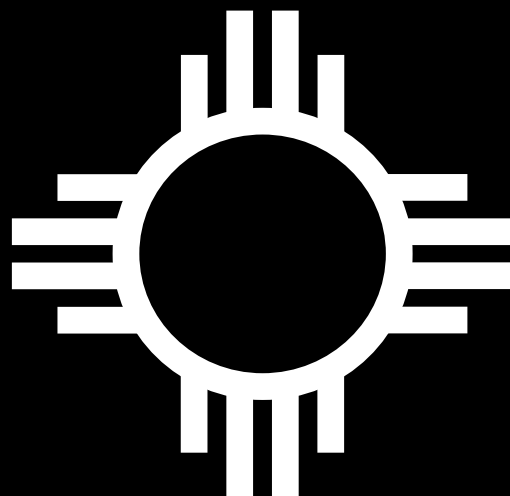


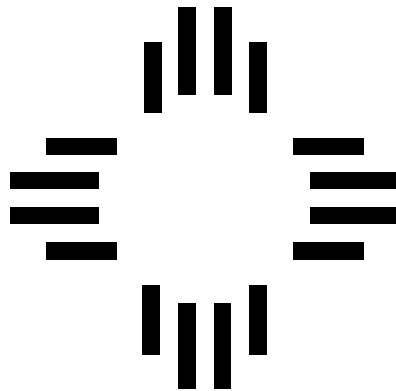
**NEW
MEXICO
REGISTER**



Volume XV
Issue Number 21
November 15, 2004

New Mexico Register

**Volume XV, Issue Number 21
November 15, 2004**



The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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New Mexico Register

Volume XV, Number 21

November 15, 2004

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Effective Date and Validity of Rule Filings

Rules published in this issue of the New Mexico Register are effective on the publication date of this issue unless otherwise specified. "No rule shall be valid or enforceable until it is filed with the records center and published in the New Mexico register as provided by the State Rules Act. Unless a later date is otherwise provided by law, the effective date of a rule shall be the date of publication in the New Mexico register." Section 14-4-5 NMSA 1978.

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Notices of Rulemaking and Proposed Rules

NEW MEXICO PUBLIC ACCOUNTANCY BOARD

PUBLIC ACCOUNTANCY BOARD NOTICE OF PROPOSED RULEMAKING

The New Mexico Public Accountancy Board ("Board") will convene a public hearing on Monday, December 6, 2004. The hearing will be held at 9:30 a.m. in the Conference Room of the Regulation and Licensing Department Building, 5200 Oakland NE, Suite D, Albuquerque, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The hearing will be held for the purpose of affording members of the public the opportunity to offer comments on proposed amendments to existing Board rules. The hearing will be followed by a regular Board meeting in the same location.

The Board staff will recommend that the Board adopt amendments to the following rules:

NMAC NUMBER	RULE NAME
16.60.1 NMAC	General Provisions
16.60.2 NMAC	Certified Public Accountant (CPA) Examination Requirements
16.60.3 NMAC	Licensure and Continuing Professional Education Requirements

Notice of the hearing and Board meeting has been published in the New Mexico Register and in the Albuquerque Journal. Interested parties may access the proposed amendments on the Board's website at www.rld.state.nm.us/b&c/accountancy. Copies may also be obtained by contacting the Board office at (505) 222-9852. Written comments regarding the proposed amendments should be directed to Ms. Patricia Soukup, Executive Director, Public Accountancy Board, 5200 Oakland NE, Suite D, Albuquerque, New Mexico 87113 or faxed to (505) 222-9855. Comments must be received by 5:00 p.m. on Thursday, December 2, 2004; however, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting should contact the Board office at (505) 222-9852 by 5:00 p.m. on November 29, 2004.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

NOTICE OF PUBLIC HEARING

Protective Services (PS) will hold a public hearing in Santa Fe on Wednesday, December 15, 2004 from 1:00 p.m. to 2:00 p.m. Interested parties are invited to make comments regarding the repeal of the current Family Preservation Services policy and the promulgation of the proposed In-home Family Services Policy.

The hearing will be held at the Public Employees Retirement Association (PERA)

Building at 1120 Paseo de Peralta, Santa Fe, NM 87501, Room 227. The PERA building is accessible to people with disabilities. Written comments are provided the same weight as comments received during the public hearing. Documents are available in different formats to accommodate a particular disability. Anyone seeking such assistance must provide two weeks notice to receive any written material in an alternative format by calling 505-827-8400. If assistance is required to attend the hearing, please call 505-827-8400 to arrange accommodation.

The current and proposed policies may be accessed by contacting Mark Ruttkay at 505-827-8445. Copies can also be requested through the use of the New Mexico relay system by calling 505-827-7586.

NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION

Notice of Hearing and Proposed Amendments to Rule 2.40.2 NMAC, the Regulations Governing the Approval of Contracts for the Purchase of Professional Services

New Mexico Department of Finance and Administration

The Department of Finance and Administration (DFA) hereby gives notice that DFA will conduct a public hearing at Mabry Hall, Department of Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501, on December 16, 2004 at 10:30 a.m. concerning the proposed amendments to Rule 2.40.2 NMAC, the Regulations Governing the Approval of Contracts for the Purchase of Professional Services. The amendments make changes to comport with statutory amendments that have occurred since 1998; deletes the requirement that the Attorney General review and approval of all contracts or contract amendments which cause expenditures under the contract to equal or exceed \$200,000; adds the requirement that the form of professional services contracts and amendments conform to requests for proposals and comply with the Accountability in Government Act, Sections 6-3A-1 et seq. NMSA 1978; limits automatic retroactive approval of contracts and contract amendments within thirty (30) days of the first day of each fiscal year; adds the requirement that contracts and contract amendments shall be signed by the state agency's legal counsel certifying that they are legally sufficient and deletes review for legal sufficiency from the contract review bureau's duties.

Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m., December 13, 2004, to the Office of the Secretary, DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed rules are available from Ms. Renee Windham, Room 180, Bataan Memorial Building, Santa Fe, New Mexico, 87501 or at 505-827-4985 or from the DFA internet website <http://www.state.nm.us/clients/dfa/index.html>.

TITLE 2 PUBLIC FINANCE
CHAPTER 40 EXPENDITURE OF PUBLIC FUNDS
PART 2 GOVERNING THE APPROVAL OF CONTRACTS FOR THE PURCHASE OF PROFESSIONAL SERVICES

2.40.2.1 ISSUING AGENCY:

Department of Finance and Administration. [5-15-97; 2.40.2.1 NMAC - Rn, 2 NMAC 40.2.1, xx-xx-2004]

2.40.2.2 SCOPE:

A. The contracts review bureau of the department of finance and administration shall review and approve all professional services contracts which result in expenditures equal to or greater than fifteen hundred dollars (\$1500), excluding gross receipts tax, and all amendments to those contracts for all state agencies except as provided in Subsections B and C of Section 2.40.2.2 NMAC of this rule. Contracts expending public funds in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 as amended are included within the scope of this rule.

B. The following state agencies are currently exempt from submitting professional services contracts and amendments through the contracts review bureau of the department of finance and administration:

(1) state agencies within the judicial branch of government as defined by the New Mexico Constitution, Article VI;

(2) state agencies within the legislative branch of government as defined by the New Mexico Constitution, Article IV;

(3) state educational institutions as defined by the New Mexico Constitution, Article XII, Section 11 and Chapter 21, Articles 13, 14, 16 and 17 NMSA 1978;

(4) the state fair pursuant to Section 16-6-8 NMSA 1978;

(5) the New Mexico public school insurance authority pursuant to Sections ~~[22-2-6-6]~~ 22-29-6 (F) and ~~[22-2-6-8]~~ 22-29-8 NMSA 1978 for contracts for procuring goods or services and paying for insurance or insurance-related services;

(6) the New Mexico mortgage finance authority pursuant to Section 58-18-20 NMSA 1978;

~~[(7) the peanut commission pursuant to Section 76-17-8 NMSA 1978];~~

~~[(8)]~~ (7) the livestock board pursuant to Section 77-2-10 NMSA 1978; and

~~[(9)]~~ (8) other state agencies exempt by statute.

C. Pursuant to Section 6-5-9 NMSA 1978, the secretary of the department of finance and administration may exempt a state agency's contracts from contracts review bureau review and approval when the secretary of the depart-

ment of finance and administration determines that efficiency or economy so requires. A state agency seeking an exemption must:

(1) apply in writing to the secretary of the department of finance and administration; and

(2) meet all of the following requirements:

(a) issue its own warrants;

(b) be exempt from prior submission of vouchers or purchase orders to the financial control division of the department of finance and administration;

(c) receive the majority of its money from non-general fund sources;

(d) maintain pre-audit and post-audit fiscal accounting controls;

(e) maintain and operate its own administrative unit for procurement and controls its own encumbrance of funds available for professional service contracts;

(f) provide administrative control and review of professional services contracts through its own administrative unit; and

(g) employs in-house counsel to prepare, review, and approve professional services contracts for form and legal sufficiency and to advise the state agency with respect to all applicable laws and regulations; provided, however, that the attorney general shall also review and approve all contracts subject to Subparagraphs (a) ~~or~~ ~~(b)~~ of Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this rule prior to approval and execution by the state agency. [7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 7-1-01; 2.40.2.2 NMAC - Rn & A, 2 NMAC 40.2.2, xx-xx-2004]

2.40.2.3 STATUTORY AUTHORITY:

A. Sections 13-1-118 and 13-1-125 NMSA 1978 authorize the department of finance and administration to review professional services contracts of state agencies as to form, legal sufficiency, and budgetary requirements if required by its regulations.

B. Section 6-5-3 NMSA 1978 provides that before any state agency enters into a contract expending public funds, the financial control division of the department of finance and administration shall determine the authority for such proposed expenditure. After the authority for the expenditure is determined, the appropriate fund shall be shown by the financial control division to be encumbered to the extent of the proposed expenditure. The financial control division may request, and the state agency shall provide, such documentation and other information as the financial control division deems necessary to justify the state agency's determination of

authority. The financial control division may disapprove the proposed expenditure if it determines that the justification is inadequate or is not substantiated by law.

C. Section 6-5-6 NMSA 1978 requires the financial control division of the department of finance and administration to determine that the proposed expenditure does not exceed the state agency's appropriation, does not exceed the periodic allotment made to the state agency or the unencumbered balance of funds at its disposal, ~~[, and is for a purpose included within the appropriation or otherwise authorized by law]~~ The state agency shall determine that a proposed expenditure is for a public benefit and purpose consistent with the related appropriation and is necessary to carry out the statutory mission of the state agency prior to committing the state to the transaction.

D. Sections 9-1-5(E) and 9-6-5(E) NMSA 1978 provide that after notice and hearing, the secretary of the department of finance and administration may make and adopt such reasonable administrative and procedural rules and regulations as necessary to carry out the duties of the department of finance and administration and its divisions.

[7-1-76, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97; 2.40.2.3 NMAC - Rn & A, 2 NMAC 40.2.3, xx-xx-2004]

2.40.2.4 DURATION: Permanent.

[5-15-97; 2.40.2.4 NMAC - Rn, 2 NMAC 40.2.4, xx-xx-2004]

2.40.2.5 EFFECTIVE DATE: May 15, 1997 unless a different date is cited at the end of a section ~~[or paragraph]~~.

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98; 2.40.2.5 NMAC - Rn & A, 2 NMAC 40.2.5, xx-xx-2004]

2.40.2.6 OBJECTIVE: The purpose of this rule is to establish the procedures state agencies must follow and the requirements state agencies must meet in drafting, entering into, and seeking approval of professional services contracts. These procedures ensure compliance with Sections 6-5-3, 6-5-6, 13-1-118 and 13-1-125 NMSA 1978 as amended. [7-1-87, 5-15-97; 2.40.2.6 NMAC - Rn, 2 NMAC 40.2.6, xx-xx-2004]

2.40.2.7 DEFINITIONS:

A. "bureau" means the contracts review bureau of the administrative services division of the department of finance and administration;

B. "contract" means any agreement for the provision of professional services;

C. "contract brief" means the bureau paper form or electronic version which shall accompany all professional services contracts and amendments submitted to the bureau;

D. "contractor" as defined in Section 13-1-43 NMSA 1978 means any business having a contract with a state agency;

E. "department or DFA" means the department of finance and administration;

F. "form" means, at a minimum, that all contracts and amendments contain the provisions required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments;

G. "legal sufficiency" means, at a minimum, that all contracts and amendments contain the provisions required by law and that all required signatures have been obtained;

H. "procurement" as defined by Section 13-1-74 NMSA 1978 means purchasing, renting, leasing, lease purchasing or otherwise acquiring items of personal property, services or construction and includes all procurement functions, including but not limited to, preparation of specifications, solicitation of sources, qualification or disqualification of sources, preparation and award of the contract, and contract administration;

I. "Procurement Code" means Sections 13-1-28 to 13-1-199 NMSA 1978, as amended;

J. "professional services" as defined by Section 13-1-76 NMSA 1978 means the services of architects, archaeologists, engineers, surveyors, landscape architects, medical arts practitioners, scientists, management and systems analysts, certified public accountants, registered public accountants, lawyers, psychologists, planners, researchers, and persons or businesses providing similar services, except information system resources professional services as defined by paragraph (2) of Subsection B of GSD Rule 1.4.1.7 NMAC;

K. "regulation" as defined by Section 13-1-80 NMSA 1978 means any rule, order, statement or policy, as amended, issued by a state agency or a local public body that affects persons not members or employees of the issuer;

L. "retroactive approval to a contract or a contract amendment" means approval of a contract or contract amendment that was submitted to the bureau and

approved by the DFA secretary or his designee pursuant to 2.40.2.13 NMAC of this rule after the contractor has begun work pursuant to a request to perform work from a state agency employee or public officer with authority to make such a request;

M. "DFA secretary" means the secretary of the department of finance and administration;

N. "sole source contract or amendment to sole source contract" means a contract or amendment which fulfills the requirements of Sections 13-1-118 and 13-1-126 NMSA 1978, as amended; and

O. "state agency" means any department, agency, commission, council, board, advisory board, committee, or institution of the state of New Mexico, and does not include local public bodies.

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98; 2.40.2.7 NMAC - Rn & A, 2 NMAC 40.2.7, xx-xx-2004]

2.40.2.8 DELEGATION OF APPROVAL AUTHORITY:

A. The bureau shall review all contracts and contract amendments for professional services with state agencies as to form, ~~legal sufficiency~~ and budgetary requirements.

B. The bureau shall consult with the department's legal counsel as needed regarding any issues of legal sufficiency of a state agency's contracts and contract amendments for professional services.

~~[B.]~~ C. The DFA secretary shall delegate, in writing to certain members of the bureau, the authority to approve professional services contracts which result in expenditures equal to or greater than fifteen hundred dollars (\$1500), excluding gross receipts tax, and all amendments to those contracts except retroactive approval to contracts and contract amendments and sole source contracts and amendments to sole source contracts as provided herein.

[7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98, 7-1-01; 2.40.2.8 NMAC - Rn & A, 2 NMAC 40.2.8, xx-xx-2004]

2.40.2.9 FORM AND SUBMISSION:

A. All contracts and subsequent amendments shall be in a form and contain such provisions as required by the bureau, including but not limited to, a scope of work consistent with the request for proposals issued by the state agency if the contract was procured by a request for proposals and performance measures as defined by and in accordance with the Accountability in Government Act, Sections 6-3A-1 through 6-3A-9 NMSA 1978 and subsequent amendments;

B. All contracts and

amendments shall:

(1) be accompanied by a contract brief being in such form and containing such information as may be required by the bureau;

(2) be accompanied by a document prescribed by the financial control division of the department showing that funds have been encumbered to the extent of the contract, including any amendments to that contract. If the contract term includes more than one fiscal year, the contract must be accompanied by an encumbrance for the current fiscal year amount or, up to the total amount of the current appropriation available for that contract;

(3) be accompanied by a written request for approval from the secretary of the contracting state agency or his designee if the contract is subject to Subparagraphs (a) ~~or (b)~~ of Paragraph (1) of Subsection C of 2.40.2.10 NMAC of this Rule; and

(4) comply with Procurement Code regulations, GSD Rule 1.4.1 NMAC and subsequent regulations regarding indemnification and insurance.

[7-1-76, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98; 2.40.2.9 NMAC - Rn & A, 2 NMAC 40.2.9, xx-xx-2004]

2.40.2.10 REVIEW PROCEDURES:

A. State agencies must submit to the bureau for review:

- (1) sole source contracts;
- (2) amendments to sole source contracts;
- (3) retroactive approval to contracts; and
- (4) retroactive approval to contract amendments.

B. Bureau review:

(1) The bureau shall review all contracts or contract amendments for form, ~~legal sufficiency,~~ budgetary requirements and compliance with the requirements prescribed on the contract brief.

(2) No contract or contract amendment shall become binding or effective until signed and dated by a member of the bureau with contract approval authority.

C. Other review:

(1) Prior to the bureau's review, the attorney general shall review ~~and approve the following:~~

~~(a)~~ all contracts which may violate conflict of interest provisions of the Governmental Conduct Act, Sections 10-16-1 to 10-16-18 NMSA 1978, ~~or~~

~~[(b) all contracts or contract amendments which, in the aggregate, cause expenditures under the contract to equal or exceed two hundred thousand dollars (\$200,000), excluding gross receipts tax.]~~

(2) The bureau may submit any

contract or amendment to the attorney general or other legal counsel for review if the bureau is aware of legal issues concerning the contract or the amendment.

[7-1-76, 8-15-77, 7-1-78, 7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97; 2.40.2.10 NMAC - Rn, 2 NMAC 40.2.10, xx-xx-2004]

2.40.2.11 SMALL PURCHASES:

A contract for professional services having a value over \$1500 but not exceeding \$20,000 excluding applicable gross receipts taxes, except for the services of architects, landscape architects engineers, or surveyors for state public works projects, may be procured in accordance with the Procurement Code, Sections 13-1-28 to 13-1-199 NMSA 1978 and procurement code regulations, GSD [Rule 1 NMAC 5.2] Rule 1.4.1 NMAC or subsequent GSD regulations.

[7-10-85, 7-1-87, 5-15-97, 6-15-98, 7-1-01; 2.40.2.11 NMAC - Rn & A, 2 NMAC 40.2.11, xx-xx-2004]

2.40.2.12 SOLE SOURCE CONTRACT OR AMENDMENT TO SOLE SOURCE CONTRACT

A. A contract may be awarded without competitive sealed proposals, regardless of the estimated cost, when a central purchasing office of a contracting state agency makes a written determination, signed by the secretary of the contracting state agency or his designee, which states that a good-faith review of available sources has been conducted and that there is only one source for the required professional services. The written determination and an estimate of the dollar amount of the contract shall be submitted to the bureau for review and approval by the DFA secretary or his designee and shall include the following information:

(1) a detailed, sufficient explanation of the reasons, qualifications, proprietary rights, or unique capabilities that make the prospective contractor a sole source;

(2) an explanation of the criteria developed and specified by the state agency as necessary to perform the contract and upon which the state agency reviewed available sources;

(3) a description of the procedures used by the state agency in conducting a good faith review of available sources, including without limitation, a narrative description of all steps taken by the state agency as evidence of the good-faith review performance such as:

(a) researching trade publications and industry newsletters;

(b) reviewing telephone books or other advertisements;

(c) reviewing current contract;

(d) contacting similar service providers; and

(e) reviewing the state purchasing agents vendor list; and

(4) a list of all businesses contacted and an explanation of why those businesses could not perform the contract, or, a reasonable explanation of why the state agency has determined that no businesses, besides the prospective contractor, exist.

B. The bureau must obtain written approval of the agency's sole source determination from the DFA secretary or his designee prior to approving a sole source contract or amendment to a sole source contract.

[7-10-85, 7-1-87, 12-20-89, 5-15-97; 2.40.2.12 NMAC - Rn, 2 NMAC 40.2.12, xx-xx-2004]

2.40.2.13 RETROACTIVE APPROVAL FOR A CONTRACT OR CONTRACT AMENDMENT:

A. The [New Mexico] Procurement Code, Section 13-1-102, NMSA 1978, as amended, requires that all non exempt procurement (Section 13-1-98, NMSA 1978) by state agencies shall be achieved by competitive sealed bids or competitive sealed proposals except for small purchases, sole source procurements, emergency procurements, existing contracts and procurements from antipoverty program business. For professional services, the proposal and procurement process are not complete until a written contract or contract amendment is signed by the agency and the contractor and is approved by the DFA secretary or his designee and approved by the bureau.

B. For retroactive approval of contracts and contract amendments which fulfill all of the requirements of this rule and the Procurement Code, DFA will approve the date requested in writing by the agency on the brief accompanying the document as long as the requested approval date is within thirty days of [~~the date the document was received and date stamped by the bureau~~] the first day of each fiscal year.

C. For retroactive approval of contracts and contract amendments apart from the approval given pursuant to the provisions [of Subsection B of] 2.40.2.13 NMAC of this rule, DFA may grant additional retroactive approval to a contract or contract amendment, based upon rare and exceptional circumstances, where all of the following conditions are met:

(1) The professional services performed without DFA's prior approval of the contract did not occur as the result of repeated agency mistakes or willful misconduct;

(2) The failure to obtain DFA's retroactive approval will prevent the state

agency from fulfilling its statutory obligations;

(3) The state agency provides to DFA a written, factual, detailed explanation of the matters described in Paragraphs (1) and (2) of Subsection C of 2.40.2.13 NMAC, certified to be true by signature of the head of the state agency.

(4) The state agency requested, through a public officer or employee with authority to make such a request, the contractor to perform professional services that were then actually performed by the contractor in good faith reliance that it would be paid for those professional services.

D. The Procurement Code, Section 13 -1-182, NMSA 1978, as amended, governs situations in which DFA has denied a request for retroactive approval of a contract or contract amendment due to the state agency's failure to meet the requirements of Subsections B or C of 2.40.2.13 NMAC of this rule.

[7-10-85, 7-1-87, 12-20-89, 5-15-97, 6-15-98; 2.40.2.13 NMAC - Rn & A, 2 NMAC 40.2.13, xx-xx-2004]

2.40.2.14 EMERGENCY PROCUREMENT:

An emergency procurement of professional services may be made under the conditions provided in the Procurement Code and 1.4.1 NMAC or subsequent GSD regulations. Records of any emergency procurement of professional services, including the written determination of the basis for the emergency procurement being relied on by the state agency as justification for the emergency procurement, shall be maintained by the state agency for a minimum of three years and shall be made available by the state agency to the financial control division upon request.

[7-10-85, 7-1-87, 5-15-97, 6-15-98; 2.40.2.14 NMAC - Rn & A, 2 NMAC 40.2.14, xx-xx-2004]

2.40.2.15 COMPLIANCE :

State agencies must comply with federal and state statutes, rules, regulations and policies and [~~are encouraged to~~] shall have their state agency's legal counsel review all contracts and contract amendments certifying in writing that they are legally sufficient prior to submission to the bureau. Wrongful or mistaken approval by the bureau shall not be a defense to an action brought by or against the state agency on a contract.

[7-1-84, 7-10-85, 7-1-87, 12-20-89, 5-15-97; 2.40.2.15 NMAC - Rn & A, 2 NMAC 40.2.15, xx-xx-2004]

2.40.2.16 RECORDS:

A. Record inspection, record retention and record destruction relating to contracts shall be conducted in accordance with the Inspection of Public Records Act, Sections 14-2-1 to 14-2-12

NMSA 1978; the Public Records Act, Sections 14-3-1 to 14-3-23 NMSA 1978; and with Section 13-1-128 NMSA pertaining to sole source and emergency procurement; and Section 13-1-116 NMSA 1978 of the Procurement Code.

B. The bureau will retain original contracts, any subsequent amendments, and contract briefs in accordance with provisions of the Inspection of Public Records and Public Records Act. [5-15-97; 2.40.2.16 NMAC - Rn & A, 2 NMAC 40.2.16, xx-xx-2004]

2.40.2.17 RULE FILING: This rule shall be filed in accordance with the State Rules Act, Sections 14-3-24, 14-3-25, and 14-4-1 to 14-4-11 NMSA 1978 and shall become effective upon publication in the New Mexico Register. [5-15-97; 2.40.2.17 NMAC - Rn, 2 NMAC 40.2.17, xx-xx-2004]

HISTORY OF 2.40.2 NMAC:

Pre-NMAC History: The material in this Part was derived from that previously filed with the State Records Center and Archives: DFA 76-3, Technical and Professional Services and State Highway Department Contracts, June 25, 1976, filed 7-13-76.

DFA 77-6, Technical and Professional Service Contracts, August 15, 1977, filed 8-22-77.

DFA 78-2.1, Governing the Approval of Contracts for the Purchase of Professional Services, filed 6-30-78.

DFA Rule No. 84-3, Governing the Approval of Contracts for the Purchase of Professional Services, filed 6-28-84.

DFA Rule No. 85-1, Governing the Approval of Contracts for the Purchase of Professional Services, filed 7-10-85.

DFA 87-1, Governing the Approval of Contracts for the Purchase of Professional Services, filed 6-30-87.

History of Repealed Material: [RESERVED]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar Ave., Santa Fe, New Mexico, 87501-2786, on Thursday, December 16, 2004, from 1:30 p.m. to 3:30

p.m. regarding the following proposed rulemaking actions:

Rule Number	Rule Name	Proposed Action
6.30.2 NMAC	EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS: STANDARDS FOR EXCELLENCE	Amend rule by adding new paragraph (8) to subsection I of Section 10 of 6.30.2 NMAC
6.30.6 NMAC (Proposed NMAC No.)	EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS: SUSPENSION OF AUTHORITY OF A LOCAL SCHOOL BOARD, SUPERINTENDENT OR PRINCIPAL (Proposed rule name)	Adopt new rule

The proposed amendment to 6.30.2 NMAC will add a new paragraph (8) to subsection I of Section 10 relating to alternative dissection techniques. Proposed new rule 6.30.6 NMAC (EDUCATIONAL STANDARDS - GENERAL REQUIREMENTS: SUSPENSION OF AUTHORITY OF A LOCAL SCHOOL BOARD, SUPERINTENDENT OR PRINCIPAL) will implement Section 22-2-14 NMSA 1978 as amended by Laws 2004, Chapter 27. This proposed rule has been previously noticed.

Interested individuals may testify at the public hearing or submit written comments. Comments regarding the proposed amendment to 6.30.2 NMAC should be directed to Dr. Richard Reif, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (reif@ped.state.nm.us) or faxed to (505) 827-6694. Copies of the proposed amendment to 6.30.2 NMAC may be accessed on Department's website (<http://sde.state.nm.us/>) or obtained from Ms. Sylvia Lujan at (505) 827-6574. Comments regarding proposed new rule 6.30.6 NMAC should be directed to Willie R. Brown, General Counsel, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 (wbrown@ped.state.nm.us) or telefaxed to (505) 827-6681. Copies of the proposed rule may be accessed on Department's website (<http://sde.state.nm.us/>) or obtained from Ms. Mary Jimenez, Administrative Assistant, Office of General Counsel, at (505) 827-6641. Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting are asked to contact Ms. Jimenez as soon as possible. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC REGULATION COMMISSION

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION
TRANSPORTATION DIVISION**

IN THE MATTER OF THE)
ADOPTION OF PROPOSED)
AMENDMENTS TO)
THE COMMISSION'S MOTOR)
TRANSPORTATION RULES,) **Docket No. 03-00360-TR-P**
TRANSPORTATION DIVISION)
STAFF OF THE PUBLIC REGULATION)
COMMISSION, Petitioner.)

**SUPPLEMENTAL NOTICE OF
PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN

that the New Mexico Public Regulation Commission ("Commission") proposes to adopt various amendments to the Commission's Motor Transportation Rules.

On December 23, 2003, the Commission filed a Notice of Proposed Rulemaking in this docket. In the months of January and February 2004, four hearings were held in various cities in the state of New Mexico, and numerous written and oral comments were received.

On July 1, 2004, in a Commission work session, the Commission's General Counsel recommended that the Commission proceed with the adoption of the Motor Transportation Rules except for 18.3.4 NMAC and 18.3.5 NMAC ("Parts 4 and 5") because General Counsel believed that Parts 4 and 5 were not ready for adoption. The Commission at that July 1, 2004 work session sent Parts 4 and 5 back to Staff for additional proposed revisions. On September 20, 2004, Staff furnished General Counsel with Staff's proposed amendments to Parts 4 and 5. Having considered Staff's proposed amendments and being fully advised,

**THE COMMISSION FINDS
AND CONCLUDES:**

1. The Public Regulation Commission Act authorizes the Commission to "adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties." NMSA 1978, Section 8-8-4(B)(10). The Motor Carrier Act ("Act") vests with the Commission the duty to adopt rules necessary to implement and enforce the Motor Carrier Act. NMSA 1978, Section 65-2A-4(A)(9). See also, Section 65-2A-4(B)(4).

2. Staff recommends combining Parts 4 and 5 into one part, Part 4, entitled "Safety Requirements" ("New Part 4") containing the subject matter previously contained in Parts 4 and 5, "Qualification of Drivers" and "Operating Requirements," respectively. New Part 4 is attached to this Supplemental NOPR as "Exhibit 1", Staff's Proposed Comment Draft for Supplemental NOPR.

New Part 4 proposes a different regulatory scheme that establishes safety requirements for drivers, motor vehicles, and motor carriers and commuter services subject to the jurisdiction of the Commission based on whether drivers for a Commission-regulated entity are required under state or federal law to hold a commercial driver's license.

3. Staff states that it has formatted the proposed rule consistent with

the requirements for compilation into the New Mexico Administrative Code and, if the proposed rule is adopted, it would be contained in Title 18 of the New Mexico Administrative Code.

4. The Commission finds that it should consider adopting amendments to the Commission's Motor Transportation Rules as Staff proposes in Exhibit 1.

5. The Commission will take written comments on the rules proposed in this Supplemental NOPR from any interested person. Interested persons shall file their written comments no later than December 3, 2004. Any person wishing to respond to comments may do so by submitting written response comments no later than December 13, 2004. Comments suggesting changes to the proposed rules 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 rules shall be in legislative format. A copy of the proposed rule in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed changes to Exhibit 1 shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (3.5-inch floppy disk in Microsoft Word 95 or Microsoft Office 97 formats). The label on the floppy disk shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rule, shall bear the caption and docket number contained at the top of this Notice.

6. Comments on the proposed amendments to the Motor Transportation Rules shall be sent to, and additional copies of the proposed rule can be obtained from:

Bettie Cordova
ATTN: Proposed Motor
Transportation Rules
New Mexico Public Regulation
Commission
P.O. Box 1269
Santa Fe, NM 87504-1269
Telephone: (505) 827-4526

Copies of the proposed rules may also be downloaded from the Commission's Web Site, www.nmprc.state.nm.us, under "Transportation Division," then "Proposed Motor Transportation Rules."

7. The Commission will review all timely submitted written comments and will hold a public hearing to take oral comment regarding the proposed rule.

The schedule and location for the public hearing is as follows:

Tuesday, December 14, 2004 at 1:15 p.m., Marian Hall, 1st floor hearing room, 224 East Palace Avenue, Santa Fe, New Mexico.

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

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Bettie Cordova at (505) 827-4526 at least 48 hours prior to the commencement of the hearing.

10. Copies of this Notice should be sent to all persons on the Transportation Service List, to all motor carriers and ambulance services holding warrants, permits, or certificates issued by this Commission or its predecessor and to any other person requesting service, and should be published in four newspapers of general circulation in the state and in the *New Mexico Register*.

**IT IS THEREFORE
ORDERED:**

A. The amended Motor Transportation Rules, attached to this Supplemental NOPR as Exhibit 1 are proposed for adoption as permanent rules as provided by this Notice.

B. Interested persons shall file their written comments on the proposed rule as provided in this Notice.

C. A public hearing shall be held as provided in this Notice.

D. Staff of the Transportation Division shall mail a copy of this Notice, excluding Exhibit 1, to all persons on the Transportation Service List, to all motor carriers and ambulance services holding warrants, permits, or certificates issued by this Commission or its predecessor, and to any other person requesting service. Staff shall cause this Notice to be published in four newspapers of general circulation in the state and in the *New Mexico Register*, shall provide the Notice by e-mail or facsimile transmission to those persons who have so requested, and shall post a copy of the proposed rules on the Commission's Web Site.

E. This Notice is effective immediately.

**ISSUED under the Seal of the
Commission at Santa Fe, New Mexico,
this 12th day of October 2004.**

**NEW MEXICO PUBLIC
REGULATION COMMISSION**

HERB H. HUGHES, CHAIRMAN

DAVID W. KING,
VICE CHAIRMAN

LYNDA M. LOVEJOY,
COMMISSIONER

JEROME D. BLOCK,
COMMISSIONER

E. SHIRLEY BACA, COMMISSIONER

NEW MEXICO RESPIRATORY CARE ADVISORY BOARD

PUBLIC RULE HEARING AND REGULAR BOARD MEETING

Notice is hereby given that the New Mexico Respiratory Care Advisory Board will convene a public rule hearing at 1:00 p.m. on Monday, December 20, 2004. The hearing will be held in Hearing Room #1 at the West Capitol Complex located at 2550 Cerrillos Road in Santa Fe, New Mexico.

The purpose of the rule hearing is to consider for adoption proposed amendments to the following Board Regulations in 16.23 NMAC: PART 12, "*Continuing Education*"; PART 14, "*Scope of Practice Guidelines For Non-Licensed, Non-Exempted Persons*" and PART 16, "*Disciplinary Proceedings*."

Persons desiring to present their views on the proposed rules may write to request draft copies from the Board office at 2550 Cerrillos Road, 2nd Floor, Santa Fe, New Mexico 87505; or call (505) 476-4660 or 476-4624; or access them in the "*News*" link on the Board's Website at www.rld.state.nm.us/b&c/rcb. All written comments, mailed to the Board office or e-mailed to RespiratoryCareBd@state.nm.us or Carmen.payne@state.nm.us, must be submitted no later than Monday, December 6, 2004, in order for the Board members to receive the comments in their packets for review before the rule hearing. Persons wishing to present their comments at the hearing will need eight (8) copies of any comments or proposed changes for distribution to the Board and staff at the hearing.

A regular business meeting will follow the rule hearing during which action will be taken on the proposed rules. During the regular meeting, the Board may enter into Executive Session to discuss licensing matters.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign

language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4624 at least two weeks prior to the meeting or as soon as possible.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

AMENDED NOTICE OF PUBLIC HEARING

This notice amends the combined Notice of Public Hearing issued on September 2, 2004, only with respect to the last rules hearing noticed in the September 2 document.

Notice is hereby given that on Tuesday, November 30, 2004, commencing at 1:30 p.m., the Workers' Compensation Administration (WCA) will conduct a public hearing on changes to the medical fee schedule and Part 7 of the WCA Rules. The hearing will be conducted at the Workers' Compensation Administration, 2410 Centre Avenue S.E., Albuquerque, New Mexico. Videoconferencing may also be made available in the WCA Field Offices upon request.

Copies of the list of adjustments to the medical fee schedule will be available on November 15, 2004. Copies of the amendments to Part 7 will be available on November 1, 2004. Written comments pertaining to the amendments to the fee schedule will be accepted until the close of business on Wednesday, December 15, 2004. Written comments pertaining to the amendments to Part 7 will be accepted until the close of business on Wednesday, December 8, 2004.

For further information call (505) 841-6000. Please inquire at the WCA Clerk's Office, 2410 Centre Avenue S.E., Albuquerque, NM, 87106, for copies of the draft rules. If you intend to request a copy by mail, please inquire at the WCA Clerk's Office about the postage cost and envelope size needed to accommodate your request. Plan on including a post-paid, self-addressed envelope with your request.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aide or service to attend or participate in the hearing or meetings, please contact Renee Blechner at (505) 841-6083. Or you may inquire about assistance through the New Mexico relay network at 1-800-659-8331.

NEW MEXICO OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT

NEW MEXICO OFFICE OF WORKFORCE TRAINING AND DEVELOPMENT

NOTICE OF PUBLIC HEARING FOR RULE MAKING

The New Mexico Office of Workforce Training and Development (OWTD) State Administrative Entity (SAE) for the delivery of Workforce Investment Act (WIA) programs, will hold a public hearing for rule making and consider public comment regarding adoption of new rules, repeal and replacing of existing rules and the repeal of obsolete Job Training Partnership Act (JTPA) rules.

1. The following **new** rules are being proposed:

- 11.2.19 Workforce Investment Act (WIA) On-The-Job Training (OJT)
- 11.2.20 Workforce Investment Act (WIA) Customized Training
- 11.2.21 Workforce Investment Act (WIA) Technical Assistance and Corrective Action Policy - Local Workforce Development Boards Failure to Meet Performance
- 11.2.22 Workforce Investment Act (WIA) Programs of Demonstrated Effectiveness
- 11.2.23 Workforce Investment Act (WIA) Priority of Service
- 11.2.24 Workforce Investment Act (WIA) Audits, Disallowed Cost Resolution, Sanctions For Delinquent Audits
- 11.2.25 Workforce Investment Act (WIA) Eligible Training Programs and Providers

2. The following rules (Issuances) are being **repealed and replaced**:

* Issuance 11.2.8 NMAC "Workforce Investment Act (WIA) Individual Training Accounts (ITAs)" and Amendment to 11.2.8 NMAC [8] filed 6/16/2000 are being repealed and replaced with 11.2.8 NMAC Workforce Investment Act (WIA) Individual Training Accounts (WIA).

* Issuance 11.2.4 NMAC "Workforce Investment Act (WIA) Program Policies and State Technical Assistance Guide [STAG] System" filed 6/13/2003 is being repealed and replaced 11.2.4 NMAC "Rule Making Procedures."

* Issuance 11.2.15 NMAC "Workforce Investment Act (WIA) Grievance Procedure" is being repealed and replaced with 11.2.26 NMAC "WIA Program Complaint Resolution Procedure

and Procedure for Reporting Criminal Fraud and Abuse” and 11.2.27 NMAC “WIA Equal Opportunity Requirements and Discrimination Complaint Resolution Procedures.”

3. The following obsolete rules are being **repealed**:

JNMD No. 5-95, JNMD No. 11-93, JNMD No. 12-95, JNMD No. 14-93, JNMD No. 27-94, JNMD No. 33-89, JNMD No. 44-88, JNMD No. 45-90, JNMD No. 48-93, JNMD No. 50-95, JNMD No. 63-92, JBD No. 15-84, JBD No. 30-84, JBD No. 31-84, JBD No. 34-84, JBD No. 38-86, JBD No. 39-86, JGI No. 6-84, JGI No. 8-86, JGI No. 10-87, JGI No. 15-84, JGI No. 32-84, JGI No. 33-86, JGI No. 34-84, JGI No. 35-84, JGI No. 37-84, JGI No. 38-85, JGI No. 40-84, JGI No. 43-85, JGI No. 44-85, JGI No. 48-85, JGI No. 49-85, JGI No. 53-86, JGI No. 54-86, JGI No. 55-87, JGI No. 63-87, JGI No. 64-87, JGI No. 68-86, JGI No. 69-86, JGI No. 73-87, JGI No. 74-87, JGI No. 75-87, JGI No. 76-87, JGI No. 77-87, JGI No. 78-87, JGI No. 80-87, JGI No. 84-87, JGI No. 85-87, JGI No. 87-87, JGI No. 88-87, JGI No. 91-88, JGI No. 92-88, JSI No. 3-89, JSI No. 4-88, JSI No. 19-94, JSI No. 31-91, JSI No. 36-95, JSI No. 39-89, JSI No. 41-88, JSI No. 43-95, JSI No. 47-93, JSI No. 51-95, JSI No. 70-90, JSI No. 72-88, JSI No. 82-88, JSI No. 94-88, JSI No. 95-95, JSI No. 96-94, JSI No. 97-89, JSI No. 98-89, JSI No. 100-89, JSI No. 101-89, JSI No. 102-89, JSI No. 103-89, JSI No. 104-90, JSI No. 105-90, JSI No. 106-90, JSI No. 109-94, JSI No. 110-93, 11 NMAC 2. A. 1-97, 11 NMAC 2. C. 1-95, 11 NMAC 2. A. 2-97, 11 NMAC 2. A. 5-98, 11 NMAC 2. A. 9-98, 11 NMAC 2. A. 11-97, 11 NMAC 2. A. 13-99, 11 NMAC 2. A. 14-97, 11 NMAC 2. A. 17-98, 11 NMAC 2. A. 20-97, 11 NMAC 2. A. 28-97, 11 NMAC 2. A. 30-98, 11 NMAC 2. A. 50-98, 11 NMAC 2. A. 56-98, 11 NMAC 2. A. 57-99 and 11.2.97 NMAC.

The Public Hearing will be held on Tuesday, December 28, 2004 at 9:00 a.m. in the Aspen Plaza conference room located at 1596 Pacheco Street, Room 201, Santa Fe, New Mexico. Interested persons who have a disability and require some accommodation in attending the public hearing or have the rules communicated to them, should submit a written request or e-mail Patrick.Newman@state.nm.us identifying the disability and the type of accommodation needed to: Office of Workforce Training and Development (OWTD), 1596 Pacheco Street-Suite 201, Santa Fe, New Mexico 87505. If such request is not made in advance, the availability of accommodation on-site cannot be guaranteed.

Inquiries or requests for copies of the poli-

cies referred to above may be addressed to the OWTD by calling Mr. Newman at (505) 827-6817 in Santa Fe.

End of Notices and Proposed Rules Section

Adopted Rules

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

These are amendments to 11.5.6 NMAC, Sections 7, 8, and 21, effective December 01, 2004.

11.5.6.7 DEFINITIONS:

General: Unless otherwise specified, the following definitions, in addition to those contained in 11.5.1.12 NMAC and the state act, are applicable to this part.

A. "American society for testing materials standard D3935" means the American society for testing materials classification standards for transparent polycarbonate bullet-resistant materials.

B. "B rated" means a safe box industry standard, which, at a minimum, conforms to the specifics of a one-fourth inch body and a one-half inch door constructed of steel or an equivalent material.

C. "Controlled access area" means an enclosure of the service counter area with transparent polycarbonate or other bullet-resistant material that meets American society for testing materials or underwriters laboratory standards.

D. "Convenience store" means any business that is primarily engaged in the retail sale of convenience goods, or both convenience goods and gasoline, and employs one or more employees during the normal operating hours of the establishment. This term ~~does not include gasoline service stations, grocery stores, or supermarkets~~ excludes businesses that operate as hotels, taverns, lodging facilities, restaurants, stores that sell prescription drugs, gasoline service stations, grocery stores, supermarkets, businesses that have more than 10,000 square feet of retail floor space, farmer's markets, roadside stands, on-site farm markets, and other agricultural activities or operations. [This term includes all businesses with separate structures on their premises that are engaged in the retail sale of convenience goods or both convenience goods and gasoline separate from their primary business.]

E. "Convenience goods" means articles that are purchased frequently for immediate use in readily accessible stores and with a minimum of effort. This term includes consumable items that are generally limited in quantity and variety, and sold in their original containers. This definition is not intended to exclude convenience stores that sell a small quantity of fresh food or unpackaged products in addition to other convenience goods.

[E]E. "Depository or time

lock safe" means a B or higher rated safe box equipped with an electronic or manually programmed time lock, or drop slot, that prevents unauthorized access.

[F]G. "Environmental engineering controls" means an established store floor plan adopted or developed by the employer to reduce theft or robbery by measures, which include, but are not limited to, cash register placement in plain view of customers, properly functioning indoor and outdoor lighting, and proper placement of security cameras.

[G]H. "Pass-through window" means a manually operated mechanical pass-through trough, front-loading deposit door, or other similar device that is encased in a transparent polycarbonate window or other bullet-resistant material that meets American society for testing materials standard D3935, or underwriters laboratory standard 752.

[H]I. "Security surveillance system" means a VHS or digital camera surveillance system that is capable of recording and retrieving a clear video or digital recorded image.

[I]J. "Security alarm system" means any device or series of devices, including, but not limited to, a signal system interconnected with a radio frequency method such as cellular, private radio signals, or other mechanical or electronic device used to notify law enforcement or a private security agency of an unlawful act in progress.

[J]K. "Underwriters laboratories 752 rated" means the underwriters laboratory standards for transparent polycarbonate bullet-resistant materials.

[K]L. "Service counter" means, at a minimum, the counter space designated by the employer to include the service transaction area of the money register(s) and the surrounding perimeter.

[L]M. "Signage" means posters, placards, neon lights, or logos, positioned in the convenience store windows and doors.

[M]N. "Training curriculum" means the instruction manual or pamphlet adopted or developed by the employer containing security policies, safety and security procedures, and personal safety and crime prevention techniques.

[11.5.6.7 NMAC - N, 6/1/04; A 12/01/04]

11.5.6.8 SECURITY REQUIREMENTS: All convenience stores shall be equipped with the following security devices and standards:

A. Exterior Lighting: The employer shall provide and maintain exterior lighting during all evening and nighttime operating hours that ensures clear

visibility of the parking areas, walkways, building entrances and exits, and gasoline pump areas.

B. Employee Training:

(1) The employer shall provide each employee, at the time of his or her initial appointment, and by periodic review not to exceed ~~three~~ four-month intervals, crime prevention and safety training in accordance with a written training curriculum. The training curriculum may include computer-based training. Periodic reviews shall include, at a minimum, review of the written training curriculum and site-specific issues. Training shall be conducted in a language that is understood by the employee. The employer shall conduct training, or designate a knowledgeable representative to conduct training, in accordance with the written training curriculum that includes but is not limited to:

(a) an overview of the potential risk of assault;

(b) operational procedures, such as cash handling rules, that are designed to reduce risk;

(c) proper use of security measures and engineering controls that have been adopted in the workplace;

(d) behavioral strategies to defuse tense situations and reduce the likelihood of violence, such as techniques of conflict resolution and aggression management;

(e) specific instructions on how to respond to a robbery and how to respond to attempted shoplifting; and

(f) emergency action procedures to be followed in the event of a robbery or violent incident.

(2) Store specific training shall be conducted by the employee's immediate supervisor.

(3) Current employees shall receive training within ninety days of the effective date of this regulation.

(4) All employers shall prepare training documentation for each employee and have employees sign a statement indicating the date, time, and place they received their safety training. Employers shall maintain documentation of an employee's training for a period of at least twelve months, or six months after termination of an employee's employment. ~~[A] Employee training documentation [including training curricula]~~ shall be made available within forty-eight hours of a department representative's request. The forty-eight hour period shall exclude holidays and weekends. Failure to provide employee training documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). Training curricula shall be kept on the convenience

store premises and made available on request by the department.

C. Late night security measures:

(1) In addition to the other security requirements of this part, convenience stores operating between the hours of ~~[5:00]~~ 11:00 p.m. and 5:00 a.m. shall employ at least one of the following security measures:

(a) two employee shift: the employer shall employ a minimum of two employees during the operating hours of ~~[5:00]~~ 11:00 p.m. to 5:00 a.m.; or, shall substitute the second employee requirement by employing security personnel on the premises;

(b) controlled access area: the employer shall provide a controlled access area by means of a secured safety enclosure of transparent polycarbonate or other bullet-resistant material that meets American society for testing materials standard D3935 or underwriters laboratory standard 752;

(c) pass-through window(s): the employer shall provide a pass-through window of transparent polycarbonate or other bullet-resistant material that meets American society for testing materials standard D3935 or underwriters laboratory standard 752 that restricts access to and encompasses the service counter area, providing an enclosure that extends not less than five feet above the service counter; or

(d) alternative operation: between the hours of ~~[5:00]~~ 11:00 p.m. and 5:00 a.m., the employer shall close the store and prohibit all sales transactions but allow employees to perform duties such as store stocking, maintenance, cleaning and other non-sales transaction duties. Signs shall be conspicuously posted on all entryways stating the store is closed.

D. Limits on Store Window Signage: The employer shall maintain door and window signage so that a clear and unobstructed view of the service counter and cash register exists from outside the building.

E. Security Surveillance System:

(1) The employer shall provide each convenience store with a fully operational VHS or digital security surveillance system that, at a minimum, shall:

(a) record a continuous unobstructed view of the service counter area~~[7]~~ and all entryways and exits ~~[7-parking areas, walkways, building entrances and exits, and gasoline pump areas]~~ during all operating hours; and

(b) include a high resolution black and white or color screen monitor with on screen date and time capabilities.

(2) The employer shall:

(a) conduct a monthly maintenance inspection and make all necessary

repairs to ensure the proper operation of the security surveillance system, and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises;

(b) maintain documentation, for a period of at least twenty-four months, of all inspections, servicing, alterations, and upgrades performed on the security surveillance system. All documentation shall be ~~[kept on the convenience store premises and made available on request by the department]~~ made available within forty-eight hours of a department representative's request; and

(c) maintain a VHS or digital library of all in-store transactions recorded by the security surveillance system during normal operating hours of the convenience store for a period of no less than twenty business days.

(d) Failure to provide equipment maintenance documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). The forty-eight hour period shall not include holidays and weekends.

F. Security Alarm System:

(1) The employer shall provide and maintain in each convenience store a fully operational security alarm system with a working personal panic alarm for each employee that, when activated, notifies law enforcement or a private security agency when an unlawful act is in progress.

(2) The employer shall:

(a) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the alarm system, and, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises; and

(b) maintain documentation for a period of at least twenty-four months of all inspections, servicing, alterations, and upgrades performed on the security alarm system; all documentation shall be ~~[kept on the convenience store premises and made available on request by the department]~~ made available within forty-eight hours of a department representative's request. Failure to provide equipment maintenance documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). The forty-eight hour period shall not include holidays and weekends.

(3) The security alarm activators shall be located in a location accessible to the employees and be available to the employees as a portable device that can be

carried on their person.

G. Depository or Time Lock Safe:

(1) The employer shall:

(a) provide at least one B or higher rated depository or time lock safe in each store;

(b) utilize each depository or time lock safe to ensure controlled access to cash;

(c) conduct a monthly maintenance inspection and make all necessary repairs to ensure the proper operation of the depository or time lock safe system, or, in the event of an extended mechanical malfunction that exceeds an eight hour period, provide alternative security that may include closure of the premises; and

(d) maintain documentation, for a period of at least twenty-four months, of all inspections, servicing, alterations, and upgrades performed on the depository or time lock safe; all documentation shall ~~[be kept on the convenience store premises and made available on request by the department]~~ made available within forty-eight hours of a department representative's request. Failure to provide equipment maintenance documentation within the forty-eight hour period shall subject the employer to the penalties provided for in NMSA 1978, Section 50-9-24 (1975). The forty-eight hour period shall not include holidays and weekends.

(2) The location of the depository time lock safe may be determined by the employer but shall be located within the service counter area, or in an office adjacent to the service counter area.

H. Cash Management:

The employer shall not have more than fifty dollars in ~~[the]~~ any cash register at any time between the hours of 11:00 p.m. and 5:00 a.m. To protect employee safety, the employer shall maintain small amounts of cash in the cash registers at all other times.

I. Required Signs:

(1) The employer shall conspicuously post a notice in English and in Spanish in the convenience store that contains, at a minimum, the following information:

(a) there is a safe in the store;

(b) employees do not have access to the safe;

(c) there is an active security alarm system;

(d) there is an active surveillance system; and

(e) ~~[there is no more than fifty dollars in the cash register.]~~ there is a limited amount of cash in the cash register.

(2) Employers will not be cited by the department for providing employees access to a time lock or other safe.

J. Pay Phones: ~~[Any outside pay phones located on convenience~~

~~store premises shall be located on the outside perimeter of the property, in clear view of the service counter area.]~~ The owner shall provide adequate lighting to the pay phone area.

K. Unobstructed View of Sales Area: The employer shall ensure an unobstructed view throughout the store from the service counter area. This may be accomplished by different means, including mirrors and video monitors.
[11.5.6.8 NMAC - N, 6/1/04; A, 12/01/04]

11.5.6.21 COMPLIANCE PROVISION: Unless otherwise provided, compliance with the sections of this part shall be achieved within ~~[ninety]~~ sixty days of its effective date.
[11.5.6.21 NMAC - N, 6/1/04; A, 12/01/04]

**NEW MEXICO
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14 NMAC 10.2, Housing and Construction, Electrical Codes, National Electrical Safety Code 1997, filed June 1, 1999 is repealed and replaced effective 11/19/04 as 14.10.5 NMAC, 2002 New Mexico Electrical Safety Code.

14 NMAC 11.9, Housing and Construction, Other Building Codes and Standards, Standards for Non-Load Bearing Baled Straw Construction filed September 30 1997 is repealed and replaced effective 11/19/04 as 14.7.5 NMAC, 2003 New Mexico Non-Load Bearing Baled Straw Construction Building Standards.

14.11.11 NMAC, Housing and Construction, Other Building Codes and Standards, Standard for Rammed Earth Construction filed October 31, 2001 is repealed and replaced effective 11/19/04 as 14.7.4 NMAC, 2003 New Mexico Earthen Building Materials Code.

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**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 4 2003 NEW MEXICO
EARTHEN BUILDING MATERIALS
CODE**

14.7.4.1 ISSUING AGENCY: Construction Industries Division of the Regulation and Licensing Department.
[14.7.4.1 NMAC - Rp, 14.11.11.1 NMAC, 11-19-04]

14.7.4.2 SCOPE: This rule applies to all earthen building materials contracting work performed in New Mexico on or after November 19, 2004, that is subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by CID before that date.
[14.7.4.2 NMAC - Rp, 14.11.11.2 NMAC, 11-19-04]

14.7.4.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9 and 60-13-44.
[14.7.4.3 NMAC - Rp, 14.11.11.3 NMAC, 11-19-04]

14.7.4.4 DURATION: Permanent.
[14.7.4.4 NMAC - Rp, 14.11.11.4 NMAC, 11-19-04]

14.7.4.5 EFFECTIVE DATE: November 19, 2004, unless a later date is cited at the end of a section.
[14.7.4.5 NMAC - Rp, 14.11.11.5 NMAC, 11-19-04]

14.7.4.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for earthen building materials construction in New Mexico.
[14.7.4.6 NMAC - Rp, 14.11.11.6 NMAC, 11-19-04]

14.7.4.7 DEFINITIONS:
A. Amended soil means improving an unqualified soil to a qualified state with the addition of other soils or amendments.

B. Amendments means additive elements to soil, such as lime, portland cement, fly ash, etc. which are "dry-mixed" into the main soil body as a percentage of total weight to achieve stabilization.

C. Buttress means a projecting structure providing lateral support to a wall. The buttress shall be incorporated into the foundation and wall system. (Refer to figure 1 of the earthen building materials auxiliary workbook, hereafter referred to as "workbook"

D. CEB means compressed earth block.

E. Keyway means a groove on the vertical rammed earth wall surface for interlocking purposes. Refer to figure 3.

F. Lift means a course of rammed earth, placed within the forms, and

then compacted.

G. Nailer means any material rammed into the wall that serves as an attachment device. Refer to figure 4.

H. Optimum moisture means sufficient water (generally no more than ten (10) percent) mixed into the soil to attain sufficient compaction.

I. psi means pounds per square inch.

J. Qualified soil means any soil, or mixture of soils, that attains 300 psi compression strength and attains 50 psi modulus of rupture.

K. Rammed earth means qualified soil that is mechanically or manually consolidated to full compaction.

L. Stabilization, stabilized means qualified soils that pass the wet strength test under ASTM D1633-00 or contain a minimum of six (6) percent portland cement by weight. Stabilization is achieved through the use of amendments.

M. Wet strength compression test means an approved testing laboratory process in which a fully cured rammed earth cylinder is completely submerged in water a minimum of four hours according to ASTM D1633-00, then subjected to a compression test.

[14.7.4.7 NMAC - Rp, 14.11.11.7 NMAC, 11-19-04]

14.7.4.8 EARTHEN BUILDING MATERIALS:

A. General. The provisions of this rule, 14.7.4 NMAC, shall control the design and construction of one- and two-family dwellings in which earthen building materials form the bearing wall system.

B. Allowable wall heights for earthen structures. All earthen structures whether adobe, burned adobe, compressed earth block, rammed earth or terrón, shall conform to table 1. For purposes of using table 1, height is defined as the distance from the top of the slab or top of stem wall to the underside of the bond beam.

[Please see **Table I** on page 1002]

Table 1- ALLOWABLE WALL HEIGHTS FOR EARTHEN STRUCTURES

Maximum Sds	Wall Thickness	Maximum Height	Maximum Sds	Wall Thickness	Maximum Height
.25	10	120"	.3	10	120"
	12	128		12	128
	14	144		14	144
	16	144		16	144
	18	144		18	144
	24	144		24	144
.35	10	120"	.4	10	120"
	12	128		12	128
	14	144		14	144
	16	144		16	144
	18	144		18	144
	24	144		24	144
.45	10	104"	.5	10	96"
	12	128		12	112
	14	144		14	136
	16	144		16	144
	18	144		18	144
	24	144		24	144

This table is based on two story maximum, one and two family residential with seismic soil site class D1.

[14.7.4.8 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.9 ADOBE CONSTRUCTION:

A. General. Adobe shall not be used in any building more than (2) stories in height. The maximum height of every wall of adobe block without lateral support is specified in 14.7.4.8 NMAC, table 1. The height of the wall is defined as the distance from the top of the slab or top of stem wall to the underside of the bond beam. The maximum height of exterior walls, which are laterally supported with those supports located no more than twenty-four (24) feet apart, are as defined in 14.7.4.8 NMAC, table 1. The bottom story of a two-story is allowed a minimum thickness of fourteen (14) inches with the upper story allowed a thickness of ten (10) inches providing the structure meets the provisions of 14.7.4.8 NMAC, table 1.

B. Fireplaces. Adobe or masonry fireplaces and chimneys in adobe structures shall comply with 14.7.3.18 NMAC. They shall be integrated into adjacent adobe walls during construction or secured to them by suitable steel ladder reinforcement or reinforcing rods.

C. Count Rumford fireplaces. Count Rumford fireplaces are allowed as provided in 14.7.3.18 NMAC.

D. Soil. Soil for use in adobe blocks should have a mixture of coarse sand, sand, silt and clay, naturally occurring, or amended with sand or straw, that will make a sun-dried brick without serious warping or cracking. The best way to determine the fitness of a soil is to make sample blocks and allow them to cure in the open, protected from moisture. Then test as specified by Subsections C and D of 14.7.4.11 NMAC. The soil shall not contain more than two (2) percent soluble salts.

[14.7.4.9 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.10 CLASSES OF ADOBE:

A. Stabilized adobe. The term "stabilized" is defined to mean water-resistant adobe made of soil to which certain admixtures are added in the manufacturing process in order to limit water absorption into the adobe. Exterior walls constructed of stabilized mortar and adobe requires no additional protection. Cement stucco or other waterproof coating is not required. The test required is that a dried four (4) inch cube cut from a sample unit shall not gain more than 2.5% in weight when placed upon a constantly water-saturated porous surface for seven (7) days. An adobe unit that meets this specification shall be considered "stabilized."

B. Unstabilized adobe. Unstabilized or "natural" adobes are adobes that do not meet the water absorption specifications indicated in Subsection A of 14.7.4.10 NMAC above. Use of unstabilized adobes is prohibited within four (4) inches of the finished floor grade. Stabilized adobe or waterproof masonry units and mortar may be used for the first four (4) inches above floor grade.

C. Terrón. The term "Terrón" shall refer to a cut sod brick. Their use is permitted if units are dry and the wall design is in conformance with this code.

D. Burned adobe. The term "burned adobe" shall refer to mud adobe bricks that have been cured by low-temperature kiln firing. This type of adobe is not generally dense enough to be "frostproof" and may deteriorate with seasonal freeze-thaw cycles. Its use for exterior locations is discouraged in climate zones with daily freeze-thaw cycles.

[14.7.4.10 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.11 PROPERTIES, SAMPLING AND TESTING:

A. General. Each of the tests prescribed in this section shall be applied to sample units selected at random at a ratio of five (5) units per twenty-five thousand (25,000) bricks to be used or at the discretion of the building official.

B. Shrinkage cracks. Shrinkage cracks are allowed, providing that these cracks do not jeopardize the structural integrity

of the blocks.

C. Compressive strength.

(1) Cured units shall have an average minimum compressive strength of three hundred (300) pounds per square inch when tested. One (1) sample out of five (5) may have a compressive strength of not less than two hundred fifty (250) psi.

(2) The adobe block shall be tested in the flat position. The length of the test unit must be a minimum of twice the width. The surfaces must be smooth. The test unit shall be subjected to a uniform compressive load that is gradually increased at a rate of five hundred (500) psi/minute until failure occurs. A true platen should be used in the testing machine, along with swivel head to accommodate nonparallel bearing surfaces. The compressive strength is defined as P/A, where P= load and A = area of compression surface.

D. Modulus of rupture. Cured units shall average fifty (50) psi in modulus of rupture when tested according to the following procedures. A cured unit shall be laid over two-inch (2") diameter cylindrical supports two (2) inches from each end and extending across the full width of the unit. A cylinder two (2) inches in diameter shall be laid midway between and parallel to the supports. Load shall be applied to the cylinder at a rate of five hundred (500) psi/minute until rupture occurs. The modulus of rupture is equal to: $3PL/2bt^2$ (P=rupture load in pounds, L=span between supports, b=width of block, t=thickness of block).

E. Mortar. The use of earth mortar is allowed if the earth mortar material is of the same type as the adobe blocks. Conventional lime/sand/cement mortars of types M, S, and N are also allowed. Mortar "bedding" joints shall be fully grouted, with partially open "head" joints allowable if the surface is to be plastered. All joints shall be lapped at least twenty-five (25) percent of the visible block length.

F. Use. No adobe shall be laid in the wall until fully cured.

G. Foundations. Adobes may not be used for foundations or basement walls. All adobe walls, except as noted under group M buildings, shall have a continuous footing at least eight (8) inches thick and not less than two (2) inches wider on each side that supports the foundation stem walls above. All foundation stem walls that support adobe units shall extend to an elevation not less than six (6) inches above the finish grade. Foundation stem walls shall be at least as thick as the adobe walls they support. Where perimeter insulation is used, a variance is allowed for the stem wall width to be two (2) inches narrower than the width of the adobe wall it supports. Alternative foundation systems must be approved by the building official.

H. Bond beams. All bearing walls shall be topped with a continuous bond beam (except patio walls less than six (6) feet high above stem). All bond beam construction shall be in accordance with accepted engineering practices.

I. Concrete bond beam. Concrete bond beams shall be a minimum of six (6) inches high by ten (10) inches wide for walls up to fourteen (14) inches thick. Where adobe walls are wider than one course, two-thirds (2/3) of each visible course top shall be covered by the concrete bond beam. All concrete bond beams shall be reinforced with a minimum of two (2) no. 4 reinforcing rods at each floor and ceiling plate line.

J. Wood bond beam. Wood bond beams shall be a minimum of six (6) inches deep by ten (10) inches wide for walls up to fourteen (14) inches thick. Where adobe walls are wider than one course, two-thirds (2/3) of each visible course top shall be covered by a wood bond beam and the roof load shall be distributed over both bond beams. Wood bond beams may be solid in the six-inch (6") dimension, or may be built up by applying layers of lumber. Ends of wood bond beams are to be lapped a minimum of the width of the wall and fully nailed. No wood layer shall be less than one (1) inch nominal thickness. The building official shall approve all wooden bond beams for walls wider than fourteen (14) inches.

K. Lintels. Lintels of wood or concrete are allowed. When an engineer's drawing and seal is not provided, all lintels shall conform to table 2 or 3 below. The required bearing of any lintel shall not be reduced by a splayed or angled window or door opening.

L. Wood lintels. When an engineer's drawing and seal is not provided for lintels, all wood lintels shall conform to table 2 and have a fiber stress rating of at least 850 psi.

Table 2 ADOBE WALL WOOD LINTEL SCHEDULE				
Wall Width	Max. Span	Size	MINIMUM FIBER STRESS 850 psi	
			Bearing length on earth wall	Load Capacity
10"	4'-0"	10" x 6"	12"	860 PLF
	6'-0"	10" x 8"	12"	1020 PLF
	8'-0"	10" x 10"	18"	1150 PLF
	10'-0"	10" x 12"	24"	1000 PLF
	12'-0"	10" x 14"	24"	1000 PLF
12"	4'-0"	10" x 6"	12"	860 PLF
	6'-0"	10" x 8"	12"	1020 PLF
	8'-0"	10" x 10"	18"	1150 PLF
	10'-0"	10" x 12"	24"	1000 PLF
	12'-0"	10" x 14"	24"	1000 PLF
14"	4'-0"	12" x 6"	12"	950 PLF
	6'-0"	12" x 8"	12"	1150 PLF
	8'-0"	12" x 10"	18"	1300 PLF
	10'-0"	12" x 12"	24"	1300 PLF
	12'-0"	12" x 14"	24"	1200 PLF

M. Concrete lintels. When an engineer's drawing and seal is not provided for lintels, all concrete lintels shall conform to table 3 and have a minimum strength of 3000 psi.

Table 3 ADOBE WALL CONCRETE LINTEL SCHEDULE MIN. 3000 psi				
Maximum Span	Minimum depth *	Reinforcing	Maximum Capacity per linear foot	Bearing length on earth wall
Less than 6' - 0"	8"	2 - # 4	1500 lbs.	12"
6' - 0" to 10' - 0"	12"	3 - # 5	1500 lbs.	18"
11' - 0" to 16' - 0"	16"	3 - # 6	1500 lbs.	24"
* SIZE - Wall width X depth of lintel				

N. Anchorage. Roof and floor structures will be suitably anchored to bond beams. Wood joists, vigas or beams shall be attached to the wood or concrete bond beams with adequate metal fasteners. Door and window bucks shall be secured to the adobe wall with adequate metal fasteners. "Gringo blocks" or wood nailers, placed in the adobe walls as they are laid up, are allowed. Wood and metal partitions may be secured to nailing blocks laid up in the adobe wall or by other approved methods.

O. Plastering. Unstabilized exterior adobe walls can be protected with portland cement plaster with a minimum thickness of seven-eighths (7/8) inch, if adequate roof, parapet, canal and window flashing is provided. If portland cement plaster is used, it must be reinforced with metal wire mesh, minimum seventeen (17) gauge by one-and-a-half (1 1/2) inch openings, securely attached to the exterior adobe wall surface by nails or staples with a minimum penetration of one-and-a-half (1 1/2) inch. Such mesh fasteners shall have a maximum spacing sixteen (16) inches from each other. Any wood surfaces to be covered with stucco or plaster must be protected from moisture with asphalt felt, reinforced with expanded metal lath. Protective coatings other than plaster are allowed. Interior gypsum or mud plasters may be applied directly to the wall, provided that adobe head joints have been left partially open. Expanded metal lath shall be used around window and door openings. If desired, exterior adobe walls may be protected with mud plaster. Alternative plastering systems shall be submitted for approval by the building official.

P. Wall insulation. All methods of wall insulation shall comply with the manufacturer's recommendations.
[14.7.4.11 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.12 RAMMED EARTH CONSTRUCTION:

A. General. The following provisions shall apply.

(1) Rammed earth shall not be used in any building more than (2) stories in height. The height of every wall of rammed earth without lateral support is specified in 14.7.4.8 NMAC table 1. The height of the wall is defined as the distance from the top of the slab or top of stem wall to the underside of the bond beam.

(2) Exterior rammed earth walls shall be a minimum of eighteen (18) inches in thickness.

(3) Interior rammed earth walls shall be a minimum of twelve (12) inches in thickness.

(4) Unstabilized rammed earth walls must be covered to prevent infiltration of moisture from the top of the wall at the end of each workday and prior to wet weather conditions, whether the walls are contained within forms or not.

(5) Fully stabilized rammed earth walls may be left unprotected from the elements.

(6) In no case shall a rammed earth wall be reduced in thickness with back to back channels or nailers. Channels or nailers rammed on both sides of a running wall shall not be opposite each other to avoid an hourglass configuration in the wall section. Channels or nailers on both sides of a running wall shall be separated from each other vertically at a distance no less than the rammed earth wall thickness. (Refer to figure 4 of the workbook.)

(7) An architect or engineer registered in the state of New Mexico shall design and seal structural portions of two-story residential rammed earth construction documents.

(8) The general construction of the building shall comply with all provisions of the 2003 New Mexico Residential Building Code (NMRBC), unless otherwise provided for in this rule.

B. Fireplaces. Adobe or masonry fireplaces and chimneys in rammed earth structures shall comply with 14.7.3.18 NMAC. They shall be integrated into adjacent rammed earth walls during construction or secured to them by suitable steel ladder reinforcement or reinforcing rods.

C. Count Rumford fireplaces. Count Rumford fireplaces are allowed as provided in 14.7.3.18 NMAC.

D. Stop work. The building inspector shall have the authority to issue a "stop work" order if the provisions of this section are not complied with.

E. Lateral support. Lateral support shall occur at intervals not to exceed twenty-four (24) feet. Rammed earth walls eighteen (18) inches to less than twenty-four (24) inches thick shall be laterally supported with any one or combination of the following: A rammed earth wall of bond beam height that intersects the running wall with at least sixty (60) degrees of support (refer to a figure 5 of the workbook.); an adobe wall of bond beam height and at least fourteen (14) inches in width that intersects with and attaches to the running wall with at least sixty (60) degrees of support (refer to figure 5 of the workbook.); a minimum 20 gauge steel frame or wood frame wall of full height that intersects with and attaches to the running wall with ninety (90) degrees of support, that is properly cross-braced or sheathed (refer to figure 6 of the workbook); a buttress configuration that intersects the running wall at (90) degrees, of adobe or rammed earth. The buttress base must project a minimum of three (3) feet (or thirty-three (33) percent of the wall height) from the running wall and support at least seventy-five (75) percent of the total wall height (refer to figure 7 of the workbook.) The thickness of a rammed earth buttress shall be at least eighteen (18) inches. The thickness of an adobe buttress shall be a minimum fourteen (14) inches. Rammed earth walls greater than twenty-four (24) inches in thickness are self-buttressing and do not require lateral support provided their design adheres to 14.7.4.8 NMAC table 1 and the other applicable provisions of this rule.

F. Openings. Door and window openings shall be designed such that the opening shall not be any closer to an outside corner of the structure as follows:

(1) In rammed earth walls eighteen (18) inches to less than twenty-four (24) inches thick, openings shall not be located within three (3) feet of any corner of the structure. (Refer to figure 8 of the workbook.) **Exception:** Openings may be located within three (3) feet of any corner provided a buttress extending at least three (3) feet from the structure supports the corner. A continuous footing below and a

continuous bond beam above, shall be provided across such openings.

(2) Rammed earth walls greater than twenty-four (24) inches thick are self-buttressing, with no special consideration for placement of openings within the area of the wall.

G. Piers. Rammed earth piers supporting openings shall measure no less than three (3) square feet in area and no dimension shall be less than eighteen (18) inches. (Refer to figures 9-A and 9-B of the workbook.)

[14.7.4.12 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.13 FOUNDATIONS:

A. General. Foundation construction shall comply with applicable provisions of the 2003 New Mexico Residential Building Code, and the following: A minimum of three (3) continuous #4 reinforcing rods are required in minimum 2500 psi. concrete footings supporting rammed earth walls. Stem walls shall be the full width of the wall supported above or wider to receive forming systems. Footings shall be a minimum of ten (10) inches in depth.

B. Perimeter insulation. For the purposes of placement of perimeter insulation, rammed earth walls may overhang the bearing surface up to the thickness of the perimeter insulation, but in no case greater than two (2) inches.

C. Keyway. A key way shall be provided where the rammed earth wall meets the foundation system. The keyway shall be established at the top of the stem a minimum of two (2) inches deep by six (6) inches wide formed at the time of the pour, and shall run continuously around the structure to include any intersecting rammed earth wall sections. The rammed earth wall shall be fully rammed into this keyway (refer to figure 2) **Exception:** Placement of vertical reinforcing rods extending a minimum twelve (12) inches into the rammed earth wall. The vertical rods shall be minimum #4, imbedded into the concrete and spaced forty-eight (48) inches on center, maximum.

D. Concrete grade beam. Rubble filled foundation trench designs with a reinforced concrete grade beam above are allowed to support rammed earth wall construction. An architect or engineer registered in the state of New Mexico shall certify the grade beam/rubble-filled trench design portion.

[14.7.4.13 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.14 RAMMED EARTH SOIL SPECIFICATIONS:

A. General. The soil shall not contain rock more than one-and-a-half (1 1/2) inch in diameter. The soil shall not contain clay lumps more than one-half (1/2) inch in diameter. The soil shall be free of all organic matter. The soil shall not contain more than two (2) percent soluble salts.

B. Soil compressive strength. Prior to the start of construction, fully-cured rammed earth soil samples shall be tested at an approved testing laboratory for compressive strength. The ultimate compressive strength of all rammed earth soil, stabilized or non-stabilized, shall be a minimum three-hundred (300) psi. The compressive strength report shall be submitted with the permit application. This report may be waived if the builder provides certification of compliance. The certification must be dated within one year of the date on the application for the building permit. Samples tested shall be representative of soil to be used on the project for which the permit application is submitted.

C. Stabilized rammed earth soil. The following shall apply to stabilization of rammed earth soil: Asphalt emulsion may not be used for stabilization of rammed earth soil. Thorough mixing of additives to the soil may be achieved by any method that assures a complete blending to a uniform color and texture. Stabilized soil is suitable soil that contains six (6) percent or more portland cement by weight or that passes ASTM D1633-00. Samples tested shall be representative of soil to be used on the project for which the permit application is submitted. The compressive strength report shall be submitted with the permit application. Laboratory testing shall indicate rammed earth samples attained a minimum of two-hundred (200) psi. after seven (7) days. If a different soil is provided at any time during construction, it must meet the minimum requirements outlined above, prior to use in the structure.

D. Unstabilized rammed earth soil. Unstabilized rammed earth soil is that containing less than six (6) percent portland cement by weight or that fails to pass ASTM D1633-00. The exterior of such walls shall be protected with approved stucco systems or other method approved by the building official. Refer to 14.7.4.19 NMAC for weather-resistive barrier requirements.

E. Amended soil. The following guidelines shall apply when amending soils to attain a qualified soil. Soil shall not contain rock greater than one-and-a-half (1 1/2) inch in diameter. Soil shall not contain clay lumps greater than one-half (1/2) inch diameter. Soil shall be free of organic matter. Soil shall not contain more than two (2) percent soluble salts. Soils to be mixed shall be sufficiently dry to blend completely to one uniform color and texture. The amended soil shall be tested prior to use as per Subsection B of 14.7.4.14 NMAC.

F. Forming systems. The forming system shall be adequate to contain the material under compaction. It shall be properly plumbed and braced to withstand the soil pressures as well as construction activity on and around it.

G. Placement of material, compaction and curing.

(1) No amount of portland cement stabilized soil will be mixed that will not be placed in the wall system within sixty (60) minutes of its preparation.

(2) Lifts of prepared soil shall be placed in the forms in relatively even layers not to exceed 8 inches in depth. Each lift shall then be rammed to full compaction.

(3) Optimum moisture content as determined to meet minimum compressive strength shall be maintained for stabilized and unstabilized walls.

(4) Work will progress, lift-by-lift, until the work approaches bond beam height.

(5) Forms may be stripped immediately after ramming is completed for a section of wall, providing ramming of adjacent sections does not affect the structural integrity of completed walls.

(6) Portland cement stabilized walls not in forms shall be lightly spray-cured with water at least five (5) spaced times during daylight hours. This procedure shall continue for at least three (3) days starting from the time that the wall is exposed to the elements.

Exception: Rammed earth walls left in forms three (3) or more days shall not require water-spray curing.

H. Placement of attachment materials.

(1) **Nailers:** Nailers incorporated into the rammed earth wall shall be installed as follows (Refer to figure 4 of the workbook.):

The rammed earth wall shall not be reduced in thickness with back-to-back nailers. To avoid an hourglass configuration in the wall section, nailers on either side of a running wall shall not be opposite each other. Nailers on either side of a running wall shall be separated from each other vertically a distance not less than the rammed earth wall thickness. Nailers shall be placed onto the wall such that the narrow dimension of the nailer is exposed on the face of the wall prior to ramming. Nailers shall be cured and sealed against moisture penetration prior to installation in forms. The nailers shall not extend the full depth of the wall. Box wood nailers are not allowed. (Refer to figure 11 of the workbook.) The nailer shall be no more than two (2) inches by four (4) inches by its length.

(2) Channels: Channels may be incorporated into the rammed earth wall as follows (Refer to figure 2 of the workbook.): To avoid an hourglass configuration in the wall section, channels on either side of a running wall shall not be opposite each other. (Refer to figure 4 of the workbook.) Channels shall be no more than two (2) inches by four (4) inches by their length in dimension. Vertical channels shall not be placed closer than twelve (12) inches to a rammed earth wall finished edge or corner.

[14.7.4.14 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.15 NICHOS OR OTHER SHAPED VOIDS:

A. General. The depth of voids shall not exceed 8 inches. The width of the void shall be as defined in Subsections B and C of 14.7.4.15 NMAC below.

B. Voids in stabilized rammed earth walls. Voids shall not exceed two (2) feet in width. Voids greater than two (2) feet in width require a lintel or half-circle arched opening. Refer to 14.7.4.18 NMAC for lintel requirements.

C. Voids in unstabilized rammed earth walls. Voids shall not exceed one (1) foot in width. Voids greater than one (1) foot in width require a lintel or half-circle arched opening of stabilized rammed earth material. Refer to 14.7.4.18 NMAC for lintel requirements.

[14.7.4.15 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.16 ATTACHMENTS AND CONNECTIONS:

A. General. Attachment and connection methods of alternate wall construction to rammed earth walls are described as follows. The building official may approve other attachment and connection methods. In no case shall two wall types be butted to each other without consideration for attachment or connection.

B. Attachment of a rammed earth wall to a rammed earth wall. A keyway, at least six (6) inches wide by three (3) inches deep shall be formed vertically at the center of the wall section from stem top to underside of bond beam. The connecting wall shall be rammed into the keyway. (Refer to figure 3 of the workbook.)

C. Attachment of a load-bearing adobe wall to a rammed earth wall. Where adobe is deployed as an interior wall that will be incorporated into the rammed earth wall for lateral support, the adobe shall measure a minimum of ten (10) inches in thickness. Steel ladder reinforcement shall be rammed into the wall at the intersection with the adobe wall. The reinforcement may be bent against the forms during the ramming process. After ramming is complete and forms removed, the reinforcement shall be incorporated into the adjoining adobe coursing, every four (4) courses minimum. (Refer to figure 12 of the workbook.) As an alternative, a keyway, not to exceed the depth of the adobe wall, nor one-third (1/3) the depth of the rammed earth wall, shall be formed into the rammed earth wall. The adobe shall be incorporated into the keyway. (Refer to figure 13 of the workbook.)

D. Attachment of a loadbearing wood or steel frame wall to a rammed earth wall. A half-inch (1/2) minimum diameter anchor bolt with four (4) inch hook, set in a linear vertical pattern, a maximum of twenty-four (24) inches on-center. The anchor bolt shall be embedded at least twelve (12) inches into the earth wall with the threaded end protruding sufficiently to pass through and attach the adjoining vertical wall stud. The washer and nut shall be tightened just prior to sheathing the frame wall. As an alternative, eighteen (18) gauge by two (2) inch minimum galvanized strap tie, grouted into the concrete bond beam (or secured to the wood bond beam or wood top plate), securely nailed to the top plate of the frame wall. The remainder of the vertical stud shall be attached to the rammed earth wall with thirty-D (30D) nails or screws embedded a minimum of three (3) inches into the adjacent wall at eight (8) inches on center vertically. (Refer to figure 14 of the workbook.)

E. Attachment of a door or window unit to a rammed earth wall. The unit shall be attached to nailers within the opening or nailed or screwed directly into the rammed earth wall. The nail or screw shall penetrate at least three (3) inches into the rammed earth wall. Heavier units may utilize stronger attachments, such as anchor bolts, T-bolts, steel pins, etc., embedded into the rammed earth wall.

F. Attachment of rigid insulation to a rammed earth wall. Round-cap nails shall be used to attach rigid insulation board up to two (2) inches in thickness to the rammed earth wall. When attaching rigid insulation board greater than two (2) inches in thickness to the rammed earth wall, galvanized round-cap nails shall penetrate at least a three (3) inch minimum into the wall.

G. Attachment of cabinetry to a rammed earth wall. Deck screws shall penetrate a minimum of three (3) inches through cabinetry and into a nailer, eight (8) inches on center maximum, or; deck screws with a least three (3) inch minimum penetration through cabinetry and into the rammed earth wall. Screws shall be placed horizontally, eight (8) inches on center maximum, on the top and bottom of cabinetry. As an alternative, all-thread rods or other attachment devices, suitable for attachment of cabinetry through the rammed earth wall.

H. Attachment of concrete bond beam to a rammed earth wall. Number four (4) reinforcing bar shall be driven into the uncured wall top. The reinforcing bar shall be set at a maximum twenty degree (20o) angle along both edges of the wall, staggered no more than twenty-four (24) inches on-center and no closer than four (4) inches from the exterior faces of the wall. The reinforcing bar shall extend a minimum of twelve (12) inches into the rammed earth wall and four (4) inches into the concrete bond beam. (Refer to figure 16 of the workbook.)

I. Attachment of wood bond beam to a rammed earth wall. One-half (1/2) inch anchor bolts with four (4) inch base hooks shall be rammed into the wall. The bolts shall be staggered a maximum of forty-eight (48) inches on-center along both edges of the wall, staggered no closer than six (6) inches from the exterior faces of the wall. The bolt shall extend a minimum of eighteen (18) inches into the rammed earth wall.

[14.7.4.16 NMAC - Rp, 14.11.11.8 NMAC, N, 11-19-04]

14.7.4.17 BOND BEAMS:

A. General. The bond beam shall be secured to the rammed earth wall. Refer to Subsections H and I of 14.7.4.16 NMAC above. Bond beams may be of wood or concrete construction. Bond beams shall measure six (6) inches nominal depth and extend the full width of the wall. **Exception:** The bond beam width may be reduced as follows: Two (2) inches maximum in an eighteen (18) to less than twenty-four (24) inch thick rammed earth wall, or three (3) inches maximum in a rammed earth wall twenty-four (24) inches or greater in thickness. Bond beams must be continuous, running the full perimeter of the structure. Interior rammed earth or adobe walls shall be incorporated into the bond beam. Varying height bond beams shall extend into the adjoining rammed earth wall one-half (1/2) the thickness of the adjoining rammed earth wall. The concrete bond beam may secure anchoring and strapping devices.

B. Wood bond beam construction. In addition to the general requirements of Subsection A of 14.7.4.17 NMAC, wood bond beams may be constructed as approved by the building official. Light wood bond beam construction may be utilized as shown in figure 10 of the workbook.

C. Concrete bond beam construction. In addition to the general requirements of Subsection A of 14.7.4.17 NMAC, concrete bond beams shall be constructed of minimum twenty-five hundred (2500) psi. concrete and shall contain steel reinforcement as follows: For eighteen (18) to less than twenty-four (24) inch thick rammed earth wall construction, a minimum of two (2) continuous number four (4) reinforcing rods shall be used. For walls equal to or greater than twenty-four (24) inches in thickness, a minimum of two (2) continuous number five (5) reinforcing rods shall be used. Provide two (2) inch minimum reinforcement concrete cover over all horizontal reinforcing rods. Concrete bond beams may be used to secure anchoring and strapping devices.

D. Concrete bond beam cold joints. Concrete bond beam cold joints are limited to corners of perpendicular intersections with other structural, full-height walls. Cold joints shall be tied into the adjoining bond beam with three (3) number four (4) reinforcing rods. The reinforcement shall extend a minimum of twenty-four (24) inches into both portions of the concrete bond beam.

[14.7.4.17 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.18 LINTELS OVER OPENINGS:

A. General. All openings require a lintel or semi-circular arch over the opening. All lintels, whether of wood or concrete shall bear a minimum of twelve (12) inches into the length of the wall. **Exception:** Nichos and other shaped voids as defined in 14.7.4.15 NMAC.

B. Bearing limitations. Lintels shall bear a minimum of twelve (12) inches beyond coved, splayed or rounded bearing portions of openings that are less than the full width of the wall. (Refer to figure 15 of the workbook.)

C. Lintels over openings in stabilized rammed earth walls. Openings less than twenty-four (24) inches in width shall not require a lintel or semi-circular arched opening. Openings greater than twenty-four (24) inches in width require lintels as defined in table 4.

Wall width	Lintel span	Lintel depth	Reinforcement [2]	Reinforcement Concrete Cover [3]	Uniform Load
18"	24"	6"	3- #4 @ 4"o.c.	3" minimum concrete cover on all sides	1000 PLF
	36"	6"	3- #4 @ 4"o.c.		
	48"	6"	3- #4 @ 4"o.c.		
	60"	6"	3- #4 @ 4"o.c.		
	72"	8"	3- #5 @ 4"o.c.		
	84"	8"	3- #5 @ 4"o.c.		
	96"	8"	3- #5 @ 4"o.c.		
20"	24"	6"	3- #4 @ 4"o.c.	4" minimum concrete cover on all sides	1350 PLF
	36"	6"	3- #4 @ 4"o.c.		
	48"	6"	3- #4 @ 4"o.c.		
	60"	6"	3- #4 @ 4"o.c.		
	72"	8"	3- #5 @ 4"o.c.		
	84"	8"	3- #5 @ 4"o.c.		
	96"	10"	3- #5 @ 4"o.c.		
22"	24"	6"	3- #4 @ 5"o.c.	3 1/2" minimum concrete cover on all sides	1700 PLF
	36"	6"	3- #4 @ 5"o.c.		
	48"	6"	3- #4 @ 5"o.c.		
	60"	6"	3- #4 @ 5"o.c.		
	72"	8"	3- #5 @ 5"o.c.		
	84"	10"	3- #5 @ 5"o.c.		
	96"	10"	3- #5 @ 5"o.c.		
24"	24"	6"	3- #4 @ 6"o.c.	3" minimum concrete cover on all sides	2000 PLF
	36"	6"	3- #4 @ 6"o.c.		
	48"	6"	3- #4 @ 6"o.c.		
	60"	6"	3- #4 @ 6"o.c.		
	72"	8"	3- #5 @ 6"o.c.		
	84"	10"	3- #5 @ 6"o.c.		
	96"	12"	3- #5 @ 6"o.c.		

[14.7.4.18 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

[1. 3000 psi minimum concrete at approximately 28 days. 2. Grade 40 steel reinforcement minimum. 3. Steel reinforcement at mid-depth of lintel.]

14.7.4.19 WEATHER RESISTIVE BARRIERS:

A. General. Stabilized rammed earth walls do not require a weather-resistive barrier or an approved exterior finish. Unstabilized rammed earth walls require a weather-resistive barrier and approved exterior finish. When a vapor barrier is installed over the rammed earth wall, it shall not be installed on both sides of a rammed earth wall system. **Exception:** On the top and sides of a parapet wall.

B. Moisture barrier locations. A moisture barrier shall protect rammed earth walls adjacent to bath and shower enclosures. A moisture barrier shall protect rammed earth walls at window sills, the top of the parapet, or other exterior wall portions exposed to the elements. A moisture barrier installed over an exposed parapet top of a rammed earth wall shall lap a minimum of six (6) inches down both sides of the parapet top.

[14.7.4.19 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.20 LATH AND PLASTER:

A. General. When non-cementitious plasters are applied directly to the rammed earth wall surface, the surface shall be scored or sandblasted prior to the application of the plaster. Rammed earth walls must cure to a depth of four (4) inches minimum prior to application of an approved exterior finish.

B. Lath. Where rammed earth walls have a plaster finish, metal lath shall be installed around interior and exterior wall openings and over dissimilar materials.

C. Exterior plaster. In unstabilized rammed earth walls, stucco netting shall be installed and cementitious plaster shall have a minimum seven-eighths (7/8) inch finished thickness, unless an elastomeric "color coat" is used, then it shall have a minimum base coat of five-eighths (5/8) inch. Applications shall follow the material manufacturers' specifications.

[14.7.4.20 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.21 PLUMBING:

A. General. Code compliant plumbing systems may be rammed into the wall system, either vertically or horizontally, provided that such plumbing material is of sufficient strength to withstand the ramming pressures without any rupture or collapse.

B. Plumbing system

installation. Installations shall not reduce the width of the rammed earth wall by more than one-third (1/3). Prior to ramming, a minimum five (5) inch earth cover is provided over any horizontal pipe.

[14.7.4.21 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.22 ELECTRICAL:

A. Electrical system installation. Electrical wiring shall pass through a channel or conduit. Approved rigid or flexible electrical conduit shall withstand ramming pressures without damage or collapse. Electrical wiring within a channel shall be covered a minimum of one and one-fourth (1 1/4) inches. Prior to ramming, a minimum five (5) inch earth cover shall be provided over any horizontal pipe.

B. UF cable installation. UF cable may not be rammed within the rammed earth wall. **Exception:** UF cable installed within an approved conduit or channel. In a channel installation, UF cable must be covered a minimum of one-and-one-fourth (1 1/4) inches with plaster, adobe or similar finish.

C. Electrical box installation. Plastic electrical boxes shall not be rammed within the rammed earth wall. **Exception:** Plastic electrical boxes installed in a channel installation.

[14.7.4.22 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.23 COMPRESSED EARTH BLOCK CONSTRUCTION (CEB):

A. General. Compressed earth block shall not be used in any building more than (2) stories in height. The height of every wall of compressed earth block without lateral support shall be defined in Subsection B of 14.7.4.8 NMAC, table 1. The height of the wall is defined as the distance from the top of the slab or top of stem wall to the underside of the bond beam. Heights for exterior walls, which are laterally supported with those supports located no more than twenty-four (24) feet apart, are defined in Subsection B of 14.7.4.8 NMAC, table 1. The bottom story of a two-story is allowed a minimum thickness of fourteen (14) inches with the upper story allowed a thickness of ten (10) inches, providing the structure meets the provisions of Subsection B of 14.7.4.8 NMAC, table 1.

B. Fireplaces. Adobe or masonry fireplaces and chimneys in compressed earth block structures shall comply with 14.7.3.18 NMAC. They shall be integrated into adjacent compressed earth block walls during construction or secured to them by suitable steel ladder reinforcement or reinforcing rods.

C. Count Rumford fireplaces. Count Rumford fireplaces are

allowed as designated in 14.7.3.18 NMAC.

D. Stop work. The building inspector shall have the authority to issue a "stop work" order if the provisions of this section are not complied with.

E. Stabilized compressed earth blocks. The term "stabilized" is defined to mean a block with certain admixtures that retains minimum strength requirements as specified in Subsection J of 14.7.4.23 NMAC after saturation in water. Saturation is defined as a minimum four (4) hours of submersion in water as defined in ASTM D1633-00.

F. Unstabilized compressed earth blocks. Unstabilized blocks are defined as not meeting the minimum strength requirements as defined in Subsection J of 14.7.4.23 NMAC after saturation in water. Use of unstabilized compressed earth blocks is prohibited within four (4) inches of the finished floor grade. Stabilized compressed earth blocks, poured concrete, or waterproof masonry units and mortar may be used for the first four (4) inches above floor grade.

G. Materials. The material must be a mineral soil with the aggregate content not exceeding one (1) inch in diameter. The material shall not contain more than two (2) percent soluble salts.

H. Testing. Each of the tests prescribed in this section shall be applied to sample units selected at random of five (5) units per building project prior to construction. Test may be waived if block manufacturer provides certification of compliance. The certification must be dated within one year of the date on the application for the building permit.

I. Shrinkage cracks. Shrinkage cracks are allowed, providing that these cracks do not jeopardize the structural integrity of the blocks.

J. Compressive strength. Cured units shall have a minimum compressive strength of three hundred (300) pounds per square inch when tested. The compressed earth block shall be tested in the flat position. The length of the test unit must be a minimum of twice the width. The surfaces must be smooth. The test unit shall be subjected to a uniform compressive load that is gradually increased at a rate of five hundred (500) psi/minute until failure occurs. A true platen should be used in the testing machine, along with swivel head to accommodate nonparallel bearing surfaces. The compressive strength is defined as P/A, where P = load and A - area of compression surface.

K. Modulus of rupture. Units shall have a minimum compressive strength of fifty (50) pounds per square inch in modulus of rupture when tested according to the following procedures: A cured unit shall be laid over two-inch (2")

diameter cylindrical supports two (2) inches from each end and extending across the full width of the unit. A cylinder two (2) inches in diameter shall be laid midway between and parallel to the supports. Load shall be applied to the cylinder at a rate of five hundred (500) psi/minute until rupture occurs. The modulus of rupture is equal to: $3PL/2bt^2$ (P= rupture load in pounds, L= span between supports, b= width of block, t= thickness of block).

[14.7.4.23 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.24 MORTAR:

A. General. The use of earth mortar is allowed if the earth mortar material is compatible with the compressed earth blocks. Conventional lime/sand/cement mortars of Types M, S, and N are also allowed. Mortar “bedding” joints shall be fully grouted. Head joint mortar is not required provided that the blocks are initially laid in contact. Partially open “head” joints are allowed if the surface is to be plastered. All joints shall be lapped at least twenty-five (25) percent of the visible block length.

B. Slip mortars. Liquid mud slip mortar is allowed, providing it is made of a compatible soil that is screened to eliminate aggregate larger than one-eighth (1/8) inch in diameter. Water may be substituted for slip or other mortars, providing adequate adhesion is demonstrated.

C. Stacking. “Dry stacking” of compressed earth blocks is allowed providing that adequate adhesion is demonstrated, the wall is to be stuccoed or plastered and the wall is not less than ten (10) inches in thickness.

D. Use. Compressed earth block may be cured prior to use or laid directly from the press into the wall in an uncured state.

E. Foundations. Compressed earth blocks may not be used for foundations or basement walls.

F. Footings. All compressed earth block walls shall have a continuous footing at least ten (10) inches thick. The footing width must be a minimum of thirty-three (33) percent greater than the wall width, but not less than two (2) inches on each side. The stem wall must be centered on the footing.

G. Stem walls. All stem walls that support CEB units shall extend to an elevation not less than eight (8) inches above the exterior finish grade. Stem walls shall be as thick as the exterior wall. Where perimeter insulation is used, a variance is allowed for the stem wall width to be two (2) inches smaller than the width of the CEB wall it supports.

H. Concrete grade beam. Rubble-filled foundation trench designs with a reinforced concrete grade beam above are allowed to support CEB construction. An architect or engineer registered in the state of New Mexico shall certify the grade beam/rubble-filled trench design portion. Other alternative foundation systems must be approved by the building official.

[14.7.4.24 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.25 BOND BEAMS:

A. General. All bearing walls shall be topped with a continuous bond beam (except patio walls less than six (6) feet high above stem). All bond beam construction shall be in accordance with accepted engineering practices.

B. Concrete bond beam. Concrete bond beams shall be a minimum of six (6) inches high by ten (10) inches wide for walls up to fourteen (14) inches thick. Where CEB walls are wider than one course, two-thirds (2/3) of each visible course top shall be covered by the concrete bond beam. All concrete bond beams shall be reinforced with a minimum of two (2) no. 4 reinforcing rods at each floor and ceiling plate line.

C. Wood bond beam. Wood bond beams shall be a minimum of six (6) inches deep by ten (10) inches wide for walls up to fourteen (14) inches thick. Where CEB walls are wider than one course, two-thirds (2/3) of each visible course top shall be covered by a wood bond beam and the roof load shall be distributed over both bond beams. Wood bond beams may be solid in the six inch (6”) dimension, or may be built up by applying layers of lumber. Ends of wood bond beams are to be lapped in minimum of the width of the wall and fully nailed. Galvanized metal straps or perforated metal straps, 18 gauge minimum and twelve (12) inches long, may be used to join the ends of wood bond beam members. Full nailing of straps is required. No wood layer shall be less than one (1) inch nominal thickness. The building official shall approve all wooden bond beams for walls wider than fourteen (14) inches.

[14.7.4.25 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

14.7.4.26 LINTELS

A. General. Lintels of wood or concrete are allowed. The bearing length of any lintel shall not be reduced by an angled or splayed window or door opening. Other lintel designs are accepted providing that engineering is submitted for review by the building official.

B. Wood lintels. When an engineer’s drawing and seal is not provided for lintels, all wood lintels shall conform to table 5 and have a fiber stress rating of at least 850 psi.

Table 5 CEB WALL WOOD LINTEL SCHEDULE				
MINIMUM FIBER STRESS 850 PSI				
Wall Width	Max. Span	Size	Bearing length on earth wall	Load Capacity
10”	4'-0”	10” x 6”	12”	860 PLF
	6'-0”	10” x 8”	12”	1020 PLF
	8'-0”	10” x 10”	18”	1150 PLF
	10'-0”	10” x 12”	24”	1000 PLF
	12'-0”	10” x 14”	24”	1000 PLF
12”	4'-0”	10” x 6”	12”	860 PLF
	6'-0”	10” x 8”	12”	1020 PLF
	8'-0”	10” x 10”	18”	1150 PLF
	10'-0”	10” x 12”	24”	1000 PLF
	12'-0”	10” x 14”	24”	1000 PLF

14"	4'-0"	12" x 6"	12"	950 PLF
	6'-0"	12" x 8"	12"	1150 PLF
	8'-0"	12" x 10"	18"	1300 PLF
	10'-0"	12" x 12"	24"	1300 PLF
	12'-0"	12" x 14"	24"	1200 PLF

C. **Concrete lintels.** When an engineer's drawing and seal is not provided for lintels, all concrete lintels shall conform to table 6 and have a minimum strength of 3000 psi.

Table 6 CEB WALL CONCRETE LINTEL SCHEDULE MIN. 3000 psi				
Maximum Span	Minimum depth *	Reinforcing	Maximum Capacity per linear foot	Bearing length on earth wall
Less than 6' - 0"	8"	2 - # 4	1500 lbs.	12"
6' - 0" to 10' - 0"	12"	3 - # 5	1500 lbs.	18"
11' - 0" to 16' - 0"	16"	3 - # 6	1500 lbs.	24"
* SIZE - Wall width X depth of lintel				

[14.7.4.26 NMAC - Rp, 14.11.11.8 NMAC, 11-19-04]

HISTORY OF 14.7.4 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

14.11.11 NMAC, Standard for Rammed Earth Construction (filed 10-31-01) repealed 11-19-04.

Other History:

14.11.11 NMAC, Standard for Rammed Earth Construction (filed 10-31-01) renumbered and replaced by 14.7.4 NMAC, 2003 New Mexico Earthen Building Materials Code, effective 11-19-04.

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 5 2003 NEW MEXICO
NON-LOAD BEARING BALED
STRAW CONSTRUCTION BUILDING
STANDARDS**

14.7.5.1 ISSUING AGENCY:
The Construction Industries Division of the Regulation and Licensing Department.
[14.7.5.1 NMAC - Rp, 14 NMAC 11.9.1, 11-19-04]

14.7.5.2 SCOPE: This rule applies to single family residential contracting work performed within the state of New Mexico on or after November 19, 2004, involving non-loadbearing baled straw construction, unless performed pursuant to a permit for which an application was received prior to that date.
[14.7.5.2 NMAC - Rp, 14 NMAC 11.9.2, 11-19-04]

14.7.5.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-

13-9(F).
[14.7.5.3 NMAC - Rp, 14 NMAC 11.9.3, 11-19-04]

14.7.5.4 DURATION: Permanent.
[14.7.5.4 NMAC - Rp, 14 NMAC 11.9.4, 11-19-04]

14.7.5.5 EFFECTIVE DATE: November 19, 2004, unless a later date is cited at the end of a section.
[14.7.5.5 NMAC - Rp, 14 NMAC 11.9.5, 11-19-04]

14.7.5.6 OBJECTIVE: The purpose of this rule is to set forth general provisions governing non-loading straw baled construction in New Mexico.
[14.7.5.6 NMAC - Rp, 14 NMAC 11.9.6, 11-19-04]

14.7.5.7 DEFINITIONS:

A. Bale means rectangular compressed blocks of straw, bound by strings or wire.

B. Flakes means slab of straw removed from an untied bale used to fill small gaps between the ends of stacked bales. Flakes may be retied to maintain the original compression of the bale before placement in gaps.

C. In fill means bales placed within or interior to the structural members so as not to carry any weight other

than the weight of the bales themselves.

D. Laid flat means stacking bales such that the longest edge of the bale is parallel to the wall plane and the greatest cross sectional area of the bale is horizontal. The resulting wall shall be at least 18" thick.

E. Straw means the stalk or stem of grain from wheat, rye, oats, rice or barley left after threshing or when the seed head has been removed.

F. Unbuttressed means a section of baled straw in-fill without a perpendicular wall, column or other lateral support.
[14.7.5.7 NMAC - Rp, 14 NMAC 11.9.7, 11-19-04]

14.7.5.8 GENERAL:

A. Baled straw shall not be used to support the weight of the building beyond the weight of the bales themselves. The bales will act as wall in-fill within or interior to the structural members.

B. The structural support of the building shall be designed according to the provisions of the 2003 New Mexico residential building code. All loadings shall be as required by 14.7.3.14 NMAC.

C. The vertical and horizontal members comprising the structural support of the building shall be wrapped in a moisture barrier according to the provisions of the 2003 New Mexico residential building code.

D. The general construction of the building shall comply with all provisions of all New Mexico building codes applicable to residential construction. (See Title 14, Chapters 5, 7, 8, 9 and 10 of the New Mexico Administrative Code - NMAC.)
[14.7.5.8 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.9 BALED STRAW SPECIFICATIONS:

A. Content: Bales of straw, limited to wheat, rye, oats, rice or barley, shall be acceptable if they meet the minimum requirements for shape, density, moisture content, and ties.

B. Shape: Bales shall be rectangular in shape and consistent in height and width to ensure even distribution of loads.

C. Ties: Bales shall be mechanically bound with baling wire or poly-propylene string. Bales shall have a minimum of two strings running parallel to the longest edge. Bales with broken or loose ties shall not be used unless the broken or loose ties are replaced with ties which restore the original degree of compaction of the bale.

D. Moisture content: Bales must be sufficiently dry with a maximum moisture content of twenty percent (20) at the time of installation. Moisture content of bales shall be determined by one of the following:

(1) Field method: A suitable moisture meter, designed for use with baled straw, and equipped with a probe of sufficient length to reach the center of the bale, shall be used to determine the average moisture content of five bales randomly selected from the bales to be used.

(2) Laboratory method: A total of five samples, taken from the center of each of five bales randomly selected from the bales to be used, shall be tested for moisture content by a recognized testing lab.

E. Compression: All bales shall be field tested for compression before placement in walls. Bales shall be of sufficient compression to remain intact when lifted by one baling wire or poly-propylene twine and transporting it manually a minimum of 25 feet while suspended by one wire or twine.
[14.7.5.9 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.10 WALL CONSTRUCTION:

A. Baled straw shall not be used below grade. The foundation shall be constructed so that the bottom of the lowest course of the bale wall is at least six inches (6") above final exterior grade. Baled straw

used for in-fill walls shall be laid flat with the vertical joints staggered at each course with a minimum overlap of twelve inches (12"). Vertical joints shall be field tested during placement of bales in the wall. Joints shall be sufficiently tight to prevent the end of a nominal dimension one by four inch (1" x 4") board two feet long from being pushed more than six inches (6") into the joint.

B. A moisture barrier shall be placed between the foundation and the first course of baled straw to prevent moisture from migrating through the foundation into the bottom course of bales. The barrier shall run vertically between the perimeter insulation and the foundation wall and shall run horizontally under the bale wall and then double back to the outside edge of the foundation.

(1) The moisture barrier shall consist of one of the following:

(a) cementitious waterproof coating;

(b) type 30 asphalt felt over an asphalt emulsion;

(c) sheet metal flashing, sealed at joints; or

(d) other ICC approved building moisture barrier.

(2) All penetrations through the moisture barrier, as well as all joints in the barrier, must be sealed with asphalt, caulking or an approved sealant.

(3) Unless protected by a roof above, a moisture barrier shall be placed over the top course of bales to prevent moisture entering the top of the wall of bales. The moisture barrier shall extend down both sides of the top course a minimum of the full top course.

(4) A moisture barrier shall be installed at all window sills prior to installing windows.

C. All weather-exposed exterior wall surfaces shall have a weather-resistive barrier to protect the interior wall covering as required by Subsection B of 14.7.2.14 NMAC.

D. Gaps between the ends of bales which are less than six inches (6") in width can be filled by a flake inserted securely into the gap.

[14.7.5.10 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.11 WALL REINFORCING:

A. The bottom course of the bale wall shall be pinned to the foundation with #4 rebar with a minimum of two pins per bale. These pins should be embedded into the foundation to a depth of not less than seven inches (7") and should continue vertically halfway into the second course of bales.

B. Each subsequent course of bales shall have two (2) rebar pins per

bale that extend vertically through that course and halfway into the second adjacent course below penetrating a total of two and one half courses. All rebar shall be located approximately nine inches (9") from the bale ends and centered on the width of the bale.

C. A continuous horizontal ladder reinforcing shall be placed horizontally between courses at mid wall height and shall be fastened twice per bale to the twine or wire.

[14.7.5.11 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.12 WALL ANCHORS:

A. Bale straw in-fill walls shall be securely anchored to all adjacent structural members to sufficiently resist horizontal displacement of the wall panels.

B. Anchors shall be placed at every horizontal joint or one per bale along vertical structure and a maximum of twenty-four inches (24") on center along horizontal structures at the top of bale wall panels beginning not more than twelve inches (12") from each end of the wall panel.

C. Anchors shall be metal strips or dowels. Metal strips shall be six inches (6") wide expanded metal lath or FHA perforated metal strips which shall be securely fastened to the vertical structural members and shall extend at least twelve inches (12") onto the adjacent bale and shall be pinned into the bale. Dowels shall be one-half inch (1/2") minimum diameter wood or steel and shall extend into the bale at least six inches (6").

D. Intersecting walls of other materials intersecting bale walls shall be attached to the bale wall by means of one or more of the following methods:

(1) Wooden dowels at least five-eighths inch (5/8") in diameter of sufficient length to provide twelve inches (12") of penetration into the bale, driven through holes bored in the abutting stud, and spaced to provide one dowel connection per bale.

(2) Pointed wooden stakes, at least 12 inches (12") in length and one and one-half inches (1-1/2") by three and one-half inches (3-1/2") at the exposed end, fully driven into each course of bales, as anchorage points.

(3) Bolted or threaded rod connection of the abutting wall, through the bale wall, to a steel nut and steel or plywood plate washer, a minimum of six inches (6") square and a minimum thickness of three-sixteenth inch (3/16") for steel and one-half inch (1/2") for plywood, in at least three equally spaced locations.

[14.7.5.12 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.13 OPENINGS: Rough

bucks and/or door and window frames shall be stabilized with one-half inch by 12 inch (1/2" X 12") diameter wood dowels extended into every adjacent bale or by means of a continuous lath, prior to the application of plaster or stucco.

[14.7.5.13 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.14 STUCCO/PLASTER:

A. Interior and exterior surfaces of bale walls shall be protected from mechanical damage, flame, animals, and prolonged exposure to water. Bale walls adjacent to bath and shower enclosures shall be protected by a moisture barrier.

B. Where bale walls abut other material (wood, concrete, steel, etc.) galvanized expanded metal lath shall be used to cover the junction. Expanded metal lath shall extend a minimum of six inches (6") onto the bales and shall be securely fastened to the bale.

C. All straw bale shall have exterior walls plastered with a minimum thickness of seven-eighths inch (7/8") portland cement plaster with or without stucco netting. The following two step process applies to the first coat of portland cement plaster applied to the vertical surface of the bales:

(1) the first coat of plaster shall be thoroughly worked into the bale surface; and

(2) the second coat of plaster shall be applied over the first coat and "scratched" to provide bonding for the subsequent layer of plaster.

D. Where wire mesh is used, wire mesh shall be a minimum of 17 gauge wire mesh by one and one half inch (1 1/2") opening and shall be securely attached to the exterior wall surface. Mesh fasteners shall have a maximum spacing of sixteen inches (16") from each other.

[14.7.5.14 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.15 PARAPETS:

Straw bales may be used for parapets with a maximum height of two (2) courses. These bales shall be pinned together vertically with rebar and have a continuous wrap with stucco netting encompassing both vertical surfaces and top of the bales. A continuous seal shall be maintained from the roof surface to the top of the parapet and down the other side a minimum of two inches (2") and a maximum of six inches (6"). Reference Paragraph (3) of Subsection B of 14.11.10 NMAC for moisture barrier types.

[14.7.5.15 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.16 ELECTRICAL:

A. All wiring within bale walls in residential construction shall be

type UF or approved conduit systems.

B. All wiring within bale walls may be pressed between vertical and horizontal joints of the bales, or bales may be channeled, maintaining a minimum depth of one and one-fourth inches (1 1/4") from the surface of the interior wall finish.

C. All cable, conduit systems, electrical and junction boxes, shall be securely attached to the bale wall.

D. All electrical wiring, methods and materials in bale walls shall meet the provisions of the New Mexico electrical code currently in effect within the state of New Mexico, and any other applicable state codes or standards.

[14.7.5.16 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.17 PLUMBING: All plumbing shall meet all provisions of the New Mexico plumbing and mechanical codes currently in effect within the state of New Mexico, and any other applicable state codes or standards.

[14.7.5.17 NMAC - Rp, 14 NMAC 11.9.8, 11-19-04]

14.7.5.18 PROFESSIONAL SEAL REQUIREMENT AND CERTIFICATE OF OCCUPANCY:

A. Construction documents detailing the structural design of the structure shall be prepared by a licensed New Mexico architect or structural engineer. The architect or engineer stamp must be affixed to each page of the plans detailing construction of the structure with the design professionals signature and date affixed over each stamp.

B. Prior to issuance of a certificate of occupancy by the construction industries division, an inspection report must be provided to the general construction inspector by the licensed New Mexico architect or structural engineer. The report shall attest to the building's structural integrity and conformance with the permitted drawings.

[14.7.5.18 NMAC - Rp, 14 NMAC 11.9.9, 11-19-04]

HISTORY OF 14.7.5 NMAC:

Pre NMAC History: None.

History of Repealed Material: 14 NMAC 11.9, Standards for Non-loadbearing Baled Straw Construction (filed 09-30-1997) repealed 11-19-04.

Other History:

14 NMAC 11.9, Standards for Non-loadbearing Baled Straw Construction (filed 09-30-1997) was renumbered and replaced by 14.7.5 NMAC, 2003 New Mexico Standards for Non-Load Bearing Baled Straw Construction, effective 11-19-04.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

TITLE 14 HOUSING AND CONSTRUCTION CHAPTER 10 ELECTRICAL CODES PART 5 2002 NEW MEXICO ELECTRICAL SAFETY CODE

14.10.5.1 ISSUING AGENCY: Construction Industries Division of the Regulation and Licensing Department.

[14.10.5.1 NMAC - Rp, 14 NMAC 10.2.1, 11-19-04]

14.10.5.2 SCOPE: This rule applies to all contracting work performed on all customer-owned electrical distribution and transmission facilities in New Mexico, on or after July 1, 2004, that are subject to the jurisdiction of CID, unless performed pursuant to a permit for which an application was received by the division before that date.

[14.10.5.2 NMAC - Rp, 14 NMAC 10.2.2, 11-19-04]

14.10.5.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9 and 60-13-44.

[14.10.5.3 NMAC - Rp, 14 NMAC 10.2.3, 11-19-04]

14.10.5.4 DURATION: Permanent.

[14.10.5.4 NMAC - Rp, 14 NMAC 10.2.4, 11-19-04]

14.10.5.5 EFFECTIVE DATE: November 19, 2004, unless a later date is cited at the end of a section.

[14.10.5.5 NMAC - Rp, 14 NMAC 10.2.5, 11-19-04]

14.10.5.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for contracting work performed on all customer-owned electrical distribution and transmission facilities in New Mexico.

[14.10.5.6 NMAC - Rp, 14 NMAC 10.2.6, 11-19-04]

14.10.5.7 DEFINITIONS: [Reserved]

14.10.5.8 ADOPTION OF THE 2002 NATIONAL ELECTRICAL SAFETY CODE:

A. This rule adopts by reference the 2002 national electrical safety code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2002 national electrical safety code.

[14.10.5.8 NMAC - Rp, 14 NMAC 10.2.8, 11-19-04]

14.10.5.9 AMENDMENTS TO THE 2002 NATIONAL ELECTRICAL SAFETY CODE. The following amendments are made to the 2002 national electrical safety code.

A. Section 1 introduction to the national electrical safety code is amended to add the following provision to section 011: E. electrical customer-owned distribution systems are subject to the NMESC. Customer-owned distribution systems include all (non-utility owned or operated) overhead or underground primary or secondary voltage electrical power line construction, installation, alteration, repairs, or maintenance.

B. Section 1 introduction to the national electrical safety code is amended to delete section 016.

[14.10.5.9 NMAC - N, 11-19-04]

HISTORY OF 14.10.5 NMAC:

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

CIC 77-5, 1977 National Electrical Safety Code, filed 11-1-77.

CID EB 81-2, 1981 National Electrical Safety Code, filed 12-23-81.

History of Repealed Material: The material in this part was derived from that previously filed renumbered as 14 NMAC 10.2 in parallel table published in the New Mexico Register Volume VII, No. 9 on May 15, 1996 and is hereby repealed effective July 1, 1999. Promulgation of 14 NMAC 10.2 - National Electrical Safety Code 1997, filed concurrently with this repeal, will be effective July 1, 1999.

14 NMAC 10.2 - National Electrical Safety Code 1997 (filed 6-01-1999) repealed 11-19-2004.

Other History:

CID EB 81-2, 1981 National Electrical Safety Code (filed 12-23-81) was renumbered, reformatted and replaced by 14 NMAC 10.2, National Electrical Safety Code 1997, effective 7-01-1999.

14 NMAC 10.2, National Electrical Safety Code 1997 (filed 6-01-1999) was renumbered, reformatted and replaced by 14.10.5 NMAC, 2002 New Mexico Electrical Safety Code, effective 11-19-2004.

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

This is an amendment to 14.7.3 NMAC, Section 11, effective 11-19-2004.

14.7.3.11 CHAPTER 3 BUILDING PLANNING:

A. Section R301 - Design Criteria. This section of the IRC is amended to include the following sentence at the end of the "exception" provision of subsection R301.2.2, seismic provisions: buildings in which earthen building materials form the bearing wall system, that are located in seismic design categories A, B, C and D1 are exempt from the seismic requirements of this code.

B. Section R302 through Section R309 See these sections of the IRC.

C. Section R310 Emergency Escape and Rescue Openings. See this section of the IRC except that the text of section R310.1 is deleted and the following language is inserted: every sleeping room shall have at least one functioning emergency escape and rescue opening, including a sleeping room in a basement. Emergency escape and rescue openings are not required in basement areas that are not sleeping rooms. Emergency escape and rescue openings shall have a sill height of no more than 44 inches (1118mm) above a permanent interior standing surface. If a door opening, to be used as an emergency escape and rescue opening, has a threshold that is below the adjacent ground elevation and is provided with a bulkhead enclosure, the bulkhead enclosure must comply with section 310.3. The net clear opening dimensions required in this Section apply to the emergency escape and rescue openings, operated normally from the inside. Emergency escape and rescue openings, which have a finished sill height lower than the adjacent ground elevation, must have a window well that complies with section R310.2.

D. Section R311 Means of Egress.

(1) R311.1 through R311.3 See these section of the IRC.

(2) R311.4 Doors. See this section of the IRC except that the text of section R311.4.3, landings at doors, is deleted and the following language is inserted: There shall be a floor or landing on each side of each exterior door, except as provided in (a) and (b) below.

(a) Where a stairway with two or fewer risers is located on the exterior side of any door, other than a required exit door, a landing is not required on the exterior side

of the door. The floor or landing at an exit door required by section R311.4.1 shall not be more than 1.5 inches (38mm) lower than the top of the threshold. The floor or landing at exterior doors other than exit doors required by section R311.4.1, is not required to comply with this requirement, but shall have a rise no greater than 8 inches (203mm).

(b) The landing at an exterior doorway, where the door does not swing over the landing, shall not be more than 8 inches (203 mm) below the top of the threshold unless it is an exterior screen or storm door. The width of each landing shall not be less than the door served. The minimum dimension of every landing shall be 36 inches (914 mm) measured in the direction of travel.

(3) R311.5 Stairways. See this section of the IRC except as provided below.

(a) The first sentence of section [~~R311.5.4~~] R311.5.3.1 is deleted and the following sentence is inserted: The maximum riser height shall be 8 inches (203 mm).

(b) The text of section R311.5.3.2, tread depth, is deleted and the following language is inserted: The minimum tread depth shall be 9 inches (229 mm). The tread depth shall be measured horizontally between the vertical planes of the foremost projection of adjacent treads and at a right angle to the tread's leading edge. The greatest tread depth within any flight of stairs shall not exceed the smallest by more than 3/8 inch (9.5 mm). Winder treads shall have a minimum tread depth of 9 inches (229 mm) measured as above at a point 12 inches (305 mm) from the side where the treads are narrower. Winder treads shall have a minimum tread depth of 6 inches (152 mm) at any point. Within any flight of stairs, the greatest winder tread depth at the 12 inch (305 mm) walk line shall not exceed the smallest by more than 3/8 inch (9.5 mm).

(c) Delete section R311.5.3.3.

(d) Delete the first sentence, only, of R311.5.6.3 and substitute the following provision: All required handrails shall be of one of the following types, or the shape shall provide equivalent graspability.

E. Section R312 through Section R323 See these sections of the IRC. [14.7.3.11 NMAC - N, 7-1-04; A, 11-19-04]

**NEW MEXICO
REGULATION AND
LICENSING DEPARTMENT
CONSTRUCTION INDUSTRIES
DIVISION**

This is an amendment to 14.10.4 NMAC, to correct the inadvertently omitted date of the adopted code, effective 11/19/04.

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 10 ELECTRICAL
CODES
PART 4 2002 STATE OF NEW
MEXICO ELECTRICAL CODE**

**UNIVERSITY OF NEW
MEXICO**

**TITLE 5 POST-SECONDARY
EDUCATION
CHAPTER 60 UNIVERSITY OF
NEW MEXICO
PART 7 CAMPUS VIO-
LENCE**

5.60.7.1 ISSUING AGENCY:
The University of New Mexico
[5.60.7.1 NMAC - N, 11-15-2004]

5.60.7.2 SCOPE: The university may take disciplinary action against anyone for an offense, such as mentioned in this policy when the offense occurs on university premises.
[5.60.7.2 NMAC - N, 11-15-2004]

5.60.7.3 STATUTORY AUTHORITY: Section 21-7-7 NMSA 1978 allows the university of New Mexico board of regents to delegate authority to the president of the institution to authorize administration policies pertaining to the operations of the university.
[5.60.7.3 NMAC - N, 11-15-2004]

5.60.7.4 DURATION:
Permanent
[5.60.7.4 NMAC - N, 11-15-2004]

5.60.7.5 EFFECTIVE DATE:
November 15, 2004.
[5.60.7.5 NMAC - N, 11-15-2004]

5.60.7.6 OBJECTIVE:
General: The university of New Mexico is committed to providing an environment that is free from violence. Any acts or threatened acts of violence will not be tolerated. Anyone engaging in such behavior will be subject to discipline, up to and including dismissal and may also be personally subject to other civil or criminal liabilities. This policy is not intended to supersede

federal, state, or local laws, rulings, and/or regulations.

[5.60.7.6 NMAC - N, 11-15-2004]

5.60.7.7 DEFINITIONS:
A. Violent behavior
includes:

(1) verbal, written, physical, electronic, or non verbal threats or other behavior that would constitute a threat of violence or cause a reasonable person to be fearful;

(2) physical acts against persons, university property, or property belonging to others that would constitute a threat of violence or cause a reasonable person to be fearful;

(3) restraining an individual or interfering with someone's free movement, except in patient care or child care areas when specifically authorized by departmental policy;

(4) possession or use on university property of firearms, ammunition, or weapons of any kind, unless authorized for law enforcement personnel by the university chief of police. This also includes brandishing any object that could reasonably be perceived as a weapon;

(5) possession on university property of dangerous substances or materials, explosives, or incendiary devices, unless used for university business, such as research, and specifically authorized in advance by the university department of risk management.

B. Weapons include, but are not limited to, firearms, ammunition or other dangerous weapons, substances, or materials, bombs, explosives, or incendiary devices.

[5.60.7.7 NMAC - N, 11-15-2004]

5.60.7.8 CONFIDENTIALITY: The university will treat reports about violence or potential violence as confidential to the extent circumstances permit. An employee reporting violent or potentially violent behavior is protected from retaliation in accordance with "Reporting Misconduct and Retaliation" Policy 2200, UBP. For information on confidentiality of reports made to the dispute resolution department and CARS, refer to "Dispute Resolution Policy" Policy 3220, UBP and "Counseling, Assistance, and Referral Service" Policy 3750, UBP.
[5.60.7.8 NMAC - N, 11-15-2004]

5.60.7.9 WEAPONS PROHIBITED ON UNIVERSITY PROPERTY: Law enforcement officers, in the performance of their authorized duties, may carry weapons on campus. ROTC students conducting required and supervised drills may carry inoperable weapons only for the purpose of those drills. With the foregoing exceptions, no person may use or possess a

weapon on any part of campus. Persons with such weapons, materials, or devices must enter campus at the closest point to the campus police office and deposit all weapons or materials at that office for the duration of their stay. Dangerous substances and materials used for university business, such as research, must be authorized in advance by the university department of risk management. If any person does carry such weapons and/or materials on campus, the weapons and/or materials may be impounded by a law enforcement officer for the duration of the person's stay on campus and the person may also be subject to appropriate disciplinary and/or criminal action.

[5.60.7.9 NMAC - N, 11-15-2004]

5.60.7.10 REPORTING: All threats and violent behaviors should be taken seriously. Any situation that poses an immediate danger to self or others must be reported to the police by dialing 911. An employee who is the victim of, a witness to, or has knowledge of violent behavior of any of the types listed in 5.60.7.8 NMAC below, or has reason to believe that violent behavior may occur at, or in connection with university activities, must report the situation or incident promptly to his or her supervisor or anonymously to crime stoppers (505/277-STOP). If the employee's supervisor is involved in the violent behavior, the employee shall report the behavior to the supervisor's immediate supervisor. Supervisors shall follow up on all reports of violence or possible violence and are encouraged to contact the university counseling, assistance, and referral service (CARS) as soon as possible. Supervisors should not investigate the situation. For information and/or assistance in dealing with potentially violent behavior, contact CARS, the university dispute resolution department, the university safety, health, and environmental affairs department, or campus police. For procedures on reporting incidents of sexual harassment, refer to "Sexual Harassment Policy" Policy 3780, UBP. For more information specifically related to students refer to the "Student Code of Conduct" located in the policies section of the Pathfinder: the UNM Student Handbook.

[5.60.7.10 NMAC - N, 11-15-2004]

5.60.7.11 INCIDENT ASSESSMENT TEAM: In addition to the initial reporting required by 5.60.7.7 NMAC, supervisors must report all incidents of violence or potential violence to the university department of risk management. Risk management must report these incidents to the chair of the incident assessment team as soon as possible. These reports will be reviewed by the university's incident

assessment team which has representatives from campus police, CARS, dispute resolution, human resources, risk management, safety, health, environmental affairs, university counsel, and the health sciences center. This team will:

A. review reports of violence, workers' compensation claims, and employee surveys to identify patterns of violence that could be prevented by security devices, procedural changes, and/or employee training;

B. evaluate work sites to identify hazards, conditions, operations and situations that could lead to violence and recommend measures to prevent or control hazards; and

C. review post incident responses to ensure effectiveness of the supervisor's and university's responses and recommend corrective action and/or revised procedures if necessary.

[5.60.7.11 NMAC - N, 11-15-2004]

5.60.7.12 DISCIPLINE: Given the serious nature of violations to this policy, such violations can result in acceleration of the steps in progressive discipline. Refer to "Performance Management" Policy 3215, UBP.

[5.60.7.12 NMAC - N, 11-15-2004]

5.60.7.13 PREVENTION: Prevention is a key to providing a safe work environment. Training and awareness can assist in preventing violence. The alarms division of the university physical plant department can assist departments with installation of security devices such as alarms.

A. Training: Both employee and supervisor training are needed to prevent violence in the workplace. Departments should receive training on the identification and management of violent or potentially violent situations. CARS and the department of risk management provide training.

B. Awareness:

(1) Events in the workplace such as corrective discipline, layoffs, harassment, and employee impairment can trigger violence and should be handled with care. Violence can erupt even when these events are handled appropriately and with compassion. CARS can provide assistance in dealing with these types of situations. The dispute resolution department can provide assistance to supervisors and/or employees in resolving work-related issues and problems.

(2) Supervisors and managers must comply with "Performance Management" Policy 3215, UBP which describes policies and procedures for improving performance and applying corrective discipline.

(3) Supervisors and managers must comply with "Separation of Employment" Policy 3225 UBP which discusses proper notice, reemployment rights, and benefit rights for an employee who may lose his or her job through a layoff.

(4) Supervisors and managers must comply with "Sexual Harassment Policy" Policy 3780, UBP which defines sexual harassment and provides procedures for reporting sexual harassment to the university office of equal opportunity.

(5) Supervisors and managers must comply with "Suspected Employee Impairment at Work" Policy 3270, UBP which provides procedures for a supervisor who suspects that an employee reporting or returning to work is impaired due to alcohol or other substances.

C. Managers also need to pay attention to signs of stress in the workplace, including organizational or job changes that affect employees, friction between employees and/or customers, and hazardous working conditions and seek assistance. CARS can help employees experiencing stress and can also assist supervisors with identification and reduction of stress.

[5.60.7.13 NMAC - N, 11-15-2004]

5.60.7.14 RELATED POLICIES: "Rights and Responsibilities at the University of New Mexico" Faculty Handbook, "Policy on Academic Freedom and Tenure" Faculty Handbook, "Visitor Code of Conduct" the Pathfinder: the UNM Student Handbook, "Student Code of Conduct" the Pathfinder: the UNM Student Handbook, "Reporting Misconduct and Retaliation" Policy 2200, UBP, "Performance Management" Policy 3215, UBP, "Dispute Resolution Policy" 3220, UBP, "Separation of Employment" Policy 3225, UBP, "Employee Impairment at Work" Policy 3270 UBP, "Counseling, Assistance, and Referral Service" Policy 3750, UBP, "Sexual Harassment Policy" Policy 3780, UBP.

[5.60.7.14 NMAC - N, 11-15-2004]

HISTORY OF 5.60.7 NMAC:
[RESERVED]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 4 WORKERS' COMPENSATION
PART 13 CONTROLLED INSURANCE PLANS

11.4.13.1 ISSUING AGENCY: New Mexico Workers' Compensation Administration (WCA).

[11.4.13.1 NMAC - N, 11/15/04]

11.4.13.2 SCOPE: These rules cover all parties regulated pursuant to NMSA 1978, Section 52-1-4.2 and all parties seeking to establish a "controlled insurance plan" or a "wrap-up" insurance plan, as defined below, for the purpose of insuring workers' compensation liability.

[11.4.13.2 NMAC - N, 11/15/04]

11.4.13.3 STATUTORY AUTHORITY: The director is authorized by NMSA 1978, Section 52-5-4 to adopt reasonable rules and regulations to implement the legislative purposes of the Workers' Compensation Act (Act). The director is empowered to seek administrative penalties pursuant to NMSA 1978, Section 52-1-61. Regulatory authority over controlled insurance plans is set forth at NMSA 1978, Section 52-1-4.2.

[11.4.13.3 NMAC - N, 11/15/04]

11.4.13.4 DURATION: Permanent.

[11.4.13.4 NMAC - N, 11/15/04]

11.4.13.5 EFFECTIVE DATE: November 15, 2004 unless a later date is cited at the end of a section.

[11.4.13.5 NMAC - N, 11/15/04]

11.4.13.6 OBJECTIVE: This part sets forth the requirements and processes for application and regulation of controlled insurance plans, enumerates prohibited acts and sets forth enforcement procedures.

[11.4.13.6 NMAC - N, 11/15/04]

11.4.13.7 DEFINITIONS:

A. "Unit statistical data" means the detailed exposure, premium, and loss (claim) information at the classification code level. Data providers submit unit statistical data to the designated rate service organization for use in ratemaking and experience rating.

B. "Single construction site" means the defined contiguous geographical area in which all accidents that occurred during the duration of the controlled insurance plan shall be covered by the controlled insurance plan.

C. "Noncontiguous construction site" means an area, or areas, in which construction is taking place that is not described on the official application, or amended application, as being within the controlled insurance plan by both a narrative description and a map designation which shows the construction site outlined by a single, non intersecting, boundary line.

D. "Controlled insurance plan," "OCIP," "CCIP," "wrap-up," "owner controlled insurance plan," and "contractor controlled insurance plan" individually and collectively mean the controlled insurance plan subject to regulation under this rule.

E. "Same project" means a construction project on a single construction site defined and funded at the time of the application required by these rules.

F. "Director" means the director of the workers' compensation administration or his designee.

G. "WCA" or "agency" means the workers' compensation administration of the state of New Mexico.

H. "Applicant" means the person or entity that sought approval of a controlled insurance plan, any person designated by the applicant as their agent for interaction with the WCA and any substituted applicant approved as a substitute in writing by the director.

I. "Equipment and furnishings" means any item that is shown in, or specified on, construction documents for the single construction site.

[11.4.13.7 NMAC - N, 11/15/04]

11.4.13.8 APPLICATIONS:

A. Any party proposing a controlled insurance plan pursuant to NMSA 1978, Section 52-1-4.2, shall submit an application for approval to the director on a form provided for that purpose not less than 30 days prior to the commencement of bidding procedures for the primary contractor.

(1) A provisional or contingent application for approval shall be allowed, provided that neither final approval nor permission to break ground may be given to any provisional or contingent application.

(2) Approvals of provisional or contingent applications are advisory only and no approval that is not designated as a final approval and that does not bear the signature of the director shall be deemed final.

(3) Every application for approval of a controlled insurance plan shall contain a detailed financial statement demonstrating that the aggregate construction cost, as statutorily defined, has been satisfied, and further showing that the sources of funding for the project conform with the definition of the term, "same project" contained in these rules. The financial statement shall be supported by an affidavit executed by the signatory to the application attesting to the accuracy and completeness of the financial statement.

B. No controlled insurance plan construction project shall break ground until final written approval of the controlled insurance plan, subject to amendment, is provided by the director. The director is authorized to seek injunctive relief to pro-

hibit construction at a site until final approval of an application for a controlled insurance plan is given or the construction project is operated under a non-controlled insurance plan otherwise complying with the Act, in addition to any other relief sought.

C. Failure to provide and maintain current information on the application form on file with the director, and to update any change information within ten calendar days of the change shall constitute a violation of these rules. The applicant shall have a continuing duty to maintain the currency and correctness of the application on file with the director.

D. Amendments to an application to conform with any modifications to the job, modifications to the safety plan or modifications to the designated single construction site and all other information required by this rule or the application for approval of a controlled insurance plan are required prior to the commencement of work pursuant to the amended provisions.

(1) The insurance policy for a controlled insurance plan must be conformed to any revisions in the application prior to commencement of work pursuant to the revisions.

(2) All contractors and subcontractors shall be notified in writing upon any request for amendment or revision to the application, and shall be separately notified of the approved amendments or revisions prior to the commencement of work pursuant to any approved amendments or revisions.

E. The director or his designee shall be available to applicants for controlled insurance plans to provide counseling in aid of the development of acceptable applications, but in no event shall such assistance be construed as the director's approval of the application or as a promise that the director will approve an application.

F. The director or his designee shall attempt to complete the application review process within 30 days of submission of the final application, and shall inform the applicants in writing of the reasons for, and expected duration of, any delay beyond the 30 day period.

G. The applicants shall specify the names of at least two individuals authorized to accept notices and service of process applicable to the controlled insurance plan. For each named individual, both street and mailing addresses shall be specified, and the applicant shall notify the WCA of any changes in the authorized representatives for receipt of notices and process or the applicable addresses for such representatives within three business days of any such change.

H. The applicant shall specify the name of at least one person, who

may also be designated to perform other functions under this part, who is knowledgeable concerning the handling of workers' compensation claims under the Act. The director shall approve the designated claims management professional after submission of credentials and resume, prior to the commencement of the work. The designated claims management professional shall be available within 24 hours of any accident at the single construction site and shall consult with the injured worker's employer within 72 hours of any accident at the single construction site, concerning the handling of the claim and return to work issues.

[11.4.13.8 NMAC - N, 11/15/04]

11.4.13.9 CONTROLLED INSURANCE PLAN CONSIDERATION UNDER THE EXTRA-HAZARDOUS EMPLOYER PROVISIONS OF THE WORKERS' COMPENSATION ACT.

The controlled insurance plan shall be considered a single employer for purposes of WCA regulations concerning extra-hazardous employers, promulgated pursuant to NMSA 1978, Section 52-5-1.3 (B). The North American industrial classification system (NAICS) code applicable to the general contractor shall be the industry code utilized for comparison of the controlled insurance plan loss record to its industry standard. The controlled insurance plan project shall be examined every 90 days, while construction is ongoing, for purposes of determining extra-hazardous employer status.

[11.4.13.9 NMAC - N, 11/15/04]

11.4.13.10 SAFETY PLANS

A. Criteria for approval. The following requirements must be met for initial approval of a safety plan and for final approval of an application for a controlled insurance plan. Failure to maintain continuous compliance with each of these requirements shall be considered a violation of these rules and the director shall be authorized to seek injunctive action to prohibit construction work until such failure is corrected.

(1) New Mexico OSHA compliance;

(2) Appointment of a site safety manager acceptable to the director;

(a) The site safety manager shall have a minimum of three-year's experience in programs covered by 29 CFR part 1910 or 29 CFR part 1926, as applicable.

(b) An applicant shall submit a resume and credentials of the proposed site safety manager not less than 14 days before commencement of work on the project. The director, or his designee, shall review the resume credentials within 14 days. Work on the project shall not commence until the director or his designee has approved a site

safety manager.

(c) An applicant shall submit a resume and credentials for any proposed substitute or standby site safety manager prior to any construction activities at the single construction site overseen by the substitute or standby site safety manager.

(d) In no event shall the applicant allow work at the single construction site to proceed for more than 8 continuous hours without the approved site safety manager, or approved substitute or backup site safety manager being physically present at the single construction site.

(e) All approved safety plans must provide that the approved site safety manager, or approved standby or substitute site safety manager shall have plenary authority to close down the construction project in whole or in part, in the event that hazards to health or safety of workers present an imminent danger to worker health or safety. The approved site safety manager, backup site safety manager or substitute site safety manager has a duty to close down the construction project, in whole or in part, upon discovery of an imminent danger to worker health or safety that cannot be immediately rectified.

(3) A plan for coordination of site safety programs among all contractors and subcontractors by the site safety manager, including access for contractor and subcontractor safety personnel.

(a) The plan shall provide for review of the controlled insurance plan safety plan and drug and alcohol testing provisions by safety personnel employed by, or contracted to, individual contractors and subcontractors.

(b) The plan shall provide that any safety provisions, and drug and alcohol testing programs required by the contractor or subcontractor that are more stringent in the safety provisions or drug and alcohol testing programs required by the approved safety plan shall be enforceable against the employees and working conditions of the contractor or subcontractor and shall not be superseded by the approved controlled insurance plan safety plan or the approved controlled insurance plan drug and alcohol screening program.

(4) Third party safety consultant

(a) The applicant shall engage the services of an independently contracted safety consultant ("third party safety consultant") to provide independent inspections and oversight on safety issues to assist the site safety manager and the WCA.

(i) The third party safety consultant shall conduct work environment evaluation inspections of the single construction site at least twice per month during construction activities.

(ii) The third party safety consultant shall notify the site safety

manager immediately of any hazardous condition disclosed by the third party safety consultant's inspection

(iii) The third party safety consultant shall not be terminated in response to making a good-faith finding that a safety hazard exists or in response to reporting such safety violations as provided by these rules.

(b) The third party safety consultant shall have credentials at least equal to those required of the site safety manager.

(c) The third party safety consultant shall not be the backup site safety manager.

(d) The credentials of the third party safety consultant shall be presented to, and approved in writing by, the WCA prior to the commencement of construction.

(e) In the event that the third party safety consultant is replaced during construction activities, the credentials of the replacement third party safety consultant shall be presented to the WCA within no more than five working days of the earlier of the termination of the contract or the cessation of work by the prior third party safety consultant.

(f) The third party safety consultant shall prepare written reports at least every 30 days from the date of commencement of construction detailing any safety issues or hazards discovered during the inspections that occurred during the prior month. Said reports shall be provided to the WCA, all contractors and all subcontractors.

(g) The third party safety consultant shall also generate a written report in the event that he or she discovers any condition or hazards that constitute an imminent danger to worker health or safety that the independent safety consultant believes would justify closure of the construction site in whole or in part by the site safety manager. Said report shall be provided to the WCA, all contractors and all subcontractors within 2 days of the discovery of the condition or hazard.

(5) Drug and alcohol screening, complying with provisions of NMSA 1978, Section 52-1-12.1. Compliance with the drug and alcohol screening plan shall be the responsibility of the applicant provided that the applicant shall implement any more stringent plan incorporated pursuant to Subparagraph (a) of Paragraph (3) of Subsection A of 11.4.13.10 NMAC.

(6) Continuous coverage of the construction site shall be provided by an on-site registered nurse, who shall have demonstrated experience in the treatment of workers' compensation claimants, during all working hours.

(a) Credentials and resume for the registered nurse must be presented to the WCA and approved prior to the beginning

of construction.

(b) Credentials for any registered nurse serving in a backup capacity or as a substitute for the original approved registered nurse must be presented to the WCA and approved prior to the first instance of coverage by that nurse.

(7) Emergency medical services plan

(a) The plan must include a provision requiring prominent display at the work site giving notice to workers of emergency facilities to be used in the event of an accident, including a map directing workers to the appropriate emergency facilities.

(b) The plan must include a provision requiring prominent display at the work site of notices concerning any contracted physicians or medical facilities.

(c) The plan must contain a provision for providing notice of initial choice of health care providers to workers, in compliance with WCA regulations.

(d) The plan must contain evidence of planning and contractual preparation for emergency medical evacuation by air, when medically appropriate.

(8) Evidence of a plan for facilitating return to work of injured employees.

(a) The plan must provide for appropriate communication to workers to ensure to the extent possible they are fully apprised concerning return to work policies.

(b) The plan must provide for the direct involvement of the employer of the injured worker in return to work planning and implementation commencing as soon as possible after the injury to the worker.

(c) The plan must provide for continued communication concerning return to work between the insurer, the worker and employer for all injuries persisting beyond the completion of the project.

(9) The site safety manager must certify to the owner of the property upon which the controlled insurance plan project is being built, all contractors and subcontractors and to the independent safety consultant, and to the WCA, that each worker on the single construction site has been specifically safety trained for each job function that they perform, within 10 days of the commencement, or change, of the workers job duties on the single construction site. The certification shall be on a form approved by the director.

(10) The plan must provide for communications provided to the applicant regarding substance abuse testing, medical treatment and medical conditions, or injury reports to be promptly and specifically communicated to the workers employer within four calendar days of the communication to the applicant. The applicant is solely responsible for this requirement. The applicant shall specify, to the WCA and to each contractor and subcontractor, before the

commencement of work at the single construction site, the names of at least two persons working full time at the single construction site who are authorized to assist the applicant in fulfilling this responsibility.

B. Failure to obtain approval for a safety plan or to maintain compliance with an approved safety plan is a serious violation of these rules and the director is authorized to seek injunctive relief to prevent commencement or continuation of construction until such situation is remedied in addition to any other relief sought.

[11.4.13.10 NMAC - N, 11/15/04]

11.4.13.11 WAIVERS. A waiver of any non-statutory requirement in this Part may be sought by the applicant. No waiver of any requirement of this part shall be effective unless documented in writing, signed by the director. No waiver shall be granted under circumstances where the waiver has the effect of increasing the risk of injury or accident to any worker on the project, or increasing the impact or effect of any accidental injury or occupational disease upon any worker on the project. The director may consult with in-house or independent safety experts in making a determination under this section, but his determination shall not be overturned unless it is arbitrary, capricious, abusive of discretion or otherwise not in compliance with law.

[11.4.13.11 NMAC - N, 11/15/04]

11.4.13.12 BID NOTICES TO CONTRACTORS AND SUBCONTRACTORS

A. All bid notices to contractors and subcontractors shall include specification of the single construction site proposed, and shall include a copy of the proposed controlled insurance safety plan.

B. The bid procedure utilized by the applicant must include a mechanism for contractors and subcontractors to have questions concerning the controlled insurance plan answered before the bid is due.

[11.4.13.12 NMAC - N, 11/15/04]

11.4.13.13 DISPUTES CONCERNING APPROVAL OF THE APPLICATION FOR APPROVAL OF A CONTROLLED INSURANCE PLAN AND FOR THE REQUIRED SAFETY PLAN

A. All application materials, and safety plan materials shall be submitted to the director at least 30 days before the planned commencement of construction.

B. Amendments to the application or safety plan, and any waivers of requirements, that are negotiated between the WCA and the applicant shall

only be effective if reduced to writing and signed by both parties.

C. In the event that an impasse develops in negotiations or disputes arising from the application process, the safety plan or request for waivers of requirements, the director shall designate an informal dispute resolution coordinator to attempt to bring the parties together to help them reach a mutually agreeable solution.

D. In the event the informal dispute resolution fails to resolve the dispute, either the applicant or the WCA can request a formal hearing before the director.

E. The director, or his hearing officer, shall hear the positions of both sides and render an initial ruling within 15 days of the hearing. Motions practice and discovery procedures shall not be allowed. The rules of evidence are relaxed to the extent possible, consistent with the need to maintain order in the hearing and reach a fair decision.

F. Appeal from the ruling the director or his hearing officer after a formal hearing shall be by writ of certiorari to the district court, pursuant to SCRA 01-075.

[11.4.13.13 NMAC - N, 11/15/04]

11.4.13.14 PROHIBITED ACTS.

The following acts are prohibited:

A. The establishment of the controlled insurance plan for projects that do not have an aggregate construction value in excess of \$150 million, including equipment and furnishings, expended within a five-year period as provided in NMSA 1978, Section 52-1-4.2 (A) and Section 11.4.7.9 of these rules.

B. The establishment of a rolling wrap-up plan or establishment of a construction project insured under a rolling wrap-up plan.

C. Establishment of a controlled insurance plan on a site other than the single construction site, or establishment of the controlled insurance plan on a noncontiguous construction site.

D. Failure to include appropriate notice of the controlled insurance plan in request for bids or request for proposals to construction contractors and subcontractors, and failure to include an accurate description of the single construction site or failure to include a copy of the proposed controlled insurance safety plan with the request for bids or request for proposals.

E. Failure to include copies of specifications for the controlled insurance plan with request for bids or request for proposals to construction contractors and subcontractors and failure to provide a mechanism for contractors and subcontractors to have their questions concerning the controlled insurance plan answered before the bid or proposal is due.

F. Failure to timely file the contract for a controlled insurance plan and evidence of compliance with NMSA 1978, Section 52-1-4.2 (A-E) with the WCA and the superintendent insurance at least 30 days before the date on which the applicant is to begin receiving bids or proposals on the project.

G. Failure to request and obtain written approval from the WCA of the application for approval and the site safety plan for the controlled insurance project, prior to the commencement of work on the project.

H. Failure to distribute project performance based refunded premiums or dividends to each participating contractor or subcontractor on a proportional basis, if such refunded premiums or dividends are provided for in the contract.

I. Failure to establish a method for timely reporting of job related injuries to employees of the contractor and subcontractors to their specific employer, the controlled insurance plan insurer and the WCA.

J. Failure to maintain and report unit statistical data to the insurance company writing the workers' compensation insurance policies for the contractors and subcontractors participating in the controlled insurance plan project within the time frame required by the insurance company.

K. Failure by contractors and subcontractors participating in the controlled insurance plan project to allow access to payroll records for payroll auditing purposes.

L. Failure to provide contractors and subcontractors with actual specific payroll audit data following the end of the annual policy period.

M. Failure to provide information to contractors and subcontractors concerning injuries to their workers in a form and format designed to quickly and accurately inform the contractors and subcontractors concerning the nature and extent of injuries and the circumstances in which the injury occurred.

N. Failure to cover the injury to an employee of any contractor or subcontractor that occurs within the physical confines of the single construction site.

O. Failure to update and keep current the application, safety plan, narrative description of the single construction site and visual diagram of the single construction site.

P. Failure to take steps to conform the controlled insurance plan policy to the single construction site definition before work is done, or knowingly allowing work to be commenced in any area intended to be covered by the controlled insurance plan, without ensuring that the controlled

insurance plan policy is written to conform its geographic scope of coverage to the single construction site.

Q. Failure to comply with any provision of these rules, or to knowingly allow any contractor, subcontractor or employee or independent contractor of the general contractor to violate any provision of these rules.

[11.4.13.14 NMAC - N, 11/15/04]

11.4.13.15 ENFORCEMENT

A. In the event of violation of any of these rules, or in the event of the occurrence of any prohibited acts specified in these rules, the WCA may seek any or all of the following penalties singly or in combination, against the applicant, any individual responsible for the performance or non-performance of any duty or prohibited act and, with respect to injunctive relief, against the continuation of the controlled insurance project:

(1) A fine of up to \$1000 for each violation pursuant to NMSA 1978, Section 52-1-61.

(2) A fine of up to \$1000 for each day of the continuing violation, after notice is served upon the designated representative of the applicant that the director has made a finding of probable cause that a continuing violation of these rules has occurred.

(3) Injunctive relief for the cessation of construction activities at the single construction site for the noncontiguous construction site until full compliance with these rules is achieved, as specifically authorized in these rules.

B. The procedures to be utilized in enforcement proceedings pursuant to this section as set forth in 11 NMAC 4.5.

[11.4.13.15 NMAC - N, 11/15/04]

HISTORY OF 11.4.13 NMAC: [Reserved]

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.12 NMAC, Sections 2, 3, 5, 7, 8, 9, 10, and 11 effective November 15, 2004.

TITLE 11 LABOR AND WORKERS' COMPENSATION CHAPTER 4 WORKERS' COMPENSATION PART 12 UNINSURED EMPLOYERS' FUND

11.4.12.1 ISSUING AGENCY: New Mexico Workers' Compensation Administration

[11.4.12.1 NMAC - N, 10/15/03]

11.4.12.2 SCOPE: This rule applies to all ~~[insurers issuing workers' compensation coverage in the state of New Mexico, all individual self insured employers, pools of governmental entities, and self insured groups issuing workers' compensation coverage in the state of New Mexico who are required to pay assessments into the uninsured employers' fund (fund) and all]~~ employers in the state of New Mexico who are subject to the Workers' Compensation Act and Occupational Disease and Disablement Law ~~[who are required to reimburse the fund].~~

[11.4.12.2 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.3 STATUTORY AUTHORITY: Chapter 258, Laws of 2003 and NMSA 1978, Section 52-5-4, authorizes the director to adopt reasonable rules and regulations for ~~[effecting]~~ implementing the purposes of the Act.

[11.4.12.3 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.4 DURATION: Permanent

[11.4.12.4 NMAC - N, 10/15/03]

11.4.12.5 EFFECTIVE DATE: October 15, 2003 unless a later date is cited at the end of a section.

[11.4.12.5 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.6 OBJECTIVE: The purpose of this rule is to establish requirements governing the uninsured employers' fund and establishing penalties against uninsured employers pursuant to Chapter 258, Laws of 2003.

[11.4.12.6 NMAC - N, 10/15/03]

11.4.12.7 DEFINITIONS:

A. "Claim" means any allegation of entitlement to benefits under Chapter 258, Laws of 2003, which has been communicated to the uninsured employer's fund or to the fund through the workers' compensation administration.

B. "Eligible" and "eligibility" mean that the claim is properly subject to payment by the fund to the extent that the claim is compensable. The compensability determination is independent of the eligibility determination.

C. "Fund" means the uninsured employers' fund established by Chapter 258, Laws of 2003 as administered by the workers' compensation administration.

D. "Fund administrator" means a designee of the director charged with administering the fund and implementing the provisions of this rule.

~~[E. "Paid losses" are~~

~~defined as the sum of medical and indemnity payments, exclusive of attorney fees, allocated and unallocated loss adjusting expense, paid during the quarter, for injuries incurred after July 1, 2003, less recoveries by insurers, self insurers, self insured groups or self insured pools of governmental entities under subrogation rights. Payments made by an employer or subject to reimbursement pursuant to a policy deductible or self insured retention shall be included in paid losses.]~~

~~[F.]~~ E. "TRD" means the New Mexico taxation and revenue department.

[11.4.12.7 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.8 PROCEDURES FOR SUBMISSION OF CLAIMS:

A. Claims may be submitted by any written request for payment addressed to the uninsured employers' fund that states the name, social security number and address of the injured worker, the name and address of the employer for whom the worker was working when the worker was injured or became ill and the date of injury or onset of occupational illness.

(1) If a ~~[complaint]~~ claim for benefits is submitted to the clerk on a complaint form and names the fund as a party, the clerk will not accept such complaints for filing or assign the complaint for mediation until an eligibility determination is made and is final, notwithstanding the provisions of any other rule.

(2) The clerk is authorized and directed to transfer any complaint naming the fund to the fund administrator for eligibility determination. The clerk shall date stamp the complaint upon receipt. No further proceedings on the complaint shall take place, until the eligibility determination is made and is final, notwithstanding the provisions of any other rule.

(3) The date of presentation to the fund shall be deemed to be the earliest date shown on the claim or complaint by an official WCA date stamp.

(4) If a claim is presented to the fund administrator prior to the running of the statute of limitations, the date of presentation shall toll the statute of limitations for purposes of filing against the fund.

B. All claims naming the fund as a party shall be submitted to the fund administrator for an eligibility determination.

(1) Only those claims for injuries or illnesses that arose from accidents or exposures occurring on or after June 22, 2003, shall be eligible to make claims against the fund.

(2) Only claims that would have been subject to the terms of the Workers' Compensation Act or Occupational Disease Disablement Law at the time of the injury or

exposure shall be eligible to make claims against the fund.

(3) Only claims by workers employed by those employers who, despite the obligation to do so, were not insured pursuant to the Workers' Compensation Act shall be eligible to make claims against the fund.

(4) A worker shall not be eligible to make a claim against the fund if the worker has filed a valid election pursuant to Section 52-1-7 NMSA 1978.

(5) No claim that is eligible for payment by an insurer's guaranty fund, a self-insurer's guaranty fund, or pursuant to the joint and several liability provisions contained in the by-laws or other authorizing documents of a certified group self-insurer shall be eligible to make claims against the fund unless that source of payments is demonstrated by the worker to be insolvent and unable to assume the claim.

(6) A district court determination that the employer of a worker making the claim was not insured at the time of the worker's injury or occupational illness shall be conclusive with respect to the issue of insurance coverage only. In such cases, all other eligibility issues are reserved for the fund.

C. The fund shall notify the parties of the eligibility determination in writing, via certified mail, return receipt requested, at the addresses shown on the claim within fifteen (15) working days of receipt of the notification of the claim against the fund as determined by the earliest date stamp appearing on the face of the claim. If the claim is not eligible, the notice shall inform the worker why the claim is not eligible.

(1) Failure to claim the notice of denial from the post office shall not operate to toll the time limits set herein.

(2) Failure to claim the notice will be treated as actual delivery for purposes of further proceedings upon return of the notice to the WCA by the post office.

D. If a party wants a review of the eligibility determination, a request for review shall be filed with the clerk within ~~thirty (30)~~ fourteen (14) days from the date of actual or constructive receipt of the eligibility determination. The request for review shall contain all the information required in Rule 11.4.12.8 NMAC and shall specify the reason or reasons ~~[that he or she does not agree]~~ for disagreement with the eligibility determination.

(1) The director or his designee shall conduct such hearing without undue delay.

(a) The director or his designee shall hold a hearing on any request for review of an eligibility determination.

(b) At any hearing on eligibility,

the claimant shall have the burden of proving that the claim arose under the Workers' Compensation Act or Occupational Disease Disablement Law and that the employer was uninsured.

(c) At any hearing on eligibility, the records of the WCA shall be rebuttably presumed to establish the insurance status of the employer as of the date of injury.

(d) At any hearing on eligibility, the rules of evidence shall be relaxed to the extent necessary to achieve substantial justice.

(e) With respect to any hearing on eligibility, no pre-hearing discovery or motions practice shall be permitted without specific authorization from the director or his designee.

(f) Telephonic and video conferencing appearances shall be permitted, to the extent permitted by law, to facilitate the appearance of the parties.

(2) The director or his designee shall issue an order within 15 working days of the hearing, which order shall be transmitted to the parties via first class US mail at their last known address.

(3) If a party ~~[is still aggrieved by]~~ wishes to contest the decision of the director or his designee, he or she may file a writ of certiorari to the district court to appeal the decision. Proceedings for a writ of certiorari shall be governed by SCRA 1-075.

E. After the determination of eligibility is made, if either party wishes to resume resolution of the dispute brought in the complaint, that party shall file a request to resume dispute resolution with the clerk.

F. If a mediator or WCJ determines that it is more likely than not that a complaint before them presents a claim that is eligible for payment by the uninsured employers' fund, the mediator or WCJ shall amend the caption of the complaint to name the fund as a party. Any complaint amended pursuant to this provision shall be forthwith returned to the WCA clerk for further processing pursuant to the provisions of this rule, notwithstanding the provisions of any other rule.

G. The fund may seek a stay of the time limits prescribed in this part, for good cause shown, by presenting the request to the director or designee with notice to all parties to the claim against the fund.

[11.4.12.8 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.9 CLAIMS ADMINISTRATION:

A. The WCA may contract with a claims administrator or third party administrator for the adjusting of those claims that are determined to be eligible for

payment by the fund, purchase a loss portfolio transfer covering some or all of the liabilities of the fund, or may purchase a policy of commercial insurance to cover the liabilities of the fund upon a finding by the director that such purchases are in the best interests of the workers eligible to receive benefits from the fund and the entities paying assessment to support the fund.

(1) The claims administrator, third party administrator or insurer shall pay, or oppose, claims on their merits, and shall be treated for purposes of mediation and adjudication of disputes as a party with all rights and responsibilities applicable under law.

(2) The claims administrator, third party administrator or insurer may engage counsel for representation when necessary.

(3) The claims administrator may solicit information concerning the average weekly wage of the claimant from the employer. Provision of such information to the claims administrator shall not constitute an admission that the claimant was an employee. In the event that the employer does not respond to the request for wage information, the employer will be informed, in writing, at the last known address of the employer, or by any means authorized by the director or his designee, that wages are in dispute and that the employee's evidence concerning wages shall be used to calculate average weekly wage. In the event that the employer does not respond within a reasonable time from the date the letter described in this paragraph, an affidavit from the worker concerning the wages earned while employed by the uninsured employer shall be deemed sufficient evidence upon which to pay benefits. Any suspected inaccurate reporting of wages by any party shall be reported to the enforcement bureau for investigation.

(4) In the event of a dispute concerning the wage basis for benefits, the claims administrator is authorized to pay indemnity benefits, under reservation of rights, to the worker based upon available wage information.

B. With respect to any complaint filed with the WCA arising from a dispute about the provision of any benefit due on any claim eligible for payment by the fund, the fund and the employer at the time of injury or last injurious exposure shall be named as parties.

C. The claims administrator, third party administrator or insurer shall regularly report to the WCA on expenditures made to and on behalf of workers from the fund.

(1) The claims administrator, third party administrator or insurer shall file the first report of injury or illness (E1.2) with the WCA within 10 days of the eligi-

bility determination and provide a copy of the E1.2 to the worker.

(2) The claims administrator, third party administrator or insurer shall file all payment reports required by law.

(3) The claims administrator, third party administrator or insurer shall maintain records sufficient to allow the WCA director or his designee to audit the administration of claims and shall provide those records upon request to the WCA. The claims administrator, third party administrator or insurer shall be subject to audit by the WCA or its contractor with respect to the administration of claims against the fund.

(4) The claims administrator, third party administrator or insurer shall actively support the WCA in its efforts to provide information to the public concerning the fund and to prosecute penalty collection proceedings against an uninsured employer pursuant to this rule.

D. Lump sum payments.

(1) All requests for lump sum payments shall be set for hearing.

(2) The director's office shall be noticed and treated as a party for all lump sum petitions involving payments from the fund.

E. The fund shall have the right to subrogation that would otherwise be available to the payer.

(1) The claims administrator, third party administrator or insurer shall pursue subrogation rights on behalf of the fund.

(2) The claims administrator, third party administrator or insurer shall be entitled to retain reimbursement for reasonable legal fees and expenses plus 10% of the sum recovered in subrogation net of legal fees and expenses. The remainder of the subrogation recovery shall be paid to the fund.

F. The fund shall be liable only for those benefits that are due under the Workers' Compensation Act or Occupational Disease Disablement Law.

(1) The fund shall be entitled to the protections of the exclusive remedy provisions of the Workers' Compensation Act or Occupational Disease Disablement Law to the same extent it would if it were the insured employer of any worker who is eligible for benefits against the fund.

(2) The fund shall not be subject to claims for payments of a judgment obtained in a third party lawsuit, nor for payment of a judgment obtained in a tort action against an uninsured employer.

G. Duplicate recovery of workers' compensation benefits is strictly prohibited.

(1) The fund shall immediately cease payments to or on behalf of any worker who is receiving workers' compensation

payments from another source for the same injury and arising out of the same accident.

(2) The fund shall have the right of first reimbursement for workers' compensation benefit payments made that duplicate any payments received by the injured worker from another source and may offset subsequent payments, institute collection proceedings, request criminal investigation or seek any other lawful remedy to recover duplicate payments of workers' compensation benefits.

H. Payments under the fund shall not constitute payments by the employer for purposes of the exclusive remedy provisions of the Act. The fund shall be entitled to assert all defenses and subrogation rights that would be available to an insured employer.

[11.4.12.9 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.10 PENALTIES COLLECTED FROM UNINSURED EMPLOYERS:

If the fund determines that an employer was obligated to pay workers' compensation benefits to or on behalf of a worker and has not done so due to its failure to obtain and keep in force a policy of workers' compensation insurance that is valid pursuant to the Workers' Compensation Act, the WCA director or his designee shall seek a penalty from the employer of not less than 115% and not more than 150% of all benefits paid to or on behalf of the worker. The determination of the appropriate percentage of penalty imposed shall be treated as a statutorily authorized discretionary act by a state agency, for purposes of judicial review. This penalty is separate from, and in addition, to any penalty or remedy sought against an uninsured employer pursuant to NMSA 1978, Sections 52-1-61 or 52-1-62 for failure to have insurance when required to do so. This penalty is intended to protect the health, safety and welfare of the citizens of the state of New Mexico and shall be considered a governmental penalty for purposes of the dischargeability provisions of the federal bankruptcy code.

A. Any final compensation order addressing the compensability of the workers' claim shall not be subject to collateral attack.

B. At any penalty hearing, the actual benefits provided to or on behalf of a worker or his dependants shall be presumed valid as the basis for the assessment of a penalty.

C. Billing and medical records in the possession of the WCA's claims adjustment contractor shall be considered records of the WCA for purposes of authentication.

D. No pre-hearing discovery or motions practice shall be permitted in penalty proceedings without specific

authorization from the director's hearing officer, and for good cause shown.

E. Telephonic and videoconferencing shall be permitted to the extent permitted by law to facilitate the participation of the parties.

~~[A-]~~ F. The WCA may use any legal process for collecting the penalty, including, but not limited to, reduction of the penalty to judgment in district court, seeking and obtaining writs of garnishment and execution, contempt citations or any other legal process in aid of collection and participating as a party in any bankruptcy action, including filing an involuntary petition in federal bankruptcy court to liquidate personal or business assets for the purpose of enforcing the penalty.

~~[B-]~~ G. For the purposes of these actions, the WCA shall, at all times act pursuant to the commissions of its personnel as special assistant attorneys general. All proceedings before the WCA director for enforcement of the provisions of this section shall be conducted in accordance with 11 NMAC 4.5.

~~[C-]~~ H. The fund may seek reimbursement of the costs of any legal action instituted in a proceeding to determine or collect a penalty pursuant to this subsection, but shall not seek reimbursement of legal fees, provided that the fund may collect reasonable attorneys fees to offset the fees incurred by the retention of outside counsel to collect any penalty.

[11.4.12.10 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.11 ASSESSMENTS:

A. The fiscal year of the fund coincides with the fiscal year of the state.

~~[B- Reporting of paid losses and payment of assessments based on those paid losses is due on or before the end of the month following each calendar quarter, commencing July 1, 2003, on a form provided for that purpose by the New Mexico taxation and revenue department ("TRD"). All reports and payments shall be delivered directly to TRD.~~

~~(1) An insurer has the sole responsibility to report paid losses and pay assessments for all of its policy holders.~~

~~(2) A group self insurer has the sole responsibility to report paid losses and pay assessments for all its members.~~

~~(3) An individual self insurer has the sole responsibility to report its paid losses and pay assessments for it, provided that if the individual self insurer is a governmental entity, the obligation to pay the assessment shall exist only to the extent permitted by law.~~

~~(4) A pool of governmental entities has the sole responsibility to report its paid losses and pay assessments for all~~

~~members of the pool, provided that the obligation to pay the assessment shall exist only to the extent permitted by law.~~

~~C. An assessment payer shall have the right, to the extent permitted by law, to flow assessments through to their policy holders or to the members of their groups.~~

~~D. Assessments for group self insurers may be considered administrative expenses and not claims expenses.~~

~~E. Group self insurers may seek a waiver, on a year to year basis, of the percentage allocation of administrative to claims expense, to the extent such allocation is affected by the assessment. The waivers shall be considered upon a showing of need until July 1, 2009. Thereafter, such waiver requests will be discouraged and strictly scrutinized.~~

~~F. Reporting of paid losses is required, even if no losses were paid during the quarter.~~

~~G. On or before June 1, 2004, and the first day of June of each succeeding year the director shall issue an order that publicly announces the percentage to be applied to paid losses that will form the basis of the assessment for the next calendar year. The order shall be accompanied by an explanation of the rationale and supporting claims and income information used for the determination of the percentage.~~

~~(1) In the absence of such an announcement the rate established for the prior year shall remain in force.~~

~~(2) The director shall set the rate at the lowest rate that provides sufficient funds to cover all known and anticipated claims and expenses payable by the fund during the next 12 months, taking into account the residual fund balance and liabilities at the time of the determination up to the amount set by law.~~

~~(3) The director may contract with an actuary for determination of the assessment necessary to insure fiscal solvency of the fund and pay the expense of the actuarial study from the corpus of the fund.]~~

B. Beginning with the calendar quarter ending September 30, 2004, and for each calendar quarter thereafter, there is assessed against each employer who is required or elects to be covered by the Workers' Compensation Act a fee equal to two dollars thirty cents (\$2.30) per covered employee. Thirty cents per employee of the fee assessed against an employer shall be distributed to the credit of the uninsured employers' fund.

[H] C. Penalties, pursuant to NMSA 1978, Section 52-1-61 for non-reporting, incorrect reporting or non-payment of assessments due shall accrue on a monthly basis, with each month of noncom-

pliance constituting a separate offense.

(1) Penalties pursuant to this provision shall be in addition to any penalties imposed by the New Mexico department of insurance or the New Mexico taxation and revenue department.

(2) The director may seek any remedy available under law for enforcement of penalties imposed pursuant to this provision.

(3) The respondent shall pay costs incurred to enforce penalties.

[11.4.12.11 NMAC - N, 10/15/03; A, 11/15/04]

11.4.12.12 MISCELLANEOUS PROVISIONS

A. The fund may purchase excess insurance from the fund corpus if, in the judgment of the director, it is fiscally prudent to do so.

B. Auditing of the fund by the superintendent of insurance shall occur yearly, commencing thirty (30) days after the close of the fund's fiscal year.

(1) The final report of the audit of the fund (after an opportunity to contest and respond to findings made by the auditor) shall be treated as a public document.

(2) In the event of any audit exceptions in the final report of the audit, the fund will issue a public statement of corrective actions that it will implement to prevent future exceptions.

(3) The fund shall comply with all requirements for the reporting of losses and claims expenditures for statistical purposes that would apply to a self-insured employer. [11.4.12.12 NMAC - N, 10/15/03]

HISTORY OF 11.4.12 NMAC:
[RESERVED].

End of Adopted Rules Section

Other Material Related to Administrative Law

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

HUMAN SERVICES DEPARTMENT
LOW INCOME HOME ENERGY ASSISTANCE PROGRAM 8.150 NMAC

A public hearing was held on September 14, 2004 to receive comments on the current administration of the Low Income Home Energy Assistance Program (LIHEAP). No one attended the hearing. Written comments were received from one organization.

The following comments were submitted:

Comment: Categorical Eligibility Option Section 2605(b)(2)(A) of the Low Income Home Energy Assistance Act (the "LIHEA" or "the Act") allows states to make payments under the Act to households in which 1 or more individuals are receiving TANF, SSI, Food Stamps, or certain needs-tested veterans benefits. This is typically referred to as categorical eligibility, and allows for households who are already receiving benefits through state HSD offices to automatically register for and receive LIHEAP benefits if they are eligible for these other benefits.

Response: Categorical eligibility was used as the primary issuance tool for LIHEAP until FFY 1999. Under welfare reform the LIHEAP application process was re-examined. The process was brought in house and the application approval rate has increased. The number of approved applications under the current process approximates the number of benefits issued using the categorical eligibility component. During ISD application intake LIHEAP is included in the services offered during screening.

However categorical eligibility continues to be an ongoing consideration. LIHEAP is a household benefit meaning that all persons living in the home must be included on the application. Our current computer system cannot track this information. Consequently an approval may result in a benefit that does not consider all household circumstances. Households would not get credit for all members and the result may be an inaccurate benefit.

Comment: The need for categorical eligibility for this kind of assistance is especially urgent in a rural state like New Mexico. These rural families typically have multiple barriers (such as lack of transportation and childcare) that impact their ability to travel to an ISD office for paperwork, interviews,

and other appointments. Likewise, these rural families are usually isolated and are unlikely to know about a program like LIHEAP, but likely do have knowledge of food stamps and TANF, and so are much more likely to apply for the latter two programs and not the former. Lastly, rural families are likely to have high heating costs during the winter due to their increased use of propane gas and heating oil.

Response: The LIHEAP application process does not require a visit to an ISD office. A representative may apply on the household's behalf. Applications are available by mail and for downloading from the ISD web site on the internet. Applications may be submitted by mail or by fax in addition to being dropped off. The required interview may take place by telephone. If circumstances warrant, a home visit may be scheduled. Clients who are homebound or reside in rural areas should not be faced with significant impediments under the current process.

Comment: Outreach Activities Sections 2605(b)(3) and (c)(3)(a) require the state to conduct outreach activities "designed to assure that eligible households...are made aware of the assistance available under this subchapter...". In the state's LIHEAP Plan, submitted for approval to HHS on a yearly basis, the section labeled "outreach" indicates that HSD does not include inserts in energy vendor billings to inform individuals of the availability of all types of LIHEAP assistance, nor does the Department make mass mailings to past recipients of LIHEAP.

Response: HSD will continue to re-evaluate its outreach activities and consider all suggestions. We are reaching clients through a message on the notice being sent for Food Stamps. The LIHEAP message was sent to PNM customers last fall through their newsletter "Energy Works". HSD will continue to look for cost effective outreach opportunities. A pilot project using buses, bus benches and bus shelters is being run in Santa Fe. Additional bus advertising is being considered depending on the effectiveness of the Santa Fe campaign.

Comments: We understand the Department's anticipated concern that by making our suggested changes and increasing enrollment, there will be less money to go around, and that therefore benefit levels will have to be cut and/or the money for the program will be exhausted before the end of the heating season. While we believe that these are legitimate concerns, we also believe that the answer to those concerns is to increase state funding for the program

and leverage more Federal funding. One way to accomplish this is to more effectively utilize the LIHEAP Incentive Program; another is to take advantage of the LIHEAP R.E.A.C.H. program, a program that New Mexico does not take part in, to our great disadvantage.

Response: In order to receive supplemental funds under the leveraging incentive program LIHEAP program staff have been working for more than two years to develop leveraging partners across New Mexico. In FFY 02 leveraging funds were reported for the second time ever for the State of New Mexico. In FFY 03 additional partners have been developed and leveraging dollars will be reported for FFY 03 and 04. Propane vendors were asked to give discounts to LIHEAP eligible households. More than ten propane companies voluntarily gave discounts to LIHEAP clients during FFY04. The dollars saved from those discounts will be reported as leveraged. An agreement was finalized this summer between Community Action Agency of Southern NM and HSD in order to leverage donated fund dollars. Other leveraging projects are also being developed.

REACH projects are being explored jointly with the Department of Energy, Minerals and Natural Resource and the New Mexico Mortgage Finance Authority. REACH rarely provides additional funds for benefits. Funding for REACH projects have typically been for home energy efficiency projects and education. Several community action agencies have indicated an interest in working with HSD to develop future REACH proposals.

Comments: A quick survey of the US DHHS website reveals that New Mexico received very little in the way of Leveraging Incentive Grants (LIG) in FY04 and that when applying for LIG money, New Mexico only claimed 3 resources.

Response: It is unfortunate that even in our largest communities few resources outside of federal funds are available to assist low-income households with the cost of utilities and bulk fuels. We are currently working with a large utility with the goal of having another "Good Neighbor" type fund created.

The effective date of the LIHEAP regulations remains 10-01-01.

Publication of Human Services Register Vol. 27 No. 51 approved on 10-14-04 by:

Pamela S. Hyde, J.D., Secretary

Human Services Department
P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment Uninsured Employers' Fund

The proposed Rules governing the Uninsured Employers' Fund were opened for public comment on October 12, 2004 for in person comment and through October 19, 2004 for written comment. No comments were received from any member of the public at the public hearing. Two comments were received from the public in writing.

One commentator suggested that the Scope provision at 11.4.12.2 be changed to read: "This rule applies to all employers in the State of New Mexico who are subject to the Workers' Compensation Act and Occupational Disease and Disablement Law" and that the word "effecting" be changed to "implementing" at 11.4.12.3. The suggestions will be adopted.

One commentator suggested that the phrase "If a complaint for benefits is submitted to the clerk" be replaced by "If a claim for benefits is submitted to the clerk on a complaint form" at 11.4.12.8.A.1. The suggestion will be adopted.

One commentator suggested that the language "per covered employee" be added to the end of the first sentence of Section 11.4.12.11.B, for the sake of clarity. The suggestion will be adopted.

One commentator suggested that the provision at 11.4.12.11.c be deleted as no longer necessary under the current funding mechanism. The suggestion is well-founded and will be adopted.

One commentator made several suggestions to the Procedures for Submission of Claims (11.4.12.8) and the Claims Administration section (11.4.12.9). At 11.4.12.8.D the commentator suggested the phrase "for disagreement" replace "that he or she does not agree" and at 11.4.12.8.D.3 the commentator suggested the phrase "wishes to contest" as a replacement for "is still aggrieved by". The commentator suggested in 11.4.12.8.G that "herein" be changed to "in this Part". The commentator suggested that the phrase "evidence concerning wages shall be used to calculate average weekly wage" in place of evidence concerning wages will be considered appropriate unless contested" in the third sentence of section 11.4.12.9.A.3. The

commentator suggested the addition of a section 11.4.12.9.A.4 to read "In the event of a dispute concerning the wage basis for benefits, the claims administrator is authorized to pay indemnity benefits, under reservation of rights, to the worker based upon available wage information." The suggestions will be adopted.

One commentator suggested the revision of the lettered subsections under 11.4.12.10, as follows:

A. "Any final compensation order addressing the compensability of the workers' claim shall not be subject to collateral attack.

B. At any penalty hearing, the actual benefits provided to or on behalf of a worker or his dependants shall be presumed valid as the basis for the assessment of a penalty.

C. Billing and medical records in the possession of the WCA's claims adjustment contractor shall be considered records of the WCA for purposes of authentication.

D. No pre-hearing discovery or motions practice shall be permitted in penalty proceedings without specific authorization from the director's hearing officer, and for good cause shown.

E. Telephonic and videoconferencing shall be permitted to the extent permitted by law to facilitate the participation of the parties." The suggestions will be adopted.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

Alan M. Varela
Director
N.M. Workers' Compensation
Administration
October 20, 2004

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

Director's Response to Public Comment Controlled Insurance Program Rules

The proposed Rules governing Controlled Insurance Programs were opened for public comment on October 5, 2004 for in person comment and through October 12, 2004 for written comment. No comments were received from any member of the public either verbally or in writing.

Accordingly, the proposed Rules will be adopted without further modification.

The public record of this rulemaking shall incorporate this Response to Public Comment and the formal record of the rulemaking proceedings shall close upon execution of this document.

Alan M. Varela
Director
N.M. Workers' Compensation
Administration
October 20, 2004

End of Other Related Material Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2004

Volume XV	Submittal Deadline	Publication Date
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 14
Issue Number 24	December 15	December 30

2005

Volume XVI	Submittal Deadline	Publication Date
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
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Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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