

The Historic Preservation Division (HPD) has received written comments and held a public hearing on its proposal to repeal 4.51.5 NMAC and replace it with a new rule, 4.10.19 NMAC. In response to the comments, the HPD has made further changes to the proposed rule, shown in Legislative format below, and has prepared a matrix explaining the changes, following the revised rule. Anyone wishing to submit written comments on the changes to the draft rule before the HPD adopts the final rule may do so no later than March 14, 2016. Comments may be mailed to the Historic Preservation Division, 407 Galisteo Street, Suite 236, Santa Fe, NM 87501, or e-mailed to nm.shpo@state.nm.us.

TITLE 4 CULTURAL RESOURCES
CHAPTER 10 CULTURAL PROPERTIES AND HISTORIC PRESERVATION
PART 19 CULTURAL RESOURCE INFORMATION SYSTEM AND RECORDS

4.10.19.1 ISSUING AGENCY: Department of cultural affairs, state historic preservation division.
[4.10.19.1 NMAC - Rp, 4.51.5.1 NMAC, __/__/16]

4.10.19.2 SCOPE: This rule applies to the state historic preservation division and entities wishing to [~~access, accessing, or submitting~~] access, use or submit records to the records repository or NMCRIS.
[4.10.19.2 NMAC - Rp, 4.51.5.2 NMAC, __/__/16]

4.10.19.3 STATUTORY AUTHORITY: Subsection D of Section 18-6-8 NMSA 1978 and Section 18-6-11.1 of the Cultural Properties Act.
[4.10.19.3 NMAC - Rp, 4.51.5.3 NMAC, __/__/16]

4.10.19.4 DURATION: Permanent.
[4.10.19.4 NMAC - Rp, 4.51.5.4 NMAC, __/__/16]

4.10.19.5 EFFECTIVE DATE: _____, unless a later date is cited at the end of the section.
[4.10.19.5 NMAC - Rp, 4.51.5.5 NMAC, __/__/16]

4.10.19.6 OBJECTIVE: This rule describes the procedures to access and use cultural resource records in the NMCRIS and the records repository while minimizing loss of archaeological resources in the state of New Mexico. In addition, the rule describes the procedures to register and to submit cultural resource records to NMCRIS and the repository and establishes reasonable fees for use of the records.
[4.10.19.6 NMAC - Rp, 4.51.5.6 NMAC, __/__/16]

4.10.19.7 DEFINITIONS:

A. "Application" means the document, provided by HPD on its website or other method that is used to request access to NMCRIS or to the records repository.

B. "ARMS" means the archaeological records management section, a bureau within the historic preservation division that manages NMCRIS and the repository.

C. "ARMS special request form" means the document, provided by HPD on its website or other method that is used to request ARMS's assistance in obtaining information from NMCRIS or the records repository including customized database queries.

D. "Assisted access user" means an individual or entity with a property interest or regulatory oversight that does not meet the standards for qualified user, but wants access to information about cultural properties or cultural resource investigations that is relevant to the property interest or regulatory oversight.

E. "Cooperative agreement" means an agreement between HPD and a public agency or tribal government to maintain and expand NMCRIS and the repository.

F. "Cultural Properties Act" means Sections 18-6-1 through 18-6-17 NMSA 1978.

G. "Cultural property" or "cultural resource" means a structure, place, site or object having historic, archaeological, scientific, architectural or other cultural significance.

H. "CPRC" means the cultural properties review committee created pursuant to Section 18-6-9 of the Cultural Properties Act.

I. "Cultural resource investigation" or "investigation" means the study of a specific cultural property or specific area to identify, record, evaluate, interpret or protect cultural properties.

- J.** "Cultural resource records" means the paper and digital files and related materials including, but not limited to, forms, journals, maps, databases, photographs, nominations, manuscripts and reports associated with cultural properties or cultural resource investigations conducted in the state of New Mexico.
- K.** "DCA" means the department of cultural affairs created pursuant to Section 9-4A-4 NMSA 1978.
- L.** "HPD" means the historic preservation division within the DCA created pursuant to Subsection A of Section 18-6-8 of the Cultural Properties Act.
- M.** "HPD website" means <http://nmhistoricpreservation.org> or its successor site.
- N.** "Independent researcher" means a qualified user who is unaffiliated with a qualified institution and is performing uncompensated research for the researcher's own benefit. Paid consultants are not independent researchers.
- O.** "Individual account" means an account for accessing NMCRIS and the records repository for each qualified user.
- P.** "Institutional agreement" means a document, signed annually by qualified institutions or independent researchers. The agreement specifies the requirements for using and disseminating information from NMCRIS and the records repository.
- Q.** "NMCRIS" means the New Mexico cultural resource information system, an online computer information system that integrates geographic, research, and management data on cultural properties and cultural resource investigations.
- R.** "Performing entity" or "performing agency" means an individual, corporation, partnership, trust, association, educational institution, foundation, museum, public agency or tribal government that carries out cultural resource investigations and creates cultural resource records.
- S.** "Public agency" means a federal or state agency or political subdivision of the state that has administrative responsibility for consulting with the SHPO under federal or state laws including but not limited to section 106 of the National Historic Preservation Act (54 U.S.C. § ~~3606108~~ 306108) and Section 18-6-8.1 of the Cultural Properties Act, Section 18-8-7 of the Prehistoric and Historic Sites Preservation Act, and Section 18-6A-5 of the Cultural Properties Protection Act.
- T.** "Qualified institution" means an entity, other than an independent researcher, that signs an institutional agreement and that authorizes one or more qualified users to represent it for purposes of accessing the records repository and NMCRIS.
- U.** "Qualified user" means an individual listed in the SHPO directory or an individual with a bachelor's degree in archaeology, anthropology, architecture, architectural history, historic architecture, history, American studies, historic preservation, or a closely related field from an accredited educational institution or ~~the equivalent~~ other appropriate education, professional experience, and training as determined by the registrar.
- V.** "Records repository" or "repository" means the archives maintained by HPD that contain cultural resource records including but not limited to cultural resource investigation reports, plans, and manuscripts; archaeological resource records; historic building, structure, and other cultural property records; state register of cultural properties and national register of historic places nominations; and related materials.
- W.** "Registrar" means the employee of HPD, assigned to manage ARMS.
- X.** "Report recipient" means an organization, public agency, tribal government, or individual that commissions a performing entity to conduct a cultural resource investigation.
- Y.** "SHPO" means the state historic preservation officer and is the individual appointed pursuant to Section 18-6-8 of the Cultural Properties Act who serves as the director of HPD.
- Z.** "SHPO directory" means the list of cultural resource and historic preservation professionals established pursuant to 4.10.8 NMAC.
- AA.** "User's guide" means the manual issued by HPD on its website or through other distribution methods that describes the process and standards to submit cultural resource records to NMCRIS and the records repository.
[4.10.19.7 NMAC - Rp, 4.51.5.7 NMAC, __/16]

4.10.19.8 ACCESS TO RECORDS REPOSITORY AND NMCRIS:

- A. Registrar:** The registrar shall:
- (1) only disseminate information from the records repository or NMCRIS that conforms with Section 18-6-11.1 of the Cultural Properties Act. If a release of information from the records repository or NMCRIS does not conform with Section 18-6-11.1 or other laws, the registrar shall redact and not release that information;
 - (2) make applications available to the public on the HPD website or through other convenient method; and

(3) grant access to the records repository and NMCRIS by applying the standards in this rule. If the registrar cannot determine whether an applicant is an independent researcher, qualified user, or qualified institution, the registrar shall refer the application to the SHPO for a final decision.

B. Qualified institutions:

(1) Qualified institutions shall submit a completed institutional agreement to HPD annually. The institutional agreement is valid only for the calendar year in which it is executed. The qualified institution shall designate the individual within the qualified institution who has signatory authority to authorize qualified users to use the qualified institution's account. The agreement shall require the institution to pay all applicable fees for the authorized qualified users' uses of NMCRIS and the records repository on the qualified institution's behalf.

(2) Qualified institutions shall submit an individual account application for each qualified user authorized by the qualified institution to represent it for purposes of accessing the records repository and NMCRIS. Signed approval by the qualified institution on the individual account application authorizes HPD to charge all applicable fees under this rule to the qualified institution.

(3) Public agencies or tribal governments may enter into a cooperative agreement with HPD in lieu of an institutional agreement. Cooperative agreements shall specify conditions for access to and use of NMCRIS and the repository that are consistent with the requirements for institutional agreements, unless this rule expressly provides otherwise. Entities may contact the registrar to negotiate a cooperative agreement.

C. Independent researchers: Independent researchers shall submit a completed institutional agreement annually. The agreement is valid only for the calendar year in which it is executed. The agreement shall indicate the independent researcher's agreement to use the NMCRIS and repository only for research that is uncompensated and that is for the independent researcher's own benefit. Individuals working as paid consultants shall submit an institutional agreement as a qualified institution and not as an independent researcher.

D. Qualified users:

(1) Qualified users wishing to access the records in the repository and NMCRIS shall be affiliated with a qualified institution with a valid institutional agreement or a public agency or tribal government with a cooperative agreement, or shall be an independent researcher with a valid institutional agreement.

(2) Qualified users shall complete, sign, and submit an individual account application to HPD. Upon receipt of a user name and password from HPD, the qualified user may access NMCRIS online and may access the records repository under the supervision of HPD staff. Qualified users shall adhere to conditions in the individual account application for use of the materials in the repository and NMCRIS.

(3) Qualified users shall not share user name or password information with anyone and shall not otherwise allow others to access NMCRIS. Qualified users shall not use, or assist others with using, information from NMCRIS or the repository to violate state or federal laws.

E. Assisted access users: Assisted access users may submit an ARMS special request form to HPD to obtain information from NMCRIS or the records repository. If the registrar approves the request, the assisted access user shall sign a nondisclosure agreement provided by HPD. Upon receipt of the signed nondisclosure agreement, HPD shall provide the relevant information or records, subject to the registrar's redaction of protected information.

F. Others: Individuals who are not assisted access users or qualified users and who wish to examine records in the repository shall contact HPD to make an appointment and shall specify the purpose of the visit and records the individual wishes to review. The individual may view the records, subject to signing a nondisclosure agreement and redaction of protected information by the registrar, if the registrar determines that granting the request conforms with Section 18-6-11.1 of the Cultural Properties Act.

G. Appeal of registrar access decisions:

(1) An entity aggrieved by a decision of the registrar regarding access to cultural resource records may appeal. Appeals shall be submitted in writing to the SHPO within ten calendar days of the decision with a statement of reasons for the appeal.

(2) The SHPO shall respond in writing within ten calendar days of receipt of an appeal.

(3) The SHPO's decision on the appeal is DCA's final action on the matter.

F. Violations of this section or the terms of an application or agreement:

(1) If the registrar discovers a violation of this section or the terms of an individual account application or institutional agreement, the registrar may restrict, temporarily suspend, or prohibit future access to NMCRIS or the repository.

(2) An entity aggrieved by the registrar's decision may appeal. Appeals shall be submitted to the SHPO in writing within ten calendar days of the decision with a statement of reasons for the appeal.

(3) The SHPO shall respond in writing within ten calendar days of receipt of an appeal.

(4) The SHPO's decision on the appeal is DCA's final action on the matter.

G. Computation of time: In computing the period of time prescribed for appeal, the day from which the period of time begins to run shall not be included. The last calendar day shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday.

[4.10.19.8 NMAC - N, __/__/16]

4.10.19.9 REGISTRATION AND RECORDS SUBMISSION:

A. Registration:

(1) Performing entities shall register all cultural resource investigations conducted in the state of New Mexico in NMCRIS unless the investigation, in its entirety, occurs on tribal lands as defined in 36 CFR 800.16(x) and the Indian nation, tribe(s), or pueblo(s) associated with the land has a tribal historic preservation officer who has assumed all or part of the functions of SHPO pursuant to 54 U.S.C. § 302702.

(2) Performing entities shall register each cultural resource investigation and each associated cultural resource in NMCRIS according to the most recent version of the user's guide. If a performing entity does not have a NMCRIS account at the time it conducts an investigation, the performing entity shall either contact HPD to set up an account and then register the investigation or make arrangements with ARMS to register the investigation with ARMS's assistance.

B. Submittal of records:

(1) **Digital submittals:** Performing entities shall submit cultural resource records according to the most recent version of the user's guide by entering data on investigations and cultural resources into NMCRIS through the online electronic forms and through the online map service. After entering the data, the performing entity shall download the electronic forms with the online data entries for the investigation and for each resource and shall complete any remaining sections not available online. Once the forms are complete, the performing entity shall scan them and the required attachments, and upload the scanned forms and the cultural resource investigation reports into NMCRIS. If performing entities are unable to upload any forms or documents into NMCRIS, they shall either make arrangements with ARMS to upload the documents or they shall submit digital copies of the forms or documents to NMCRIS separately and concurrently with the submittal of the paper records.

(2) **Paper submittals:** Unless submitted to HPD by the report recipient, the performing entity shall submit one printed copy of the investigation's cultural resource reports, the NMCRIS information abstract form, the associated Laboratory of anthropology (LA) site records and historic cultural properties inventory (HCPI) forms, and any related materials to HPD for archiving in the records repository. Performing entities shall include the NMCRIS activity number, LA site numbers, and HCPI numbers associated with the relevant cultural resources on all documents they submit to NMCRIS and the records repository.

C. Failure to comply with this section:

(1) If the registrar discovers a violation of this section, the registrar may restrict, temporarily suspend, or prohibit future access to NMCRIS or the repository.

(2) An entity aggrieved by the registrar's decision may appeal. Appeals shall be submitted to the SHPO in writing within ten calendar days of the decision with a statement of reasons for the appeal.

(3) The SHPO shall respond in writing within ten calendar days of receipt of an appeal.

(4) The SHPO's decision on the appeal is DCA's final action on the matter.

D. Computation of time: In computing the period of time prescribed for appeal, the day from which the period of time begins to run shall not be included. The last calendar day shall be included in the computation unless it is a Saturday, Sunday or a day on which a legal holiday is observed. In such a case, the period of time runs to the close of business on the next regular workday.

[4.10.19.9 NMAC - N, __/__/16]

4.10.19.10 FEES:

A. Use of the records repository and NMCRIS is contingent upon the HPD's receipt of reasonable fees as provided in this rule. The SHPO shall expend the fees received solely for the maintenance and administration of the records repository and NMCRIS, consistent with HPD's appropriated budget. Expenditures for the maintenance and administration of the records repository and the NMCRIS include, but are not limited to, software licensing and maintenance, software development, computer equipment lease or purchase, contractual services, staff time, facilities, and supplies.

B. Fee schedule:

(1) **Access fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay an annual access fee that entitles ~~representatives~~ qualified users of the qualified institution to unlimited on-site use of the records repository and access to NMCRIS on the following basis: \$200 per year for qualified institutions with three or fewer supervisory staff; \$300 per year for qualified institutions with four to 10 supervisory staff; \$500 per year for qualified institutions with 11-20 supervisory staff; and \$800 per year for qualified institutions with 21 or more supervisory staff. As used in this paragraph, “supervisory staff” means supervisory archaeologists or crew chiefs who meet the qualifications outlined in 4.10.8.10 NMAC. Access fees are due each calendar year and shall accompany a signed institutional agreement.

(2) **Registration fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay registration fees for cultural resource investigations consistent with the following fee schedule.

(a) Fees for archaeological surveys are based on the total area surveyed as measured in acres, using the schedule below:

Class number	Survey size (acres +/-)	Survey Registration Fees
1	<2	\$25
2	2 to 4.99	\$50
3	5 to 9.99	\$75
4	10 to 19.99	\$100
5	20 to 39.99	\$125
6	40 to 79.99	\$200
7	80 to 119.99	\$300
8	120 to 199.99	\$400
9	200 to 399.99	\$500
10	400 to 599.99	\$800
11	600 to 999.99	\$1000
12	1,000 to 1,499.99	\$2000
13	1,500 to 1,999.99	\$2500
14	2,000 to 2,499.99	\$3000
15	2,500 to 3,000	\$3500
16	greater than 3,000 acres	\$500 more for each 500 acres or fraction thereof over 3,000 acres

(b) Fees for surveys that record all types of cultural properties are based on the total area of archaeological survey as measured in acres using the schedule above.

~~(b)~~(c) The fee is twenty dollars (\$20.00) to register damage assessments, regional research designs, cultural overviews or historic contexts, and small monitoring projects with five or fewer archaeological sites. The fee is seventy-five dollars (\$75.00) for monitoring projects with more than five archaeological sites and for all test excavation, excavation, or mitigation projects. Add fifteen dollars (\$15.00) to the seventy-five dollars (\$75.00) fee for each archaeological site.

(3) **Staff assistance fees:** With the exception of public agencies or tribal governments with a cooperative agreement, additional fees for HPD staff assistance with cultural resources records apply as follows:

(a) Qualified institutions shall pay seventy-five dollars (\$75.00) per-hour for assistance with records or map checks when the assistance time exceeds a one-half hour on a given business day, rounding increments to the next full hour.

(b) Qualified institutions shall pay one hundred fifty dollars (\$150) per hour for assistance with custom database queries and creation of electronic data files, with a one hour minimum and rounding increments to the next full hour.

(c) Assisted access users shall pay two hundred fifty (\$250) per hour for assistance, with a one hour minimum, and rounding increments to the next full hour.

(d) HPD may charge reasonable fees to make copies of records.

(4) **Fees for researchers:** Independent researchers and educational institutions engaged in academic research are not subject to any fees, other than copy fees, provided they have a current institutional agreement on file and they submit the results of the research to HPD in accordance with 4.10.19.9 NMAC.

C. Consolidated fee schedule: At least 60 days prior to implementation, HPD shall provide written notice to all qualified institutions of the date that the following “consolidated fee schedule” shall go into effect.

HPD shall also provide this notice on its website and may provide additional notice through other convenient methods. The “consolidated fee schedule” shall supersede the fee schedule outlined in Subsection B of this section on the date provided in the notice.

(1) **Access fees:** Authorized qualified users, designated by a qualified institution, shall have unlimited on-site use of the records repository and NMCRIS without paying access fees.

(2) **Registration fees:** With the exception of public agencies or tribal governments with a cooperative agreement, qualified institutions shall pay registration fees for cultural resource investigations consistent with the following fee schedule.

(a) Fees for ~~[cultural resource]~~ archaeological surveys are based on the total area surveyed as measured in acres, using the schedule below:

Class number	Survey size (acres +/-)	Survey Registration Fee
1	<2	\$35
2	2 to 4.99	\$65
3	5 to 9.99	\$100
4	10 to 19.99	\$130
5	20 to 39.99	\$170
6	40 to 79.99	\$260
7	80 to 119.99	\$390
8	120 to 199.99	\$520
9	200 to 399.99	\$650
10	400 to 599.99	\$1,040
11	600 to 999.99	\$1,300
12	1,000 to 1,499.99	\$2,600
13	1,500 to 1,999.99	\$3,250
14	2,000 to 2,499.99	\$3,900
15	2,500 to 3,000	\$4,550
16	greater than 3,000 acres	\$650 more for each additional 500 acres or fraction thereof over 3,000 acres

(b) Fees for surveys that record all types of cultural properties are based on the total area of archaeological survey as measured in acres using the schedule above.

~~(b)(c)~~ The fee is fifty dollars (\$50.00) to register ~~damage assessments, regional research designs, cultural overviews or historic contexts, and small monitoring projects with five archaeological sites or less surveys that are solely architectural in scope.~~ Add twenty-five dollars (\$25.00) to the fifty dollars (\$50.00) fee for each associated cultural property.

(d) The fee is fifty dollars (\$50.00) to register all non-survey cultural resource investigations. Add twenty-five dollars (\$25.00) to the fifty dollar (\$50.00) fee for each associated cultural resource.

(3) **Staff assistance fees:** With the exception of public agencies or tribal governments with a cooperative agreement, fees for HPD staff assistance with cultural resources records apply as follows:

(a) Qualified institutions shall pay seventy-five dollars (\$75.00) per hour for assistance with records or map checks that require more than one-half hour in a given day, in not less than one hour increments, rounding increments to the next full hour.

(b) Qualified institutions shall pay one hundred fifty dollars (\$150) per hour for assistance with custom database queries and creation of electronic data files rounding increments to the next full hour.

(c) Assisted access users shall pay two hundred fifty dollars (\$250) per hour for assistance rounding increments of an hour to the next full hour.

(d) HPD may charge reasonable fees to make copies of records.

(4) **Fees for researchers:** Independent researchers and educational institutions engaged in academic research are not subject to any fees, other than copy fees, provided they have a current institutional agreement on file and they submit the results of the research to HPD in accordance with 4.10.19.9 NMAC.

D. Cooperative agreement fees: Except in cases the SHPO determines the historic preservation benefits are significant, cooperative agreements shall provide annual financial assistance to HPD.

E. Delinquent accounts: Accounts with balances that remain unpaid for more than 90 days are delinquent. HPD shall terminate institutional agreements with entities that have delinquent accounts. [4.10.19.10 NMAC - Rp, 4.51.5.11 NMAC, __/__/16]

HISTORY OF 4.10.19 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System (filed 11/15/2002) repealed 1-1-2010.

Other History: 4 NMAC 51.3.2, named Fees, Subpart 2 - Archaeological Records Repository And Cultural Resource Information System, filed 8/16/96 was renumbered, reformatted and amended to 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System, effective 1/1/03. 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System (filed 11/15/2002) was replaced by 4.51.5 NMAC, Archaeological Records Repository And Cultural Resource Information System, effective 1-1-2010.

COMMENTS MATRIX on proposed rule 4.10.19 NMAC

Section 4.10.19.7 DEFINITIONS:

- **Subsection N: “Independent Researcher”**

Comment: Has there been any concern with an independent researcher using NMCRIS just to find sites? How do you weed out the researchers doing real research vs. the ones that might not be?

Response: Independent researchers must be Qualified Users. Beyond that, the NCMRIS application does not have the capability to permit a user partial or restricted access.

- **Subsection S: “Public Agency”**

Comment: The citation for section 106 should be 54 U.S.C. §306108.

Response: Corrected.

Comment: I know this section says state laws including but not limited to, but I wonder why this section of the CPA [Cultural Properties Act] is called out specifically and the other Acts are not mentioned?

Response: Added citations for Section 18-8-7 of the Prehistoric and Historic Sites Preservation Act, and Section 18-6A-5 of the Cultural Properties Protection Act.

- **Subsection U: “Qualified User”**

Comment: There are some agencies that have cultural resource managers who do not meet these qualifications, nor have the relevant education or training (for some reason, they are very often biologists). Not being provided a NMCRIS account would severely hamper their ability to do their job.

Response: Text revised to add "... or other appropriate education, professional experience, and training as determined by the registrar."

Comment: A public agency, like Santa Fe County, and tribal governments may have a cooperative agreement but might not have a qualified user as it is defined. How does this work? When I read this, the user has to be on the SHPO directory or have a BA, etc.

Response: Same as above.

4.10.19.8 ACCESS TO RECORDS REPOSITORY AND NMCRIS:

- **Subsection C: Independent Researchers**

Comment: "Independent Researchers" should be bolded.

Response: Corrected.

4.10.19.9 REGISTRATION AND RECORDS SUBMISSION:

- **Paragraph 2 of Subsection B: Paper submittals**

Comment: Instead of calling out the individual forms by name, should the rule just say "appropriate recording forms" so that the acequia form and any other forms that might be developed in the future like a landscape form? Otherwise the acequia form should be added in this list.

Response: No change. The acequia form is a variant of the HCPI form and not a stand-alone document.

4.10.19.10 FEES:

- **Paragraph 1 of Subsection B: Access fees**

Comment: Second line, change "representatives" to "qualified users." It seems that the access fees really should be based upon the number of qualified users, not supervisory staff. But since the access fees are on their way out, it may not be important to make such a change here.

Response: Changed "representatives" to "qualified users" in the second line. The references to supervisory staff were retained, a carry-over from the fee structure in the previous rule, 4.51.11 NMAC.

- **Paragraph 2 of Subsection B: Registration fees**

Comment: This says "cultural resource investigations," but the fees are for "archaeological investigations" and archaeological sites.

Response: The current fee schedule has been carried over from the previous rule with as little alteration as possible, and the fee structure was based on archaeological surveys and registration of archaeological sites. See also Response to Comment on the consolidated

fee schedule (Paragraph C of Subsection 4.10.19.10 NMAC). A new subparagraph (b) was added to clarify fees for cultural resource investigations that record both archaeological and architectural resources.

- **Subparagraph (a) [archaeological surveys]**

Comment: What about architectural surveys only?

Response: Under the current fee schedule HPD does not charge registration fees for surveys that are solely architectural in scope. HPD will charge for these surveys when the consolidated fee schedule is implemented (see Subsection C of Section 4.10.19.10 NMAC).

- **Subparagraph (b) [architectural surveys]**

Comment: What about HCPI's? Does a [new subsection] need to be added to address architectural only surveys and HCPI's?

Response: Under the current fee schedule HPD does not charge "per-resource" fees for architectural resources. HPD will charge for these resources when the consolidated fee schedule is implemented (Subsection C of Section 4.10.19.10 NMAC).

- **Paragraph 2 of Subsection C: Registration fees [in consolidated fee schedule]**

Comment: The description of fees (particularly subsections C[2][a and b] still seem heavily weighted toward archaeological investigations/properties/documents, ignoring the architectural and other investigations/properties/documents that are starting to be incorporated into the NMCRIS system. If they are to become a part of NMCRIS, and if it is foreseen that much of the research of these documents would be done through NMCRIS as is done for archaeological investigations, there may need to be more comprehensive and include a list of the types of documents that require fees. For example, do HABS recordings fall under the list? This is particularly important because a whole new group of qualified users (Architectural historians, etc.) who have neither previously used NMCRIS nor paid any sort of registration fees in the past will be using the system, and all of us will need clear guidance.

Response: Several changes were made to clarify registration fees for different situations: a new subparagraph (b) was added to clarify registration fees for surveys that record both archaeological and architectural resources; a new subparagraph (c) was added to clarify registration fees for surveys that are solely architectural in scope; and a new subparagraph (d) was added for all non-survey cultural resource investigations.

Further guidance on the types of resource documentation (including HABS/HAER recordings) will be provided in an updated version of the NMCRIS User's Guide.

Comment: I would like to recommend that the fee schedule... be based not on acreage (a very archaeological criterion), but on the number of cultural resources for which records (LA and HCPI: newly discovered and updates) are submitted for a particular investigation. The fee should be calibrated to the burden put on the record keeping system. When they are based on acreage this calibration does not exist; however, if based on the number of properties recorded, there is a direct calibration...

Response: No change was made. Fees tied to associated resources could more accurately reflect the data entry, storage, and preservation costs of records for a given project. However, HPD has opted not to make this change based upon the following:

1. Many surveys are negative; they either find no cultural resources of any kind or they only find isolated artifacts/features. There are costs associated with these surveys that need to be reflected in the fee schedule.
2. Charging per resource might provide a financial incentive not to record newly discovered archaeological sites.
3. A performing agency bidding on a project normally knows in advance the acreage to be surveyed. The agency can use this knowledge to make an accurate estimate of the registration fee. The agency can then incorporate this estimate into their bid, thereby passing the cost on to their client. On the other hand, it is impossible to accurately predict the number of archaeological sites that might be discovered during survey. It would therefore be impossible to accurately estimate the per-resource registration fee in time to incorporate it into a bid.
4. Changing the fee structure in this way would have a dramatic and unpredictable effect upon the revenues received through registration fees, especially in the first year after implementation. Given that program budgets are established two years ahead a dramatic change in revenues (either up or down) could seriously impact the bureau and possibly reduce the level of service currently provided.

○ **Subparagraph (a): Registration Fees [surveys]**

Comment: How would architectural surveys be calculated since they don't do it the same way as archaeologists?

Response: A new subparagraph (c) was added to clarify registration fees for surveys that are purely architectural in scope. The consolidated fee schedule charges a flat fee of fifty dollars (\$50.00) to register the survey and charges twenty-five dollars (\$25.00) for each associated resource rather than by acreage.

○ **Subparagraph (b), Registration Fees [testing, excavation projects]**

Comment: How about testing or excavation projects? ... What would the fee be?

Response: New subparagraph (d) was added to clarify that all non-survey cultural resource investigations will be charged that flat fee of fifty dollars (\$50.00) plus twenty-five dollars (\$25.00) per associated cultural resource.