TAXATION & REVENUE
NEW MEXICO

STATE OF NEW MEXICO
Taxation and Revenue Department
An Equal Opportunity Employer

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December 15, 2015

Enclosed are the following proposals:

**Taxation and Revenue Department Act**

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| 3.28.2.1 NMAC<br>***(Issuing Agency)*** | Section 9-11-14 NMSA 1978 |
| 3.28.2.2 NMAC<br>***(Scope)*** | Section 9-11-14 NMSA 1978 |
| 3.28.2.3 NMAC<br>***(Statutory authority)*** | Section 9-11-14 NMSA 1978 |
| 3.28.2.4 NMAC<br>***(Duration)*** | Section 9-11-14 NMSA 1978 |
| 3.28.2.5 NMAC<br>***(Effective Date)*** | Section 9-11-14 NMSA 1978 |
| 3.28.2.6 NMAC<br>***(Objective)*** | Section 9-11-14 NMSA 1978 |
| 3.28.1.7 NMAC<br>***(Definitions)*** | Section 9-11-14 NMSA 1978 |
| 3.28.1.8 NMAC<br>***(Standard of Conduct)*** | Section 9-11-14 NMSA 1978 |

The proposals were placed on file in the Office of the Secretary on December 1, 2015. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about February 12, 2016.

A public hearing will be held on the proposals on Wednesday, January 20, 2016, at 9:30 a.m. Secretary's Conference Room on the third floor of the Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before January 20, 2016.

Demesia Padilla, CPA
Secretary

**TITLE 3: TAXATION**
**CHAPTER 28: TAX FRAUD ENFORCEMENT**
**PART 2: STANDARD OF CONDUCT FOR COMMISSIONED PERSONNEL AND TFID EMPLOYEES ACTIVELY PURSUING COMMISSION**

**3.28.2.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.
[3.28.2.1 NMAC - N, xx/xx/xx]

**3.28.2.2 SCOPE:** This part applies to all certified law enforcement officers commissioned as tax fraud enforcement officers by the New Mexico taxation and revenue department's tax fraud investigations division and employees of the taxation and revenue department's tax fraud investigations division who are actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978.
[3.28.2.2 NMAC - N, xx/xx/xx]

**3.28.2.3 STATUTORY AUTHORITY:** Section 9-11-14 NMSA 1978.
[3.28.2.3 NMAC - N, xx/xx/xx]

**3.28.2.4 DURATION:** Permanent.
[3.28.2.4 NMAC - N, xx/xx/xx]

**3.28.2.5 EFFECTIVE DATE:** xx/xx/xx, unless a later date is cited at the end of a section.
[3.28.2.5 NMAC - N, xx/xx/xx]

**3.28.2.6 OBJECTIVE:** The objective of this part is to provide standards of conduct for commissioned tax fraud enforcement officers of the New Mexico taxation and revenue department's tax fraud investigations division (TFID), as authorized by the provisions of Section 9-11-14 NMSA 1978 of the Taxation and Revenue Department Act and for non-commissioned employees of the TFID who are actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978.
[3.28.2.6 NMAC - N, xx/xx/xx]

**3.28.2.7 DEFINITIONS:** As used in Section 9-11-14 NMSA 1978 and in this part:

**A.** "academy" means a law enforcement academy that offers accredited courses and curricula for law enforcement officer certification;

**B.** "certified firearms instructor" is an individual who is certified by the New Mexico department of public safety to instruct and test individuals on the use of firearms;

**C.** "certified law enforcement officer" is an individual who has received a certification from the New Mexico law enforcement academy board;

**D.** "code of conduct" means the department's code of conduct for all employees;

**E.** "commissioned personnel" means any commissioned tax fraud enforcement officer with the TFID;

**F.** "days" means, unless otherwise stated, that days will be considered to be working days, or days which are regularly scheduled to be worked. For suspension purposes, a holiday is considered to be a working day;

**G.** "department" means the New Mexico taxation and revenue department;

**H.** "employee" means certified and commissioned tax fraud enforcement officers within the TFID who are vested by law with a duty to maintain public order or make arrests for crimes, as limited herein to crimes associated with violations of the Tax Administration Act, and non-commissioned TFID employees while they are actively pursuing commission;

**I.** "firearm" means one of the following:

**(1)** revolver or semi-automatic handgun, issued or personal; must be a glock .40 caliber or other caliber which is approved and authorized by the appropriate chain of command within TFID;

**(2)** shotgun, issue only, 12 gauge, which is approved and authorized by the appropriate chain of command within the TFID; or

**(3)** special team weapon identified, approved and authorized by the appropriate chain of command within the TFID;

**J.** "New Mexico law enforcement academy board" means the board created by Section 29-7-3 NMSA 1978;

**K.** "non-commissioned employee" means TFID employees actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978;

**L.** "order" means a lawful authoritative command, either verbal or written;

**M.** "policy" means a mandatory guide designated to meet a situation and circumstance;

**N.** "procedures" means a written method which delineates the implementation of a policy;

**O.** "qualification" means the process established by the department of public safety for a certified firearms instructor to test a candidate's firearm skills;

**P.** "secretary" means the cabinet secretary of the New Mexico taxation and revenue department;

**Q.** "suspension" means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed thirty calendar days;

**R.** "tax fraud enforcement officer" means a certified law enforcement officer who has been commissioned by the secretary to investigate fraud and other crimes that may affect the collection of taxes due to the state;

**S.** "termination" means the act of permanently terminating the service of a commissioned tax fraud enforcement officer; a discharge or removal from position of hire, for cause, pursuant to provisions of the Personnel Act (Chapter 10, Article 9 NMSA 1978), as applicable to all employees of the department pursuant to Section 9-11-10 NMSA 1978; and

**T.** "TFID" means the tax fraud investigations division of the New Mexico taxation and revenue department.

[3.28.2.7 NMAC - N, xx/xx/xx]

**3.28.2.8** **STANDARD OF CONDUCT:** All employees are expected to adhere to the provisions of this rule and are subject to such disciplinary action for violation of any of these rules as deemed appropriate by their supervisors or the secretary of the department.

**A.** Employees shall obey all:

**(1)** laws of the United States, or any state and local jurisdiction in which the employees are present; and

**(2)** department and TFID code of conduct, rules and regulations, policies, procedures, directives and lawful orders issued by supervisors.

**B.** Employees shall satisfactorily perform their duties and assume the responsibilities of their positions. Unsatisfactory performance may be demonstrated by violating any one of the following provisions:

**(1)** a lack of knowledge of the application of laws required to be enforced;

**(2)** an unwillingness or inability to perform assigned tasks; or

**(3)** the failure to conform to work standards established to the employees' rank, grade or position as set forth in the job specifications.

**C.** Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Conduct unbecoming an employee shall include that which brings the department into disrepute or reflects discredit upon the employee as a member of the department, or that which impairs the operation or efficiency of the department or employee. Employees are subject to all rules, policies, and the code of conduct of the department, and, in addition:

**(1)** employees shall carry out all proper, lawful orders given them by supervisors in the line of duty without hesitation or criticism. Employees will take up matters affecting themselves, their position and departmental business with their immediate supervisor, or through their chain of command or through other TFID designated and proper channels;

**(2)** employees shall promptly obey any lawful orders of any supervisor. This will include orders relayed from a supervisor by an employee of the same rank or a subordinate employee;

**(3)** employees who are given an otherwise lawful and proper order which is in conflict with a previous order, rule, regulation or directive shall respectfully inform the supervisor issuing the conflicting order. If the supervisor issuing the order does not alter or retract the conflicting order, the new order shall stand. Under these circumstances, the responsibility for the conflict shall be upon the supervisor. Employees shall obey the conflicting order and shall not be held responsible for disobedience of the order, rule, regulation or directive previously issued;

**(4)** employees shall not obey any order which they know or should know would require them to commit any illegal act. If in doubt as to the legality of an order, employees shall request the issuing supervisor to either clarify the order or to confer with higher authority;

**(5)** all employees shall be courteous to the public, supervisors and all other employees, as well as any person the employee has contact with during the performance of his/her duties and responsibilities.

Employees shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane, or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, sex, lifestyle, or similar characteristics. When any person requests assistance or advice, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon; and

**(6)** employees shall maintain a level of good moral character in their personal and business affairs, which is in keeping with the highest standards of the law enforcement profession. Employees shall not participate in any incident which impairs their ability to perform their duties or impedes the operation of the department or causes the department to be brought into disrepute. An employee's direct supervisor shall determine if an employee is fit for duty.

**D.** Employees will properly care for and maintain all state equipment issued to or used by the employee.

**E.** An employee will not represent themselves as speaking on behalf of the department in any court proceeding, civil or criminal, for purpose of being a character witness.

**F.** All employees shall follow all applicable rules and protocols established by the department as regards to confidentiality of taxpayer and motor vehicle division information.

**G.** Commissioned tax fraud enforcement officers shall carry their badges and commissions on their person at all times, while on duty or while carrying a loaded concealed firearm off duty as provided by the department's policy and procedures. Commissioned tax fraud enforcement officers shall furnish their name to any person requesting that information when they are on duty or while representing themselves in an official capacity, except when the withholding of such information is necessary for the performance of law enforcement officer or department duties.

**H.** Employees shall submit all necessary reports and official documents on time and in accordance with established documents and in accordance with established departmental or TFID procedures. Reports and documents submitted by employees shall be truthful and complete, and no employees shall knowingly enter or cause to be entered any inaccurate, false, or improper information. All departmental law enforcement reports, records and evidence are privileged and confidential and may be released only upon written authority of the secretary, and by verbal authority if written authority cannot reasonably be obtained except as required by court order.

**I.** All employees are expected to meet their financial obligations in a timely manner and live within their financial means. This does not preclude any employee from properly proceeding in bankruptcy.

**J.** The purpose of this subsection is to provide direction and guidance regarding supplemental employment.

**(1)** Supplemental employment includes any tasks performed for which the employee is compensated in any way.

**(2)** Employees who wish to obtain supplemental employment shall secure written permission from their direct supervisor.

**(3)** In addition to department policies regarding supplemental employment, TFID may impose specific additional conditions on TFID employees.

**(4)** This subsection applies to all TFID employees including those on any type of leave or suspension.

**K.** All employees will be physically and mentally fit for duty. The secretary or the employee's direct supervisor may order a physical or psychological examination to assure compliance with this rule, and may mandate counseling or coursework to assist an employee to meet appropriate standards.

**L.** Employees will not accept anything, including, but not limited to loans, offered to them which is intended to influence the employee in the performance of their duties and responsibilities or for tasks performed as part of their duties.

**M.** The purpose of this subsection is to provide direction and guidance to all employees regarding political activity.

**(1)** While off duty and not representing the department, employees shall be permitted to:

**(a)** express opinion(s) as individuals on political issues and candidates;

**(b)** attend political conventions, rallies, fund raising functions and similar political gatherings in an unofficial capacity;

**(c)** actively engage in any non-partisan political function, partisan meaning an adherent to a party, faction, cause or person; actively engaging in activities of private, fraternal or social organizations which do not conflict with the mission of the department and associated responsibilities is permissible;

(d) sign political petitions as individuals;

(e) make financial contributions to political organizations;

(f) perform non-partisan duties as prescribed by state or local laws;

(g) hold membership in a political party and participate in its functions to the extent consistent with the law and consistent with this regulation; and

(h) otherwise participate fully in public affairs, except as provided by law, to the extent that such endeavors do not impair the neutral and efficient performance of official duties, or create real or apparent conflicts of interest.

(2) Employees are prohibited at all times from:

(a) using their official capacity to influence, interfere with, or affect the results of an election;

(b) assuming active roles in management, organization or financial activities of partisan political clubs, campaigns or parties;

(c) serving as officers of partisan political parties and clubs;

(d) becoming candidates for, seeking election to, or running for, or campaigning for, a partisan elective public or political office;

(e) soliciting votes in support of, or in opposition to, any partisan candidates;

(f) serving as delegates to a political party convention;

(g) endorsing or opposing a partisan candidate for public office in a political advertisement, broadcast or campaign literature;

(h) initiating or circulating a partisan nominating petition;

(i) organizing, selling tickets to, or actively participating in a fund-raising function for a partisan political party or candidate;

(j) addressing political gatherings in support of, or in opposition to, a partisan candidate; and

(k) otherwise engaging in prohibited partisan activities on the federal, state, county or municipal level.

N. In their capacity as department employees, employees will not seek self-publicity through the news media or any other media by furnishing information obtained or generated from their work for the department for the primary purpose of personal publicity.

O. Employees will not use their position or permit use of their position for personal or financial gain whether directly or indirectly for themselves or any other individual or group.

P. All commissioned tax fraud enforcement officers shall use the utmost care and caution in handling firearms at all times. The following regulate the authorized use of a firearm. An employee shall use their department issued firearm:

(1) as authorized by department use of force and carrying of firearms policies or any other department policy and procedure, drawing or displaying the firearm only for a legal use or for inspection (including cleaning, oiling and storing);

(2) for practice, preferably on an approved range under the auspices of an approved range master; however, should an approved range master not be available, the employee may, at his or her discretion, still utilize the approved range for target practice;

(3) to kill a critically wounded or dangerous animal, when other disposition is impractical; or

(4) to give an alarm or call for assistance for an important purpose when no other means can be used.

Q. In every instance in which a commissioned tax fraud enforcement officers discharges a firearm while on duty, with the exception of target practice, the employee will, without delay, make a written report as required by TFID protocols. The secretary will be apprised of all incidents of discharged firearms other than target practice. Any unauthorized discharge of a firearm could result in disciplinary action up to and including termination. Any unauthorized use or discharge of a firearm could result in disciplinary action up to and including termination.

R. Non-commissioned TFID employees who are actively pursuing commission are authorized to use department firearms only:

(1) with a certified firearms instructor for qualification; and

(2) when attending an academy and shall use department firearms only during academy directed exercises, classes and events.

S. Duty issued firearms and other department issued weapons shall not be used off-duty except for

duty related matters.

**T.** Employees will maintain a neat appearance in groom and dress, as required for all department employees by department policy. Other practical requirements may be made so that the employee can properly use duty issued firearms and other department equipment. All additional requirements will be made by employee's supervisors and discussed with the employee prior to implementation.

**U.** Any and all disciplinary action shall be taken in accordance with the regulations of the state personnel board, department policies and code of conduct and this subsection.

**(1)** Administrative leave with pay shall not have any effect on a commissioned tax fraud enforcement officer's retention of their department commission;

**(2)** During all periods of suspension, an employee will be relieved of their commission card and any other TFID identity card; any TFID badge(s); their department issued firearm and firearm holster; and their department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers. During all periods of or discipline based administrative leave taken in accordance with the regulations of the state personnel board, an employee shall not access or attempt to access department e-mail; data bases; or computers; and

**(3)** If disciplinary action includes termination, a commissioned tax fraud enforcement officer's commission shall be revoked at the time the termination is made pursuant to department policies. In addition to any requirements imposed by department policies, the commissioned tax fraud enforcement officer's commission shall be immediately returned to the department. All terminated employees shall return to the department any TFID identity card; any TFID badge(s); any department issued firearm and firearm holster; and department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers.

**V.** Any commissioned tax fraud enforcement officer who is relieved of their law enforcement certification will be relieved of their TFID commission.

[3.28.2.8 NMAC - N, xx/xx/xx]

With respect to the adoption of 3.28.2 NMAC:

Approved:

Demesia Padilla, CPA
Secretary

Reviewed for legal sufficiency:

Brad Odell, Chief Counsel
NM Taxation and Revenue Department