

Internal Revenue Service Revised Form 990 (2008)
SAMPLE GOVERNANCE POLICIES

Background

The Internal Revenue Service has issued a new Form 990 annual tax return/report that must be submitted by most federal income tax exempt organizations, including trade associations, professional societies, cause/social welfare groups, and charitable/ scientific/educational organizations. Instructions for the form have also been issued.

The new Form 990 is to be used beginning with the filing for 2008, the one a calendar year organization will file by May 15, 2009 (for non-calendar-year organizations, the new form is to be first used for the tax year that began in 2008).

To a significant extent, the revised Form 990 is IRS's reaction to concerns expressed by key committees in Congress for greater disclosure and improved governance in nonprofit tax-exempt organizations. IRS also asserts its view that appropriate governance enhances compliance with federal income tax exemption requirements.

Among other new features, the form asks in Part VI if the filing organization has adopted a series of five governance policies; the organization must answer "yes" or "no" for each. While a "no" answer does not indicate any violation of law or inconsistency with federal income tax exemption requirements, it could trigger scrutiny by the IRS. To minimize that risk, many organizations using the new form will want to be able to answer "yes" to all five of these governance policy questions.

Each governance policy must be adopted by the end of the year for which the form is being submitted if the organization is to answer "yes" on the Form 990. While not specified by the IRS, it would be typical for such policies to be adopted by the organization's principal governing body such as its board of directors.

Presented here are sample governance policies for nonprofit tax-exempt organizations in basic versions that reflect the narrowly-defined IRS definitions/instructions for Part VI of the new Form 990. Each would likely be sufficient to permit the organization to respond "yes" to the Form 990 question about that policy. Many organizations may prefer expanded or enhanced versions of the policies; if the essential elements are maintained, those should still suffice for Form 990 purposes.

Nonprofit tax-exempt organizations should consult with their own legal counsel regarding governance policies to assure compliance with state nonprofit corporation laws, with the organizations' charters and bylaws, and with other legal or regulatory schemes such as for employment, document retention, etc.



Whistleblower Policy

This Whistleblower Policy of the New England Mechanical Contractors Association, Inc (NEMCA or Association) (1) encourages staff and volunteers to come forward with credible information on illegal practices or serious violations of adopted policies of NEMCA; (2) specifies that NEMCA will protect the person from retaliation; and (3) identifies where such information can be reported.

1. **Encouragement of reporting.** NEMCA encourages complaints, reports or inquiries about illegal practices or serious violations of the Association's policies, including illegal or improper conduct by the Association itself, by its leadership, or by others on its behalf. Appropriate subjects to raise under this policy would include financial improprieties, accounting or audit matters, ethical violations, or other similar illegal or improper practices or policies, including matters of alleged discrimination or harassment.
2. **Protection from retaliation.** NEMCA prohibits retaliation by or on behalf of the Association against staff or volunteers for making good faith complaints, reports or inquiries under this policy or for participating in a review or investigation under this policy. This protection extends to those whose allegations are made in good faith but prove to be mistaken. The Association reserves the right to discipline persons who make bad faith, knowingly false, or vexatious complaints, reports or inquiries or who otherwise abuse this policy.
3. **Where to report.** Complaints, reports or inquiries may be made under this policy on a confidential or anonymous basis. They should describe in detail the specific facts demonstrating the bases for the complaints, reports or inquiries. They should be directed to the NEMCA's chief employed executive or President of the Board of Directors; if both of those persons are implicated in the complaint, report or inquiry, it should be directed to the President-Elect or Executive Secretary/Counsel. NEMCA will conduct a prompt, discreet, and objective review or investigation. Staff or volunteers must recognize that NEMCA may be unable to fully evaluate a vague or general complaint, report or inquiry that is made anonymously.

Peter Comeau, President



Document Retention and Destruction Policy

This Document Retention and Destruction Policy of the New England Mechanical Contractors Association. (“Association” or “NEMCA”) identifies the record retention responsibilities of staff, volunteers, members of the Board of Directors, and outsiders for maintaining and documenting the storage and destruction of the Association’s documents and records.

1. **Rules.** NEMCA’s staff, volunteers, members of the Board of Directors and outsiders (i.e., independent contractors via agreements with them) are required to honor these rules: (a) paper or electronic documents indicated under the terms for retention below will be transferred to and maintained by the administrative staff of the Association; (b) all other paper documents may be destroyed after three years; (c) all other electronic documents may be deleted from all individual computers, data bases, networks, and back-up storage after one year; and (d) no paper or electronic documents will be destroyed or deleted if pertinent to any ongoing or anticipated government investigation or proceeding or private litigation.
2. **Terms for retention.**
 - a. Retain permanently:
 - *Governance records* – Charter and amendments, Bylaws, other organizational documents, governing board and board committee minutes.
 - *Tax records* – Filed state and federal tax returns/reports and supporting records, tax exemption determination letter and related correspondence, files related to tax audits.
 - *Intellectual property records* – Copyright and trademark registrations and samples of protected works.
 - *Financial records* – Audited financial statements, attorney contingent liability letters.
 - b. Retain for ten years:
 - *Pension and benefit records* -- Pension (ERISA) plan participant/beneficiary records, actuarial reports, related correspondence with government agencies, and supporting records.
 - *Government relations records* – State and federal lobbying and political contribution reports and supporting records.
 - c. Retain for three years:
 - *Employee/employment records* – Employee names, addresses, social security numbers, dates of birth, INS Form I-9, resume/application materials, job descriptions, dates of hire and termination/separation, evaluations, compensation information, promotions, transfers, disciplinary matters, time/payroll records, leave/comp time/FMLA, engagement and discharge correspondence, documentation of basis for independent contractor status (retain for all current employees and independent contractors and for three years after departure of each individual).
 - *Lease, insurance, and contract/license records* – Software license agreements, vendor, hotel, and service agreements, independent contractor agreements, employment agreements, consultant agreements, and all other agreements (retain during the term of the agreement and for three years after the termination, expiration, non-renewal of each agreement).
 - d. Retain for one year:
 - *All other electronic records, documents and files* – Correspondence files, past budgets, bank statements, publications, employee manuals/policies and procedures, survey information.
3. **Exceptions.** Exceptions to these rules and terms for retention may be granted only by the Association’s chief staff executive or President of the Board.

Peter Comeau, President



Policy on Process for Determining Compensation

This Policy on the Process for Determining Compensation of the New England Mechanical Contractors Association, Inc (“Association” or “NEMCA”) applies to the compensation of the following persons employed by the Association:

X The Organization’s **chief employed executive**¹ (CHECK IF APPLICABLE)
_____ Other **Officers**² or **Key Employees**³ of the Association by title: _____ (CHECK IF APPLICABLE; SUPPLY TITLES).

The process includes all of these elements: (1) review and approval by the Executive Committee or compensation committee of the Association; (2) use of data as to comparable compensation; and (3) contemporaneous documentation and recordkeeping.

- 1. Review and approval.** The compensation of the person is reviewed and approved by the Executive Committee or compensation committee of NEMCA, provided that persons with conflicts of interest with respect to the compensation arrangement at issue are not involved in this review and approval.
- 2. Use of data as to comparable compensation.** The compensation of the person is reviewed and approved using data as to comparable compensation for similarly qualified persons in functionally comparable positions at similarly situated organizations.
- 3. Contemporaneous documentation and recordkeeping.** There is contemporaneous documentation and recordkeeping with respect to the deliberations and decisions regarding the compensation arrangement.

Peter Comeau, President

¹ **Chief employed executive** – The CEO (i.e., Chief Executive Officer), executive director, or top management official (i.e., a person who has ultimate responsibility for implementing the decisions of the Association’s governing body or for supervising the management, administration, or operations of the Association).

² **Officer** – A person elected or appointed to manage the Association’s daily operations, such as a president, vice-president, secretary or treasurer. The officers of the Association are determined by reference to its organizing document, bylaws, or resolutions of its governing body, or as otherwise designated consistent with state law, but at a minimum include those officers required by applicable state law. Include as officers the Association’s top management official and top financial official (the person who has ultimate responsibility for managing the Association’s finances).

³ **Key Employee** – An employee of the Association who meets all three of the following tests: (a) \$150,000 Test: receives reportable compensation from the Association and all related organizations in excess of \$150,000 for the year; (b) Responsibility Test: the employee: (i) has responsibility, powers, or influence over the Association as a whole that is similar to those of officers, directors, or trustees; (ii) manages a discrete segment or activity of the Association that represents 10% or more of the activities, assets, income, or expenses of the Association, as compared to the Association as a whole; or (iii) has or shares authority to control or determine 10% or more of the Association’s capital expenditures, operating budget, or compensation for employees; and (c) Top 20 Test: is one of the 20 employees (that satisfy the \$150,000 Test and Responsibility Test) with the highest reportable compensation from the Association and related organizations for the year



Joint Venture Policy

This Joint Venture Policy of the New England mechanical Contractors Association, Inc (“Association” or “NEMCA”) requires that NEMCA evaluate its participation in joint venture arrangements under Federal tax law and take steps to safeguard the Association’s exempt status with respect to such arrangements. It applies to any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity as further defined in this policy.

1. **Joint ventures or similar arrangements with taxable entities.** For purposes of this policy, a joint venture or similar arrangement (or a “venture or arrangement”) means any joint ownership or contractual arrangement through which there is an agreement to jointly undertake a specific business enterprise, investment, or exempt-purpose activity without regard to: (1) whether NEMCA controls the venture or arrangement; (2) the legal structure of the venture or arrangement; or (3) whether the venture or arrangement is taxed as a partnership or as an association or corporation for federal income tax purposes. A venture or arrangement is disregarded if it meets both of the following conditions:
 - (a) 95% or more of the venture’s or arrangement’s income for its tax year ending within NEMCA’s tax year is excluded from unrelated business income taxation [including but not limited to: (i) dividends, interest, and annuities; (ii) royalties; (iii) rent from real property and incidental related personal property except to the extent of debt-financing; and (iv) gains or losses from the sale of property]; and
 - (b) the primary purpose of the NEMCA’s contribution to, or investment or participation in, the venture or arrangement is the production of income or appreciation of property.
2. **Safeguards to ensure exempt status protection.** NEMCA will: (1) negotiate in its transactions and arrangements with other members of the venture or arrangement such terms and safeguards adequate to ensure that the Association’s exempt status is protected; and (2) take steps to safeguard NEMCA’s exempt status with respect to the venture or arrangement. Some examples of safeguards include:
 - (a) control over the venture or arrangement sufficient to ensure that it furthers the exempt purpose of the association;
 - (b) requirements that the venture or arrangement gives priority to exempt purposes over maximizing profits for the other participants;
 - (c) that the venture or arrangement not engage in activities that would jeopardize NEMCA’s exemption; and
 - (d) that all contracts entered into with the association be on terms that are arm’s length or more favorable to NEMCA.



Conflict of Interest Policy

Policy:

It is the intent of the New England Mechanical Contractors Association, Inc (NEMCA) to conduct the activities of the Association in accordance with the highest ethical standards. Consistent with that intent, it shall be the policy of NEMCA that members who serve in a leadership capacity, whether as Officers, Directors, Committee or Task Force Chairs, shall at all times act in the best interests of NEMCA and avoid situations that may be construed as conflicts of interest. In their capacity as leaders of NEMCA, they must give undivided loyalty to NEMCA and subordinate their personal, individual business, and other interests when making decisions about NEMCA operations, programs and business transactions.

The purpose of this policy is to help inform the Officers, Directors, Committee and Task Force Chairs (“Leaders”) about what constitutes an actual or potential conflict of interest and to provide procedures to ensure that conflicts of interest are disclosed and addressed.

All conflicts of interest are not necessarily prohibited or harmful to NEMCA. However, all actual and potential conflicts must be fully disclosed and the interested Leader(s) must be excused from participating in any discussion and voting on the related matter(s).

Definitions and Examples:

1. A conflict of interest is a transaction or relationship which presents or may present a conflict between a Leader’s obligations to NEMCA when making decisions about NEMCA programs, operations or business transactions, and the Leader’s personal, individual business, third party or other interests.

“Making decisions about NEMCA programs, operations, or business transaction” means recommending or selecting a vendor or service provider for a business transaction; initiating, recommending or approving a purchase, an investment or a contract; drafting or negotiating the terms of such a contract; or authorizing or making payments from NEMCA accounts. This definition is intended to include not only transactions for NEMCA’s procurement of goods and services, but also for the provision of services by NEMCA.
2. A “potential conflict of interest” exists where the Leader, or a close relative or household member, is an officer, director, employee, partner or trustee of an entity seeking to do business with NEMCA.

A “potential conflict of interest” also exists where the Leader is (or expects to be) retained as a paid consultant or contractor by an entity which seeks to do business with NEMCA.
3. A “potential conflict of interest” exists whenever a transaction will entail remuneration in the form of money or anything else of substantial value to the Leader, or to a close relative or household member.
4. A “potential conflict of interest” exists when a Leader has an interest in an entity which is in competition with another entity seeking to do business with NEMCA, if the Leader’s position gives him or her access to proprietary or other privileged information which could benefit the entity in which he or she has an interest.
5. A “possible conflict of interest” exists when a Leader is a trustee, director, officer or employee of a not-for-profit organization which is seeking to do business with or have a significant connection with NEMCA or is engaged in activities which could be said in a business context to be “in competition with” the operations or programs of NEMCA.

Procedures:

1. All actual and potential conflicts of interest shall be disclosed to the President and the Executive Committee through an annual disclosure form and/or whenever a conflict arises.
2. The disinterested members of the NEMCA Executive Committee shall make a determination as to whether a conflict exists and what subsequent action is appropriate, if any. The NEMCA Executive Committee shall inform the Board of such determination and action. The Board shall retain the right to modify or reverse such determination and action, and retain the ultimate enforcement authority with respect to the interpretation and application of the policy.
3. Until a determination is made with respect to a conflict of interest, and/or if a conflict is deemed to exist, an interested Leader shall refrain from participating in the deliberations or the vote on the related matter, and shall not be counted in the quorum for the meeting.
4. On an annual basis, all Leaders shall be provided with a copy of this policy and required to complete and sign the acknowledgment and disclosure form below. All completed forms shall be provided to and reviewed by the NEMCA Executive Committee, as well as all other conflict information provided by Leaders. Copies of the forms shall be held by the Executive Vice President in the files of NEMCA.

This Policy shall be reviewed periodically and updated as necessary for proper guidance of all those who serve NEMCA in a leadership capacity.

Approved by VOTE of the NEMCA Board of Directors: December 18, 2008

Acknowledgment:

I have read the NEMCA Conflict of Interest Policy set forth above and agree to comply fully with its terms and conditions at all times during my service to NEMCA in a leadership capacity. If at any time following the submission of this form I become aware of any actual or potential conflicts of interest, or if the information provided below becomes inaccurate or incomplete, I will promptly notify the NEMCA President in writing.

Disclosure of Actual or Potential Conflicts of Interest:

Other Organizations which you serve in a leadership capacity:

Printed Name:

Signature:

Date: _____