suspend a participant in cases in which a participant poses a threat to the safety of others.

[4.51.57.15 NMAC - N, 12/27/2018]

4.51.57.16 AUTHENTICITY AND QUALITY STANDARDS:

A. General Criteria:

(1) Participants shall accurately represent the materials and origins of all products and shall accurately identify the creator of all products and the methodology used to create all products.

(2) Generally prohibited materials: No participant shall use any reconstituted materials; color-shot, pre-drilled, semi-precious stones; imported heishi; or, pre-carved pieces in any jewelry exhibited or offered for sale under the portal.

B. Metalsmithing:

(1) Materials:

(a) Silver: Silver jewelry shall be made of sterling silver or fine silver, and not silver plate or commercial liquid silver. Gold overlay on sterling silver is allowable. All silver jewelry shall have "sterling" or .925 stamped on each piece.

(b) Gold: Gold jewelry must be appropriately stamped, 10K through 24K. All gold-filled jewelry must be appropriately stamped, 10 KGF through 24 KGF.

(c) Copper

(d) Brass: Red and Yellow

(e) Prohibited materials: In addition to the above prohibited materials, no participant shall use any plated silver; commercial liquid silver; reconstituted materials; color-shot, pre-drilled, semi-precious stones; imported heishi; faceted cabochons; lab grown, synthetic, cubic zirconium; gallery wire (also known as gallery bezel); or, pre-carved pieces in any jewelry exhibited or offered for sale in the program area. Given the wide range of patterned wire faceted stones available and its ever evolving nature, it would be burdensome to list each allowed and not allowed. Before the application of such materials, participants must receive clarification from the portal committee that such use would be allowed.

(2) Maker's Mark:

(a) Each participant shall stamp metal jewelry with the participant's maker's mark.

(b) On metal jewelry with stones, participants shall place the maker's mark on the back of the piece opposite of the stone before the stone is set. If the design permits, the maker's mark must be placed on the back of the bezel cup before the stone is set. If the design of a reversible pendant (or other piece of jewelry) makes it impossible to stamp the maker's mark behind the stone, the pendant (or other piece of jewelry) shall be stamped on the bezel. The intention of this provision is to require the participant to stamp the piece before the stones are set, and to make it impossible to stamp such pieces after they are completed. Metal plates with a maker's mark that is soldered or attached by other means to a piece of metal jewelry shall not be permitted.

(3) Findings: Accepted findings used on jewelry sold in the program shall be the following:

(a) Sterling silver findings: All chains, all jump rings, all spring rings, all tie-on hooks and eyes, all crimp type hook and eye earring part, all toggle clasps, all screw-on and clip-on earrings, all ear wire types, all ear posts and backs, omega clips, all cuff link and components, all necklace cones, all bolo tips, all bench made beads (2 mm to 9 mm seamless are acceptable), all size money clips, surgical wire for earrings, all size melon beads, and bezel cups in all sizes and shapes from 2 mm to 5 mm.

(b) Nickel or base metal findings: All size buckle backs, all bolo backs, all foxtail and tigertail, all conch backs key rings, including split rings, all barrel catches including eyeglass/chain attachments, all tie tacks, sets and clutches (backs), all scarf pins (stick pins) backs, all pin bars and pinsets (backs), all barrette backs, all tie bar slides, all alligator clips, all expansion centers, all size spring bars, keyholders (safety pins)-large and medium sizes, all size money clips, and wire used in "memory bracelets", and wire post earrings.

(c) 10K-24K gold findings: All ear posts and nuts, joint catches, jump rings, spring rings, bolo backs, bolo tips, and necklace cones. Also 2mm to 9 mm seamless beads.

(d) Gold filled findings: All posts and nut sets, all French wire styles, all hooks and eyes, all spring rings, all size jump rings, all neck chains; all beads, all tie tack backs, all bolo tips, all ear clips, stick pins and clutches, and all size cones.

(e) Red brass or brass findings: All buckle backs, all key ring backs, all concho backs, all bolo backs, all bolo tips, all hooks and eyes, all brass beads, and all size money clips.

(f) Leather findings: All size straps for concho belts and all size braided bolo cords. Vinyl bolo cords are not permitted.

(g) All copper findings. All buckle backs, all key rings backs, all concho backs, all bolo backs, all bolo tips, all hooks and eyes, all brass beads, and all size money clips.

C. Beadwork:

(1) Permitted beadwork materials: Silver, brass or any other metal which has been incorporated with beadwork into the final product shall be Native American handmade. The following materials shall be permitted: all size glass beads, brass beads, all types of legal feathers, all types of leather, porcupine quills (natural color only), genuine natural bone hair pipes, and genuine natural bone disc beads, dentalia shells, and lead crystals.

(2) Beadwork findings: Because beadwork is different from silversmithing, the following findings shall be permitted when incorporated into beadwork items: buckle backings (blanks), barrette backings, bolo backs and tips, sterling silver, aluminum and tin cones for fringe dangles only, metal spots of nickel or brass, barrel screw clasps, hooks and eyes, spring rings, crimp beads, eye pins and head pins, jump rings, split key rings,

tie tack mounts, tiger tail, and all earring findings.

(3) Prohibited beadwork materials: The following materials shall not be permitted when incorporated into beadwork: plastic bone hair pipe and pre-cut or pre-shaped, abalone disk.

D. Pottery:

(1) All pottery or clay items shall be handmade of completely natural, earth clay that has been collected from traditional areas and processed by the participant and fired outdoors in the traditional method using natural materials. The director may approve in writing clay from sources other than traditional areas.

(2) Pre-processed or commercially obtained clay or ceramic is not permitted, either alone or in combination with natural clay. Pottery or clay items made of greenware are not permitted.

(3) Acceptable hand-building methods are coil, pinched and slab. Stabilizing bases are allowed for large clay items.

(4) All pottery or clay items must be signed by carving in the item before it is fired. The artisan's mark must also be added prior to firing. Post-firing signatures or artisan's marks and signatures in pencil or paint, without a pre-firing carved signature, are not permitted.

(5) All pottery or clay items that are painted or decorated may only be painted or decorated with natural vegetable or mineral paint, acrylic paint, and /or clear acrylic sealers.

(6) Products may not be fired in an electric kiln.

(7) The post-firing technique of inlaying beads or stones, engraving, or torching of pottery or clay items is permitted.

E. Traditional food stuffs:

(1) Participants may offer traditional food stuffs for sale. Participants shall make foodstuffs in the participant's household within 24 hours of offering.

(2) The following food may be sold: oven bread, uncut fruit and vegetables, tamales, pies, cookies without filling, fry bread, piñon nuts, parched corn, piki bread (paper bread), and ristras (chile strings).

(3) All participants who vend food shall obtain from the city of Santa Fe a valid food handlers card or certificate, which the participant shall exhibit at all times.

(4) All food shall be packaged and labeled with the participant's mark and ingredients.

(5) The director or portal committee shall approve other additional kinds of foods before the participant offers it for sale to the public.

(6) Program food sales may only be conducted from the participant's space.

F. Sandpainting:

(1) All sandpainting shall be Native American handmade of natural materials. No commercial and dyed sand is permitted. However, use of commercial protective sealants is allowed.

(2) Pre-made frames are not allowed.

(3) The participant shall impress each sandpainting with the maker's mark on the face of the sandpainting while the sand is wet. This does not preclude additional marking or signatures, e.g., on the back of the painting.

G. Leatherwork:

(1) Participants shall permanently mark all leatherwork. Marking with ink is not permitted.

(2) Leatherwork without beadwork shall have a branded or stamped mark.

(3) Leatherwork with beadwork shall have a branded, stamped or beaded mark. The maker's mark may also be incorporated into the beaded design.

(4) Leatherwork shall not be marked with any type of ink.

H. Heishi: Heishi products shall be handmade from natural materials, stabilized materials, jet serpentine, pipestone, sea shells and stones. Heishi beads shall be hand rolled, of any size, shape or strand length, with all materials cut, drilled, strung, and shaped by hand.

(1) Materials allowed:

(a) natural and stabilized stones, shells, coral, apple coral;

(b) glass beads and coral when incorporated into one's own work;

(c) pearls and machine-made silver beads when incorporated with your own work.

(2) Prohibited material:

(a) commercial, pre-made, or pre-strung beads;

(b) imported, pre-made heishi, plastic block or chemically made stones, pre-carved, pre-drilled or artificially enhanced material.

(3) Findings allowed: Heishi offered for sale in the program may contain the same findings as beadwork jewelry.

(4) Trademark discs: Makers of heishi and nuggets that are metal discs as their trademark on their products must incorporate the disc into the body area of the item. The metal disc may not be attached to the clasp using a jump ring or any other fastener nor be in the vicinity of the ends of the piece.

I. Other goods: Native American handmade products that are not specifically named in this rule, including but not limited to Native American handmade paintings, basketry, and textiles, are permitted if their size and form permit sales from a space on the portal area without impeding on other participant's spaces and while allowing the public to view the product easily.

[4.51.57.16 NMAC - N, 12/27/2018]

4.51.57.17 PORTAL CODE OF CONDUCT: Participants shall not:

A. require or accept any gifts, favors, or loans from anyone with whom the participant is involved in any manner in the course of the participant's duties that are conditioned upon promised performance of portal committee member or participant duties;

B. use any information obtained through or during the participant's or portal committee member's term for the participant's, member's or another's private financial gain;

C. use any equipment, property, or supplies belonging to the state of New Mexico for personal purposes;

D. alter official documents of the program with the intent to defraud portal committee members or the division;

E. tamper with program files, official documents or records, including removing or destroying files, documents or records from the program's office or computer, or from the program archives or the museum;

F. mishandle, misappropriate, or divert for personal use any funds raised by the program or portal committee or through activities sponsored or sanctioned by the museum;

G. falsify any program documents whatsoever;

H. possess, use, sell, or purchase any forbidden items while engaged in portal committee or program activities, including firearms, illegal drugs, or stolen property; or

I. engage in any other unprofessional conduct that is inconsistent with the interests of the program, the museum or the department of cultural affairs.

[4.51.57.17 NMAC - N, 12/27/2018]

HISTORY OF 4.51.57 NMAC:

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

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 5/11/83.

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 2/11/87.

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 4/7/87.

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 5/27/87.

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 8/12/88.

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 5/26/89.

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 6/7/89.

Rule No. 37, Guidelines, Rules, and Regulations Governing the Portal Program at the Palace of the Governors, 6/16/89.

MNM: Rule No. 57, Rules and Regulations Governing the Portal Program at the Palace of the Governors, 7/31/91.

MNM: Rule No. 57, Rules and Regulations Governing the Portal Program at the Palace of the Governors, 7/13/95.

History of Repealed Material:

4.51.57 NMAC, Governance of the Portal Program at the Palace of the Governors, Repealed effective 12/27/2018]

Other History:

MNM: Rule No. 57, Rules and Regulations Governing the Portal Program at the Palace of the Governors (filed 7/13/95) was renumbered, reformatted, amended and replaced by 4.51.57 NMAC, Governance of the Portal Program at the Palace of the Governors, effective 9/15/08.