

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION RULEMAKING)
AMENDING RULES PERTAINING TO FIRE AND SMOKE) Case No. 20-00105-FM
DAMPERS PURSUANT TO SECTION 59A-52-15.1 OF THE)
STATE FIRE MARSHAL STATUTES)**

**ORDER INITIATING PROPOSED RULEMAKING AND CHANGING CASE CAPTION
AND NOTICE OF PROPOSED RULEMAKING**

NOTICE is hereby given that the New Mexico Public Regulation Commission (the “Commission”), on its own motion, is commencing a rulemaking proceeding to consider the adoption of the proposed rule or alternatives pertaining to the inspection and testing of fire and smoke dampers in accordance with National Fire Protection Association standards. A copy of the proposed rule is attached hereto as Exhibit 1 (the “Proposed Rule”). Being duly informed in the premises,

THE COMMISSION FINDS AND CONCLUDES:

1. Pursuant to the New Mexico Constitution, Article XI, § 2; § 59A-15-15.1 NMSA 1978 and § 59A-15-15 NMSA 1978 of the State Fire Marshal's statutes; State Rules Act, NMSA 1978, § 14-4-1, et seq. and the Public Regulation Commission Act, NMSA 1978, § 8-8-1 through 8-8-21; the Commission has jurisdiction to promulgate a rule pertaining to the inspection and testing of fire and smoke dampers in accordance with National Fire Protection Association standards.

2. On June 5, 2020, the Commission opened docket No. 18-00030-UT, captioned *In the Matter of a Commission Rulemaking Amending Rules Pertaining to Smoke and Fire Dampers Pursuant to Section 52A-52-15.1 of the State Fire Marshal Statutes*. The purpose of the Rulemaking was to propose certain amendments to Parts 1, 2, and 5 of Title 10, Chapter 25 of the New Mexico Administrative Code ("NMAC") of the State Fire Marshal's Rules (Rules 10.25.1, Order Initiating Proposed Rulemaking and Notice of Proposed Rulemaking Case No. 20-00105-FM

10.25.2, and 10.25.5 NMAC, respectively) as a result of changes made by the New Mexico State Legislature to the State Fire Marshall Division (“SFMD”) statutes in 2019. The Commission notes that the petition inadvertently cites to Sections 52A-52-15 and 52A-52-15.1, and will reference that the correct citations are Sections 59A-52-15 and 59A-52-15.1

3. The Commission finds that the Commission should initiate this rulemaking to repeal and replace proposed changes to rules 10.25.1, 10.25.2, and 10.25.5 NMAC insofar as it pertains to the inspection and testing of fire and smoke dampers in accordance with National Fire Protection Association standards, attached as Exhibit 1 to this Order and Notice.

4. Interested persons should contact the Commission to confirm the date, time and place of any public meeting, because meetings are occasionally rescheduled. Meeting announcements are posted on the Commission’s website at www.nmprc.state.nm.us.

5. The Commission will accept written comments concerning the proposed Rule contained in Exhibit 1 and proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments on the proposed rules no later than August 31, 2020. Any response comments shall be filed September 14, 2020. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and Docket Number contained at the top of this Notice.

6. Written comments or written response comments, containing the Docket Number in this matter, shall be sent to:

Melanie Sandoval
New Mexico Public Regulation Commission
Order Initiating Proposed Rulemaking
and Notice of Proposed Rulemaking
Case No. 20-00105-FM

Attention: Case No. 20-00105-FM
1120 Paseo de Peralta
Santa Fe, NM 87504

7. Copies of the proposed rules may be downloaded from the Commission's web site, www.nmprc.state.nm.us. The Commission will review all timely submitted written comments and will hold public comment hearings on the following date and at the following time and place: October 21, 2020 at 2:00 p.m.; New Mexico Public Regulation Commission, Old P.E.R.A. Building, 4th Floor Hearing Room, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501.

8. Interested persons should contact the Commission to confirm the date, time and place of any public hearing because hearings are occasionally rescheduled.

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Mr. Isaac Sullivan- Leshin at 827-4501 at least 48 hours prior to the commencement of the hearing.

10. Commission Rule 1.2.3.7(B) ("Ex Parte Communications") draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as "ex parte communications." In order to assure compliance with 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds such date should be fourteen days (14) after the date of the public hearing, November 4, 2020. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

version of the Proposed Rule. The Staff of the Commission's Fire Marshall Division shall file comments as provided in this paragraph.

E. All pleadings, including comments, shall bear the above caption and case number of this matter and shall be filed with the Commission's Records Division, at either of the addresses set forth below:

Melanie Sandoval for hand delivery
NMPRC Records Management Bureau
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
or
NMPRC Records Management Bureau
PO Box 1269
Santa Fe, New Mexico 87501-1269

F. A public hearing on the Proposed Amendment to the IRP Rule, to be presided over by the Commission or its designee, to be appointed by subsequent single signature order of the Commission, shall be held beginning at **2:00 p.m. on October 21, 2020**, at the offices of the Commission, at the following location:

**4th Floor Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501
Tel. 505-827-4501**

The hearing will be held in order to receive oral comments only by those persons who did not file written comments or responses in any capacity. Because commenters are afforded the opportunity to submit written comments and written responses to the Commission, **any individual who wants to provide oral comments shall be limited to five minutes to express those comments, subject to the Commission's discretion.** The Commission may also determine that a spokesperson be designated to speak on behalf of an organization, a group, or a group of individuals that shares the same message or seeks the same goals, in order to maximize the

efficiency of the public comment hearing. **No testimony or other evidence will be taken at the hearing as this is a rulemaking proceeding.**

G. Commission Rule 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as “ex parte communications.” In order to ensure compliance with Rule 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds that date shall be fourteen (14) days following the **October 21, 2020 Public Hearing**, that is **November 4, 2020**. The setting of that record closure date will permit Commissioners and Commission counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission’s proposed Rule or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

H. Interested persons should contact the Commission to confirm the date, time, and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Isaac Sullivan-Leshin at (505) 827-4501 at least 48 hours prior to the commencement of the hearing.

I. At least thirty (30) days prior to the hearing date, this Order, including Exhibit 1, shall be mailed to all persons who have made a written request for advance notice.

J. The *Notice of Proposed Rulemaking*, Exhibit 2, in at least two newspapers of general circulation in New Mexico and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of the *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

K. Copies of this Order, shall be e-mailed to all persons listed on the attached Certificate of Service if their e-mail addresses are known, and if not known, mailed to such persons via regular mail.

L. Copies of any forthcoming final order adopting a new rule shall be mailed or emailed, along with copies of the new rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of the final order in this docket, to all commenters in this case, and to all individuals requesting such copies.

M. This Notice and Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 24th day of
June, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Valerie Espinoza, electronically signed

VALERIE ESPINOZA, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT 5



“Redlined” Version of Proposed Repeal and Replacement Rule 10.25.1 NMAC

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 1 GENERAL PROVISIONS

10.25.1.1 ISSUING AGENCY: New Mexico Public Regulation Commission, State Fire Marshal Division until June 30, 2021; State Fire Marshal, effective July 1, 2021.
[10.25.1.1 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.2 SCOPE: This rule applies to any person whose activities are regulated by the provisions of ~~Sections 59A-52-1 through 59A-52-25~~ Chapter 59A, Article 52 NMSA 1978 or the Fireworks Licensing and Safety Act, Section 60-2C-1 through 60-2C-11 NMSA 1978.
[10.25.1.2 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.3 STATUTORY AUTHORITY: Sections 8-8-6 and 8-8-15, until June 30, 2021, 59A-52-2, 59A-52-15, 59A-52-15.1, 59A-52-16 and 60-2C-3 NMSA 1978 and Laws 2020, Chapter 9, Section 52, effective July 1, 2021.
[10.25.1.3 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019; Rp, __/__/2020]

10.25.1.4 DURATION: Permanent.
[10.25.1.4 NMAC - N, 11/15/2007; A/E, 6/28/2019; A, 11/26/2019; Rp, __/__/2020]

10.25.1.5 EFFECTIVE DATE: ~~[November 15, 2007, unless a later date is cited at the end of a section.]~~ Unless another date is otherwise provided by law or in the rule, the effective date of this rule shall be the date of publication in the New Mexico register.
[10.25.1.5 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.6 OBJECTIVE: The purpose of this rule is to set forth general provisions governing fire prevention, control of fires, and safe egress from and use of public occupancies.
[10.25.1.6 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.7 DEFINITIONS: In addition to the definitions contained in [Chapter 59A, Article 52 NMSA 1978; Sections] Section 60-2C-2 [and 60-2C-2.1] NMSA 1978[; and the definitions contained in Sections [10.25.1 NMAC;] 10.25.2.7 and 10.25.5.7 NMAC[; and the code adopted in 10.25.5 NMAC; as used in these rules] of the rules pertaining to certificates of fitness and fire prevention and public occupancy, respectively, the following definitions apply to the rules of the State Fire Marshal:

A. ~~[AHJ]~~ "AHJ" means an authority having jurisdiction[; this], which may refer to an organization, office or individual responsible for enforcing the requirements of codes, standards and permits within their respective jurisdiction regarding equipment, materials and procedures utilized for installations of fire protection systems, and may refer to the [fire marshal] SFM or FM, as appropriate, or to other authorities [with concurrent jurisdiction] having an approved partnership agreement with the SFM, such as a municipality or county that [has enacted an ordinance concerning] wishes to perform final acceptance testing of fire protection systems, conduct fire and life safety inspections, conduct inspections for the sale or display of fireworks, the review of fire protection system drawings, or perform investigation of complaints not posing an immediate danger to life and health [;].

[B.] ~~certificate of fitness means the fire marshal's approval of a fire protection installation, maintenance and inspection company obtained pursuant to 10.25.2 NMAC;~~

[C.] ~~"CID" means the construction industries division of the New Mexico regulation and licensing department;~~

[D.] ~~B.~~ "[e]Commission" means the New Mexico public regulation commission. This Subsection shall expire on June 30, 2021.

[E.] ~~fire marshal means the state fire marshal as established under the State Fire Marshal Act, Section 59A-52-1 et seq. NMSA 1978, or his designee; and]~~

[F.] ~~these rules means the rules adopted by the commission in Title 10, Chapter 25 NMAC;~~

C. "Fire Services Council" means that body created in Laws 2020, Chapter 9, Section 53. This Subsection shall become effective on July 1, 2021.

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D. "FM" means the fire marshal with the authority over permitting and inspections of fire protection systems within a particular political subdivision of the state. A valid partnership agreement shall be on file with the SFM, defined below.

E. "Partnership Agreement" means a signed and notarized agreement between the SFM and an AHJ, their manager, and their attorney, where statutory responsibilities involving inspections and investigations are granted to the AHJ by the SFM. This agreement shall be reviewed annually, and may be revoked by the SFM. Any change of a fire chief or of personnel in a fire department who has been authorized to perform responsibilities listed in the agreement must be communicated to the SFM, accompanied with documentation identifying the change within seven calendar days. For any reason, the SFM may cancel the agreement seven calendar days after written notice has been received by the FM, AHJ, or authorized fire chief. The FM or AHJ reserves the right to cancel the agreement by providing written notice within 30 calendar days to the SFM.

F. "SFM", until June 30, 2021, means the director of the state fire marshal division under the public regulation commission who has the authority for final determination of the application of the fire provisions of this rule throughout the state. Effective July 1, 2021, "SFM" means the director of the division of the state fire marshal's office under the homeland security and emergency management department who has the authority for final determination of the application of the fire provisions of this rule throughout the state.

G. "SFMO" means ~~the state fire marshal,~~ a SFM deputy, a SFM supervisor or a SFM fire inspector. [10.25.1.7 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.8 REQUIREMENTS FOR FILED DOCUMENTS: In addition to the requirements stated here, particular rules may include other filing requirements. All documents required by these rules to be filed with the ~~fire marshal~~ SFM, including applications referenced in 10.25.6 NMAC, shall be filed as follows.

A. Address for filing documents.

(1) Until June 30, 2021, documents filed by mail shall be addressed to the ~~New Mexico~~ State Fire Marshal ~~Division~~, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. Effective July 1, 2021, documents filed by mail shall be mailed to the address posted on the current website of the SFM.

(2) Until June 30, 2021, documents filed in person or by delivery service shall be delivered to the ~~New Mexico~~ State Fire Marshal ~~Division~~ located on the fourth floor of 1120 Paseo de Peralta, in Santa Fe, New Mexico. Effective July 1, 2021, personal delivery of documents shall be made at the physical address posted on the current website of the SFM.

(3) If documents are sent by email as may be authorized by the SFM, the email address for the SFM is sfmo.info@state.nm.us.

B. Required format. All reports, articles, applications and other documents filed with the ~~fire marshal~~ SFM shall be typewritten, clearly legible, on good quality white paper 8 1/2 x 11 inches in size, have a 1 inch margin on each side and at least a one-inch margin at the top and bottom of each page, and be signed or executed in black or blue-black ink.

C. Facsimile filing prohibited. The ~~fire marshal~~ SFM will not accept documents for filing or applications submitted by facsimile.

D. Date of filing. The ~~fire marshal~~ SFM shall consider any document filed pursuant to this rule as filed on the date it was received and stamped by the ~~fire marshal's division~~ SFM. ~~[unless the document is returned pursuant to 12.3.1.11 NMAC, except that if the fire marshal~~ If the SFM receives a document by mail, personal delivery, or email after regular business hours, the ~~fire marshal~~ SFM shall stamp and consider it received on the next regular business day.

[10.25.1.8 NMAC - N, 11/15/2007; A/E, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.1.9 APPLICATIONS, FORMS AND GUIDELINES:

A. Mandatory applications. For ease and consistency of data entry, the ~~fire marshal~~ SFM has prepared guidelines and mandatory ~~permit and~~ certificates of fitness applications, and license and permit for the sale of fireworks applications for compliance with 10.25.2 and 10.25.6 NMAC.

B. Optional permit application and guidelines. The ~~fire marshal~~ SFM provides an optional permit application for display fireworks, described in Subsection E of 10.25.6.8 NMAC, and other guidelines to aid in fire prevention and safety, and to assist in carrying out certain requirements of these rules.

C. How to obtain. Interested persons may obtain copies of ~~mandatory and optional~~ applications, forms, and guidelines:

- (1) by calling the ~~fire marshal division~~ SFM at 505-476-0080 or 1-800-244-6702;

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(2) in person until June 30, 2021, at the ~~[fire marshal division]~~ SFM's office located on the fourth floor of 1120 Paseo de Peralta in Santa Fe. Effective July 1, 2021, copies may be obtained at the physical address posted on the current website of the SFM;

(3) [by] in writing until June 30, 2021, to the ~~[fire marshal division]~~ SFM, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. Effective July 1, 2021, a written request for copies may be sent to the mailing address posted on the current website of the SFM; or

(4) from the ~~[fire marshal]~~ SFM website[: ~~http://www.nmpre.state.nm.us/~~].
[10.25.1.9 NMAC - N, 11/15/2007; A/E, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.1.10 INCOMPLETE FILINGS:

A. A filing will be considered incomplete if:

- (1) it is unsigned;
- (2) it omits any information required by law or ~~[fire marshal]~~ SFM rule or order;
- (3) it is not accompanied by the appropriate filing fee~~[, paid as required by 12.3.1.14~~

NMAC]; or

- (4) the ~~[fire marshal]~~ SFMO determines the filing is otherwise insufficient.

B. Return of incomplete filings. Any application returned by the ~~[fire marshal]~~ SFMO shall be deemed denied. The ~~[fire marshal]~~ SFMO shall return an incomplete filing with a statement indicating the nature of the insufficiency to:

- (1) the address on any cover letter included with the form or document;
- (2) if no cover letter was included, then to the return address on the envelope in which the document or form was received;
- (3) if no cover letter or envelope with return address were included, then to the address on any check delivered with the form or document for filing; or
- (4) if none of the above were included, then to any other address in the applicant's file.

[10.25.1.10 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.11 INSPECTION OF DOCUMENTS: Any person who wishes to inspect public records or other documents relating to fires shall make a request to the ~~[fire marshal]~~ SFM. The request shall meet the requirements of the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, ~~[and]~~ shall follow the procedure required by that law, and shall be accompanied by the associated fees.

[10.25.1.11 NMAC - N, 11/15/2007; A, 9/1/2008; Rp, __/__/2020]

10.25.1.12 REQUESTS FOR COPIES:

A. Filing of request. A person shall make a request in writing for copies of a document or report and shall list all documents or information requested. A request may be mailed or delivered ~~[as provided in 12.3.1.9 NMAC, or sent by facsimile to (505) 827-3778]~~ to the addresses listed in Paragraphs 2 and 3 of Subsection C of 10.25.1.9 NMAC. If a person cancels a request within 24 hours, the ~~[fire marshal]~~ SFM shall not assess any fees.

B. Estimate of fees. When the ~~[fire marshal]~~ SFM receives a request for copies, the ~~[fire marshal's office shall]~~ SFM must issue an informal estimate of fees. ~~[The fire marshal shall charge the fees enumerated in Subsection C of 1.2.2.8 NMAC, Public Regulation Commission Rules of Procedure.]~~

C. Completion of request.

(1) If the ~~[person approves the]~~ informal estimate of fees is acceptable to the person who made the request, the ~~[fire marshal]~~ SFM shall prepare the copies within the time periods provided in the Inspection of Public Records Act, ~~[Section 14-2-1 et seq. NMSA 1978]~~ Sections 14-2-1 through 14-2-12 NMSA 1978, as may be amended.

(2) When the requested documents are ready, the ~~[fire marshal]~~ SFM shall provide a written statement of fees due and shall ~~[release]~~ make available or provide the copies ~~[electronically]~~ upon payment of all fees due.

[10.25.1.12 NMAC - N, 11/15/2007; A, 9/1/2008; A/E, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.1.13 PAYMENT OF FEES: ~~[A person shall pay f]~~ Fees charged by the ~~[commission or the fire marshal]~~ SFM shall be paid by cashier's or company check or money order from funds on deposit with a United States financial institution, made payable to the ~~[New Mexico public regulation commission]~~ "State Fire Marshal". ~~[The fire marshal will not accept personal checks or cash.]~~ Payment by personal check or cash cannot be accepted.

[10.25.1.13 NMAC - N, 11/15/2007; Rp, __/__/2020]

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10.25.1.14 RULES OF PROCEDURE: Until June 30, 2021, all matters before the commission involving the SFM shall follow the commission's rules of procedure. Effective July 1, 2020, ~~[In]all [matters before the commission]~~ appeals involving the ~~[fire marshal] SFM [-the commission]~~ shall follow ~~[the commission's]~~ rules of procedure that may be adopted by the Fire Services Council through the SFM. ~~[A specific provision in these rules shall control over a conflicting general provision in the commission's rules of procedure.]~~
[10.25.1.14 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.1.15 REVIEW OR APPEAL[S]: ~~[A person aggrieved by any order of the fire marshal may appeal the decision:]~~

A. A person aggrieved by any decision made by the SFM, SFMO or an AHJ may request a review by the SFM of the decision. A review by the SFM shall take place and a written order shall be issued by the SFM in a time not to exceed 16 calendar days from the date of the request for review. A person may request such a review as follows:

- (1) by calling the SFM at 505-476-0080 or 1-800-244-6702;
- (2) in person until June 30, 2021, at the SFM's office located on the fourth floor of 1120 Paseo de Peralta in Santa Fe. Effective July 1, 2021, an in person request may be made at the physical address posted on the current website of the SFM; or
- (3) in writing until June 30, 2021, to the SFM, P.O. Box 1269, Santa Fe, New Mexico 87504-1269. Effective July 1, 2021, a written request may be sent to the mailing address posted on the current website of the SFM.

~~[A.]~~**B.** Until June 30, 2021, a person aggrieved by any order of the SFM may make an administrative appeal of an order by submitting a written appeal to the commission in accordance with Section 59A-52-21 NMSA 1978, by filing an appeal with the New Mexico ~~[P]public [R]regulation [C]commission [D]docketing [O]office~~ by mail to P.O. Box 1269, Santa Fe, New Mexico 87504-1269 or by delivery to the P.E.R.A. Building, Room 413, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501~~[÷ø€]~~. Effective July 1, 2021, and within ten days from the date of service of the order, an administrative appeal of an order may be made by submitting a written appeal to the fire services council to the address for appeals posted on the current website of the SFM. A written appeal must contain all pertinent information to enable the fire services council to make a determination on the appeal. The fire services council shall render a determination on the appeal as provided by 59A-52-21 NMSA 1978.

~~[B.]~~**C.** A person aggrieved by any order of the SFM may appeal the order to state district court in accordance with the provisions of Section 59A-52-22 NMSA 1978.

[10.25.1.15 NMAC - N, 11/15/2007; A/E, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

HISTORY OF 10.25.1 NMAC: [RESERVED]

“Redlined” Version of Proposed Repeal and Replacement Rule 10.25.2 NMAC

TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 2 CERTIFICATES OF FITNESS

10.25.2.1 ISSUING AGENCY: New Mexico Public Regulation Commission, State Fire Marshal Division until June 30, 2021; State Fire Marshal, effective July 1, 2021.
[10.25.2.1 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.2.2 SCOPE: This rule applies to ~~[all fire protection installation, maintenance and inspection]~~ the installation, inspection, maintenance, servicing, tagging or repairing of fire protection equipment or systems by companies or individuals who [that] operate in the state of New Mexico.
[10.25.2.2 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.2.3 STATUTORY AUTHORITY: Sections ~~[8-8-24]~~ 8-8-6 and 8-8-15 until June 30, 2020, 59A-52-2, ~~[and]~~ 59A-52-15, 59A-52-15.1, 59A-52-16 NMSA 1978 and Laws 2020, Chapter 9, Section 52, effective July 1, 2021.
[10.25.2.3 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.2.4 DURATION: Permanent.
[10.25.2.4 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.2.5 EFFECTIVE DATE: ~~[November 15, 2007, unless a later date is cited at the end of a section.]~~ Unless a later date is otherwise provided by law or in the rule, the effective date of this rule shall be the date of publication in the New Mexico register.
[10.25.2.5 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.2.6 OBJECTIVE: The purpose of this rule is to assure a minimum level of ~~[quality in the]~~ competency necessary to perform the installation, inspection, maintenance and repair of fire protection equipment ~~[and to encourage fire prevention and control of fires],~~ through approved certification.
[10.25.2.6 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.2.7 DEFINITIONS: In addition to the definitions contained in Sections 10.25.1.7 and 10.25.5.7 NMAC of the rules pertaining to general provisions and fire prevention and public occupancy, respectively, the following definitions apply to this Part:

- A. "NICET" means the National Institute for Engineering Technologies.
- B. "NM CID", means the New Mexico Construction Industries Division.
- C. "[e]Qualified [p]Party" means a person holding a license from NM CID, and having met the requirements of this rule to install, inspect, service, maintain, tag, recharge or repair fire protection systems or fire extinguishers.
- D. "SFM", until June 30, 2021, means the director of the state fire marshal division under the public regulation commission who has the authority for final determination of the application of the fire provisions of this rule throughout the state. Effective July 1, 2021, "SFM" means the director of the division of the state fire marshal's office under the homeland security and emergency management department who has the authority for final determination of the application of the fire provisions of this rule throughout the state.
- E. "SFMO" means ~~the state fire marshal,~~ a SFM deputy, a SFM supervisor or a SFM fire inspector.

[10.25.2.7 NMAC - N, 11/15/2007; Rp, __/__/2020]

10.25.2.8 TYPES OF CERTIFICATES REQUIRED:

A. When required. No person shall install, inspect, maintain, service, tag, recharge or repair fire protection equipment ~~[or],~~ fire protection systems or fire extinguishers unless ~~[he has]~~ first having obtained a certificate of fitness from the ~~[fire marshal]~~ SFM in compliance with these rules. Any person holding a certificate of fitness shall have a copy ~~[of it]~~ readily available in all service vehicles, on-site while performing work, and [offices for review if requested during inspection] in places of business for review upon request by the ~~[fire marshal or AHJ]~~ SFMO or local FM. Certificates of fitness are ~~[not]~~ non-transferable.

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B. Types of certificates. The ~~[fire marshal]~~ SFM or AHJ may issue ~~[certificates]~~ a certificate of fitness for the installation, inspection, maintenance, ~~[repair, recharging or]~~ tagging, recharging or repairing ~~[it]~~ of the following ~~[disciplines]~~:

- (1) ~~[automatic fire suppression systems and fire pumps]~~ water-based fire protection systems;
- (2) ~~[automatic]~~ fire ~~[detection and]~~ alarm systems;
- (3) ~~[chemical fire suppression systems; and]~~ special hazards systems;
- (4) fire and smoke dampers:

(a) electrically actuated fire and smoke dampers, or

(b) mechanically actuated fire and smoke dampers; and

~~[(4)](5)~~ portable fire extinguishers.

[10.25.2.8 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.2.9 APPLICATION PROCEDURE: Any company or person may apply ~~[for a]~~ to obtain a certificate of fitness by submitting the required application to the ~~[fire marshal]~~ SFM as provided in Section 10.25.1.9 NMAC ~~[or to an AHJ. The mandatory applications described in 10.25.1.9 NMAC are available as indicated in 10.25.1.9 NMAC.]~~ An AHJ may issue a certificate of fitness within their respective jurisdiction, but shall comply with the minimum requirements of this rule and Subsection A of Section 10.25.2.8 NMAC.

A. ~~[Information required for initial application.] Fire Protection Companies.~~ ~~[Each]~~ An application for a certificate of fitness from a company shall ~~[include]~~:

(1) include the ~~[applicant's]~~ applicant company's name, complete mailing address, direct telephone number, email address, name and signature of the authorized representative or owner of the company, and date submitted;

(2) indicate the ~~[disciplines]~~ discipline(s) for which ~~[certification]~~ a certificate of fitness is being requested, as listed in Subsection B of Section 10.25.2.8 NMAC;

(3) include a statement that the applicant agrees to be inspected by the ~~[fire marshal, his]~~ SFM, designees of the SFM, or an AHJ at any time during normal business hours;

(4) for ~~[certification for automatic fire suppression systems and fire pumps]~~ a certificate of fitness to perform work on water-based fire protection systems, an application shall include:

(a) the name of the qualified party~~[-the type and number of his CID license and a copy of his license]~~ who possesses a valid NM CID MS-12 license, the license number, and the license expiration date;

(b) documentation of a valid NICET Level II certification in "Water Based Systems Layout" with the certification number and the certification expiration date;

(c) proof of liability insurance coverage with no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate coverage;

(5) for ~~[certification for automatic fire detection and]~~ a certificate of fitness to perform work on fire alarm systems, an application shall include:

(a) the name of the qualified party~~[-the type and number of his CID license and a copy of his license]~~ who possesses a valid NM CID ES-3 license, the license number, and the license expiration date;

(b) documentation of a valid NICET Level II certification in "Fire Alarm Systems" with the certification number and the certification expiration date;

(c) proof of liability insurance coverage with no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate coverage;

(6) for ~~[certification for chemical fire suppression]~~ a certificate of fitness to perform work on special hazards systems, an application shall include:

(a) the name of the qualified party~~[-the type and number of his CID license and a copy of his license]~~ who possesses a valid NM CID MM-98, MS-14 or JS-12 license, the license number, and the license expiration date;

(b) documentation of a valid NICET Level II certification in "Special Hazards Systems" with the certification number and the certification expiration date;

(c) proof of liability insurance coverage with no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate coverage;

(7) for a certificate of fitness to perform work on fire and smoke dampers, an application shall include:

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(a) the name of the qualified party who possesses a valid NM CID MM-98 or MM-3 license, and license number with expiration date;

(b) proof of liability insurance coverage with no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate coverage;

(c) for electrically actuated fire and smoke dampers monitored by a fire alarm system, applicants shall comply with requirements of Paragraph 5 of Subsection A of this Section 10.25.2.9 NMAC;

(d) for mechanically actuated fire and smoke dampers, applicants shall provide documentation of a valid NFPA-Certified Fire Protection Specialist certification or of an approved fire and life safety certification from a program accredited by ANSI.

~~(7)~~(8) for ~~[certification for]~~ a certificate of fitness to perform work on portable fire extinguishers~~[-, a statement indicating that the applicant]~~, an application shall include:

(a) the name of the qualified party;

(b) documentation of a valid fire extinguisher certification that is compliant with the most current edition of NFPA 10, with the certification number and the certification expiration date, provided, however, that the certification program shall consist of a practical and written exam and the applicant shall achieve a minimum of 85% competency on each exam; and;

(c) proof of liability insurance coverage with no less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in aggregate coverage;

~~(a)~~(d) a statement that the qualified party operates from a fixed location, provides mobile recharging service, or both;

~~(b)~~(e) a statement that the qualified party agrees to allow only trained personnel to maintain, service and recharge portable fire extinguishers, maintains all current training documentation for personnel and calibration records of applicable equipment; ~~and]~~

~~(e)~~(f) a statement that the qualified party agrees to provide its personnel with all service manuals and documentation, proper tools, ~~[recharging]~~ recharging materials, lubricants and manufacturers' recommended replacement parts or parts specifically listed for use in fire extinguishers;

(9) include a statement that the qualified party acknowledges that all employees meet or exceed the minimum requirements of Subsection B of Section 10.25.2.9 NMAC, except for those individuals who are applying to obtain a certificate of fitness for fire extinguishers; and

(10) whenever a company applies to obtain a certificate of fitness for two or more of the fire protection disciplines as listed in Subsection B of Section 10.25.2.8 NMAC, the company applicant shall provide proof of liability insurance coverage with no less than one million dollars (\$1,000,000) per occurrence and no less than five million dollars (\$5,000,000) in combined single, aggregate, or umbrella coverage.

B. Fire Protection System Technicians. Any person who wishes to install, modify, service, tag, recharge or repair fire protection equipment or systems shall be employed by an approved company in accordance with the requirements of Subsection A of Section 10.25.2.9 NMAC and shall comply with following minimum requirements:

(1) in addition to any NM CID requirements, such person shall possess a minimum of a NICET Level II certification in the exact discipline(s) for which a certificate of fitness is being sought, e.g., "Fire Alarms," "Water-Based Systems Layout" or "Special Hazards Systems"; or

(2) fire protection technicians shall ~~[be]~~ possess a minimum NICET Level I certification and shall be directly supervised by a person who possesses a NICET Level II certification in the exact discipline(s) for which a certificate of fitness is being sought, e.g., "Fire Alarms," "Water-Based Systems Layout" or "Special Hazards Systems". A supervisor who possesses a NICET Level II certification in a discipline that is different from the discipline for which a certificate of fitness is being sought by the NICET Level I fire protection technician, is not qualified to provide supervision under this Paragraph.

~~[B-]C. Requirements for renewal.~~ Any person or company seeking to renew a certificate of fitness shall ~~[apply following]~~ follow the process ~~[provided]~~ required by this rule, and shall submit all information ~~[required,]~~ as prescribed for an initial application.

[10.25.2.9 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.2.10 REVIEW OF APPLICATION:

A. Review. The ~~[fire marshal]~~ SFMO shall review each application and shall return it to the applicant if the application is determined to be incomplete ~~[pursuant to]~~ as provided by Section 10.25.1.10 NMAC ~~[if incomplete]~~. An application returned by the ~~[fire marshal]~~ SFMO shall be deemed denied. ~~[An AHJ]~~ A local

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FM shall follow the review process provided in ~~[its applicable]~~ their respective ordinance, and shall assure that the applicant has first obtained a valid certificate of fitness from the SFM.

B. Denial. The ~~[fire marshal of AHJ shall deny]~~ SFMO may recommend to the SFM denial of an application if the:

(1) ~~[the]~~ application is incomplete or does not include documentation required by these rules or Section 10.25.1.10 NMAC;

(2) ~~[the]~~ applicant does not have required licenses or qualifications for the disciplines requested;

(3) ~~[the]~~ application is not properly signed with original signature; ~~[or]~~

(4) ~~[the fire marshal]~~ SFMO determines that the application contains any falsification or ~~[misrepresentation]~~ misrepresentations; or

(5) a lack of competency of the applicant has been documented and determined.

C. Approval. If the ~~[fire marshal approves]~~ SFMO recommends approval of the application, ~~[he shall]~~ a SFM deputy may issue a certificate of fitness valid for up to two years, expiring on December 31 of the second year. A certificate of fitness shall not be issued for a time period longer than the earliest expiration date contained on documentation provided by the applicant at the time the application is submitted.

[10.25.2.10 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.2.11 CHANGES TO INFORMATION ON APPLICATION OR CERTIFICATE: An applicant or certificate of fitness holder shall notify the ~~[fire marshal]~~ SFM ~~[or AHJ]~~ within five business days of any change ~~[or]~~ in information ~~[in]~~ on the application or on the certificate of fitness, such as, but not limited to, a change of address or change of qualifying party ~~[within ten (10) days after such change]~~.

[10.25.2.11 NMAC - N, 11/15/2007; Rp, ___/___/2020]

10.25.2.12 EXPIRATION AND REVOCATION OF CERTIFICATE:

A. Expiration. A certificate of fitness automatically expires at the conclusion of the time period for which it was issued or shall expire if notification is not provided to the SFM as required by Section 10.25.2.11 NMAC.

B. Revocation. The ~~[fire marshal]~~ SFM, a SFM deputy or an AHJ may revoke, or refuse to issue, a certificate of fitness if:

(1) any of the required licenses or qualifications of the applicant expire, are canceled or are revoked;

(2) during an inspection, the ~~[fire marshal]~~ SFMO or AHJ finds a substantial violation of these rules, ~~[or]~~ applicable fire codes, or NFPA standards for a discipline for which the certificate of fitness ~~[has been]~~ was issued;

(3) the SFMO determines that the applicant made false statements or misrepresentations of material fact in the application or documentation submitted with the application; ~~[or]~~

(4) the SFMO determines that the certificate of fitness was issued in error or in violation of an applicable statute or these rules;

(5) the SFMO determines that the applicant has a documented and verified lack of competency which poses a significant harm or imminent danger to the public; or

(6) the SFMO determines that the applicant installed a fire protection system without written approval from the SFM, the SFM's designee, or local FM.

C. Rules of procedure. Until June 30, 2021, all matters before the commission involving the SFM shall follow the commission's rules of procedure. Beginning July 1, 2020, ~~[in]~~ all matters ~~[before the commission]~~ involving the ~~[fire marshal]~~ SFM ~~[, the commission]~~ shall follow ~~[the commission's]~~ rules of procedure that may be adopted by the SFM. ~~[A specific provision in these rules shall control over a conflicting general provision in the commission's rules of procedure.]~~

D. Appeals. Review. A person whose certificate of fitness is revoked by ~~[the fire marshal]~~ the SFM, a SFM deputy or an AHJ may ~~[appeal]~~ request a review by the SFM of the revocation using the procedures enumerated in Subsection A of Section 10.25.1.15 NMAC.

[10.25.2.12 NMAC - N, 11/15/2007; Rp, ___/___/2020]

HISTORY OF 10.25.2 NMAC: [RESERVED]

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TITLE 10 PUBLIC SAFETY AND LAW ENFORCEMENT
CHAPTER 25 STATE FIRE MARSHAL
PART 5 FIRE PREVENTION AND PUBLIC OCCUPANCY

10.25.5.1 ISSUING AGENCY: New Mexico Public Regulation Commission, State Fire Marshal Division until June 30, 2021; State Fire Marshal, effective July 1, 2021.
[10.25.5.1 NMAC - Rp/E, 10.25.1 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.2 SCOPE:

A. This rule establishes the state's minimum requirements that apply to structures, processes, premises and safeguards regarding:

- (1) the hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices;
- (2) conditions hazardous to life, property or public welfare in the occupancy of structures or premises;
- (3) fire hazards in the structure or on the premises from occupancy or operation;
- (4) matters related to the construction, extension, repair, alteration or removal of fire protection systems; and
- (5) conditions affecting the safety of firefighters and emergency responders during emergency operations.

B. This rule provides standards applicable to the inspection and testing of mechanical fire and smoke dampers and smoke control systems in places of assembly, business, daycare, detention and correctional, educational occupancies, factory industrial, high hazard, health care occupancies, institutional occupancies, residential occupancies consisting of four or more family units, mercantile occupancies, office occupancies, industrial occupancies, storage occupancies, mixed occupancies and miscellaneous structures, underground structures and windowless buildings and all buildings owned or occupied by the state or any political subdivision thereof or by municipal governments.

~~**B.**~~ **C.** This rule does not apply to detached one- and two-family dwellings ~~and~~ or townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures not more than three stories above grade in height built to the New Mexico Residential Building Code.

D. ~~[AHJs]~~ The FM, defined below, may adopt fire protection requirements that are more stringent than Section 10.25.5 NMAC, provided such requirements do not conflict with this rule or 59A-52-18 NMSA 1978. The authority for administration and interpretation of construction-related sections of the NMFC, defined below, ~~that~~ which apply to construction projects requiring a building permit is the responsibility of the chief building official or the AHJ. The FM~~[-defined below, shall have]~~ may be granted the authority for the administration and interpretation of fire protection systems, as outlined in a signed partnership agreement with the SFM, defined below. In the event of conflicting fire code interpretation, the SFM may review and determine final interpretation of fire code application upon receiving written notification with supporting documentation, regardless of partnership agreement status. ~~[and the]~~ The chief building official of an AHJ, defined below, shall have the authority for the administration and interpretation of building codes, other than fire protection systems.
[10.25.5.2 NMAC - Rp/E, 10.25.5.2 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.3 STATUTORY AUTHORITY: Sections 8-8-6 and 8-8-15 until June 30, 2021, 59A-52-2, 59A-52-15, 59A-52-15.1, ~~and~~ 59A-52-16 and 60-2C-3 NMSA 1978, and Laws 2020, Chapter 9, Section 52, effective July 1, 2021.

[10.25.5.3 NMAC - Rp/E, 10.25.5.3 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.4 DURATION: Permanent.

[10.25.5.4 NMAC - Rp/E, 10.25.5.4 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.5 EFFECTIVE DATE: ~~[November 26, 2019 unless a later date is cited at the end of a section.]~~
Unless a later date is otherwise provided by law or in the rule, the effective date of this rule shall be the date of publication in the New Mexico register.

[10.25.5.5 NMAC - Rp/E, 10.25.5.5 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

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10.25.5.6 OBJECTIVE: The purpose of this rule is to prescribe minimum fire and life safety requirements and adoption of applicable fire code and all national fire protection association standards, except for NFPA 1 and NFPA 101, for the installation, operation and maintenance of fire protection and life safety features in buildings and structures necessary to reasonably protect life and property from the hazards created by fire, explosion, and similar emergencies~~[-, and which minimum requirements shall not conflict with the provisions of the Construction Industries Licensing Act].~~

[10.25.5.6 NMAC - Rp/E, 10.25.5.6 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.7 DEFINITIONS: In addition to the definitions contained in Sections 10.25.1.7 and 10.25.2.7 NMAC of the rules pertaining to general provisions and certificates of fitness, respectively, the following definitions apply to this Part:

A. "Authority Having Jurisdiction (AHJ)" means an organization, office, or individual responsible for enforcing the minimum requirements of codes, standards and permits for approving equipment, materials and installations or a procedure within its jurisdiction.

B. "ANSI" means the American national standards institute located in Washington, D.C., or its predecessor organization.

~~[B.]~~**C. "Certificate of Fitness"** ~~[means the State Fire Marshall's]~~ refers to a verification document [of a fire protection installation, maintenance and inspection company's competence in the methods and materials of the specific fire system subject to the permit.] which is obtained pursuant to Part 10.25.2 NMAC that is valid and on file with the SFM as required by Part 10.25.2 NMAC.

~~[C. — "Fire Code Official" shall have the meaning provided in Section 202 of the IFC.]~~

D. [~~"Fire Marshal (FM)"] "FM"~~ means the fire marshal with the authority over permitting and inspections of fire systems within a particular political subdivision of the state.

E. "IFC" means the ~~[New Mexico currently adopted]~~ international fire code, 2015 edition, published by the International Code Council and is available by contacting: Publications, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795.

~~[F. — "Life Safety Features" means compliance with NFPA 1 and NFPA 101 for structures built on or before November 15, 2007, and the NMFC for structures build after November 15, 2007.]~~

F. "NFPA" means the national fire protection association located in Quincy, Massachusetts, or its predecessor organization.

G. "NICET" means the national institute for certification in engineering technologies.

~~[G. — "NFPA 1" means the fire prevention code, 1997 edition, published by the National Fire Protection Association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 9101.]~~

~~[H. — "NFPA 101" means the life safety code, 1997 edition, published by the National Fire Protection Association and available by contacting: Secretary, Standards Council, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269 9101.]~~

H. "NM CID" means the construction industries division of the New Mexico regulation and licensing department.

I. [~~"New Mexico Fire Code (NMFC)"] "NMFC"~~ means the New Mexico fire code created by this rule including the IFC currently-adopted by the construction industries division of the regulation and licensing department in New Mexico by reference.

J. [~~"State Fire Marshal (SFM)"]~~ Until June 30, 2021, "SFM" means the director of the state fire marshal division under the public regulation commission who has the authority for final determination of the application of the fire provisions of this rule throughout the state. Beginning July 1, 2021, "SFM" means the director of the division of the state fire marshal's office under the homeland security and emergency management department who has the authority for final determination of the application of the fire provisions of this rule throughout the state.

[10.25.5.7 NMAC - Rp/E, 10.25.5.7 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.8 ADOPTION OF FIRE CODE AND NATIONAL STANDARDS: The SFM adopts the IFC, 2015 edition, which is ~~[then]~~ incorporated by reference as revised in this rule. In this rule, revisions are numbered to correspond with the section numbering of the IFC and such revisions further amend such sections of the IFC. All references in the IFC to the ~~[H]international [M]mechanical [C]code~~ mean the New Mexico ~~[M]mechanical [C]code~~, NM CID rule Section 14.9.2 NMAC. All references in the IFC to the ~~[H]international [P]plumbing [C]code~~ mean the New Mexico ~~[P]plumbing [C]code~~, NM CID rule Section 14.8.2 NMAC. For purposes of this rule, the application

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of building code section 102.4 of the IFC, 2015 edition, means that the design and construction of new structures shall comply with the currently adopted New Mexico ~~[B]building [C]code [(NMBC)],~~ NM CID rule Section 14.7.2 NMAC~~[, and any alterations, additions, changes in use or changes in structures required by the NMFC, and shall be made in accordance with the currently adopted New Mexico building code, CID rule 14.7.2 NMAC].~~
[10.25.5.8 NMAC - Rp/E, 10.25.5.8 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.9 REVISIONS TO IFC CHAPTER 1 ADMINISTRATION:

A. Section 101 General.

(1) Section 101.1 Title. Insert in brackets: New Mexico.

~~[(2) — Section 101.2 Scope. This section of the IFC shall not apply. 10.25.5.2 NMAC defines the scope of this rule.]~~

(3) Section 101.2.1 Appendices. ~~[The appendices]~~ Appendices D, E, F, G and J of the IFC shall ~~[not] apply[.].~~ All remaining appendices shall not apply, except where adopted by an AHJ.

(4) Sections 101.3 through 101.5. See the corresponding sections of the IFC.

~~[B. — Section 102.3 (Applicability, Change in use or occupancy.) Delete this section and replace with the following: "Changes shall not be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the NMBC. Subject to the approval of the building code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure allowed to be occupied for purposes in other groups without conforming to all of the requirements of this code and the NMBC for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use."]~~

~~[C.]~~B. Section 104 General authority and responsibilities. If Section 104.6 (official records) or any other provision of the NMFC conflicts with the Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978, the provisions of the Inspection of Public Records Act shall control.

~~[D.]~~C. Section 105 permits. The following sections of the IFC are deleted: Section 105.6, Section 105.7.2 through 105.7.5, Section 105.7.8 through 105.7.16 and Section 105.7.18. ~~[All permits required through the CID permitting process are strictly within the authority of CID.]~~ The NMFC establishes the state minimum fire code allowing local jurisdictions and political subdivisions the ability to enact stricter ordinances provided the state minimum is complied with by all such jurisdictions. The SFM requires permits and licenses for fireworks as provided in 10.25.6 NMAC.

~~[E.]~~D. Certificates of fitness. The SFM requires certificates of fitness for the installation, inspection, maintenance, servicing, tagging, recharging ~~[and]~~ or repairing of fire protection systems as provided in Part 10.25.2 NMAC.

~~[F.]~~E. Section 105.3 Conditions of a Permit. This section is deleted in its entirety and replaced with the following language: "105.3 conditions of a permit. Such permission, if granted in Section 105.1.2.2, shall not be construed as authority to violate, cancel or set aside any other provisions of this code or other applicable regulations or laws of the jurisdiction."

~~[G.]~~F. Section 105.4.1 Construction documents: submittals. This section is deleted in its entirety and replaced with the following language:

(1) One set of construction documents shall be submitted to the ~~[Building Official,]~~ SFM or FM~~[, who is the AHJ for the construction project]~~ when required.

(2) All construction documents that are submitted to the SFM shall comply with the plans submittal information provided by the SFM on their respective website and shall be submitted with the applicant's certificate of fitness number, permit application and permit number or building official unique identifier and shall comply with the approval process provided in Section [10.25.5.16] 10.25.5.18 NMAC ~~[and with the CID regulation on permits, CID rule 14.5.2 NMAC].~~

~~[H. — Section 106.2.2 Approval Required. Change the last sentence to read, "Any portions that do not comply shall be corrected and such portion shall not be covered or concealed prior to inspection as required by the fire code official."]~~

~~[I.]~~G. Section 108 Board of appeals. This section is deleted in its entirety and replaced with the following language: The appeal processes provided in Sections 59A-52-21 and 59A-52-22 NMSA 1978 shall apply and may be initiated by filing an appeal as provided in 10.25.1 NMAC.

~~[J.]~~H. Section 109 Violations. The penalties listed in section 109.4 of the IFC shall not apply in New Mexico. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

~~[K.]~~I. Section 111 Stop work order. The penalties listed in section 111.4 of the IFC shall not apply. The penalties authorized in Sections 59A-52-24 and 59A-52-25 NMSA 1978 shall apply.

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~~[L.]J.~~ **Section 113 Fees.** This section of the IFC shall not apply.
[10.25.5.9 NMAC - Rp/E, 10.25.5.9, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.10 **REVISIONS TO IFC CHAPTER 2 DEFINITIONS:**

A. Definitions defined by the SFM or the NMFC shall apply specifically to the enforcement and requirements of Part 10.25.5 NMAC. Terms not defined in this rule but defined in the New Mexico ~~[B]~~building ~~[C]~~code, NM CID rule Part 14.7.2 NMAC, the New Mexico ~~[R]~~residential ~~[B]~~building ~~[C]~~code, NM CID rule Part 14.7.3 NMAC, the New Mexico ~~[E]~~existing ~~[B]~~building ~~[C]~~code, NM CID rule Part 14.7.7 NMAC, the New Mexico ~~[M]~~mechanical ~~[C]~~code, NM CID rule Part 14.9.2 NMAC, the New Mexico ~~[P]~~plumbing ~~[C]~~code, NM CID rule Part 14.8.2 NMAC, the New Mexico ~~[E]~~electrical ~~[C]~~code, NM CID rule Part 14.10.4 NMAC~~, or the National Fire Protection Association's (NFPA) NFPA 54 shall have the meanings as ascribed in those codes~~.

B. Section 202 General Definitions. The definition of "record drawings" is deleted in its entirety and replaced with the following language: "record drawings" means submittals and amended submittals that document the location of all appurtenances of fire protection systems to include any corrections incurred during final acceptance, as required by IFC Section 105.4.

[10.25.5.10 NMAC - Rp/E, 10.25.5.10 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.11 **REVISIONS TO IFC CHAPTER 3 GENERAL REQUIREMENTS:**

~~[A.]~~ **Section 301.1 Scope.** This section applies as mandated by the local AHJ.]

~~[B.]~~**A.** **Section 301.2 Permits.** This Section shall apply to the extent mandated by ~~[the]~~ a local AHJ.

~~[C.]~~**B.** **Section 304.1.2 Vegetation.** This section applies to the extent mandated by the local AHJ.

~~[D.]~~**C.** **Section 307, Open burning, recreational fires and portable outdoor fireplaces.** This section of the IFC applies only and to the extent mandated by the local AHJ.

~~[E.]~~**D.** ~~[Section 308.3 Group A Occupancies Exception #2. Delete the word "international" and replace with the word "New Mexico".]~~ **Section 308.1.6.3 Sky lanterns.** The following shall be added: "No amendment or provision by an AHJ may allow for the release of untethered sky lanterns or similar devices."

[10.25.5.11 NMAC - N, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.12 **REVISIONS TO IFC CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS:**

In section 405.5 Record keeping, item number 7 is ~~[deleted and replaced]~~ amended with the following language: "Problems encountered and corrective actions for the problems encountered."

[10.25.5.12 NMAC - Rp/E, 10.25.5.11 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

~~[10.25.5.13] **REVISIONS TO IFC CHAPTER 6 BUILDING SERVICES AND SYSTEMS:** Amend section 603.9 to add "if required by the fire code official" at the end of the section.]~~

[10.25.5.13 NMAC - Rp/E, 10.25.5.12 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

~~[10.25.5.14] **REVISIONS TO IFC CHAPTER 9 FIRE PROTECTION SYSTEMS:** Throughout chapter 9, the following shall apply:~~

~~_____ A. Delete the term "International Mechanical Code" where used in this chapter and replace with the term "New Mexico Mechanical Code".~~

~~_____ B. Delete the term "International Plumbing Code" where used in this chapter and replace with the term "New Mexico Plumbing Code".~~

~~_____ C. **Section 904.12 Commercial cooking systems.** The replacement of commercial cooking equipment, including but not limited to a stove, hood, deep fryer, grill, griddle, or any other device used in the cooking process, shall comply with this Section and with the Uniform Mechanical Code as adopted by reference in CID rule 14.9.2.13 NMAC.~~

~~_____ D. **Section 905.3.4.1 Hose and Cabinet.** Insert the following sentence at the end of this section, "Unless required by a fire code official, one and one half inch hoses and hose cabinets are not required for class II and class III standpipe systems."~~

[10.25.5.14 NMAC - Rp/E, 10.25.5.13 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, __/__/2020]

10.25.5.[45]13 **REVISIONS TO IFC CHAPTER 10 MEANS OF EGRESS:** ~~[See Section 10 of the NMBC, CID rule 14.7.2 NMAC, and IFC section 1031, Maintenance of the Means of Egress.]~~ The institutional portion of Table 1004.1.2 is amended to add correctional facilities and detention centers having an occupant load factor of 60 gross, in accordance with NM CID rule Subsection B of Section 14.7.2.18 NMAC.

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[10.25.5.15 NMAC - Rp/E, 10.25.5.14 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, ___/___/2020]

10.25.5.[46]14 REVISIONS TO IFC CHAPTER 56 EXPLOSIVES AND FIREWORKS: This chapter of the IFC and 10.25.6 NMAC shall apply to fireworks. If there is any conflict between ~~[this chapter of]~~ the IFC and the Fireworks Licensing and Safety Act, Sections 60-2C-1 through 60-2C-11 NMSA 1978, the Fireworks Licensing and Safety Act shall control.

[10.25.5.16 NMAC - N, 6/28/2019; Rp, 11/26/2019; Rp, ___/___/2020]

10.25.5.[47]15 REPEAL OF CODES: NFPA 1 and NFPA 101 are repealed ~~[except as provided in 10.25.5.19 NMAC]~~.

[10.25.5.17 NMAC - Rp/E, 10.25.5.16 NMAC, 6/28/2019; Rp, 11/26/2019; Rp, ___/___/2020]

10.25.5.[48]16 APPROVAL OF FIRE PROTECTION SYSTEMS: Prior to beginning construction or occupancy of any building or structure regulated by the currently-adopted ~~[New Mexico Building Codes and the]~~ NMFC, the contractor and technicians shall ~~[apply for a permit and submit]~~ possess a valid certificate of fitness as required by Part 10.25.2 NMAC. Fire protection drawings shall be submitted to the SFM or FM, as appropriate, for plan review and ultimate approval by the AHJ. [of the fire protection system from the SFM or FM, as appropriate, of a fire protection system for the building or structure. The review and approval of fire protection systems is in addition to all review required by CID pursuant to Title 14 of the New Mexico administrative code].

A. Filing drawings with the SFM for review.

(1) **Documents required.** The contractor shall submit one set of drawings for the building or structure. Submittals shall be in accordance with "Plans Submittal Information" obtained via the SFM website and this rule. For convenience, a contractor may submit additional sets of drawings and an envelope with prepaid postage directly to the SFM for the SFM's use in returning the drawings after review. Electronic filing of fire protection plans will be accepted via electronic plans review software that is compatible with software used by the SFM.

(2) **Where to submit.** The contractor shall submit drawings of the fire protection system to the fire code enforcement bureau of the SFM in compliance with Section 10.25.1 NMAC or to an AHJ ~~[as required by the AHJ]~~ who has obtained a valid partnership agreement with the SFM. The SFM shall not accept drawings by facsimile transmission.

(3) **Requirements for drawings.** The drawings shall clearly indicate fire protection systems in sufficient detail to establish compliance with applicable codes and standards, and shall include the signature and seal of the licensed professional engineer in accordance with the New Mexico Engineering and Surveying Practice Act (found at Chapter 61, Article 23 NMSA 1978) that prepared the drawings. Drawings submitted shall comply with plans submittal information provided by the SFM on its website. Fire protection designers who wish to submit fire protection plans shall possess, at minimum, a valid NICET level III certification in the relevant discipline. The NICET level, certification number, expiration date, and signature shall be indicated on all fire protection drawings submitted to the SFM or AHJ.

(4) **Fees.** The SFM does not require any fees for review of fire protection systems.

B. Third party review. The SFM or FM, as appropriate, in their ~~[sole]~~ discretion, may require a third party review of drawings if specialized expertise or knowledge is needed, ~~[and shall so notify the contractor in writing with a cost estimate if so determined]~~ as indicated in IFC Section 104.7.2. If the contractor agrees to proceed with review, the contractor shall file written approval by the method provided in 10.25.1.8 NMAC and shall pay directly to the third party the cost of such review before the SFM or FM, as appropriate, returns the drawings.

C. Return of drawings. If the SFM or FM, as appropriate, approves the drawings, the drawings shall be stamped "approved", with the name of the reviewer from the SFM or FM, as appropriate, with the submitter or contractor, as appropriate. The SFM or FM shall retain[ing] one complete set of drawings or submittals for a period no less than five years or for as long as the structure or activity to which such records relate remain in existence. If the SFM or FM, as appropriate, rejects the drawings or submittals ~~[or does not approve the drawings]~~, an explanation for the basis for rejection ~~[or non-approval]~~ shall be given to the submitter or contractor. The submitter or contractor shall pick up approved drawings if prior arrangements have not been agreed to for return by mail. Hard copy plans will be kept for no longer than 21 calendar days.

D. Rejection. The SFM or FM, as appropriate, may reject fire protection system drawings for noncompliance with the plan submittal requirements indicated on the SFM website and by Subsection A of Section 10.25.5.16 NMAC for the following reasons:

(1) the drawings are incomplete;

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- (2) the drawings indicate a violation of these rules or applicable codes and standards;
- (3) the submitted drawings are not in accordance with Title 16, Chapter 39 NMAC;
- (4) no certificate of fitness is on file with the SFM;
- (5) the drawings or submittals contain a misrepresentation or inaccuracy;
- (6) third party review of the drawings or submittals reveals a violation of these rules,

applicable codes or standards;

- (7) all SFM ~~or FM~~ requirements have not been included in the submittals; or
- (8) any other valid reason as determined by the SFM.

E. ~~Re-submission~~ Resubmission of drawings. If drawings are rejected, the contractor may correct the deficiencies noted in the rejection letter and the corrected drawings may be resubmitted. ~~New-s~~ Submittals shall be submitted by the same process for filing original drawings for review.

F. Construction.

(1) Construction may ~~commence~~ begin upon approval of plans and issuance of the proper permits.

(2) New construction. Any new building, new alteration, new addition or new structure after the effective date of the adoption of the currently-adopted NMFC shall comply with the currently-adopted NMFC.

~~(2)~~(3) After installation of the fire protection system has been completed, a request for inspection shall be made to the ~~FM~~ SFM, FM or AHJ. The request may be made orally or in writing to the ~~FM~~ SFM or as otherwise required by the SFM.

G. Inspection and testing. The SFM or FM, as appropriate, ~~will inspect~~ shall perform an inspection of the fire protection system of a building or structure within a reasonable period of time after a request for inspection has been made. ~~The SFM or FM, as appropriate, shall notify the AHJ of approval or rejection of drawings or of the fire protection system, and, if applicable, the AHJ may request a letter indicating the system is in compliance with approved plans and applicable codes and standards.]~~ The SFM or FM, as appropriate, shall not approve the installation if the inspection indicates:

- (1) a violation of this rule or applicable codes and standards;
- (2) the fire protection system was not installed in compliance with the drawings;
- (3) the fire protection system was not installed by a licensed entity and certified journeyman;
- (4) no valid certificate of fitness is on file with the SFM;
- (5) the final acceptance testing of each fire protection system is not recorded as complete;

~~or~~

(6) the fire protection system was installed by anyone other than the company indicated on the approved plans;

(7) any other disciplines, other than fire protection work, has not been inspected and approved, i.e. plumbing, mechanical or electrical work; or

~~(6)~~(8) for any other valid reason as determined by the SFM.

H. Re-inspection. If the FM does not approve the installation of the fire protection system and the responsible party corrects the deficiencies noted in the inspection, the responsible party may re-apply for inspection following the same procedure as for the initial inspection or by Paragraph 2 of Subsection F of Section 10.25.5.16 NMAC.

[10.25.5.21 NMAC - Rp/E, 10.25.5.17 NMAC, 6/28/2019; Rp, 11/26/2019; Rn, 10.25.5.18 NMAC 04/__/2020]

~~10.25.5.19~~ **CODE REQUIREMENTS FOR EXISTING BUILDINGS AND STRUCTURES:** For purposes of this section, "constructed" shall mean that the contractor has begun any substantial portion in the design, permitting or building of a building or structure. A change in occupancy requires approval from the appropriate building code official. All new construction, alteration, repair, and additions require adherence to applicable building codes and laws.

~~A.~~ **Existing buildings and structures.**

(1) ~~Upon an inspection being conducted by the FM, an owner or contractor is not required to renovate or adapt an existing building or structure to comply with the currently adopted NMFC, but shall comply with the requirements in place when the existing building or structure was constructed. See IFC, Section 104.~~

(2) ~~Following the adoption of this provision, an existing structure or part of a structure that changes its occupancy classification, however done, must comply with the currently adopted NMFC.~~

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~~(3) Following the adoption of this provision, an existing fire protection system that is replaced, repaired, or altered by the FM, whose classification has not changed, shall comply with the currently adopted NMFC. The system shall comply with the currently adopted New Mexico Existing Building Code.~~

~~(4) Fire protection systems constructed prior to November 15, 2007, which fall under NFPA 1, 1997 edition, and NFPA 101, 1997 edition, shall be required to have a permit using the requirements of the currently adopted NMFC, section 105, for the installation of any new, altered, remodeled, repaired or partial fire protection system.~~

~~(5) Fire protection systems plans which were initially submitted to the AHJ for review under the currently adopted NMFC as per the requirements for new construction under Subsection B of 10.25.2.19 NMAC will be inspected per the currently adopted NMFC.~~

~~**B. New construction.** Any new building, new alteration, new addition, or new structure after the effective date of the adoption of the currently adopted NMFC shall comply with the currently adopted NMFC.~~

~~**C. Variance.** The SFM may grant a variance from any of the requirements of this subsection if the applicant demonstrates to the SFM's satisfaction that the variance sought does not degrade the overall protection of individuals from fire and similar emergencies.~~

~~**D. Hazard to life or property.** Notwithstanding any other provision of these rules, if the FM or AHJ determines that a nonconforming facility constitutes an immediate hazard to life or property, the FM or AHJ shall so notify the contractor or owner of the facility in writing, and shall permit the contractor a reasonable period of time to comply with current rules. If the contractor does not comply with the notification and its requirements within the time specified, the FM or AHJ may order the owner or contractor to take the facility out of service.]~~

[10.25.5.23 NMAC - Rp/E, 10.25.5.18 NMAC, 6/28/2019, Rp, 11/26/2019; Rn, 10.25.5.19 NMAC; Rp, __/__/2020]

HISTORY OF 10.25.5 NMAC:

Pre-NMAC History: none.

History of Repealed Material:

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) repealed 11/15/2007.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) repealed, effective 6/28/2019.

10.25.5 NMAC, Fire Prevention and Public Occupancy emergency rule repealed, effective 11/26/2019.

NMAC History:

10 NMAC 25.6, Safe Handling and Sale of Fireworks, effective 6/9/1997.

10 NMAC 25.5, Fire Prevention (filed 05/09/1997) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 11/15/2007.

10.25.5 NMAC, Fire Prevention and Public Occupancy (filed 11/1/2007) was replaced by 10.25.5 NMAC, Fire Prevention and Public Occupancy, effective 6/28/2019.

NOTICE OF PROPOSED RULEMAKING
CASE NO. 20-00105-FM

The New Mexico Public Regulation Commission (the “commission”) gives notice of its initiation of a proposed rulemaking to repeal and replace **Rules 10.25.1, 10.25.2, and 10.25.5 NMAC**. The rules which may be adopted as the final rules in this proceeding may include all, part, or none of the language in the proposed rules issued by the commission. The commission may also consider alternative proposals for amending or replacing the current rules.

Concise statement of proposed rules: The commission is considering repealing and replacing Rules 10.25.1, 10.25.2, and 10.25.5 NMAC. The commission is considering changes to many sections of the rules. In particular, the commission is considering changes regarding the inspection and testing of fire and smoke dampers in accordance with evolving National Fire Protection Association standards, provisions within general provisions, which part contains, among other things, definitions that are used in Part 5, provisions within certificates of fitness, which contains provisions establishing the methods of becoming certified to install, test, and inspect fire and smoke dampers, and other changes to modernize the rules.

Constitutional and statutory authority: New Mexico Constitution, Article XI, Sec. 2; Paragraph 10 of Subsection B of Section 8-8-4 NMSA 1978 (1998), Section 8-8-15 NMSA 1978 (1999, amended 2001), Section 59A-52-15 NMSA 1978 (amended 2017), and Section 59A-52-15.1 NMSA 1978 (amended 2017).

A copy of the full text of the proposed rules may be obtained from the Rulemaking Proceedings section of the Commission’s website at <http://www.nmprc.state.nm.us> under Case No. 20-00105-FM or by calling Isaac Sullivan-Leshin in the Office of General Counsel at (505) 670-4830.

Written initial comments and written response comments shall be filed by the deadlines below. Currently, due to the COVID-19 pandemic and orders of the governor pertaining thereto, the commission has adopted emergency electronic filing procedures, which may or may not be in place at the time that comments are filed in this docket. In the alternative, the commission may revert to the filing procedures in place before the emergency electronic filing procedures were instituted, in which case such filings shall be made with the commission’s records bureau at P.O. Box 1269, Santa Fe, NM 87504-1269 or by hand delivery to the commission’s records management bureau at 1120 Paseo de Peralta, Room 406, Santa Fe, NM 87501. For information as to how to file at the time of filing, please contact Melanie Sandoval, the commission’s records bureau chief at melanie.sandoval@state.nm.us or (505) 827-6968. Written initial comments shall be filed no later than **August 31, 2020** and written response comments shall be filed no later than **September 14, 2020**. Comments shall refer to Case No. 20-00105-FM. All written comments will be posted on the commission’s website within three days of their receipt by the records bureau.

A public hearing will be held on **October 21, 2020, beginning at 2:00 p.m.** at the offices of the commission located in the 4th Floor Hearing Room at 1120 Paseo de Peralta, Santa Fe, NM 87501. If emergency conditions arising from the COVID-19 pandemic persist at that time, the commission will announce any alternative forum, such as a conference call, through which the hearing may be held. The purpose of the hearing is to give interested persons an opportunity to give oral comments. The commission may limit the time for each comment to five minutes. The record of this case will close on **November 4, 2020**.

Any person with a disability requiring special assistance in order to participate in the hearing should contact Mr. Bradford Borman at (505) 827-4048 at least 48 hours prior to the commencement of the hearing.

EXHIBIT 2

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF A COMMISSION RULEMAKING)
AMENDING RULES PERTAINING TO FIRE AND SMOKE) Case No. 20-00105-FM
DAMPERS PURSUANT TO SECTION 59A-52-15.1 OF THE)
STATE FIRE MARSHAL STATUTES)**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Order Initiating Proposed Rulemaking and Changing Case Caption and Notice of Proposed Rulemaking** issued on June 24th, 2020 was sent via email to the parties listed below:

| | | |
|-------------|-------------|---|
| Eric | Martinez | abiquiu.vfd@rio-arriba.org; |
| Milt | Moomaw | mmoomaw1@aol.com; |
| Alfredo | Montoya | agua.sana.vfd@rio-arriba.org; |
| Gary | Townsend | alamowestchief@yahoo.com; |
| Mikel | Ward | mward@ci.alamogordo.nm.us; |
| Dave | Downey | ddowney@cabq.gov; |
| David | Archuleta | davarchu@nmsu.edu; |
| Darren | Padilla | avvfd@hotmail.com; |
| Jimmy | Clay | tuanclay@yahoo.com; |
| Andrew | Bertges | abertges@angelfirenm.gov; |
| Jack | Lasher | claytonlasher@yahoo.com; |
| Jerome | Garcia | acfd_jerome@yahoo.com; |
| Fernando | Montoya | arabellavolunteer@pvtnetworks.net; |
| Harold | Snyder | adfd_47@yahoo.com; |
| J.D. | Hummingbird | jdhummingbird@artesianm.gov; |
| Ryan | Zuniga | whitetrashtrailers@yahoo.com; |
| Kevin | Simpson | ksimpsonazte@cnm.gov; |
| Donald | Adams | bardendee@yahoo.com; |
| Euphemio | Gonzalez | egonzalez@FireDepartmentofbayardnm.com; |
| Charles | Cox | charles.cox@belen-nm.gov; |
| John | Evans | bent1604@gmail.com; |
| Michael | Carroll | mcarroll@townofbernalillo.org; |
| Christopher | Celaya | celaya@berncogov; |
| Christopher | Celaya | celaya@berncogov; |
| Jim | Higgins | berrendofire@co.chaves.nm.us; |
| Wayne | Wendell | wwendell@sjcounty.net; |
| John | Mohler | jmohler@bloomfieldnm.com; |
| Preston | Neff | neff_preston@yahoo.com; |
| Jacob | Campos | vandeelsilva@yahoo.com; |
| William | Candler | bluewaterlakefd@wildblue.net; |
| John | Badjar | 0114jaguns@beyondbb.com; |
| Carl | Bartley | cbartley@FireDepartmentbankonline.com; |
| Spencer | Wood | spencer.wood@comcast.net; |
| Michael | Valdez | captvaldez@msn.com; |
| Michael | Booth | mikeyboo2488@gmail.com; |
| Lillian | Maestas | lillian.maestas@uhc.com; |
| Bert | Hanneman | bhanneman@co.otero.nm.us; |
| Ray | Mullins | usa88m10@yahoo.com; |
| Tim | Nix | tnix_mineralhill@yahoo.com; |
| Mike | Sweet | twopsinapod@hughes.net; |
| Abraham | Baca | apbaca@rio-arriba.org; |
| David | Cox | utility@villageofcapitan.org; |
| Garland | King | garland_k@hotmail.com; |
| Richard | Lopez | rdlopez@FireDepartmentofcarlsbadnm.com; |
| LeeRoy | Zamora | carrizozofire@gmail.com; |
| Steven | Brady | carsonfire@taoscounty.org; |

| | | |
|-------------|------------|---|
| Rebecca | Lucero | anella.russo@catroncountynm.gov; |
| Mike | Clark | causeyfd@yucca.net; |
| Kip | Rix | krix@fhpllc.net; |
| Rodney | Taylor | rodney_taylor7@aol.com; |
| Juan Carlos | Gonzales | jcgonzales101@me.com; |
| John | Abeyta | jabeyta@yahoo.com; |
| Matthew | Gallegos | matthewgallegos87520@live.com; |
| Kellen | Tarkington | kellent@donaanacounty.org; |
| Mitch | Herrera | nnmtkd1@gmail.com; |
| Benjamin | Alarcon | benjamina@donaanacounty.org; |
| Barry | Wilkinson | FireDistrict8fire@co.chaves.nm.us; |
| Angelo | Gurule | agurule@co.chaves.nm.us; |
| Jack | Vigil | chetfire@nmt.net; |
| Daniel | Martinez | dmartinez@santafecountynm.gov; |
| Dustin | Middleton | dmiddleton@co.cibola.nm.us; |
| Anthony | Martinez | anthony.martinez@scouting.org; |
| Justin | Drumm | jdrummer77@gmail.com; |
| Robert | Agnew | lazyr@hotmail.com; |
| Erich | Wuersching | ccvfd@nmex.com; |
| Michael | Nolen | mnolen@FireDepartmentofclovis.org; |
| John | Gurule | fire@cochitlake.org; |
| Larry | Osborn | losborn@co.colfax.nm.us; |
| Nathaniel | Sandoval | n8s4dj@hotmail.com; |
| Andres | Ramos | cvfd@vtc.net; |
| Ed | Wright | conchasvfd@plateautel.net; |
| John | Hinze | pastorjohn@fbctuc.com; |
| Danny | Wallace | rndwallace@yahoo.com; |
| Del | Choate | rural3@plateautel.net; |
| Kevin | Kelly | kkellyemt@gmail.com; |
| Bradley | Gage | bradg1960@yahoo.com; |
| Anthony | Martinez | amartinez@corrales-nm.org; |
| Lawrence | Lovato | elkchewlog@gmail.com; |
| Guy | Kellogg | guykellogg@hotmail.com; |
| Billy | Norman | bnorman@artesianm.gov; |
| Adonais | Martinez | coyotefireems@gmail.com; |
| William | Fisher | jjsigns1501@yahoo.com; |
| Isaac Reece | Barbone | isaac.candyman@yahoo.com; |
| Alan | Aragon | alanaragon42@gmail.com; |
| Rick | Romero | rick.romero@rocketmail.com; |
| Joseph | DeSoto | jcpdesoto@msn.com; |
| David | Kube | dkube@currycounty.org; |
| Anella | Russo | datilfirechief@gmail.com; |
| Raul | Mercado | rmercado@FireDepartmentofdeming.org; |
| Lee | Dixon | dmoinesvillage@bacavalley.com; |
| Justin | Powell | dep_chiefpowell@plateautel.net; |
| Kathy | Miller | dixon.vfd@rio-arriba.org; |
| Eric | Crispin | erice@donaanacounty.org; |
| Christopher | Paz | chrisp@donaanacounty.org; |
| Tomas | Herrera | tomas.herrera254@yahoo.com; |
| Johnny | Carrillo | jcarr622@ad.nmsu.edu; |
| Tom | Ontiveros | tomontiveros@aol.com; |
| Jorge | Au | jorgea@donaanacounty.org; |
| Paul | Luscombe | pluscombe@yucca.net; |
| Delbert | Crow II | dulcefiredepartment_1@gmail.com; |
| Chris | Fierro | barraza88310@msn.com; |
| Stetson | Elkins | dunkenfire@co.chaves.nm.us; |
| David | Crabb | davidcrabb21@yahoo.com; |
| Wilson | Blackie | impala_1958_64@yahoo.com; |
| T. Scott | Gibson | village@eaglenest.org; |
| Monte | Baker | egpfire@co.chaves.nm.us; |
| Kevin | Hope | khope@eddycofire.org; |
| Nate | Miller | firef1801@gmail.com; |
| Wendy | Servey | efrs121@outlook.com; |
| Ken | Homer | elmorrovalley.volunteerfire@gmail.com; |
| Daniel | Garcia | negro87560@yahoo.com; |
| Marcos | Garcia | marcos.garcia@state.nm.us; |
| Toby | Boone | fire@FireDepartmentofelephantbutte.com; |
| Darrell | Chenault | townofelida@yucca.net; |
| Victor | Gallegos | vrg88321@yahoo.com; |
| Eric | Tafoya | eatafoya@coepd-nm.us; |

| | | |
|----------------|-----------|--|
| Lester | Gary | firechief@townofestancia.com; |
| Jesse | Davis | jdavis@FireDepartmentofeunice.org; |
| James | Williams | james.h.williams@nasa.gov; |
| Edgar | Reyes | fsfd2001@yahoo.com; |
| Carl | Bhosser | ceb1943@comcast.net; |
| Terry | Page | tpage@firenet.org; |
| Rose | Blood | flvfdchiefblood@gmail.com; |
| Cody | Moberly | codymoberly@wildblue.net; |
| Serge | Baron | fvfdchief201@msn.com; |
| Darwin | Chenault | floyd-village@yucca.net; |
| Kevin | Towndrow | folsomvfd@bacavalley.com; |
| Joe | Garrett | pappyjoe63jg@gmail.com; |
| Joe | Chavez | jchavez@grantcountyfire.com; |
| Dale | Propps | fsFireDepartmenthalljw@plateautel.net; |
| Jerijah | Triplet | jmt1805@yahoo.com; |
| Steve | Briggs | ftfdchief@bacavalley.com; |
| Jean | Moya | nicholas.moya@co.valencia.nm.us; |
| Arthur | Gonzales | gallinasfire@co.snamiguel.nm.us; |
| Eric | Babcock | ebabcock@gallupnm.gov; |
| Steven | Bouvet | garfd@donaanacounty.org; |
| Bill | Dunlap | gvfd1601@gmail.com; |
| Alan | Beaty | glenwoodfire@gilanet.com; |
| Jane | McSweeney | mcsweeney_79_220@yahoo.com; |
| Danny | Chavez | chavez_dd@yahoo.com; |
| Jerome | Provencio | vlgofgrady@plateautel.net; |
| Randy | Villa | rvilla@grantcountynm.com; |
| Robert | Hays | robert.hays@ci-grants.newmexico.gov; |
| Philip | Bramblett | grenvillevfd@bacavalley.com; |
| Isaac | Herrera | eazy35h@gmail.com; |
| Jeff | Turpen | hagerman@leaco.net; |
| Gaylon | Fuller | gfuller@castrans.com; |
| James | Rigoni | jrig1@plateautel.net; |
| Zack | Hartwig | hartwigzackary@yahoo.com; |
| Guillermo | Herrera | hatch_fire1@yahoo.com; |
| David | Whipple | ems2620@hotmail.com; |
| Adrian | Jones | gandara494@gmail.com; |
| Samuel Guy | Ross | guy_ros@msn.com; |
| Robert | Sindicich | robertshmfd@gmail.com; |
| Trevor | Roberts | trerober@live.com; |
| Manuel | Gomez | mgomez@hobbsnm.org; |
| Terry | Protheroe | terryprotheroe@yahoo.com; |
| Andrew | Coleman | afgcoleman@yahoo.com; |
| Edmundo | Jaramillo | dsjaramillo@aol.com; |
| Jim | Bookland | hopcanyonvfd@co.socorro.nm.us; |
| Steve | Barley | stevenbarl@gmail.com; |
| Brett | Dalbey | papadisc@hotmail.com; |
| Bill | Runyan | drunyan@plateautel.net; |
| Robert | Terrazas | hurleyfd@yahoo.com; |
| Patric | Foy | foyboy369@hotmail.com; |
| Scott | Brown | dsbrown3@hotmail.com; |
| Thomas | Porter | swamprat2401@yahoo.com; |
| Pat | Walter | ladyfiref30@yahoo.com; |
| William "Bill" | Hanson | whanson47@gmail.com; |
| Scott | Shrider | scottshrider69@gmail.com; |
| Peter | Dwyer | peterdwyer@gmail.com; |
| Robin | Williams | robin88220@gmail.com; |
| Bill | Noland | bnoland@plateautel.net; |
| Michael | Singleton | msingleton@leacounty.net; |
| Efren | Galindo | galindo.efren@yahoo.com; |
| Lee | Taylor | lacuevafire@windstream.net; |
| Robert | Castillo | robertc878@hotmail.com; |
| Bob | Renwick | oi@weebeastiebaba.com; |
| Rob | Hahn | laluzfd@gmail.com; |
| Joe | Gober | gober621@comcast.net; |
| Greg | Blanke | gblanke@santafeopera.org; |
| Karen | Baldi | kbaldi@gmail.com; |
| Chris | Opperman | cdopperman@yahoo.com; |
| Joseph | Sandoval | jvsandoval@santafecountynm.gov; |
| Arturo | Nunez Jr. | cury_nunez37@hotmail.com; |
| John | Garcia | kgarcia@lagunapueblo-nsn.gov; |

| | | |
|--------------|-------------|-----------------------------------|
| Kit | Taylor | lagunavista23@gmail.com; |
| Ysidro | Salazar | lafire@dfn.com; |
| Ronald | Shields | rlshields@plateautel.net; |
| Tom | Schalkofski | kd5kko@yahoo.com; |
| Arnold | Diaz | lasalturaschief@yahoo.com; |
| Eric | Enriquez | eenriquez@las-cruces.org; |
| Larry | Brownlee | chieflarrybrownlee@yahoo.com; |
| Phillip | Mares | chiefmares@ci.las-vegas.nm.us; |
| Jona | Olsson | latirfirejona@taosnet.com; |
| Lorenzo | Velasquez | lvelasquez@leacounty.net; |
| Joel | Peters | paramediate@gmail.com; |
| Chad | Vecellio | sf_80_16@yahoo.com; |
| Bennie | Long | bennie.long@state.nm.us; |
| Joe | Kenmore | jkenmore@lincolncountynm.gov; |
| John | Greacen | john@greacen.net; |
| Pete | Whiting | donaldwhiting@gmail.com; |
| Jason | Ciempa | jctrucking@pvtnetworks.net; |
| Rex | Stall | loganfd@plateautel.net; |
| John | Hill | firemanjohnhill@gmail.com; |
| Troy | Hughes | troy.hughes@lacnm.us; |
| Troy | Hughes | troy.hughes@lacnm.us; |
| Jeremy | Fiedler | jfcjmo@aol.com; |
| John | Gabaldon | jgabaldon@loslunasnm.gov; |
| Christopher | Celaya | ccelaya@bernco.gov; |
| Dennis | Onsurez | lovingvfd@gmail.com; |
| Terrance | Lizardo | tlizardo@lovington.org; |
| Mike | Vaughan | lmchief@yahoo.com; |
| Carl | Hansen | solarwks@cybermesa.com; |
| Michael | Bisbee | magdalenafirechief@gmail.com; |
| Pecos | Davis | malagavfd@yahoo.com; |
| Curry | Pruit | cpruit@leacounty.net; |
| Isaac | Abyeta | isaacabeyta@rocketmail.com; |
| Kimberly | Begay | begaykimberly@yahoo.com; |
| Shawn | Mitchell | shawn.mitchell@yahoo.com; |
| Ron | Munn | ronmunn@hotmail.com; |
| Greg | Brown | greg@equipmentassurance.com; |
| Bill | Woolman | bwoolman@co.mckinley.nm.us; |
| Rudy | Nez | mckinleywest@yahoo.com; |
| Tony | Villalovos | jvillalovos419@gmail.com; |
| Kenny | Jacobs | kenny@aaafirenm.com; |
| Thomas | Lapaz | tlapazmafr@matisp.net; |
| Kevin | Hoban | kevinhoban@msn.com; |
| Alfred | Nevarez | mfd@donaanacounty.org; |
| Mike | Vigil | mvigil@wildblue.net; |
| Edgar Ornell | Fuller | midwayfire@co.chaves.nm.us; |
| Marc | Wheeler | mwheeler@co.socorro.nm.us; |
| Keith | Austin | milanfiredept@villageofmilan.com; |
| John | Mohon | milfd@yucca.net; |
| Mathew | Orozco | cararchule2007@yahoo.com; |
| Justin | Solomon | jsolomon@leacounty.net; |
| Dennis | Romero | morafirechief01@yahoo.com; |
| Ed | Littleton | edltltn@gmail.com; |
| Robert | Coss, Jr. | bob@bobsyard.com; |
| Steven | Spann | sspann@moriartynm.gov; |
| Shawn | Jeffrey | mosquero@plateautel.net; |
| Phillip | Nelson | townclerk@mountainairnm.gov; |
| Gary | Girard | nvfd@plateautel.net; |
| James | Gleason | jgleasoniii@gmail.com; |
| Danniford | Deschine | d.deschine@yahoo.com; |
| Robert | Hall | chiefnewkirk300@gmail.com; |
| Chris | Row | crsplumbinginc@aol.com; |
| Don | Dirks | skridnod@hotmail.com; |
| Jerry | Moleski | moleski@nmt.net; |
| Nick | Sena | senas_de_ojo@hotmail.com; |
| Derrick | Rodriguez | derrickrodriguez23@yahoo.com; |
| Pete | Bellows | fi-emfd@donaanacounty.org; |
| Brandon | Johnson | bdjohnson705@gmail.com; |
| Paul | Quairoli | pquairoli@co.otero.nm.us; |
| David | Looney | davidlooney62@yahoo.com; |
| Jason | Martinez | pecosfirechief139@yahoo.com; |

| | | |
|-------------|------------|---------------------------------------|
| Richard | Ley | nose.down.airedales@gmail.com; |
| Estevan | Lovato | carmenlovato4@gmail.com; |
| Jim | Ellett | penascofire@co.chaves.nm.us; |
| Randy | Sahd | shadspenasco@hotmail.com; |
| John | Dear | jd5109@comcast.net; |
| Nick | Cardenas | Nicolas.cardenas@scouting.org; |
| Sam | Palahnuk | pietownfire@gmail.com; |
| Herman | Copi | hcopi@yahoo.com; |
| Paul | Kniepkamp | pcpclan@pvt.net; |
| Lucy | Whitmarsh | lmwk@dishmail.net; |
| James | Jarvis | snjarvis@hotmail.com; |
| Ted | Richardson | Rjrichardson@plateautel.net; |
| Nick | Martinez | pojoaquechief@gmail.com; |
| Virgil | Gauchupin | virgilgauchupin@sandovalcountynm.gov; |
| Gary | Nuckols | firechief@portalesnm.gov; |
| Austin | Gibson | austingibson199008@yahoo.com; |
| Frank | Fahl | mtnmanfrank@hotmail.com; |
| Abel | Forkner | abelforkner@yahoo.com; |
| Arnold | Billie | arnold.billie@bie.edu; |
| Andres | Zamora | andres_zamora@hotmail.com; |
| Gerald | Hight | ghight@plateautel.net; |
| Donald | Adams | quaycofm@yahoo.com; |
| Albert | Hobbs | queenvfd@dellFireDepartment.com; |
| Jerry | Armstrong | jandyauto@gilnet.com; |
| Mike | McDoniel | qlakefd13@gilnet.com; |
| Mark | Ortega | morteaga@villageofquesta.org; |
| Arthur Dean | Grine | rabbtearfire@plateautel.net; |
| Eric | Crespin | ericc@donaanacounty.org; |
| David | Montoya | firechiefmontoya@yahoo.com; |
| Andrew | Wilson | andrew.wilson@state.nm.us; |
| David | Stultz | dstultz@gilnet.com; |
| James | Mathews | jmathews@FireDepartmentofraton.com; |
| Ron | Burnham | rburnham@redriver.org; |
| Raymond | Cordova | raycordova@sandovalcountynm.gov; |
| Donal | Weaver | reservevfd01@hotmail.com; |
| Carlos | Esquibel | cresquibel@rio-arriba.org; |
| Philip | Brainerd | riofelixfire@co.chaves.nm.us; |
| Russell | Driskell | driskell@taosnet.com; |
| Jason | Gonzales | rgcfd@hotmail.com; |
| Paul | Bearce | pbearce@rrnm.gov; |
| Tom | Navarrette | riverside802@hotmail.com; |
| Ramon | Escobar | rodeofd@gmail.com; |
| Robert | Casados | rlc_bobby@yahoo.com; |
| Devin | Graham | dgraham_166@yahoo.com; |
| Douglas | Gonzales | tdomj67@gmail.com; |
| Jody | Hazen | jodyhazen@yahoo.com; |
| Orlando | Arriola | orlandoarriola@ruidoso-nm.gov; |
| Gary | Williams | gwilliams@ruidosodowns.us; |
| Mike | Jones | prcarocks@yahoo.com; |
| Fred | Hollis | fhollis@co.socorro.nm.us; |
| Eric | Vom Dorp | evomdorp@aol.com; |
| Craig | Brashear | sjfire@plateautel.net; |
| Craig | Daugherty | daughertyc@sjcounty.net; |
| Charles | Ortega | smco2670@gmail.com; |
| Mike | Montano | emontano@co.sanmiguel.nm.us; |
| Clarence | Marez | sanrafaelvfd@yahoo.com; |
| James | Maxon | jmaxon@sandovalcountynm.gov; |
| JoeAdam | Gallegos | gallegosjoeadam@yahoo.com; |
| Eric | Litzenberg | ejlitzenberg@santafenm.gov; |
| David | Sperling | dsperling@santafecountynm.gov; |
| Mark | Standard | santaritavfd@gmail.com; |
| Gilbert | Romero | gromero@srmn.org; |
| Wayne | Massey | waynem@ftjames.com; |
| James | Casanova | casanovajames@msn.com; |
| Thomas | Ross | thomascottross@icloud.com; |
| Joe | Reeser | sedanfire@outlook.com; |
| Daniel | Atencio | info@sheridanvfd.com; |
| Donald | Ford | sierrafire@co.chaves.nm.us; |
| Mickey | Richardson | sbrfiredepartment@gmail.com; |
| Paul | Tooley | ptooley@sierraco.org; |

| | | |
|------------|-------------|--|
| Jeffrey | Fell | jfell@silverFireDepartmentmail.com; |
| Ronnie | Hickman | rpbkhickman@hotmail.com; |
| Joe | Gonzales | sfd@socorronm.gov; |
| Mark | Mercer | mmerc@co.socorro.nm.us; |
| Humberto | Macias | bombero428@aol.com; |
| Eric | Ernst | erice@donaanacounty.org; |
| Daniel | Roberts | firefox553@yahoo.com; |
| Linda | Anaya | ltcanaya@gmail.com; |
| Richard | Sylvestre | avfd@co.socorro.nm.us; |
| Gabriel | Garza | safd@co.socorro.nm.us; |
| Robert | Maxwell | rob.maxwell@williams.com; |
| Casey | White | casey@hdc-nm.com; |
| Andres | Burciaga | chiefburciaga@yahoo.com; |
| David | Guerrero | david88usc@yahoo.com; |
| Mark | Klaene | mark@apo.nmsu.edu; |
| Leroy | Gonzales | lgonzales@taosgov.com; |
| Michael | Cordova | mike.cordova@taoscounty.org; |
| Mitch | Daniels | fire@vtsv.org; |
| Curry | Pruit | cpruit@leacounty.net; |
| Corey | Pacheco | pachecofire58@yahoo.com; |
| JD | Damron | jimmydean2u@aol.com; |
| Lewis | Cooper | texicofire@yucca.net; |
| Jacob | LaCroix | jlacroix78@yahoo.com; |
| Justiniano | Valdez | justiv@hotmail.com; |
| David | Bezy | dbezy@aol.com; |
| Joe | Wheeler | tvfd01@gmail.com; |
| Matthew | Duran | matthewfduran@gmail.com; |
| Jason | Trumbull | tcfd49@torrancecounty911.com; |
| Brian | Culp | bculp@sandovalcountynm.gov; |
| Johnnu | Perea | john.perea@nm.usda.gov; |
| Martin | Honegger | trementinafd@plateautel.net; |
| Wayne | Coffman | springcreekconstruction@yahoo.com; |
| David | Trujillo | truches.vfd@rio-arriba.org; |
| Paul | Tooley | chief@torcfire.com; |
| Shane | Warner | firechief@FireDepartmentoftucumcari.com; |
| John | Montoya | 2501tvfd@live.com; |
| Roger | Groves | tvfrchief1@yahoo.com; |
| Jim | O' Bryant | ucfire@plateautel.net; |
| Fred | Kezar | chiefuccvfd@tularosa.net; |
| Ed | Powers | umvfr@gilnet.com; |
| James | Rockenfield | uteparkfd@kitcarson.net; |
| Brian | Culp | brian.culp@co.valencia.nm.us; |
| Rick | LaClair | vecfd@yahoo.com; |
| Arnold | Gurule | vallecitos.vfd@rio-arriba.org; |
| Andy | Unruh | flyingucattle@yahoo.com; |
| Donovan | Mack | valleyfire101@hotmail.com; |
| John | Cote | musiccote@hotmail.com; |
| Thomas | Owens | townofvaughn@plateautel.net; |
| Thomas | Ortega | vfd@co.socorro.nm.us; |
| Carlos | Esquibel | cresquibel@rio-arriba.org; |
| Larry | Osborn | losborn@co.colfax.nm.us; |
| Lyle | Mortensen | vvfd@aznex.net; |
| Robert | Mondragon | robmondragon@hotmail.com; |
| Frank | Lucero | franknamelucero@yahoo.com; |
| Deke | Willis | dwillis@redriver.org; |
| Daniel | Salaiz | whiskeycreekfirechief@yahoo.com; |
| Neal | Duenas | nmduenas@gmail.com; |
| Jordan | Greene | j.greene91@yahoo.com; |
| Roy | Dose | dosdzit@aol.com; |
| John | Day | johnday98@gmail.com; |
| Faye | Chavez | villageofwillard@qwestoffice.net; |
| James | Jones | jim.joneswvfd@gmail.com; |
| Antonio | Medina | amedina@yahoo.com; |
| Martin | Romero | Martin.romero@state.nm.us; |
| Aldred | Cheama | aldred.cheama@ashiwi.org; |
| David | Black | david.black@state.nm.us; |
| Avelino | Gutierrez | Avelino.Gutierrez@state.nm.us; |
| Sally | Galanter | Sally.Galanter@state.nm.us; |
| Isaiah | Zemke | izemke@smwlu49.org; |
| Randy | Traynor | randy@nmlobbyist.com; |

| | | |
|-----------|-----------------|----------------------------------|
| Ronda | Gilliland-Lopez | mca@mcaofnm.org; |
| Steve | Crespin | screspin@mcaofnm.org; |
| Anthony | Kocurek | tkocurek@ebinm.com; |
| Vince | Alvarado | valvarado@smwlu49.org; |
| Mike | Puelle | mike@agc-nm.org; |
| Carla | Kugler | ckugler@abcnm.org; |
| Joseph | Martinez | joseph.martinez@state.nm.us; |
| Jerome | Baca | jerome.baca@state.nm.us; |
| Bradford | jasonman | Bradford.Borman@state.nm.us; |
| Melchiore | Savarese | Melchiore.Savarese@state.nm.us; |
| Peggy | Martinez-Rael | Peggy.Martinez-Rael@state.nm.us; |
| Elizabeth | Ramirez | Elizabeth.Ramirez@state.nm.us; |
| Jack | Milarch | jmilarch@buildertrust.com; |
| Melanie | Lawton | melanie@nmhba.org; |
| Gilbert | Fuentes | GilbertT.Fuentes@state.nm.us; |
| Hans | Muller | Hans.Muller@state.nm.us; |
| John | Kondratick | John.Kondratick@state.nm.us; |
| Jason | Montoya | JasonN.Montoya@state.nm.us; |
| Raymond | Torres | Raymond.Torres@state.nm.us; |

DATED this 24th day of June, 2020.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Paralegal