

**NEW
MEXICO
REGISTER**

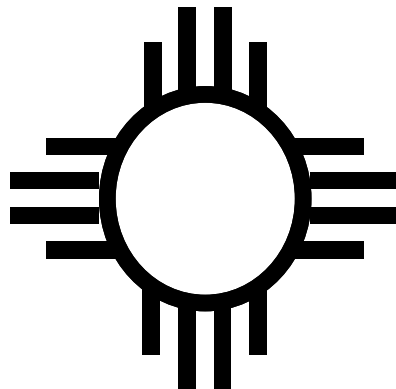


Volume XVIII
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The official publication for all notices of rulemaking and filings of adopted, proposed and emergency rules in New Mexico

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New Mexico Register

Volume XVIII, Number 16

August 30, 2007

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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.

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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Notices of Rulemaking and Proposed Rules

NEW MEXICO DEPARTMENT OF AGRICULTURE

Notice of Hearing

New Mexico Department of Agriculture will hold public hearings under the New Mexico Pesticide Control Act, 76-4-1 through 39, NMSA 1978, in order to propose amendments 21.17.50 NMAC - Pesticides.

In general, these rules will facilitate revisions to pesticide applicator testing and certification requirements. Copies of the proposed rule can be obtained at the address below or viewed on NMDA's webpage at: <http://www.nmda.nmsu.edu/pesticides> and clicking on Regulation Changes on the right menu bar.

Comments in support or opposition, may be submitted in writing to the address below or presented in person at one of the scheduled hearing opportunities as follows:

* Albuquerque -
Wednesday October 3, 2007, 9:30 a.m. at the NMDA Albuquerque District Office 2604 Aztec NE Albuquerque.

* Las Cruces - Tuesday
October 3, 2007, 9:30 a.m. at the NMDA building, 3190 S. Espina, Las Cruces

Written comments, signed by the submitting person, must be received by 5:00 p.m., October 3, 2007. Comments, inquiries, or requests for copies of the rule should be directed to Bonnie Rabe, New Mexico Department of Agriculture, Pesticide Compliance Program, PO Box 30005, MSC 3AQ, Las Cruces, NM 88003. Telephone (505) 646-2133. Fax (505) 646-5977.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

Notice of Public Hearing

Notice is hereby given that the Children, Youth and Families Department, Protective Services Division, will hold a public hearing in Santa Fe, New Mexico, on Thursday,

September 6, 2007, from 4:00 p.m. to 5:00 p.m. Interested parties are invited to make comments regarding amendments to the following rules:

Child Protective Legal Services, 8.10.7 NMAC. This rule is being revised to comply with federal requirements.

Permanency Planning, 8.10.8 NMAC. This rule is being revised to comply with federal requirements.

Independent Living Program 8.10.9 NMAC. This rule is being revised to include added services and changes in practice.

Adoption Services, 8.26.2 NMAC. This rule is being revised to comply with federal requirements.

Foster Parenting, 8.27.2 NMAC. This rule is being revised to comply with federal requirements.

The hearing will be held at the Public Employees Retirement Association (PERA) Building at 1120 Paseo de Peralta, Santa Fe, NM 87501, Room 565. 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.

The PERA building is accessible to people with disabilities. Anyone seeking such assistance must provide five days' 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 for accommodation.

The current and proposed rules may be accessed by contacting Andrea Poole at 505-827-8474. The proposed rules may also be viewed online at the New Mexico Register, <http://www.nmcp.state.nm.us/nmregister/>, Online Issue No. 16, which will be published on August 30, 2007.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ENERGY CONSERVATION AND MANAGEMENT DIVISION

NOTICE OF PUBLIC MEETING AND HEARING

OF THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

The New Mexico Energy, Minerals and Natural Resources Department will hold a meeting and hearing at 9:00 A.M. Thursday, September 20, 2007 in Room 103, State Personnel Office, 2600 Cerrillos Road Santa Fe, New Mexico.

During the meeting, the New Mexico Energy, Minerals and Natural Resources Department will conduct a public hearing on proposed changes to rule 3.13.19 NMAC for administration of the Renewable Energy Production Tax Credit, NMSA 1978, Section 7-2A-19 as amended in 2007 by SB 463. In addition, a proposed change would add a definition for "low emissions technology" for biomass generators.

Copies of the rules and the proposed changes are available from the New Mexico Energy, Minerals and Natural Resources Department, Energy Conservation and Management Division, 1220 South Saint Francis Drive, Santa Fe, NM 87505, on our website, <http://www.emnrd.state.nm.us/ecmd/>, or by contacting Michael McDiarmid at 505-476-3319, michael.mcdiarmid@state.nm.us or Fernando Martinez at 476-3312, fernando.r.martinez@state.nm.us.

All interested persons may participate in the hearing, and will be given an opportunity to submit relevant evidence, data, views, and arguments, orally or in writing.

A person who wishes to submit a written statement, in lieu of providing oral testimony at the hearing, shall submit the written statement prior to the hearing, or submit it at the hearing. No statements will be accepted after the conclusion of the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, please contact Michael McDiarmid at least one week prior to the hearing or as soon as possible. Public documents can be provided in various accessible formats. Please contact Michael McDiarmid at 476-3319, through Relay New Mexico at 1-800-659-1779 Voice or 1-800 659-8331 TTY, if a summary or other type of accessible format is needed.

**NEW MEXICO
ENVIRONMENTAL
IMPROVEMENT BOARD**

**NEW MEXICO ENVIRONMENTAL
IMPROVEMENT BOARD
NOTICE OF PUBLIC HEARING TO
CONSIDER PROPOSED REMEDIA-
TION OF CLANDESTINE DRUG LAB-
ORATORIES RULE, 20.4.5 NMAC**

The New Mexico Environmental Improvement Board (Board) will hold a public hearing beginning on October 22, 2007 and continuing thereafter as necessary in Room 317 of the New Mexico State Capitol, 490 Old Santa Fe Trail [at the northeast corner of Old Santa Fe Trail and Paseo de Peralta]. The purpose of the hearing is to consider the New Mexico Environment Department's proposed Remediation of Clandestine Drug Laboratories Rule, 20.4.5 NMAC.

The proposed rule would require the remediation of any chemical contamination of property where a clandestine drug laboratory has been discovered and seized; and prior to remediation prohibits the occupation of the premises and requires that notice of the contamination be given to any purchaser, renter or other transferee. The property owner will be responsible for the remediation.

Documents filed with the Environmental Improvement Board related to the proposed rule are available for review or copying during regular business hours in the office of the Boards and Commissions:

Joyce Medina, Board Administrator
NMED Boards and Commissions
Harold Runnels Building, 1190 St. Francis Drive, N2153
Santa Fe, New Mexico, 87502
(505) 827-2425, Fax (505) 827-2836
joyce.medina@state.nm.us

The proposed rule has been posted to the New Mexico Environment Department webpage at http://www.nmenv.state.nm.us/Common/regs_idx.html. Parties interested in receiving a hardcopy should contact Ms. Vanessa Baros of the Hazardous Waste Bureau by e-mail at vanessa.baros@state.nm.us or by phone at (505) 476-6000.

The hearing will be conducted in accordance with the Hazardous Waste Act, Section 74-4-5 NMSA 1978, the Rulemaking Procedures - Environmental Improvement Board, 20.1.1 NMAC, and other applicable procedures. A copy of the Rulemaking Procedures for the Board may

be obtained from Ms. Medina; they are also available on the Board's web page at <http://www.nmenv.state.nm.us/eib/regulations.htm>.

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony. A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Written comments regarding the proposed amendments may be addressed to Ms. Joyce Medina at the above address, and should reference docket number **EIB 07-10 (R)**.

Any person who intends to present technical testimony at the hearing shall file a notice of intent to present technical testimony. Technical testimony means scientific, engineering, economic or other specialized testimony, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing. The notice of intent shall:

- * identify the person for whom the witness(es) will testify;
- * identify each technical witness the person intends to present and state the qualifications of that witness, including a description of their educational and work background;
- * summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- * include the text of any recommended modifications to the proposed regulatory change; and
- * list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent to present technical testimony for the hearing must be received in the Office of the Environmental Improvement Board not later than **5:00 p.m. on October 5, 2007**, and should reference the name of the proposed rule, the date of the hearing, and docket number **EIB 07-10 (R)**. Notices of intent to present technical testimony should be submitted to Ms. Joyce Medina at the address above.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by October 5, 2007, at the New Mexico Environment Department, Human Resources Bureau,

P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay Network at 1-800-659-8331.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal. The Board may make changes to the proposed rule based upon the administrative record, comments, or evidence considered at the hearing.

**NEW MEXICO
DEPARTMENT OF HEALTH
DIVISION OF HEALTH
IMPROVEMENT**

**NEW MEXICO DEPARTMENT OF
HEALTH
NOTICE OF RULEMAKING AND
PUBLIC HEARING**

NOTICE IS HEREBY GIVEN of rule-making and public hearing to be held on Monday, October 1, 2007 at 8:30 A.M to 2:30 P.M. in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico. The public hearing will be held to consider the adoption of two new proposed rules 7.34.2 NMAC "Advisory Board Responsibilities and Duties" and 7.34.3 NMAC "Registration Identification Cards".

Pursuant to the statutory authority granted under the Lynn and Erin Compassionate Use Act (Act), Senate Bill 523, the New Mexico Department of Health's promulgation of these new parts and accompanying rules will regulate an application system of issuing identification cards to participating qualified patients and their designated caregivers in the Department's Medical Cannabis Program, which includes medical use of marijuana, possession limitations and prohibited qualified patient and designated caregiver conduct and also delineate the duties and responsibilities of the medical marijuana advisory boards and public hearing requisites.

A copy of the proposed regulation can be obtained from:

Brian R. Royer
New Mexico Department, Division Health Improvement
P.O. Box 26110
Santa Fe, NM 87502-6110
(505) 827-2663

Please submit any written comments regarding the proposed regulation to:

Brian R. Royer
New Mexico Department of Health,
Division of Health Improvement
P.O. Box 26110
Santa Fe, NM 87502-6110

The Department will accept public comment through the close of the hearing.

If you are an individual with a disability who is in need of special services to attend or participate in the hearing, please contact Brian Royer by telephone at 505-827-2663.

The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF
MARIJUANA
PART 2 ADVISORY BOARD
RESPONSIBILITIES AND DUTIES**

7.34.2.1 ISSUING AGENCY:
New Mexico Department of Health, Public Health Division.
[7.34.2.7 NMAC - N, 00/00/2007]

7.34.2.2 STATUTORY AUTHORITY: These requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the authority granted under the Department of Health Act, Section 9-7-6E and the Lynn and Erin Compassionate Use Act.
[7.34.2.7 NMAC - N, 00/00/2007]

7.34.2.3 SCOPE: This part governs the membership, duties, responsibilities and public hearing proceedings of the medical marijuana advisory board.
[7.34.2.7 NMAC - N, 00/00/2007]

7.34.2.4 DURATION:
Permanent.
[7.34.2.7 NMAC - N, 00/00/2007]

7.34.2.5 EFFECTIVE DATE:
_____, 2007
[7.34.2.7 NMAC - N, 00/00/2007]

7.34.2.6 OBJECTIVE: The objective of this part is to establish membership, duties, responsibilities, and public hearing procedures that govern the medical marijuana advisory board proceedings.
[7.34.2.7 NMAC - N, 00/00/2007]

7.34.2.7 DEFINITIONS:

A. "Act" means the Lynn and Erin Compassionate Use Act.

B. "Adequate supply" means an amount of marijuana, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's designated caregiver that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of marijuana for a period of three (3) months which is derived solely from an intrastate source. An adequate supply shall not exceed six (6) ounces of useable marijuana, four (4) mature plants and three (4) seedlings.

C. "Advisory board" means the medical marijuana advisory board consisting of eight (8) practitioners representing the fields of but not limited to neurology, pain management, medical

oncology, psychiatry, infectious disease, family medicine and gynecology.

D. "Consent to release of medical information form (MCP-62007-006)" means a signed qualified patient or designated caregiver authorization form to release specific medical use of marijuana information to any specified person, agency or family member.

E. "Debilitating medical condition" means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admitted into hospice care in accordance with rules promulgated by the department; or
- (8) any other medical condition, medical treatment or disease as approved by the department; and
- (9) which results in pain, suffering or debility for which there is credible evidence that medical use marijuana could be of benefit.

F. "Department" means the department of health.

G. "Designated caregiver" means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by the patient's practitioner or qualified patient as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of marijuana pursuant to the provisions of the act.

H. "Designated caregiver application form (MCP-62007-003)" means the registry identification card application form provided by the medical cannabis program.

I. "Division" means the public health division of the department of health.

J. "Medical cannabis program coordinator" means the administrator of the New Mexico department of health, public health division medical cannabis program.

K. "Medical cannabis program" means the administrative body of the New Mexico public health division charged with the management and implementation of the medical cannabis registry identification card program.

L. "Medical provider certification for patient eligibility form (MCP-62007-002)" means a written certification form provided by the medical cannabis program signed by a patient's practitioner that, in the practitioner's pro-

fessional opinion, the patient has a debilitating medical condition as defined by the act or this part and would be anticipated to benefit from the medical use of marijuana.

M. "Minor" means an individual less than eighteen (18) years of age.

N. "Participant enrollment form (MCP-62007-001)" means the registry identification card application form for adult qualified patient applicants provided by the medical cannabis program.

O. "Petitioner" means any New Mexico resident or association of New Mexico residents petitioning the advisory board for the inclusion of a new medical condition, medical treatment or disease to be added to the list of debilitating medical conditions that qualify for the medical use of marijuana.

P. "Practitioner" means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 et seq., NMSA (1978).

Q. "Usable marijuana" means the dried leaves and flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

R. "Qualified patient" means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of the act or this part.

S. "Representative" means an individual designated as the petitioner's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, Sections 24-7A-1 et seq. NMSA 1978.

T. "Secretary" means the secretary of the New Mexico department of health.

U. "Technical evidence" means scientific, clinical, medical or other specialized testimony, or evidence, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing. [7.34.2.7 NMAC - N, 00/00/2007]

7.34.2.8 ADVISORY BOARD MEMBERSHIP REQUIREMENTS AND RESPONSIBILITIES:

A. Advisory board membership. The advisory board shall consist of eight (8) practitioners representing the fields of neurology, pain management, medical oncology, psychiatry, infectious disease, family medicine and gynecology. The practitioners shall be nationally board-certified in their area of specialty and knowl-

edgeable about the medical use of marijuana. The members shall be chosen for appointment by the secretary from a list proposed by the New Mexico medical society.

B. Duties and responsibilities. The advisory board shall convene at least twice (2) per year to review and recommend to the department for approval additional debilitating medical conditions that would benefit from the medical use of cannabis; issue recommended quantities of cannabis that are necessary to constitute an adequate supply for qualified patients and designated caregivers; and to accept and review petitions to add medical conditions, medical treatments or diseases to the list of debilitating medical conditions that qualify for the medical use of cannabis and all lawful privileges under the act and implementing rules.

C. Advisory board membership term. Each member of the advisory board shall serve a term of two (2) years from the date of appointment by the secretary. No member may be removed prior to the expiration of his or her term with out a showing of good cause by the secretary.

D. Chairperson elect. The advisory board shall elect by majority vote cast of the eight (8) member board a chairperson and alternate. The chairperson or alternate shall exercise all powers and duties prescribed or delegated under the act or this part.

(1) Public hearing responsibilities. The chairperson shall conduct a fair and impartial proceeding, assure that the facts are fully elicited and avoid delay. The chairperson shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair and impartial resolution of issues arising during the public hearing proceedings or in any public meeting in which a quorum of the advisory board are present.

(2) Voting rights. The chairperson shall only vote in cases of a tie among advisory board members.

(3) Delegation of chair. The chairperson may delegate their responsibility to an alternate. The alternate shall exercise all powers and duties prescribed or delegated under the act or this part.

E. Per diem and mileage. All advisory board members appointed under the authority of the act or this part, will receive as their sole remuneration for services as a member those amounts authorized under the Per Diem and Mileage Act, Sections 10-8-1 et seq., NMSA 1978. [7.34.2.8 NMAC - N, 00/00/2007]

7.34.2.9 PETITIONS REQUIREMENTS:

A. Petition requirements.

The advisory board may accept and review petitions from any individual or association of individuals requesting the addition of a new medical condition, medical treatment or disease for the purpose of participating in the medical cannabis program and all lawful privileges under the act. Except as otherwise provided, a petitioner filing a petition shall file the originals and eight (8) copies with the medical cannabis coordinator by either personal delivery, express or first class mail. In order for a petition to be processed and forwarded to the advisory board the following information shall be submitted to the medical cannabis program coordinator.

(1) Petition format. Unless otherwise provided by this part or by order of the hearing officer, all documents, except exhibits, shall be prepared on 8 1/2 x 11-inch white paper, printed double-sided, if possible, and where appropriate, the first page of every document shall contain a heading and caption. The petitioner shall include in the petition documents a narrative address to the advisory board which includes:

(a) petition caption stating the name, address and telephone number of the petitioner and the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions;

(b) an introductory narrative of the individual or association of individuals requesting the inclusion of a new medical condition, medical treatment or disease to include the individual or association of individuals' relationship or interest for the request whether that interest is professional or as a concerned citizen;

(c) the proposed benefits from the medical use of cannabis specific to the medical condition, medical treatment or disease sought to be added to the existing debilitating medical conditions listed under the act; and

(d) any additional supporting medical, testimonial, or scientific documentation.

(2) Statement of intent to present technical evidence. If the petitioner wishes to present technical evidence at the hearing the petition shall include a statement of intent. The statement of intent to present technical evidence shall include:

(a) the name of the person filing the statement;

(b) the name of each witness;

(c) an estimate of the length of the direct testimony of each witness;

(d) a list of exhibits, if any, to be offered into evidence at the hearing; and;

(e) a summary or outline of the anticipated direct testimony of each witness.

B. Qualified patient applicant petitioner. If the petitioner is submitting their requests as a potential qualified patient applicant the petitioner shall attach an original medical practitioner's certification for patient eligibility form (MCP-62007-002) provided by the medical cannabis program coordinator which includes the following information.

(1) The name, address, telephone number and clinical licensure of the petitioner's practitioner.

(2) The petitioner's name, date of birth.

(3) The medical justification for practitioner's certification of the petitioner's debilitating medical condition.

(4) The practitioner's signature and date of signature.

(5) The name, address and date of birth of the petitioner.

(6) The name, address and telephone number of the petitioner's practitioner.

(7) The name, address and date of birth of the petitioner's designated caregivers, if applicable.

(8) A reasonable xerographic copy of the petitioner's New Mexico driver's license photograph or comparable New Mexico state or federal issued photo identification card verifying New Mexico residence.

(9) Documented parental consent if applicable to the petitioner.

(10) If applicable the petitioner's potential debilitating medical condition.

(11) The length of time the petitioner has been under the care of the practitioner providing the medical provider certification for patient eligibility.

(12) The petitioner's signature and date.

(13) A signed consent for release of medical information form (MCP-62007-006) provided by the medical cannabis program.

C. Petitioner confidentiality. The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a public hearing petition request. Individual names on the list shall be confidential and not subject to disclosure, except:

(1) to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of the act or this part;

(2) as provided in the federal Health Insurance Portability and Accountability Act of 1996, Section 8 and Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended).

D. Department notification. The medical cannabis program coordinator shall review each petition request and

within reasonable time after receipt issue notice of docketing by certified mail upon the petitioner, each advisory board member, and the advisory board legal counsel. The notice of docketing shall contain the petition caption and docket number, the date upon which the petition was received and scheduling date of the advisory board public hearing. A copy of this rule shall be included with a notice of docketing sent to the petitioner.

E. Examination allowed. Subject to the provisions of law restricting the public disclosure of confidential information, any person may, during normal business hours, inspect and copy any document filed in any public hearing proceeding. Inspection shall be permitted in accordance with the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 et. seq., NMSA 1978, but may be limited by the Health Insurance Portability and Accountability Act of 1996, Section 8 and Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended). Documents subject to inspection shall be made available by the medical cannabis program coordinator, as appropriate. Unless waived by the department, the cost of duplicating documents or tapes filed in any public hearing proceeding shall be borne by the person seeking the copies.

F. Notice of withdrawal. A petitioner may withdraw a petition at any time prior to a decision by the advisory board by filing a notice of withdrawal with the medical cannabis program coordinator. [7.34.2.9 NMAC - N, 00/00/2007]

7.34.2.10 ADVISORY BOARD PUBLIC HEARING PROCEDURES:

A. Public hearing requirement. The advisory board shall convene by public hearing at least twice (2) per year to accept and review petitions requesting the inclusion of medical conditions, medical treatments or diseases to the list of debilitating medical conditions. Any meeting consisting of a quorum of the advisory board members held for the purpose of evaluating, discussing or otherwise formulating specific opinions concerning the recommendation of a petition filed pursuant to this rule, shall be declared a public hearing open to the public at all times, except as otherwise provided by the Open Meetings Act, Sections 10-15-1 et. seq., NMSA 1978.

B. Location of the public hearing. Unless otherwise ordered by the advisory board the public hearing shall be in held in the city of Santa Fe, New Mexico at a location sufficient to accommodate the anticipated audience.

C. Public hearing notice. Except as otherwise provided by the Open Meetings Act, Sections 10-15-1 et. seq.,

NMSA 1978 the medical cannabis program coordinator shall, upon direction from the advisory board chairperson, prepare a notice of public hearing setting forth the date, time and location of the hearing, a brief description of the petition, and information on the requirements for public comment or statement of intent to present technical evidence, and:

(1) no later than thirty (30) days prior to the hearing date, send copies, with requests for publication, to at least one newspaper of general circulation and other means the department determines an acceptable manner of notice;

(2) mail a copy to each interested participant who has filed an entry of appearance for public comment or who has expressed, in writing to the department or the advisory board, an interest in the public hearing that is the subject of the petition;

(3) immediately upon receipt of an entry of appearance to present public comment or technical evidence that is received after the initial mailing, mail a copy to such interested participant; and

(4) file an affidavit certifying how and when notice was given with a copy of the notice of hearing and affidavits of publication attached.

D. Public hearing agenda. The department shall make available an agenda containing a list of specific items to be discussed or information on how the public may obtain a copy of such agenda.

E. Postponement of hearing. Request for postponement of a public hearing may be granted, upon consent of the advisory board for good cause shown.

F. Statement of intent to present technical evidence. Any individual or association of individuals who wish to present technical evidence at the hearing shall, no later than fifteen (15) days prior to the date of the hearing, file a statement of intent. The statement of intent to present technical evidence shall include:

(1) the name of the person filing the statement;

(2) indication of whether the person filing the statement supports or opposes the petition at issue;

(3) the name of each witness;

(4) an estimate of the length of the direct testimony of each witness;

(5) a list of exhibits, if any, to be offered into evidence at the hearing; and

(6) a summary or outline of the anticipated direct testimony of each witness.

G. Ex Parte Discussions. At no time after the initiation and before the conclusion of the petition process under this part, shall the department, or any other party, interested participant or their representatives discuss ex parte the merits of the

proceeding with any advisory board member.

H. Public hearing process. The advisory board chairperson shall conduct the public hearing so as to provide a reasonable opportunity for all interested persons to be heard without making the hearing unreasonably lengthy or cumbersome or burdening the record with unnecessary repetition.

(1) A quorum of the advisory board shall consist of three (3) voting members.

(2) The advisory board chairperson or alternate shall convene each public hearing by:

(a) introduction of the advisory board members;

(b) statutory authority of the board;

(c) statement of the public hearing agenda; and

(d) recognition of the petitioner.

(3) Petitioner comment period. The petitioner or by representative may present evidence to the advisory board. The advisory board shall only consider findings of fact or scientific conclusions of medical evidence presented by the petitioner or by representative to the advisory board prior to or contemporaneously with the public hearing.

(4) Public comment period. The advisory board may provide for a public comment period. Public comment may be by written comment, verbal or both.

(a) Written comment. Any individual or association of individuals may submit written comment to the advisory board either in opposition or support of the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act. All written comment shall adhere to the requirements of Subsection F of this Section.

(b) Public comment. Any member of the general public may testify at the public hearing. No prior notification is required to present general non-technical statements in support of or in opposition to the petition. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is non-technical in nature and not unduly repetitious of the testimony. The request for public comment shall be notated by order of appearance on the date of the public hearing. No public comment shall exceed ten (10) minute presentation.

I. Written minutes. The advisory board shall keep written minutes of all its public hearings. The minutes shall include at a minimum the date, time and place of the public hearing, the names of members in attendance and those absent, the substance of the petition considered and

a record of any decisions and votes taken that show how each member voted. Unless the advisory board orders the hearing to be tape recorded, the hearing shall be transcribed verbatim. Any person, other than the advisory board, desiring a copy of a transcript must order a copy from the medical cannabis program coordinator. Any person, other than the advisory board, desiring a copy of hearing tapes must arrange copying with the medical cannabis program coordinator at their expense.

[7.34.2.10 NMAC - N, 00/00/2007]

7.34.2.11 ADVISORY BOARD RECOMMENDATION TO THE DEPARTMENT:

A. Advisory board recommendation. Upon final determination the advisory board shall provide to the secretary a written report of finding, which recommends either the approval or denial of the petitioner's request. The written report of findings shall include a medical justification for the recommendation based upon the individual or collective expertise of the advisory board membership. The medical justification shall delineate between the findings of fact made by the advisory board and scientific conclusions of credible medical evidence.

B. Department final determination. The department shall notify the petitioner by certified mail within ten (10) days of the secretary's determination. A denial by the secretary recommending the inclusion of a medical conditions, medical treatments or diseases to the existing list of debilitating medical conditions contained under the act shall not represent a permanent denial by the department. Any individual or association of individuals may upon good cause re-petition the advisory board. All requests shall present new supporting findings of fact, or scientific conclusions of credible medical evidence not previously examined by the advisory board.

[7.34.2.11 NMAC - N, 00/00/2007]

7.34.2.12 SEVERABILITY: If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of these rules shall not interfere with the remaining protections provided by these rules and the act.

[7.34.2.12 NMAC - N, 00/00/2007]

HISTORY OF 7.34.2 NMAC:
[RESERVED]

**TITLE 7 HEALTH
CHAPTER 34 MEDICAL USE OF
MARIJUANA**

PART 3 REGISTRY IDENTIFICATION CARDS

7.34.3.1 ISSUING AGENCY: New Mexico Department of Health, Public Health Division.

[7.34.3.1 NMAC - N, 07/02/2007]

7.34.3.2 STATUTORY AUTHORITY: These requirements set forth herein are promulgated by the secretary of the department of health, pursuant to the authority granted under the Department of Health Act, Section 9-7-6E and the Lynn and Erin Compassionate Use Act.

[7.34.3.2 NMAC - N, 07/02/2007]

7.34.3.3 SCOPE: This rule applies to all participants of the medical cannabis program.

[7.34.3.3 NMAC - N, 07/02/2007]

7.34.3.4 DURATION: Permanent

[7.34.3.4 NMAC - N, __/__/2007]

7.34.3.5 EFFECTIVE DATE: __/__/2007

[7.34.3.5 NMAC - N, __/__/2007]

7.34.3.6 OBJECTIVE: The objective of this rule is to ensure the safe use and possession of medical marijuana for individuals living with debilitating medical conditions, and the safe possession and administration of medical marijuana to those individuals by designated caregivers, as mandated under the Lynn & Erin Compassionate Use Act.

[7.34.3.6 NMAC - N, __/__/2007]

7.34.3.7 DEFINITIONS:

A. "Act" means the Lynn and Erin Compassionate Use Act.

B. "Adequate supply" means an amount of marijuana, in any form approved by the department, possessed by a qualified patient or collectively possessed by a qualified patient and the qualified patient's designated caregiver that is determined by the department to be no more than reasonably necessary to ensure the uninterrupted availability of marijuana for a period of three (3) months which is derived solely from an intrastate source. An adequate supply shall not exceed six (6) ounces of useable marijuana four (4) mature plants and three (4) seedlings.

C. "Administrative review committee" means an inter-department committee selected for the purposes of reviewing qualified patients or designated caregivers application denial or the imposition of an adverse action. The administrative review committee shall consist of the is medical director, medical cannabis program manager, and social worker, registered

nurse and attorney all of whom are licensed in the state of New Mexico and are in good standing.

D. “Administrative withdrawal” means the procedures for the voluntary withdrawal of a qualified patient or designated caregiver from the medical cannabis program.

E. “Adverse action” means the department’s immediate revocation of the qualified patient’s or designated caregiver’s registry identification card and all lawful privileges under the act.

F. “Applicant” means any person applying to participate in the medical cannabis program as a qualified patient or designated caregiver.

G. “Cannabis” means a drug derived in various forms from the dried leaves and flowers of the hemp plant *Cannabis sativa*, smoked, vaporized or ingested.

H. “Consent to release of medical information form (MCP-62007-006)” means a signed qualified patient or designated caregiver authorization form to release specific medical use of marijuana information to any specified person, agency or family member.

I. “Debilitating medical condition” means:

- (1) cancer;
- (2) glaucoma;
- (3) multiple sclerosis;
- (4) damage to the nervous tissue of the spinal cord, with objective neurological indication of intractable spasticity;
- (5) epilepsy;
- (6) positive status for human immunodeficiency virus or acquired immune deficiency syndrome;
- (7) admitted into hospice care in accordance with rules promulgated by the department; or
- (8) any other medical condition, medical treatment or disease as approved by the department; and
- (9) which results in pain, suffering or debility for which there is credible evidence that medical use marijuana could be of benefit.

J. “Department” means the department of health.

K. “Designated caregiver” means a resident of New Mexico who is at least eighteen (18) years of age and who has been designated by the patient’s practitioner or qualified patient as being necessary to take responsibility for managing the well-being of a qualified patient with respect to the medical use of marijuana pursuant to the provisions of the act.

L. “Division” means the public health division of the department of health.

M. “Informal administra-

tive review” means an informal non-adversarial administrative review of written documentation submitted by an applicant or designated caregiver who has been denied a registry identification card.

N. “Intrastate” means existing or occurring within the state boundaries of New Mexico.

O. “Marijuana” means all parts of the plant *cannabis sativa*, family *cannabinaceae*, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

P. “Medical cannabis program” means the administrative body of the New Mexico public health division charged with the management and implementation of issuing the medical use of marijuana registry identification cards.

Q. “Medical director” means a medical practitioner designated by the department to determine whether the medical condition of an applicant qualifies as a debilitating medical condition eligible for enrollment in the program.

R. “Medical provider certification for patient eligibility form (MCP-62007-002)” means a written certification form provided by the medical cannabis program signed by a patient’s practitioner that, in the practitioner’s professional opinion, the patient has a debilitating medical condition as defined by this rule and would be anticipated to benefit from the medical use of marijuana.

S. “Minor” means an individual less than eighteen (18) years of age.

T. “Paraphernalia” means any equipment, product, or material of any kind that is primarily intended or designed for use in compounding, converting, processing, preparing, inhaling, or otherwise introducing into the human body marijuana, including but not limited to: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, or punctured metal bowls; water pipes, roach clips; meaning objects used to hold burning material such as a marijuana cigarette, that has become too small or too short to be held in the hand; bongs; ice pipes or chillers; and devices intended for the vaporization of marijuana.

U. “Participant enrollment form (MCP-62007-001)” means the

registry identification card application form for adult qualified patient applicants provided by the medical cannabis program.

V. “Possession” means the full accounting of medical use marijuana under the qualified patient’s, or designated caregiver’s, direct control.

W. “Practitioner” means a person licensed in New Mexico to prescribe and administer drugs that are subject to the Controlled Substances Act, Sections 30-31-1 et seq., NMSA (1978).

X. “Premises” means all buildings and grounds for which the qualified patient or designated caregiver owns or leases.

Y. “Designated caregiver application form (MCP-62007-003)” means the registry identification card application form provided by the medical cannabis program.

Z. “Uninterrupted availability of marijuana” means an adequate supply of useable marijuana, in any form approved by the department, which is possessed by a qualified patient or collectively possessed by each qualified patient and the qualified patients’ designated caregiver that includes but shall not exceed six ounces of useable marijuana.

AA. “Usable marijuana” means the dried leaves and flowers of the marijuana plant, and any mixture or preparation thereof, but does not include the seeds, stalks, and roots of the plant.

BB. “Qualified patient” means a resident of New Mexico who has been diagnosed by a practitioner as having a debilitating medical condition and has received a registry identification card issued pursuant to the requirements of this rule.

CC. “Qualified minor parental consent form (MCP-62007-004)” means the supplemental registry identification card application form for qualified minor’s parent or representative provided by the medical cannabis program.

DD. “Reasonably necessary” means the amount of marijuana in any form approved by the department used by a qualified patient for the purpose of alleviating symptoms caused by a debilitating medical condition or associated medical treatments.

EE. “Registry identification card” means a document issued by the department which identifies a qualified patient authorized to engage in the medical use of marijuana for a debilitating medical condition or a document issued by the department which identifies a designated caregiver authorized to engage in the intrastate possession and administration of medical use marijuana for the sole use of the qualified patient.

FF. “Representative”

means an individual designated as the qualified patient's agent, guardian, surrogate, or other legally appointed or authorized health care decision maker pursuant to the Uniform Health Care Decisions Act, Sections 24-7A-1 et seq. NMSA 1978.

GG. "Secretary" means the secretary of the New Mexico department of health.

[7.34.3.7 NMAC - N, __/__/2007]

7.34.3.8 QUALIFIED PATIENT AND DESIGNATED CAREGIVER REGISTRY IDENTIFICATION CARD APPLICATION REQUIREMENTS:

A. Qualified patient participant enrollment form (MCP-62007-001). The department may issue a registry identification card to an applicant for the purpose of participating in the medical cannabis program upon the written certification of the applicant's practitioner and supporting application documents. In order for a registry identification card to be obtained and processed the following information shall be provided in the participant enrollment form submitted to the department.

(1) An attached original medical provider certification for patient eligibility form (MCP-62007-002) provided by the medical cannabis program which includes:

- (a) the name, address and telephone number of the practitioner;
- (b) the practitioner's clinical licensure;
- (c) the patient applicant's name, date of birth;
- (d) the medical justification for practitioner's certification of the patient's debilitating medical condition; and
- (e) the practitioner's signature and date.

(2) The name, address and date of birth of the applicant.

(3) The name, address and telephone number of the applicant's practitioner.

(4) The name, address and date of birth of the applicant's designated caregivers, if any.

(5) A reasonable xerographic copy of the applicant's New Mexico driver's license photograph or comparable state of New Mexico or federal issued photo identification card verifying New Mexico residence;

(6) Documented parental consent if applicable to the applicant.

(7) The applicant's debilitating medical condition.

(8) The length of time the applicant has been under the care of the practitioner providing the medical provider certification for patient eligibility.

(9) The applicant's signature and date.

(10) A signed consent for release of medical information form (MCP-62007-006) provided by the medical cannabis program.

B. Qualified minor parental consent form (MCP-62007-004).

The department may issue a registry identification card to an applicant under the age of eighteen (18) for the purpose of participating in the medical cannabis program upon the medical provider certification for patient eligibility form (MCP-62007-002) of the applicant's practitioner and supporting application documents required under Subsection A of 7.34.3.8 NMAC. In addition to the application requirements of Subsection A of 7.34.3.8 NMAC, the applicant's parent or representative shall also submit with the completed qualified minor parental consent form supplied by the medical cannabis program. The qualified minor parental consent form shall require the following information to be provided with the participation enrollment form of Subsection A of 7.34.3.8 NMAC.

(1) Written documentation that the applicant's practitioner has explained the potential risks and benefits of the medical use of marijuana to both the applicant and parent or representative of the applicant.

(2) The applicant's parent or representative consent to:

- (a) allow the applicant's medical use of marijuana;
- (b) serve as one (1) of the applicant's designated caregivers; and
- (c) control the acquisition of the marijuana, dosage and the frequency of the medical use of marijuana by the applicant.

C. Designated caregiver application form (MCP-62007-003).

The department may issue a registry identification card to a designated caregiver applicant for the purpose of managing the well-being of up to four (4) qualified patients pursuant to the requirements of this rule upon the completion and approval of the designated caregiver application form available from the medical cannabis program. A qualified patient may request two (2) designated caregivers for the purposes of managing the qualified patient's medical use of marijuana. In order for a registry identification card to be obtained and processed, the following information shall be submitted to the medical cannabis program:

(1) birth certificate verifying that the applicant is at least eighteen years of age;

(2) written approval by the qualified patient(s) and the qualified patient's practitioner(s) authorizing responsibility for managing the well-being of a qualified

patient(s) with respect to the medical use of marijuana;

(3) the name(s), address(s), telephone number(s) and date of birth of the qualified patient(s);

(4) the name, address and telephone number of the qualified patient's practitioner(s);

(5) the name, address, telephone number and date of birth of the applicant;

(6) a reasonable xerographic copy of a driver's license photograph or comparable state of New Mexico or federal issued photo identification card verifying New Mexico state residence of the applicant; and

(7) the applicant's signature and date

D. Designated caregiver application requirements and prohibitions.

(1) Criminal History Screening Requirements. Pursuant to the Caregivers Criminal History Screening Act, Sections 29-17-2 et. seq., NMSA (1978), all designated caregiver applicants are required to consent to a nationwide and statewide criminal history screening background check in accordance with all rules and procedures of the department's caregivers criminal history screening program. All applicable application fees associated with the nationwide and statewide criminal history screening background check shall only be paid by the designated caregiver applicant. In addition to the rules and procedures of the Criminal History Screening Act, Sections 29-17-2 et. seq., NMSA (1978), if an applicant has been convicted of a felony violation of Sections 30-31-1 et seq., NMSA (1978), which has occurred less than three (3) years from the date of the applicant's completion of all obligations associated with the conviction, the applicant is prohibited from being a designated caregiver. The applicant and qualified patient will be notified by registered mail of his or her disqualification from being a designated caregiver. If the applicant has been convicted of more than one (1) felony violation of Sections 30-31-1 et seq., NMSA (1978), the applicant and qualified patient will be notified by registered mail that the applicant is permanently prohibited from being a designated caregiver and cannot be issued a medical use marijuana registry identification card.

(2) Prohibitions. A qualified patient may only reimburse their designated caregiver for the cost of supplies or utilities associated with the possession of medical use marijuana by the designated caregiver for the qualified patient. No other cost associated with the possession of medical use marijuana by the designated caregiver for the qualified patient, including the cost of labor, may be reimbursed or paid. All marijuana possessed by a designated caregiver

for a qualified patient is the property of the qualified patient and must be provided to the qualified patient by the designated caregiver upon request.

[7.34.3.8 NMAC - N, ___/___/2007]

7.34.3.9 REGISTRY IDENTIFICATION CARDS:

A. Department inquiry.

(1) The department may verify information on each application and accompanying documentation, which can include:

(a) contacting each applicant by telephone, mail, or if proof of identity is uncertain the department may require a face-to-face meeting and the production of additional identification materials;

(b) when applicable, contacting a minor's parent or legal representative;

(c) contacting the New Mexico medical board to verify that an attending practitioner is licensed to practice in New Mexico and is in good standing; and

(d) contacting the attending practitioner to request further documentation to support a finding that the practitioner is the applicant's attending practitioner and to obtain further documentation that the applicant's medical diagnosis and medical condition qualify as a debilitating medical condition eligible for enrollment in the program.

(2) Upon verification of the information contained in an application submitted pursuant to this Subsection the department shall approve or deny an application within thirty (30) calendar days of receipt.

B. Department registry identification card. Upon approval the department shall issue a registry identification card within five (5) business days of approving an application. A registry identification card shall contain an eight (8) digit number maintained by the division which identifies the qualified patient or designated caregiver. Unless renewed at an earlier date, suspended or revoked, a registry identification card shall be valid for a period of one (1) year from the date of issuance and shall expire at midnight on the day indicated on the registry identification card as the expiration date.

C. Supplemental information requirement. A qualified patient or designated caregiver who possesses a registry identification card shall notify the department of any change in the person's name, address, qualified patient's practitioner status, qualified patient's designated caregiver status, or change in status of the qualified patient's debilitating medical condition, within ten (10) calendar days of the change. Failure to do so will result in the immediate revocation of the registry identification card and all lawful privileges provided under the act.

D. Registry identification card application denial. The medical

director or designee may deny an application if the applicant did not provide the information required pursuant to 7.34.3.8 NMAC or if the department determines that the information provided is false or if the patient does not have a debilitating medical condition eligible for enrollment in the program as determined by the medical director. A person whose application has been denied shall not reapply for six (6) months from the date of the denial unless otherwise authorized by the department, and are prohibited from all lawful privileges provided by this rule and act.

E. Registry identification card renewal application. Each registry identification card issued by the department is valid for one (1) year from the date of issuance. A qualified patient or designated caregiver shall apply for a registry identification card renewal no less than thirty (30) calendar days prior to the expiration date of the existing registry identification card in accordance with the requirements of 7.34.3.8 NMAC.

F. Amended registry identification card. A qualified patient or designated caregiver shall submit for department approval an application form provided by the department for an amended registry identification card to the department within thirty (30) days prior to an anticipated change of address.

G. Non-transferable registration of registry identification card. A registry identification card shall not be transferred by assignment or otherwise to other persons or locations. Any attempt will result in the immediate revocation of the registry identification card and all lawful privileges provided by this rule and act.

H. Automatic expiration of registry identification card by administrative withdrawal. Upon request by the qualified patient or designated caregiver may discontinue the medical cannabis program by an administrative withdrawal. A qualified patient or designated caregiver that intends to seek an administrative withdrawal shall notify the licensing authority no later than thirty (30) calendar days prior to closure.

I. Lost or stolen registry identification card. The qualified patient or designated caregiver shall report a lost or stolen registry identification card to the medical cannabis program within twenty-four (24) hours after discovery. Upon notification the medical cannabis program shall issue a new registry identification card at the qualified patient or designated caregiver earliest convenience. Unless documentation in the initial application has changed the qualified patient or designated caregiver will not be required to submit a new application.

J. Survey, monitoring

and investigations.

(1) The department may, at any time, contact a registry identification cardholder or a patient's practitioner by telephone, mail or in person to verify the current accuracy of information included in the registry system. This authority does not extend to allowing the department to routinely search the person or property of a person who possesses a registry identification card or to search the property of a practitioner.

(2) The department shall refer criminal complaints against registry identification cardholders, or medical malpractice complaints against practitioners to the appropriate New Mexico state or local authorities.

[7.34.3.9 NMAC - N, ___/___/2007]

7.34.3.10 INFORMAL ADMINISTRATIVE REVIEW REQUEST AND PROCEDURES:

A. Informal administrative review. All applicants, whose applications have been denied pursuant to 7.34.3.8 NMAC or qualified patients or designated caregivers subject to an adverse action by the division in violation of the requirements of this rule, may request an informal administrative review from the department.

B. Procedure for requesting informal administrative review.

(1) An applicant given notice of an application denial or qualified patient or designated caregiver subject to an adverse action by the division in violation of the requirements of this rule may submit a written request for an informal administrative review. To be effective, the written request shall:

(a) be made within twenty (20) calendar days, as determined by the postmark, from the date of the denial notice issued by the department;

(b) be properly addressed to the medical cannabis program;

(c) state the applicant's, name, home and work address, if applicable, and telephone numbers;

(d) state the applicant's proposed status as a qualified patient or designated caregiver;

(e) if the applicant is a potential designated caregiver, state the anticipated date of which services will commence;

(f) provide a brief narrative rebutting the circumstances of the application denial or adverse action; and

(g) when applicable, provide supplemental documentation from the applicant's practitioner supporting the debilitating medical condition as eligible for the program.

(2) If the applicant wishes to submit and have considered additional docu-

mentation that additional documentation must be included with the request for an informal administrative review.

C. Informal administrative review proceeding: The review proceeding is intended to be an informal non-adversarial administrative review of written documentation. It will be conducted by a review committee designated for that purpose by the division. The review committee may issue a registry identification card to an applicant who has been denied or reverse an adverse action taken by the department upon evidence based on all supporting documents submitted by the applicant, qualified patient or designated caregiver. In cases where the administrative review committee finds the need for additional or clarifying information, the review committee may request that the applicant supply such additional information within the time set forth in the committees' request.

D. Final determination.

(1) Content. The administrative review committee shall render, sign and enter a written decision setting forth the reasons for the decision and the evidence upon which the decision is based.

(2) Effect. The decision of the administrative review committee is the final decision of the informal administrative review proceeding.

(3) Notice. A copy of the decision shall be mailed by registered mail to the applicant, qualified patient or designated caregiver.

E. Judicial review.

Judicial review of the administrative review committee's final decision is permitted to the extent provided by law. The party requesting the appeal shall bear the cost of such appeal.

[7.34.3.10 NMAC - N, __/__/2007]

7.34.3.11 PROHIBITIONS, RESTRICTIONS AND LIMITATIONS ON THE MEDICAL USE OF MARIJUANA AND CRIMINAL PENALTIES:

A. Participation in a medical cannabis program by a qualified patient or designated caregiver does not relieve the qualified patient or designated caregiver from:

(1) criminal prosecution or civil penalties for activities not authorized in this rule and act;

(2) liability for damages or criminal prosecution arising out of the operation of a vehicle while under the influence of marijuana; or

(3) criminal prosecution or civil penalty for possession, distribution or transfers of marijuana or use of marijuana:

(a) in a school bus or public vehicle;

(b) on school grounds or property;

(c) in the workplace of the qualified patient's or designated caregiver's employment;

(d) at a public park, recreation center, youth center or other public place;

(e) to a person not approved by the department pursuant to this rule;

(f) acts to obtain or transport marijuana from outside New Mexico; or

(g) exceeds the allotted amount of useable medical use marijuana.

B. Revocation of registry identification card. Violation of any provision of this rule will result in the department's immediate revocation of the qualified patient's or designated caregiver's registry identification card and all lawful privileges under the act.

[7.34.3.11 NMAC - N, __/__/2007]

7.34.3.12 EXEMPTION FROM CRIMINAL AND CIVIL PENALTIES FOR THE MEDICAL USE OF MARIJUANA:

Possession of or application for a registry identification card shall not constitute probable cause or give rise to reasonable suspicion for any governmental agency to search the person or property of the person possessing or applying for the card.

A. A qualified patient shall not be subject to arrest, prosecution or penalty in any manner for the possession of or the medical use of marijuana by the state of New Mexico if the quantity of marijuana does not exceed an adequate supply.

B. A designated caregiver shall not be subject to arrest, prosecution or penalty in any manner for the possession of marijuana by the state of New Mexico for the medical use by the qualified patient if the quantity of marijuana does not exceed an adequate supply.

C. Subsection A of 7.34.3.8 NMAC shall not apply to a qualified patient under the age of eighteen (18) years, unless:

(1) the qualified patient's practitioner has explained the potential risks and benefits of the medical use of marijuana to the qualified patient and to a parent, guardian or person having legal custody of the qualified patient; and

(2) a parent, guardian or person having legal custody consents in writing to:

(a) allow the qualified patient's medical use of marijuana;

(b) serve as the qualified patient's designated caregiver; and

(c) control the dosage and the frequency of the medical use of marijuana by the qualified patient.

D. A qualified patient or a designated caregiver shall be granted the full legal protections provided under 7.34.3.12 NMAC by the state of New Mexico if the qualified patient or designated caregiver is in possession of a registry

identification card. If the qualified patient or designated caregiver is not in possession of a registry identification card, the qualified patient or designated caregiver shall be given an opportunity to produce the registry identification card before any arrest or criminal charges or other penalties are initiated.

E. A practitioner shall not be subject to arrest or prosecution, penalized in any manner or denied any right or privilege by the state of New Mexico for recommending the medical use of marijuana or providing written certification for the medical use of marijuana pursuant to this rule and act.

F. Any property interest that is possessed, owned or used in connection with the medical use of marijuana, or acts incidental to such use, shall not be harmed, neglected, injured or destroyed while in the possession of New Mexico state or local law enforcement officials. Any such property interest shall not be forfeited under any New Mexico state or local law providing for the forfeiture of property except as provided in the Forfeiture Act. Marijuana, paraphernalia or other property seized from a qualified patient or designated caregiver in connection with the claimed medical use of marijuana shall be returned immediately upon the determination by a court or prosecutor that the qualified patient or designated caregiver is entitled to the protections of the provisions of this rule and act, as may be evidenced by a failure to actively investigate the case, a decision not to prosecute, the dismissal of charges or acquittal.

G. A person shall not be subject to arrest or prosecution by the state of New Mexico for a marijuana related offense for being in the presence of the medical use of marijuana as permitted under the provisions of this rule and act.

[7.34.3.12 NMAC - N, __/__/2007]

7.34.3.13 QUALIFIED PATIENT AND DESIGNATED CAREGIVER CONFIDENTIALITY:

The department shall maintain a confidential file containing the names and addresses of the persons who have either applied for or received a registry identification card. Individual names on the list shall be confidential and not subject to disclosure, except:

A. to authorized employees or agents of the department as necessary to perform the duties of the department pursuant to the provisions of this rule and act;

B. to authorized employees of New Mexico state or local law enforcement agencies, but only for the purpose of verifying that a person is lawfully in possession of a registry identification card; or

C. as provided in the fed-

eral Health Insurance Portability and Accountability Act of 1996, Section 8 and Section 30-31-6 NMSA 1978 (being Laws 1972, Chapter 84, Section 6, as amended).

[7.34.3.13 NMAC - N, __/__/2007]

7.34.3.14 SEVERABILITY. If any part or application of these rules is held to be invalid, the remainder or its application to other situations or persons shall not be affected. Failure to promulgate rules or implement any provision of these rules shall not interfere with the remaining protections provided by these rules and the act.

[7.34.3.14 NMAC - N, __/__/2007]

HISTORY OF 7.34.3 NMAC: [RESERVED]

NEW MEXICO PUBLIC EDUCATION DEPARTMENT

The Public Education Department ("Department") hereby gives notice that the Department will conduct a public hearing at 10:00 AM to Noon on October 1, 2007 at the office of the Educator Quality Division at 444 Galisteo, Suite A in Santa Fe, New Mexico 87501.

The purpose of the public hearing will be to obtain input on the following rules:

Rule Number	Rule Part Name	Proposed Action
6.60.3 NMAC	ALTERNATIVE LICENSURE	AMEND
6.60.4 NMAC	LICENSURE RECIPROCITY	AMEND
6.60.5 NMAC	COMPETENCY TESTING FOR LICENSURE	AMEND
6.60.6 NMAC	CONTINUING LICENSURE FOR LICENSED EDUCATORS IN NEW MEXICO	AMEND
6.60.7 NMAC	EDUCATOR LICENSURE APPLICATION FEE	AMEND
6.60.10 NMAC	MENTORSHIP PROGRAMS FOR BEGINNING TEACHERS	AMEND
6.61.2 NMAC	LICENSURE IN ELEMENTARY EDUCATION, GRADES K -8	AMEND
6.61.3 NMAC	LICENSURE IN MIDDLE LEVEL EDUCATION, GRADES 5 -9	AMEND
6.61.4 NMAC	LICENSURE IN SECONDARY EDUCATION, GRADES 7 -12	AMEND
6.61.5 NMAC	LICENSURE FOR GRADES PRE -KINDERGARTEN THROUGH 12	AMEND
6.61.6 NMAC	LICENSURE IN SPECIAL PRE EDUCATION K -12	AMEND
6.61.9 NMAC	CERTIFICATES OF WAIVER	AMEND
6.62.2 NMAC	LICENSURE FOR EDUCATIONAL ADMINISTRATION, GRADES PRE K -12	AMEND
6.63.3 NMAC	LICENSURE FOR INSTRUCTIONAL SUPPORT PROVIDERS PRE K -12 NOT COVERED IN OTHER RULES	AMEND
6.63.7 NMAC	LICENSURE FOR SCHOOL SOCIAL WORKERS, PRE K -12	AMEND
6.63.9 NMAC	LICENSURE FOR EDUCATIONAL AS SISTANTS, PRE K -12	AMEND
6.63.10 NMAC	CERTIFICATION FOR SUBSTITUTE TEACHERS	AMEND
6.63.12 NMAC	SCHOOL BUSINESS OFFICIAL LICENSURE	AMEND
6.64.2 NMAC	COMPETENCIES FOR ENTRY -LEVEL LANGUAGE ARTS TEACHERS	AMEND
6.64.3 NMAC	COMPETENCIES FOR ENTRY -LEVEL READING TEACHERS	AMEND
6.64.4 NMAC	COMPETENCIES FOR ENTRY -LEVEL MATHEMATICS TEACHERS	AMEND
6.64.5 NMAC	COMPETENCIES FOR ENTRY -LEVEL SCIENCE TEACHERS	AMEND
6.64.6 NMAC	COMPETENCIES FOR ENTRY -LEVEL HISTORY, GEOGRAPHY, ECONOMICS, CIVICS AND GOVERNMENT TEACHERS	AMEND
6.64.7 NMAC	COMPETENCIES FOR ENTRY -LEVEL HEALTH EDUCATION TEACHERS	AMEND
6.64.8 NMAC	COMPETENCIES FOR ENTRY -LEVEL LIBRARY MEDIA SPECIALISTS	AMEND
6.64.11 NMAC	TESOL COMPETENCIES	AMEND
6.64.12 NMAC	LICENSURE IN MODERN, CLASSICAL, AND NATIVE LANGU AGES	AMEND
6.64.13 NMAC	COMPETENCIES FOR ENTRY -LEVEL PERFORMING ARTS AND VISUAL ARTS EDUCATION TEACHERS	AMEND
6.64.14 NMAC	COMPETENCIES FOR ENTRY -LEVEL PHYSICAL EDUCATION TEACHERS	AMEND
6.64.15 NMAC	COMPETENCIES FOR ENTRY -LEVEL FAMILY AND CONSUMER SCIENCES TEACHERS	
6.64.16 NMAC	COMPETENCIES FOR ENTRY -LEVEL TECHNOLOGY STUDIES/EDUCATION	AMEND
6.64.17 NMAC	COMPETENCIES FOR ENTRY -LEVEL AGRICULTURAL EDUCATION TEACHERS	AMEND
6.69.4 NMAC	PERFORMANCE EVALUATION SYSTEM REQUIREMENTS FOR TEACHERS	AMEND
6.2.4 NMAC	THE ALTERNATIVE LICENSURE REVIEW PANEL	REPEAL

Interested individuals may testify at the public hearing or submit written comments to Ms. Flo Martinez, Executive Administrative Assistant, Licensure Bureau, Educator Quality Bureau, Public Education Department, 444 Galisteo, Suite A, Santa Fe, NM 87501 (florence.martinez@state.nm.us) fax: 505-827-4148. Written comments must be received no later than 5:00 PM on October 1, 2007. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed rules may be accessed on the Departments website (<http://ped.state.nm.us>) or obtained from Ms. Martinez as indicated in the preceding paragraph by sending a self addressed stamped envelope to Professional Licensure Bureau at 300 Don Gaspar Ave., Room 101 in Santa Fe, NM 87501. The proposed rules will be made available at least thirty days prior to the hearings.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in the meeting are asked to contact Ms. Martinez by 5:00 PM on September 21, 2007. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

NEW MEXICO PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

STATE OF NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION

IN THE MATTER OF ADOPTING
13.9.18 NMAC, USE OF PREFERRED
RISK MORTALITY TABLES AND
AMENDING 13.18.2 NMAC, CREDIT LIFE AND
CREDIT HEALTH INSURANCE

DOCKET NO. 07-00329-IN

NOTICE OF HEARING ON PROPOSED RULEMAKING AND PROCEDURAL ORDER

NOTICE IS HEREBY GIVEN that the New Mexico Superintendent of Insurance (“Superintendent”) proposes to adopt 13.9.18 NMAC, Use Of Preferred Risk Mortality Tables and amend 13.18.2 NMAC, Credit Life And Credit Health Insurance. The Superintendent, being fully advised, **FINDS** and **CONCLUDES**:

1. The Superintendent is proposing adoption of the National Association Of Insurance Commissioners’ Model Regulation Permitting The Recognition Of Preferred Mortality Tables For Use In Determining Minimum Reserve Liabilities with certain modifications to permit insurers to utilize preferred risk mortality tables in the computation of policy reserves for preferred risk classes.

2. The Superintendent is proposing amendments to 13.18.2 NMAC, Credit Life And Credit Health Insurance to designate the 2001 CSO Male Composite Ultimate Mortality Table as the minimum basis for computing credit life insurance policy reserves.

3. Copies of the proposal are available as follows:

- a. by downloading from the Public Regulation Commission’s website, www.nmprc.state.nm.us, under Proposed Rules, Insurance: Docket No. 07-00329-IN - Adopting 13.9.18 NMAC, Use Of Preferred Risk Mortality Tables and Amending 13.18.2 NMAC, Credit Life And Credit Health Insurance;
- b. by sending a written request with the docket number, rule names, and rule numbers to the Public Regulation Commission’s Docketing Office, P.O. Box 1269, Santa Fe, NM 87504-1269 along with a self-addressed envelope and a check for \$5.00 made payable to the Public Regulation Commission to cover the cost of copying; or
- c. for inspection and copying during regular business hours in the Public Regulation Commission’s Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

4. The Superintendent requests written and oral comments from all interested persons and entities on the proposal. All relevant and timely comments, including data, views, or arguments, will be considered by the Superintendent. In reaching his decision, the Superintendent may take into account information and ideas not contained in the comments, providing that such information or a writing containing the nature and source of such information is placed in the docket file, and provided that the fact of the Superintendent’s reliance on such information is noted in the order the Superintendent ultimately issues.

IT IS THEREFORE ORDERED that this Notice of Hearing on Proposed Rulemaking and Procedural Order be issued.

IT IS FURTHER ORDERED that an informal public hearing pursuant to Section 59A-4-18 NMSA 1978 be held on **Wednesday, September 19, 2007** at 9:30 a.m. in the Public Regulation Commission, Fourth Floor Hearing Room, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, New Mexico for the purpose of receiving oral public comments including data, views, or arguments on the proposal. All interested persons wishing to present oral comments may do so at the hearing. Interested persons should contact the Insurance Division ahead of time to confirm the hearing date, time, and place since hearings are occasionally rescheduled.

IT IS FURTHER ORDERED that all interested parties may file written comments on the proposal on or before **Friday, September 14, 2007**. An original and two copies of written comments must be filed with the Public Regulation Commission’s Docketing Office, Room 406, P.O. Box 1269, Santa Fe, NM 87504-1269. The docket number must appear on each submittal. If possible, please also e-mail a copy of written comments in Microsoft Word format to michael.batte@state.nm.us. Comments will be available for public inspection during regular business hours in the Docketing Office, Room 406, P.E.R.A. Building, corner of Paseo de Peralta and Old Santa Fe Trail, Santa Fe, NM.

IT IS FURTHER ORDERED that the Superintendent may require the submission of additional information, make further inquiries, and

modify the dates and procedures if necessary to provide for a fuller record and a more efficient proceeding.

IT IS FURTHER ORDERED that Insurance Division Staff shall cause a copy of this Notice to be published once in the *New Mexico Register* and once in the *Albuquerque Journal*.

PLEASE BE ADVISED THAT the New Mexico Lobbyist Regulation Act, Section 2-11-1 *et seq.*, NMSA 1978 regulates lobbying activities before state agencies, officers, boards and commissions in rulemaking and other policy-making proceedings. A person is a lobbyist and must register with the Secretary of State if the person is paid or employed to do lobbying or the person represents an interest group and attempts to influence a state agency, officer, board or commission while it is engaged in any formal process to adopt a rule, regulation, standard or policy of general application. An individual who appears for himself or herself is not a lobbyist and does not need to register. The law provides penalties for violations of its provisions. For more information and registration forms, contact the Secretary of State's Office, State Capitol Building, Room 420, Santa Fe, NM 87503, (505) 827-3600.

PLEASE BE ADVISED THAT individuals with a disability, who are in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing, may contact Bettie Cordova at (505) 827-4526. Public documents associated with the hearing can be provided in various accessible forms for disabled individuals. Requests for summaries or other types of accessible forms should also be addressed to Ms. Cordova.

DONE, this 3 day of August 2007.

NEW MEXICO PUBLIC REGULATION COMMISSION

INSURANCE DIVISION

MORRIS J. CHAVEZ, Superintendent of Insurance

**End of Notices and
Proposed Rules Section**

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Adopted Rules

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT FAMILY SERVICES DIVISION

This is an emergency amendment to 8.15.2 NMAC, Section 17, effective August 15, 2007.

8.15.2.17 PAYMENT FOR SERVICES: The department pays child care providers on a monthly basis, according to standard practice for the child care industry. Payment is based upon the child’s enrollment with the provider as reflected in the child care placement agreement, rather than daily attendance. As a result, most placements reflect a month of service provision and are paid on this basis. However, placements may be closed at any time during the month. The following describes circumstances when placements may be closed and payment discontinued at a time other than the end of the month:

A. When the eligibility period as indicated by the child care placement agreement expires during the month, including the end of a school semester; or when the provider requests that the client change providers or the provider discontinues services; payment will be made through the last day that care is provided.

B. When the client requests a change of provider, regardless of the reason, payment will be made through the final day of the expiration of the fourteen (14) calendar day notice issued to the provider. Payment to the new provider begins on the day care begins.

C. The amount of the payment is based upon the average number of hours per week needed per child during the certification period. The number of hours of care needed is determined with the parent at the time of certification and is reflected in the provider agreement. Providers are paid according to the units of service needed which are reflected in the child care agreement covering the certification period.

D. The department pays for care based upon the following units of service:

Full time	Part time 1	Part time 2	Part time 3
Care provided for an average of 30 or more hours per week per month	Care provided for an average of 20-29 hours per week per month	Care provided for an average of 6 -19 hours per week per month	Care provider for an average of 5 or less hours per week per month
Pay at 100% of full time rate	Pay at 75 % of full time rate	Pay at 50 % of full time rate	Pay at 25% of full time rate

E. Out of school time care provided by licensed child care providers who provide care for 6-19 hours per week are paid at the 75% rate (part time 1).

F. Out of school time care provided by licensed child care providers who provide care for 20 or more hours per week are paid at the 100% rate (full time).

G. Out of school time care provided for 5 hours or less per week are paid at the 25% rate (part time 3) regardless of provider type.

H. Monthly reimbursement rates

Licensed child care centers								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	[\$467.84] \$476.37	[\$410.22] \$418.75	[\$350.88] \$357.28	[\$307.67] \$314.06	[\$233.92] \$238.19	[\$205.11] \$209.38	[\$116.96] \$119.09	[\$102.56] \$104.69
Toddler	[\$417.19] \$425.72	[\$381.10] \$389.63	[\$312.89] \$319.29	[\$285.82] \$292.22	[\$208.60] \$212.86	[\$190.55] \$194.81	[\$104.30] \$106.43	[\$95.27] \$97.41
Pre-school	[\$386.48] \$395.01	[\$354.49] \$363.02	[\$289.86] \$296.26	[\$265.87] \$272.27	[\$193.24] \$197.51	[\$177.25] \$181.51	[\$96.62] \$98.75	[\$88.62] \$90.76
School age	[\$337.11] \$345.64	[\$324.43] \$332.96	[\$252.83] \$259.23	[\$243.32] \$249.72	[\$168.56] \$172.82	[\$162.22] \$166.48	[\$84.28] \$86.41	[\$81.11] \$83.24
Licensed group homes (capacity: 7-12)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	[\$370.48] \$379.01	[\$347.43] \$355.96	[\$277.86] \$284.26	[\$260.57] \$266.97	[\$185.24] \$189.51	[\$173.72] \$177.98	[\$92.62] \$94.75	[\$86.86] \$88.99
Toddler	[\$335.40] \$343.93	[\$327.70] \$336.23	[\$251.55] \$257.95	[\$245.78] \$252.17	[\$167.70] \$171.97	[\$163.85] \$168.12	[\$83.85] \$85.98	[\$81.93] \$84.06

Pre-school	[\$329.55] \$338.08	[\$322.28] \$330.81	[\$247.16] \$253.56	[\$241.71] \$248.10	[\$164.78] \$169.04	[\$161.14] \$165.40	[\$82.39] \$84.52	[\$80.57] \$82.70
School age	[\$325.00] \$333.53	[\$315.00] \$323.53	[\$243.75] \$250.15	[\$236.25] \$242.65	[\$162.50] \$166.77	[\$157.50] \$161.77	[\$81.25] \$83.38	[\$78.75] \$80.88
Licensed family homes (capacity: 6 or less)								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$365.20	\$342.60	\$273.90	\$256.95	\$182.60	\$171.30	\$91.30	\$85.65
Toddler	\$325.08	\$320.04	\$243.81	\$240.03	\$162.54	\$160.02	\$81.27	\$80.01
Pre-school	\$324.17	\$317.09	\$243.13	\$237.81	\$162.09	\$158.54	\$81.04	\$79.27
School age	\$319.28	\$309.64	\$239.46	\$232.23	\$159.64	\$154.82	\$79.82	\$77.41
Registered homes and in-home child care								
	Full time		Part time 1		Part time 2		Part time 3	
	Metro	Rural	Metro	Rural	Metro	Rural	Metro	Rural
Infant	\$278.74	\$258.00	\$209.06	\$193.50	\$139.37	\$129.00	\$69.69	\$64.50
Toddler	\$264.00	\$217.69	\$198.00	\$163.27	\$132.00	\$108.85	\$66.00	\$54.42
Pre-school	\$242.00	\$220.00	\$181.50	\$165.00	\$121.00	\$110.00	\$60.50	\$55.00
School age	\$242.00	\$198.00	\$181.50	\$148.50	\$121.00	\$99.00	\$60.50	\$49.50

I. The department pays a differential rate according to the location of the provider, license or registration status of the provider, national accreditation status of the provider if applicable, Star level status of the provider if applicable, and in accordance with the rate established for metro or rural location of the provider. Providers located in the metropolitan statistical areas of the state as determined by the U.S. census bureau receive the metropolitan rate. These include Bernalillo, Sandoval, Valencia, Santa Fe, Los Alamos, Dona Ana, and San Juan counties. All other providers receive the rural rate.

J. Providers holding national accreditation status receive an additional \$120.00 per child per month for full time care above the metro rate for type of child care (licensed center, group home or family home) and age of child. All licensed nationally accredited providers will be paid at the metro rates for the appropriate age group and type of care. In order to continue at this accredited reimbursement rate, a provider holding national accreditation status must meet and maintain licensing standards and maintain national accreditation status without a lapse. If a provider holding national accreditation status fails to maintain these requirements, this will result in the provider reimbursement reverting to a lower level of reimbursement. The provider is required to notify the department immediately when a change in accreditation status occurs.

K. The department pays a differential rate to providers achieving higher Star levels as follows: 2-Star at \$45.00 per month per child for full time care above the base reimbursement rate; 3-Star at \$70.00 per month per child for full time care above the base reimbursement rate; 4-Star at ~~[\$95.00]~~ \$104.50 per month per child for full time care above the base reimbursement rate, and 5-Star at ~~[\$120.00]~~ \$132.00 per child per month for full time care above the base reimbursement rate. In order to continue at these reimbursement rates, a provider must maintain and meet most recent star criteria and basic licensing requirements. If the provider fails to meet the requirements, this will result in the provider reimbursement reverting to the level demonstrated.

L. The department pays a differential rate equivalent to 5, 10, or 15% of the applicable full-time/part-time rate to providers who provide care during non-traditional hours. Non-traditional care will be paid according to the following charts:

	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
After hours	5%	10%	15%
	1-10 hrs/wk	11-20 hrs/wk	21 or more hrs/wk
Weekend hours	5%	10%	15%

M. If a significant change occurs in the client's circumstances, (for example, an increase or decrease in income, or a change in work schedule) the child care placement agreement is modified and the rate of payment is adjusted. The department monitors attendance and reviews the placement at the end of the certification period when the child is re-certified.

N. The department may conduct provider or parent audits to assess that the approved service units are consistent with usage. Providers found to be defrauding the department are sanctioned. Providers must provide all relevant information requested by the department during an audit.

O. Payments are made to the provider for the period covered in the placement agreement or based on the availability of funds, which may be shorter than the usual six month certification period. The client's certification period may be established for a period less than six months, if applicable to their need for care.

[8.15.2.17 NMAC - Rp, 8.15.2.17 NMAC, 02/14/05; A, 08/31/06; A/E, 8/15/07]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

PROTECTIVE SERVICES DIVISION

This is an emergency repeal of 8.10.9 NMAC, Independent Living Program (filed 11/1/2005) effective August 15, 2007 and replaced by 8.10.9 NMAC, Independent Living Program, effective August 15, 2007.

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT**

PROTECTIVE SERVICES DIVISION

**TITLE 8 SOCIAL SERVICES
CHAPTER 10 CHILD PROTECTIVE SERVICES
PART 9 INDEPENDENT LIVING PROGRAM**

8.10.9.1 ISSUING AGENCY: Children, Youth and Families Department, Protective Services.

[8.10.9.1 NMAC - Rp/E, 8.10.9.1 NMAC, 08/15/07]

8.10.9.2 SCOPE: Protective services employees, contractors, and the general public.

[8.10.9.2 NMAC - Rp/E, 8.10.9.2 NMAC, 08/15/07]

8.10.9.3 STATUTORY AUTHORITY: New Mexico Children's Code, Section 32A-4-21(A)(11), NMSA 1978 (Repl. 2004); John H. Chafee Foster Care Independence Act of 1999, 42 U.S.C. Section 677.

[8.10.9.3 NMAC - Rp/E, 8.10.9.3 NMAC, 08/15/07]

8.10.9.4 DURATION: Permanent.

[8.10.9.4 NMAC - Rp/E, 8.10.9.4 NMAC, 08/15/07]

8.10.9.5 EFFECTIVE DATE: August 15, 2007, unless a later date is cited at the end of a section.

[8.10.9.5 NMAC - Rp/E, 8.10.9.5 NMAC, 08/15/07]

8.10.9.6 OBJECTIVE: To establish standards and practice to successfully transition foster youth and emancipated foster youth into adult living.

[8.10.9.6 NMAC - Rp/E, 8.10.9.6 NMAC, 08/15/07]

8.10.9.7 DEFINITIONS:

A. "Adolescent and adoption resource team (AART)" is a

team of two people, one a CYFD employee and one under contract with CYFD, which is responsible for:

(1) in the adoption context, developing, reviewing, amending, and approving individualized adoption plans for eligible children and youth in CYFD custody to ensure timely movement toward adoption; and

(2) in the independent living context, developing, reviewing and amending, in conjunction with the youth's permanency planning worker (PPW) and the youth services consultant (YSC), individualized transition plans for eligible youth in CYFD custody.

B. "Case management services" means any service provided by the CYFD worker to a youth up to the age of 21 to assist him/her in the transition to adulthood, which may include, but is not limited to, visitation, assistance in the identification of and linkage to community resources, locating and matching mentors, and allocating payments and funding as appropriate.

C. "Chafee Act" refers to the John H. Chafee Foster Care Independence Act of 1999, which allows states to provide services and funds to youth likely to age out of foster care and youth who have aged out of foster care.

D. "Education and training voucher (ETV) program" is a Chafee Act program created to provide financial assistance to eligible youth who are enrolled in an accredited post-secondary educational setting.

E. "Guardian" means a person or entity appointed by a court to provide care, custody, or control of a minor or incapacitated person.

F. "Individualized transition plan (ITP)" is a plan developed jointly by the youth's PPW, the YSC and the AART to identify and address barriers affecting the successful implementation of the youth's transitional living plan (TLP).

G. "Independent living placement status (ILPS)" describes the status of a youth in CYFD custody or youth who has emancipated from foster care, to live independently with limited financial support and supervision from CYFD.

H. "Independent living services" are services provided or arranged by CYFD to assist youth in making the transition to independence.

I. "Life skills assessment (LSA)" is an assessment of a youth conducted by a YSC to assess the youth's areas of strength and areas needing improvement, across multiple domains of life skills.

J. "Planned permanent living arrangement (PPLA)" is a permanency plan for a child who resides in an out-

of-home placement and is established when the court determines that this is the most appropriate permanency plan for the child after considering reunification, placement with a fit and willing relative, adoption, and permanent guardianship.

K. "Start-up funds" means funds available through the Chafee Act provided to assist eligible youth in establishing an independent living arrangement.

L. "Transitional living plan (TLP)" is an individualized, written plan that identifies a youth's needs, strengths and goals to support his or her transition to independence.

M. "Youth advocates for New Mexico" is a statewide youth advisory board involved in planning the annual independent living conference, speaking at public events, advocating for youth, and participating in the ongoing development of CYFD's independent living program, the Chafee plan, the child and family services plan, and the child and family services review.

N. "Youth in CYFD custody" means youth in the legal custody of CYFD through an abuse/neglect petition filed under the New Mexico Children's Code (Chapter 32A, Article 4, NMSA 1978).

O. "Youth services consultant (YSC)" is a CYFD worker who provides or arranges for independent living services to eligible youth.

P. "Youth with disabilities" means a youth who demonstrates over time either partial or complete developmental, emotional or physical functional impairment to the extent that he or she requires consistent support and services which will continue to be needed after age 18.

[8.10.9.7 NMAC - Rp/E, 8.10.9.7 NMAC, 08/15/07]

8.10.9.8 INDEPENDENT LIVING PROGRAM:

A. Purpose: The purpose of the independent living program is to prepare and support eligible youth for successful management of adult responsibilities, to the extent of their individual abilities and capacities.

B. Service components: Service components of the independent living program include:

- (1) independent living services,
- (2) case management,
- (3) transitional living planning,
- (4) AART review,
- (5) independent living placement,
- (6) education and training vouchers,
- (7) Chafee medicaid, and
- (8) start-up funds.

C. Eligibility: Eligibility varies by specific service component of the independent living program. Youth are not eligible to receive education and training vouchers, start-up funds, Chafee medicaid or payments for an independent living placement while incarcerated or detained in a correctional facility.

[8.10.9.8 NMAC - Rp/E, 8.10.9.8 NMAC, 08/15/07]

8.10.9.9 INDEPENDENT LIVING SERVICES

A. Independent living intake: The independent living intake is completed by the youth's PPW:

(1) when a youth in CYFD custody turns 15 and six months of age; or

(2) when a permanency plan of PPLA is established for a youth of any age; or

(3) when a youth over the age of 15 years and six months enters CYFD custody.

B. The life skills assessment: The life skills assessment (LSA) is completed by the YSC (YSC), in conjunction with the youth, within 60 days of receipt of the independent living intake or within 60 days of notification of a youth's eligibility for IL services, whichever occurs first. Results of this assessment are summarized in an independent living assessment summary and used to develop recommendations for the PPW and YSC to focus on the independent living skill development of the individual youth.

C. Life skills classes: Life skills classes and tutorials are offered by CYFD to youth eligible for independent living services.

D. Counseling: counseling is provided or arranged for by CYFD to eligible youth on educational, vocational or other life skills development needs.

E. Youth activities: Youth advocacy, involvement, and peer support activities include:

(1) Youth advocates for New Mexico, a statewide youth advisory board involved in planning the annual independent living conference, speaking at public events, and advocating for youth. Youth advocates also participate in the ongoing development of CYFD's independent living program, child and family services plan, and child and family services review.

(2) Independent living conferences, held annually for youth from around the state.

[8.10.9.9 NMAC - N/E, 08/15/07]

8.10.9.10 CASE MANAGEMENT SERVICES:

A. Youth in CYFD custody who are age 16-17 and youth of any age in CYFD custody who have a plan of

PPLA continue to receive permanency planning services, including case management, as provided by their PPW.

B. Youth who have aged out of foster care at age 18 up to the age of 21 may receive case management services from CYFD.

C. Case management services may include, but are not limited to, monthly visits with the youth and assistance for the youth in accessing needed services, including vocational rehabilitation, educational services, Medicaid, social security supplemental security income (SSI), services provided by the aging and long term services department, adult mentors and others.

D. CYFD shall provide the youth with his or her health and education records, a copy of his or her birth certificate and social security card at no cost at the time the youth turns 18 and emancipates from foster care.

[8.10.9.10 NMAC - N/E, 08/15/07]

8.10.9.11 TRANSITIONAL LIVING PLAN:

CYFD shall develop transitional living plans (TLPs) for all youth in CYFD custody who are age 16-17 and youth of any age in CYFD custody who have a plan of PPLA. A TLP is developed in collaboration with the youth, incorporates the findings and recommendations of the life skills assessment and shall address:

A. the youth's needs, strengths and goals for achieving independence.

B. a description of the specific skills the youth requires for successful transition into independent living as an adult;

C. identification of the programs and services appropriate to provide the necessary skills;

D. the reasons why the programs and services are likely to be useful;

E. the availability of any proposed programs and services;

F. determination of where the youth will live until reaching adulthood (age 18);

G. efforts to identify of persons in a youth's life who can provide a permanent emotional connection;

H. an education plan which describes the milestones and time frames that must be achieved by the youth to attain a high school diploma or general equivalency diploma (GED), or post secondary goals such as technical/vocational school or college; the youth's individual education plan (IEP) or next step plan (NSP) may constitute or be incorporated with the education plan in the TLP.

[8.10.9.11 NMAC - Rp/E, 8.10.9.9 NMAC, 08/15/07]

8.10.9.12 ADOLESCENT AND ADOPTION REVIEW TEAM (AART)

REVIEW: Youth in CYFD protective services custody are referred for an AART review beginning at age 16 and every 60 days thereafter until the youth reaches age 18. The youth's PPW and YSC participate in the review with the AART. The youth's transitional living plan (TLP) is reviewed at the AART review, and recommendations are made by the AART to address specific issues related to the successful implementation of the TLP. These recommendations form the individualized transition plan (ITP), which is reviewed at each subsequent AART review.

[8.10.9.12 NMAC - N/E, 08/15/07]

8.10.9.13 INDEPENDENT LIVING PLACEMENT STATUS:

Independent living placement status allows an eligible youth to become his or her own vendor to receive the substitute care monthly maintenance payment. The substitute care payment allows the youth to live as a boarder with the foster parent or to live independently with limited CYFD supervision.

A. With the approval of the county office manager, a youth age 16 and older in CYFD protective services custody may be eligible for independent living placement status, with the monthly maintenance payment provided with state general funds. The youth must have an approved, documented TLP and an independent living placement agreement (ILPA) which specifies, at a minimum, the youth's living arrangement, monthly home visits, education or vocation requirements, prohibited behaviors, participation in treatment if needed, and a response plan for the youth in case of an emergency.

B. A youth age 18 through 20 who has emancipated from foster care may be eligible for an independent living placement, using Chafee Act funds, if:

(1) the youth voluntarily accepts services and is assigned a PPW; and

(2) the youth is enrolled in secondary or post-secondary education or training, or is pursuing gainful employment, including job training, or is participating in rehabilitation services, and

(3) the youth has an ILPA which specifies, at a minimum, the youth's living arrangement, monthly visits, education or vocation requirements, prohibited behaviors, participation in treatment, if needed, and a response plan for the youth in case of an emergency.

C. CYFD monitors the youth's independent living placement to determine continued appropriateness and reviews the TLP or ILPA agreement quarterly.

D. Independent living pay-

ments for youth under 18.

[8.10.9.13 NMAC - N/E, 08/15/07]

8.10.9.14 START-UP FUNDS:

Start-up funds are provided to assist the youth in making the transition to independence. Start-up funds are provided to eligible youth age 18 through 20 and youth in CYFD legal custody when it is determined that the youth will be placed in an independent living placement. Start-up funds for youth under age 18 are provided through state general funds and for youth over 18 are provided through Chafee Act funding.

[8.10.9.14 NMAC - N/E, 08/15/07]

8.10.9.15 EDUCATION AND TRAINING VOUCHERS:

Education and training vouchers (ETVs) provide financial assistance to eligible youth who are enrolled in an accredited post-secondary educational or vocational program.

A. Eligible youth are youth who graduated from high school or obtained a GED who emancipated from foster care or were adopted at age 16 or older. Youth who have graduated from high school or obtained a GED who are still in CYFD custody may be eligible for ETV funds.

B. Youth 21 years of age remain eligible for ETV funds until they attain age 23, provided the youth is enrolled in ETV before age 21, continues to be enrolled in a post-secondary educational or vocational training program and is making satisfactory progress toward completion of that program.

[8.10.9.15 NMAC - N/E, 08/15/07]

8.10.9.16 CHAFEE MEDICAID:

Youth age 18 through 20 who were in foster care on their 18th birthday are eligible for medicaid through the provisions of the Chafee foster care independent living program. Before the youth's 18th birthday, or upon the youth's request for medicaid benefits, the youth must complete and sign the application for Chafee medicaid. To be eligible, the youth must receive at least one additional form of independent living program assistance, such as IL services, case management services, ILP status, ETVs, start-up funds, or transitional living planning. Minimally, the youth must have an assigned CYFD worker who maintains the youth's case file, including a copy of the birth certificate, social security number, and current contact information.

[8.10.9.16 NMAC - N/E, 08/15/07]

8.10.9.17 YOUTH WITH DISABILITIES:

CYFD provides services to assist youth with disabilities who are in its custody in transitioning from CYFD to adult-oriented services such as those pro-

vided by the aging and long term services department. If the youth requires that a guardian be appointed, CYFD attempts to identify a prospective guardian before the youth turns 18 and provide the necessary information and assistance to the aging and long term services department in securing the guardianship appointment.

[8.10.9.17 NMAC - Rp/E, 8.10.9.14 NMAC, 08/15/07]

HISTORY OF 8.10.9 NMAC:

Pre-NMAC History:

The material in this part was derived from that previously filed with the State Records Center and Archives under: SSD Rule #411.0000 Substitute Care, 11/10/81;

SSD 5.0.0, Substitute Care for Children - Definition and Goal Statement, 8/22/86;

SSD 5.1.0, Substitute Care for Children - General Provision, 8/22/86;

SSD 5.1.0, Substitute Care for Children - General Provision, 1/29/87;

SSD 5.1.0, Substitute Care for Children - General Provision, 6/18/87;

SSD 5.1.0, Substitute Care for Children - General Provision, 3/28/89;

SSD Rule #410.5400, Substitute Care for Children General Guidelines, 9/17/81;

SSD 5.2.0, Substitute Care - General Guidelines, 8/22/86;

SSD 5.2.0, Substitute Care - General Guidelines, 1/29/87;

SSD 5.2.0, Substitute Care - General Guidelines, 6/18/87;

SSD 5.2.0, Substitute Care - General Guidelines 3/28/89;

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 8/22/86;

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 1/29/87;

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 6/18/87;

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 6/14/88;

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 8/22/88;

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 9/18/90;

SSD 5.3.0, Substitute Care for Children - Department Responsibilities, 3/15/91;

SSD Rule #412.0000, Youth Services - Definition and Goal Statement, 11/10/81;

SSD 6.0.0, Youth Services - Definition and Goal Statement, 11/10/81;

SSD 6.0.0, Youth Services - Definition and Goal Statement, 8/22/86;

SSD 6.1.0, Youth Services - General Provisions: Youth Services, 8/22/86;

SSD 6.1.0, Youth Services - General Provisions: Youth Services, 1/29/87;

SSD 6.1.0, Youth Services - General Provisions: Youth Services, 6/18/87;

SSD 6.1.0, Youth Services - General Guidelines, 8/22/86;

SSD 6.1.0, Youth Services - General

Guidelines, 8/22/86.

History of Repealed Material:

8 NMAC 10.9, Independent Living Program - Repealed, 2/14/01.

8.10.9 NMAC, Independent Living Program - Repealed, 11/15/05.

8.10.9 NMAC, Independent Living Program - Repealed, 08/15/07.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

This is an emergency amendment to 8.10.7 NMAC, Sections 7, 18, 30 and 31, effective 8/15/2007.

8.10.7.7 DEFINITIONS:

A. "Abandoned infant"

means a child assessed to be under the age of one year who has been left by the parent without provision for the child's identification for a period of fourteen days, or who has been left with others, including the other parent or an agency, without provisions for support and without communication for a period of 3 months.

B. "Adjudication hearing"

is the hearing that occurs within sixty days of service on the respondents and is the hearing at which the court determines whether the child is abused or neglected.

C. "Affidavit"

means a sworn statement of facts and accompanies the petition for an ex-parte order. It is signed by any person who either has personal knowledge of the facts or has been informed of them and believes them to be true.

D. "Best interest of the child"

is the standard that reflects the protection of the child from abuse and neglect. In motions to terminate parental rights and for permanent guardianship cases, the term encompasses stability and permanency in placement.

E. "Children's court attorneys"

are the attorneys who have been given the authority and the responsibility to represent CYFD in child abuse and neglect and family in need of services proceedings.

F. "Child's attorney"

refers to the attorney appointed by the court to represent the child who is 14 years of age or older.

G. "Compelling reasons"

means the reasons and/or circumstances which necessitate CYFD's determination that the filing of a motion for termination of parental rights is not in a child's best interest and/or the reason a permanency plan of "planned permanent living arrangement" is

the most appropriate plan for the child.

H. "Consent decree" means a plea of no contest by the respondent to the allegations in the petition and an agreement to participate in a court ordered six month treatment plan with subsequent dismissal of the petition with prejudice.

I. "Custodian" refers to an adult with whom the child lives who is not a parent or guardian.

J. "Custody" means legal custody as defined by statute.

K. "Date child enters foster care" means the earlier of 60 days from the date of removal of the child or the date of the adjudication of child abuse or neglect.

L. "Disposition" means the court hearing which establishes custody and where the court may adopt a treatment plan for the child and family.

M. "Emergency custody" exists when a child is removed from the parent's home based upon a determination by law enforcement that the child is in need of protective custody or based upon an ex parte custody order.

N. "Ex parte custody order" is an order issued by the court pursuant to an ex parte affidavit that grants emergency custody to CYFD.

O. "Family in need of court ordered services" refers to the Family in Need of Court Ordered Services Act whereby services are provided through court intervention when voluntary services have been exhausted in recognition of the fact that in many instances of truancy and running away by a child the situation is symptomatic of a family in need of services where the child and parent are unable to share a residence.

P. "Guardian ad litem" is appointed by the court to represent and protect the best interests of the child in a neglect and abuse proceeding when the child is less than 14 years old.

Q. "Indian child" refers to an unmarried person who is (1) under the age of eighteen years old; (2) a member of an Indian tribe or is eligible for membership in an Indian tribe; and (3) the biological child of a member of an Indian tribe.

R. "Infant" means a child less than one year of age.

S. "Legal custody" means a legal status created by [the] order of the court or other court of competent jurisdiction or by operation of statute that vests in a person, department or agency the right to determine where and with whom a child shall live; the right and duty to protect, train and discipline the child and to provide the child with food, shelter, personal care, education and ordinary and emergency medical care; the right to consent to major medical, psychiatric, psychological and sur-

gical treatment and to the administration of legally prescribed psychotropic medications pursuant to the Children's Mental Health and Developmental Disabilities Act; and the right to consent to the child's enlistment in the armed forces of the United States.

T. "New Mexico Children's Code" refers to Section 32A-1-1, et. seq., NMSA 1978.

U. "Party" in a neglect and abuse proceeding is any individual named in the petition or subsequently granted that status in the case by the court.

V. "Periodic review" is a court hearing where the court reviews the treatment plan and may modify the treatment plan or adopt a new treatment plan.

W. "Permanency hearing" is a court hearing where the court reviews the progress made in the case, determines the permanency plan for the child and creates orders to expedite the achievement of permanency for the child.

X. "Permanency review hearing" is a court hearing where the court reviews the transition plan adopted when a reunification plan is ordered at the permanency hearing.

Y. "Petition" means the document filed with the court setting forth the allegations of abuse and/or neglect and relief sought.

Z. "Reasonable medical judgment" means a medical judgment that would be made by a reasonably prudent physician, knowledgeable about the case and treatment possibilities with respect to the medical conditions involved.

AA. "Respondent" refers to a parent, guardian or custodian of a child named in an abuse and neglect proceeding.

BB. "Settlement" is an admission or a plea of no contest by the respondent to the allegations in the petition.

CC. "10-day custody hearing" is the hearing at which the court determines if probable cause exists for the child to remain in CYFD's custody pending adjudication.

DD. "Treatment issues" include placement decisions, permanency planning goals, and treatment recommendations.

EE. "Trial home visit" means the period of time, not to exceed [60] 6 months, in which a child with a plan of reunification resides with the parent or guardian while services are provided to the child and family to address risk factors and ensure safety of the child.

FF. "Use immunity" means that the in-court testimony, statements made in the course of court ordered psychological evaluation or treatment program, records, documents or other physical objects produced by an immunized respondent shall not be used against that respon-

dent in a criminal prosecution.

GG. "Withholding medically indicated treatment" means the failure to respond to an infant's life-threatening condition by providing treatment which, in the treating physician's reasonable medical judgment, will be most likely to be effective in ameliorating or correcting all such conditions.

[8.10.7.7 NMAC - Rp, 8.10.7.7 NMAC, 11/15/05; A/E, 08/15/07]

8.10.7.18 LITIGATION CONSIDERATIONS

A. CYFD makes reasonable efforts to prevent removal of the child and, when removal is necessary, CYFD makes reasonable efforts to reunify the child and to finalize the child's current permanency plan.

B. Protection and the best interest of the child are of paramount concern, followed by the treatment needs of the family.

C. Reasonable efforts to prevent a child's removal from home or to reunify the child and family are not required if CYFD obtains a judicial determination that such efforts are not required because:

(1) a court of competent jurisdiction has determined that the parent has subjected the child to aggravated circumstances as set forth in the New Mexico Children's Code; or

(2) the parent or custodian has been convicted, by a court of competent jurisdiction, of murder or voluntary manslaughter of another child of the parent, or of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter, or convicted of a felony assault that results in serious bodily injury to the child or another child of the parent.

D. No conversations concerning settlement or disposition occur in the absence of counsel for CYFD.

(1) Direct contact between CYFD workers and respondent's counsel is limited to the exchange of routine information, such as, time for visitation, name of psychologist to perform evaluation, etc.

(2) CYFD routinely informs the guardian ad litem or child's attorney about important decisions relating to the child.

E. ~~[CYFD spares children the trauma of testifying except when determined necessary by CYFD to protect the child's safety and best interest.] The child or youth participates in court proceedings in his or her case unless it is determined not to be in the child's or youth's best interest. At the permanency hearing, the child is consulted, in an age-appropriate manner, about the permanency plan developed for the child.~~

F. CYFD pursues obtain-

ing use immunity when CYFD's reunification efforts may conflict with a criminal prosecution.

G. The CYFD worker is CYFD's primary witness on treatment issues. Psychological expertise is used only when issues of mental illness, developmental disabilities, personality disorders or children's behavior disorders appear in a given case.

H. In a case where a parent has a recognizable mental or physical disability, CYFD shows how services provided were designed to address the disability within the context of the parenting plan.

I. CYFD files requests so as to obtain timely judicial determinations.

J. CYFD seeks to obtain judicial determinations that are made on a case-by-case basis, and in which the court states the specific reasons for its determination.

[8.10.7.18 NMAC - Rp, 8.10.7.18 NMAC, 11/15/05; A/E, 08/15/07]

8.10.7.30 PERMANENCY HEARING REQUIREMENTS

A. A permanency hearing shall be commenced within six months of the initial judicial review of a child's dispositional order or within twelve months from the date a child enters foster care, whichever occurs first.

B. If the court adopts a permanency plan of reunification at the permanency hearing, the court shall adopt a plan for transitioning the child home and schedule a permanency review hearing within three months. If a child is reunified, the subsequent hearing may be vacated.

C. The court shall hold permanency hearings every twelve months when a child is in the legal custody of CYFD.

D. CYFD provides the foster parent(s) of a child and any preadoptive parent(s) or relative(s) providing care for the child with timely notice of ~~[and an opportunity]~~ permanency hearings and notice of their right to be heard in permanency hearings and permanency review hearings. The ~~[notice and opportunity]~~ right to be heard [do not include] does not confer the right to standing as a party to the case.

E. The children's court attorney shall ensure that CYFD's report to the court for the permanency hearing documents that CYFD has considered out-of-state, as well as in-state permanent placements for the child.

F. If the child is in an out-of-state placement at the time of the permanency hearing, the children's court attorney shall request a finding that the out-of-state foster care placement continues to be appro-

priate and in the child's best interests.

[8.10.7.30 NMAC - Rp, 8.10.7.30 NMAC, 11/15/05; A/E, 08/15/07]

8.10.7.31 NOTICE AND OPPORTUNITY TO BE HEARD AT REVIEWS:

CYFD gives notice to all parties, the child's guardian ad litem or youth attorney if 14 years or older, the child's CASA, the contractor administering the citizen review board (see the New Mexico Children's Code), the child's foster parents, preadoptive parents, or relative caregiver, of the time, place and purpose of any judicial review hearing held pursuant to NMSA Section 32A-4-25(A) or (B) of the New Mexico Children's Code, including hearings held after a termination of parental rights has occurred. ~~[Review hearings are held with in six months of the dispositional hearing or termination of parental rights and every six months until the child's adoption or reunification.]~~ Notice to the child's foster parents, preadoptive parents, or relative caregiver includes notice of the right to be heard at the review hearing. Such notice does not confer the right to standing as a party to the case.

[8.10.7.31 NMAC - Rp, 8.10.7.31 NMAC, 11/15/05; A/E, 08/15/07]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT PROTECTIVE SERVICES DIVISION

This is an emergency amendment to 8.10.8 NMAC, Sections 11 and 14, effective 8/15/2007.

8.10.8.11 SUBSTITUTE CARE:

The investigation worker, in consultation with the supervisor, assesses whether substitute care is required to protect the child. The safety of the child is the paramount consideration when assessing the need for out-of-home placement. If, after the safety assessment, CYFD finds that placement is necessary:

A. CYFD conducts an assessment of the needs and strengths of the child and family to determine a placement that can best ensure the safety of the child and meet those needs.

(1) CYFD completes a safety assessment prior to any removal or return home.

(2) The worker may recommend a child remain in his/her own home if the safety assessment indicates that the child is safe or conditionally safe and a safety plan is in place that safeguards the child. Reasonable efforts will be made to prevent out-of-home placement.

B. CYFD selects a best

interest placement for the child based on the needs and strengths of the child in relation to the available placement options.

C. When substitute care is required to protect the child, the out-of-home placement meets the following criteria.

(1) Least restrictive: Children are placed in the least restrictive setting consistent with the assessment of their individual needs.

(2) Close proximity: Children are placed in close proximity to their home if their safety can be assured.

(3) Sibling continuity: Children are placed in a manner that encourages the development and/or maintenance of an appropriate relationship with their siblings.

(4) Indian child placement: CYFD makes a best interest placement for an Indian child in accordance with the placement preferences of the Indian Child Welfare Act (I.C.W.A.).

(5) Relatives: CYFD considers placement with relatives as a preference when making substitute care decisions. CYFD considers fictive kin for placement if appropriate for best interest placement consideration.

(6) CYFD considers out-of-state placements for children in CYFD custody when appropriate, in compliance with the Safe and Timely Interstate Placement of Foster Children Act of 2006 (PL109-239). [8.10.8.11 NMAC - Rp, 8.10.8.11 NMAC, 11/15/05; A/E, 08/15/07]

8.10.8.14 OUT-OF-STATE PLACEMENTS:

~~[Children in CYFD custody are not placed in out-of-state, non-relative foster homes unless the plan is to reunite the child with the natural parents or relatives who reside in the same state where the placement is planned.]~~

A. ~~[The out-of-state placement of a child in CYFD custody complies with the interstate compact on the placement of children.]~~ CYFD places children in CYFD custody in out-of-state placements and accepts children in the custody of another state for placement in New Mexico in accordance with the Safe and Timely Interstate Placement of Foster Children Act of 2006 and the Interstate Compact for the Placement of Children (ICPC).

B. CYFD has no authority to license foster home in other states.

C. The protective services director is notified of any out-of-state placement of a child in CYFD custody in a residential treatment center or psychiatric and/or medical facility.

D. CYFD ~~[visits]~~ shall visit each child who is in an out-of-state placement in his or her placement at least [quarterly and submits a report of the visit.

~~The treatment worker also makes arrangements for a caseworker on the staff of the state agency for the state in which the child has been placed to visit the child monthly and submit a report of the visits at least once every 3 months.] every six months and documents that visit in FACTS. CYFD, in accordance with ICPC, shall request that a worker from the state agency in the receiving state visit the child in his or her placement monthly and provide CYFD with quarterly reports on those visits. The CYFD worker shall document the information provided in those written reports in FACTS.~~
 [8.10.8.14 NMAC - Rp, 8.10.8.14 NMAC, 11/15/05; A/E, 08/15/07]

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT

PROTECTIVE SERVICES DIVISION

This is an emergency amendment to 8.26.2 NMAC, Sections 11 and 15, effective 8/15/2007.

8.26.2.11 ADOPTIVE PARENT ELIGIBILITY

A. Any adult age 18 years and older is eligible to adopt through CYFD once she/he has an approved pre-placement study.

B. A CYFD employee is not allowed to adopt any child with whom he/she is working in an official capacity.

C. CYFD conducts background record checks for all applicants. The applicant(s) shall provide finger print cards to CYFD for all adult relatives or non-relatives residing in the applicant(s)' home, as well as a request for federal background record checks. ~~[No person shall be approved as an adoptive parent who has current or past convictions records for crimes against children, including but not limited to sexual offense, neglect, and/or abuse or any other violent offense, including but not limited to domestic violence, assault, battery or rape.]~~

D. ~~[No person shall be approved as an adoptive parent whose own children are in foster care or when there has been a substantiation of sexual abuse or severe physical abuse.]~~ A review of the CYFD management information system for abuse and neglect reports is conducted on all household members of the applicant family. If the applicant or any other household member resided in any state(s) other than New Mexico in the five years prior to the date of the application, CYFD shall request that each such state conduct a review of its abuse and neglect information system or registry and submit the results of that review to CYFD. CYFD shall respond

to abuse and neglect registry check requests received from other states.

E. ~~No person shall be approved as an adoptive parent who has current or past convictions records for crimes against children including, but not limited to, sexual offense, neglect, abuse or any other violent offense, including, but not limited to, domestic violence, assault, battery or rape.~~

F. ~~No person shall be approved as an adoptive parent whose own children are in foster care or when there has been a substantiation of sexual abuse or severe physical abuse.~~

G. ~~If a substantiation of child or adult abuse or neglect exists, the application is assessed on a case-by-case basis to determine if the family dynamics that resulted in the abuse or neglect have been resolved. When there is a question, CYFD shall deny the application.~~

[8.26.2.11 NMAC - Rp, 8.26.2.11 NMAC, 11/15/05; A/E, 08/15/07]

8.26.2.15 SUBSIDIZED ADOPTIONS

A. CYFD makes information about subsidized adoption available to interested families.

B. Post decree subsidy services are available to a family who has adopted an eligible child through CYFD.

C. CYFD determines if a child is eligible to receive state or federal subsidy based upon federally ~~[and/or]~~ or state established criteria that consider the special needs of the child, the child's birth family ~~[and/or]~~ or economic status of the adoptive family.

D. The subsidy maintenance payment cannot exceed the maximum amount that would have been paid for the child in foster care.

E. Types of subsidy available:

(1) Legal: There shall be a one-time only attorney fees subsidy for legal services leading to the finalization of an adoption.

(2) Maintenance: Maintenance payments based on the maximum amount of maintenance payment the child is eligible for in foster care shall be utilized to meet the child's existing day-to-day needs.

(3) Medical: Medical subsidy shall cover only those pre-existing conditions that are not covered by the family's private/group medical insurance or Medicaid.

(4) Medically fragile: Subsidy may continue beyond the child's 18th birthday if the child is enrolled in the medically fragile waiver program, in which case the payments may extend until the child is twenty-one years of age.

F. For a private agency

treatment foster home the adoption subsidy shall be negotiated in the same manner as any other subsidy.

G. In the case of the conversion to adoption of CYFD's level 3 foster homes, the subsidy may be negotiated up to the level 3 foster care rate and must be approved by the protective services director or deputy secretary.

H. The adoptive parent receiving subsidy notifies CYFD within two weeks of any of the changes listed below.

(1) the adoptive parent is no longer legally responsible for the child;

(2) change of address;

(3) change in the child's name;

(4) change in family needs or circumstances; ~~[and/or]~~ or

(5) death of the child.

I. Failure to notify CYFD in a timely manner may result in suspension or termination of the monthly adoption subsidy payment and a request for repayment of funds.

J. If the child's worker has determined that the child is eligible for Title IV-E funding, the child is eligible for non-recurring adoption expenses as noted below.

(1) Time frames: The agreement for non-recurring expenses shall be signed prior to the final decree of adoption.

(2) Eligibility: There is no income eligibility requirement for adoptive parents in determining whether payments for non-recurring expenses of adoption shall be made. However, parents cannot be reimbursed for out-of-pocket expenses for which they have otherwise been reimbursed.

(3) Separate reimbursement: In cases where siblings are placed and adopted, either separately or as a unit, each child shall be treated as an individual with separate reimbursement up to the maximum allowable for each child.

(4) Interstate placement: When the adoption of the child involves interstate placement, the state that enters into adoption subsidy agreement shall be responsible for paying the non-recurring adoption expenses of the child. In cases in which there is interstate placement but no agreement for adoption assistance, the state in which the final adoption decree is issued shall be responsible for reimbursement of non-recurring expenses if the child meets the requirements. Subsidy payments are paid to the adoptive parents regardless of the family's place of residence as long as the child is under age 18, and there is verification of the family's financial need and the child's continued dependency.

K. Each Title IV-E subsidy agreement shall be completed and signed prior to adoptive finalization to be valid.

The child shall not be eligible for Title IV-E subsidy after the adoption decree has been entered.

L. CYFD notifies the adoptive parent in writing when changes in the adoption subsidy rate occur.

M. CYFD shall ~~review~~ review each subsidy agreement annually. ~~[to redetermine eligibility maintenance payments may increase or decrease based on current financial status report, that is, a current tax form 1040. The adoptive family shall be required to submit a current financial status report at least 45 days before the expiration of the agreement and verification that the child is in the home and/or the family is financially responsible for the child.]~~ The adoptive family shall be required to submit verification that the child is in the home and that the family is financially responsible for the child. If the child is not in the home, proof of financial responsibility shall be sufficient.

(1) Subsidy ~~can~~ shall be terminated based upon any of the following events:

- (a) fulfillment and completion of the terms of the agreement;
- (b) at the request of the adoptive parent;
- (c) when the child reaches 18 years of age;
- (d) upon the death of the child;
- (e) upon the cessation of legal responsibility of the adoptive parent for the adopted child;
- (f) CYFD determines that the child is no longer receiving ~~any~~ financial support from the adoptive parent; or
- (g) the family fails to participate in the renewal process for adoption assistance.

(2) The adoptive parent may request an administrative hearing of the decision to reduce, change, suspend or terminate adoption subsidy in accordance with CYFD policy.
[8.26.2.15 NMAC - Rp, 8.26.2.15 NMAC, 11/15/05; A/E, 08/15/07]

**NEW MEXICO CHILDREN,
YOUTH AND FAMILIES
DEPARTMENT
PROTECTIVE SERVICES DIVISION**

This is an emergency amendment to 8.27.2 NMAC, Section 17, effective 8/15/2007.

8.27.2.17 ABUSE/NEGLECT CHECK

A. A review of the CYFD management information system for abuse and neglect reports is conducted on all household members of the applicant family. If the applicant or any other household

member resided in any state(s) other than New Mexico in the five years prior to the date of the application, CYFD shall request that each such state conduct a review of its abuse and neglect information system or registry and submit the results of that review to CYFD. CYFD shall respond to abuse and neglect registry check requests received from other states.

B. CYFD shall not license as a foster parent any person who has been convicted of an offense of sexual molestation [f] or sexual abuse of an adult or child, or who has been the subject of a substantiated allegation of sexual molestation [f] or sexual abuse of an adult or child.

C. If a substantiation of child or adult abuse [f] or neglect exists, the application is assessed on a case-by-case basis to determine if the family dynamics that resulted in the abuse [f] or neglect have been resolved. When there is a question, CYFD decides in favor of a foster child and denies the license.

D. A check of the management information system is conducted on all household members each year at the time of annual relicensing. If the household includes a new household member who was not living in the home at the time of the initial abuse and neglect check, and that new household member resided in any state(s) other than New Mexico in the five years prior to the date of the relicensing, CYFD shall request that each such state conduct a review of its abuse and neglect information system or registry and submit the results of that review to CYFD.
[8.27.2.17 NMAC - Rp, 8.27.2.17 NMAC, 11/15/05; A/E, 08/15/07]

**NEW MEXICO
DEPARTMENT OF GAME
AND FISH**

**TITLE 19 N A T U R A L
RESOURCES AND WILDLIFE
CHAPTER 31 HUNTING AND
FISHING
PART 6 WATERFOWL**

19.31.6.1 ISSUING AGENCY:
New Mexico Department of Game and Fish.
[19.31.6.1 NMAC - Rp, 19.31.6.1 NMAC, 8-30-2007]

19.31.6.2 SCOPE: Hunters of waterfowl. Additional requirements may be found in Chapter 17 NMSA 1978 and Chapters 30 and 32 through 36 of Title 19.
[19.31.6.2 NMAC - Rp, 19.31.6.2 NMAC, 8-30-2007]

**19.31.6.3 S T A T U T O R Y
AUTHORITY:** 17-1-14 and 17-1-26

NMSA 1978 provide that the New Mexico game commission has the authority to establish rules and regulations that it may deem necessary to carry out the purpose of Chapter 17 NMSA 1978 and all other acts pertaining to protected mammals, birds, and fish.

[19.31.6.3 NMAC - Rp, 19.31.6.3 NMAC, 8-30-2007]

19.31.6.4 DURATION: August 30, 2007 - March 31, 2008.

[19.31.6.4 NMAC - Rp, 19.31.6.4 NMAC, 8-30-2007]

19.31.6.5 EFFECTIVE DATE:
August 30, 2007 unless later date is cited at end of individual sections.

[19.31.6.5 NMAC - Rp, 19.31.6.5 NMAC, 8-30-2007]

19.31.6.6 O B J E C T I V E :
Establishing seasons on American coot, common moorhen, common snipe, ducks, geese, sora, Virginia Rail, and setting falconry seasons.

[19.31.6.6 NMAC - Rp, 19.31.6.6 NMAC, 8-30-2007]

19.31.6.7 D E F I N I T I O N S :
Areas, species, non-toxic shot, and possession limit defined.

A. "Adult/youth (A/Y)"
as used herein, shall mean that hunt designation where the adult and youth are permitted to hunt together.

B. "Arrows" shall mean only those arrows or bolts having broadheads with steel cutting edges.

C. "Baiting" shall mean the placing, exposing, depositing, distributing, or scattering of any salt, grain, scent or other feed on or over areas where hunters are attempting to take protected game mammals or game birds.

D. "Bernardo north duck hunt area (BND)" shall mean that area north of U.S. 60 on Bernardo WMA.

E. "Bow" shall mean compound, recurve, or long bow. Sights on bows shall not project light nor magnify.

F. "Central flyway" shall mean that portion of New Mexico east of the Continental Divide, with the exception of the Jicarilla Apache Indian reservation.

G. "Crossbows" shall mean a device with a bow limb or band of flexible material that is attached horizontally to a stock and has a mechanism to hold the string in a cocked position. Sights on crossbows shall not project light nor magnify.

H. "Dark goose" shall mean Canada goose or greater white-fronted goose.

I. "Department" shall mean the New Mexico department of game and fish.

J. "Director" shall mean the director of the New Mexico department of game and fish.

K. "Electronic motion decoys" shall mean decoys such as spinning wing decoys that operate by electric motors or electronic controls.

L. "Established road" is defined as follows:

(1) a road, built and/or maintained by equipment, which shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures;

(2) a two-track road completely void of vegetation in the tracks which shows use prior to hunting seasons for other purposes such as recreation, mining, logging, and ranching and shows no evidence of ever being closed to vehicular traffic by such means as berms, ripping, scarification, reseeding, fencing, gates, barricades or posted closures.

M. "Falconry" shall mean hunting migratory game birds using raptors.

N. "License year" shall mean the period from April 1 through March 31.

O. "Light geese" shall mean snow geese, blue phase snow geese, and Ross's geese.

P. "Light goose conservation order" shall mean those methods, bag and possession limits, and dates approved by the USFWS towards reducing over-abundant light goose populations.

Q. "Middle Rio Grande valley dark goose hunt area (MRGV)" shall mean Sierra, Socorro and Valencia counties.

R. "Migratory game bird" shall mean American coot, common moorhen, common snipe, ducks, geese, sora, and Virginia rail.

S. "Modern firearms" shall mean center-fire firearms, not to include any fully automatic firearms. Legal shotguns shall be only those shotguns capable of being fired from the shoulder.

T. "Muzzle-loader or muzzle-loading firearms" shall mean those rifles and shotguns in which the charge and projectile are loaded through the muzzle. Only blackpowder, Pyrodex or equivalent blackpowder substitute may be used. Use of smokeless powder is prohibited. Legal muzzle-loader shotguns shall be only those shotguns capable of being fired from the shoulder.

U. "Non-toxic shot" shall mean that non-toxic shot approved for use by the U. S. fish and wildlife service.

V. "North zone" shall

mean that portion of the Pacific flyway north of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway north of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

W. "Pacific flyway" shall mean that portion of New Mexico west of the Continental Divide including the Jicarilla Apache Indian reservation.

X. "Permanent mobility limitation" shall mean an individual that permanently has: restricted movement in both arms, or is restricted to the use of a walker, wheelchair, or two crutches to walk, or has a combination of disabilities that cause comparable substantial functional limitations. EXCEPTION: For the purposes of hunting migratory game birds from a vehicle, mobility limitation individuals are those that have permanently lost one or both legs.

Y. "Possession limit" shall mean twice the daily bag limit except where otherwise defined.

Z. "Protected species" shall mean any of the following animals:

(1) all animals defined as protected wildlife species and game fish under Section 17-2-3 New Mexico Statutes Annotated 1978 Compilation;

(2) all animals listed as endangered species or subspecies as stated in regulation(s) set by the state game commission.

AA. "Retention" or "retain" shall mean the holding of in captivity.

BB. "South zone" shall mean that portion of the Pacific flyway south of I-40 from the Arizona-New Mexico border to the Continental Divide; and that portion of the central flyway south of I-40 from the Continental Divide to Tucumcari and U.S. 54 at its junction with I-40 at Tucumcari to the New Mexico-Texas border.

CC. "Unlimited" shall mean there is no set limit on the number of permits or licenses established for the described hunt areas.

DD. "Waterfowl management area" (WMA) shall mean state game commission owned or managed waterfowl management areas.

EE. "Youth" shall mean those less than 18 years of age except where otherwise defined.

FF. "Youth waterfowl hunting days" shall mean the special seasons where only those under 16 years of age may hunt ducks and geese. A supervising adult must accompany the youth hunter.

[19.31.6.7 NMAC - Rp, 19.31.6.7 NMAC, 8-30-2007]

19.31.6.8 LICENSE AND APPLICATION REQUIREMENTS:

A. License: It shall be unlawful to hunt migratory game birds without having purchased a valid license for the current license year.

(1) For the hunting of migratory game birds; valid licenses are general hunting, or general hunting and fishing, or junior general hunting, or junior general hunting and fishing, or senior or handicapped general hunting, or senior or handicapped general hunting and fishing, or small game, or non-resident small game, and temporary small game 4-day licenses. A habitat stamp is required for those hunting on US Forest Service and Bureau of Land Management properties. Hunters from 18 through 69 years of age must also purchase a habitat management and access validation except for resident 100% disabled veterans.

(2) In addition to a valid license (see Paragraph (1) of Subsection A of 19.31.5.8 NMAC) a migratory bird permit number shall be required while hunting migratory game birds.

B. Valid dates of license or permit: All permits or licenses shall be valid only for the dates, legal sporting arms, bag limit and area specified by the hunt code printed on the permit or license.

C. Applications: Applications for Bernardo WMA light goose, and Bernardo WMA youth-only waterfowl hunt permits shall be submitted on the appropriate application form.

(1) It shall be unlawful to submit more than one application per species per year. Those submitting more than one application per species will result in the rejection of all applications.

(2) A six-dollar application fee shall be required by each applicant per application submitted.

(3) Applicants may apply for a first, second and third choice of seasons. A maximum of one permit per species hunt code will be awarded to successful applicants unless otherwise specifically allowed by rule.

(4) All applications must be mailed to the Santa Fe office unless otherwise specifically allowed by rule. Applications that have been mailed and postmarked but not delivered by the deadline date will be accepted by the Santa Fe office up to 5 working days after that deadline. A person desiring a MRGV dark goose permit shall apply in person to the department in Santa Fe, Albuquerque, Raton, Las Cruces, or Roswell, or by mail to the Santa Fe office only.

(5) The deadline date for application for the Bernardo WMA youth-only waterfowl hunt permits shall be the second Saturday in September.

(a) for the Bernardo WMA youth-

only waterfowl hunt permits no more than three persons may apply per application;

(b) up to two hunt choices may be awarded; and

(c) if any permits are available after the drawing, a person may submit a new application to the department in Albuquerque, Raton, Las Cruces or Roswell office, but only for those dates where a permit was not issued by drawing. Up to 2 hunt choices may be awarded. Hunters may have a maximum of 4 Bernardo youth-only permits per license year.

(6) The deadline date for application for the Bernardo WMA light goose hunt permits shall be the first Saturday in November.

(7) No more than four persons may apply per application.

(8) Applications for permits may be returned to the sender if such applications are not on the proper form or do not supply adequate information.

(9) If applications for permits exceed the number of available permits, as herein established, the available permits shall be allotted by means of a random public drawing in the Santa Fe office of the department of game and fish.

(10) If any permits remain after the original deadline, the director may authorize a new deadline. A person who is not awarded a permit for which he applied may submit a new application for a permit if such permits remain available.

D. Youth hunts: Only applicants who have not reached their 18th birthday by the opening day of the hunt are eligible to apply for or participate in a youth only hunt. **EXCEPTION:** During the youth waterfowl hunt days only those who have not reached their 16th birthday may hunt waterfowl (see Section 19.31.6.15 NMAC). [19.31.6.8 NMAC - Rp, 19.31.6.8 NMAC, 8-30-2007]

19.31.6.9 MANNER AND METHODS FOR MIGRATORY GAME BIRDS:

A. Season and hours: Migratory game birds may be hunted or taken only during open seasons and only during the period from one-half hour before sunrise to sunset unless otherwise specifically allowed by rule.

(1) On state game commission owned or managed waterfowl management areas (WMA)s, as listed herein, hunting hours shall mean from one-half hour before sunrise to 1:00 p.m.

(2) During the light goose conservation order hunt dates, as listed herein, hunting hours shall mean from one-half hour before sunrise to one-half hour after sunset.

B. Bag limit: It is unlaw-

ful for any person to hunt for or take more than one daily bag limit allowed by regulation. There shall be no daily bag or possession limit for light geese during the light goose conservation order hunt dates.

C. Tagging:

(1) Any permit or license that permits the taking of dark geese in the MRGV; shall be issued with tags bearing the name of the species.

(2) It shall be unlawful for any licensee not to properly tag the animal as prescribed below:

(a) IMMEDIATELY after killing any dark goose in the MRGV; the licensee killing the game shall notch the proper day and month of kill from the species tag; and

(b) the tag shall be attached to the carcass of dark geese harvested in the MRGV; and the tag shall remain attached to the carcass while the carcass is in any vehicle, left unattended in the field, or while it is in camp or at a residence or other place of storage.

(3) A species tag, when attached to the carcass of legally taken game, shall authorize possession and storage for the period designated on the tag.

D. Seizure: Any conservation officer or other officer authorized to enforce game laws and regulations shall seize the carcasses of any waterfowl or migratory game bird illegally obtained or dark geese in the MRGV that are improperly tagged.

E. Use of bait: It shall be unlawful for anyone to take or attempt to take any protected species by use of baits as defined in Subsection C of 19.31.6.7 NMAC.

F. Live animals: It shall be unlawful to use live animals as a blind or decoy in taking or attempting to take any protected species.

G. Use of calling devices: It shall be unlawful to use any electrically or mechanically recorded calling device in taking or attempting to take any protected species. During the light goose conservation order hunt dates, as listed herein, electronic calling devices are allowed.

H. Killing out-of-season: It shall be unlawful to kill any protected species out-of-season.

I. Legal sporting arms and ammunition:

(1) The following are **legal sporting arms** for migratory game birds:

(a) shotguns firing shot, shotguns shall not be capable of holding no more than three shells;

(b) muzzle-loading shotguns firing shot;

(c) bows and arrows;

(d) crossbows for individuals that qualify with a permanent mobility limita-

tion; and

(e) during the light goose conservation order hunt dates, as listed herein, shotguns capable of holding more than three shells are lawful.

(2) **Non-toxic shot** use is required for hunting:

(a) all migratory game bird species;

(b) on all state game commission owned lands; and

(c) only 30 rounds per hunter will be allowed at the blinds when participating on the Bernardo WMA light goose special permit hunts.

(3) **Use of toxic shot:** It shall be unlawful for any person hunting migratory game birds to hunt with or be in possession of any shotgun shells loaded with toxic shot.

J. Drugs and explosives:

It shall be unlawful to use any form of drug on an arrow or use arrows driven by explosives.

K. Proof of species or sex: One fully-feathered wing or the head shall remain attached to each migratory game bird taken until the bird has arrived at the personal abode of the possessor or storage facility.

L. Possession or sale of protected species: It shall be unlawful to possess, sell, or offer for sale all or part of any protected species except as provided below:

(1) **License or permit:** A person may possess protected species or parts thereof that they have lawfully taken (killed) under license or permit.

(2) **Game taken by another:** Any person may have in their possession or under their control any protected species or parts thereof that have been lawfully taken by another person, if they possess a written statement which shall be provided by the donor of the protected species, or parts thereof, and which shall contain the following:

(a) the kind and number of game parts donated;

(b) the date and county where the game was lawfully taken;

(c) the donor's name, address, and the number of the hunting license under which the game was lawfully taken; and

(d) the date and place of the donation.

(3) **Retention of live animals:** It shall be unlawful to retain protected species in a live condition except under permit or license issued by the director for the following purposes:

(a) zoos open for public display;

(b) in class A parks;

(c) in projects for scientific research and propagation;

- (d) a rehabilitation permit;
- (e) under a falconry permit, only those birds listed on the permit;
- (f) under a scientific collection permit, one may collect and possess only those species listed on the permit; and
- (g) in transit through New Mexico when the transporter can demonstrate proof of legal possession of the protected animal being transported.

(4) **Sale of game animal parts:** It shall be unlawful to sale or barter any parts or feathers from migratory game birds.

(5) **Falconry provisions for possession:** the falconry hunter shall not retain nor possess any protected species of bird taken by a raptor except those species of protected birds taken during open falconry season.

M. Release of wildlife: It shall be unlawful for any person or persons to release, intentionally or otherwise, or cause to be released in this state any mammal, bird, fish, reptile or amphibian, except domestic mammals, domestic fowl, or fish from government hatcheries, without first obtaining a permit from the department of game and fish.

N. Use of vehicles and roads in hunting migratory game birds:

(1) **Roads:** It shall be unlawful to shoot at, wound, take, attempt to take, or kill any protected species on, from, or across any graded paved, or maintained public road and including the areas lying within right-of-way fences or 40 feet from the edge of the pavement or maintained surface, in absence of right-of-way fences.

(2) **Vehicles, boats, aircraft:** It shall be unlawful to shoot at any protected species from within a motor vehicle, power boat, sailboat, or aircraft. EXCEPTION - Migratory birds may be taken from a motor-driven boat (or other craft with attached motor) or sailboat when resting at anchor or fastened within or immediately alongside a fixed hunting blind or is used solely as a means of picking up dead birds.

(3) **Harassing protected wildlife:** It shall be unlawful, at any time, to pursue, harass, harr, drive, or rally any protected species by use of or from a motor-driven vehicle, powerboat, sailboat, or aircraft.

(4) **Vehicle off of established road:** During the seasons established for any protected species, it shall be unlawful to drive or ride in a motor vehicle, which is driven off an established road when the vehicle bears a licensed hunter, fisherman or trapper. EXCEPTION: 1) Snowmobiles; 2) All landowners, lessees or their employees, while on their owned or leased lands in connection with legitimate agricultural activities.

(5) **Closed roads:** During the seasons established for any protected species, it shall be unlawful to knowingly occupy, drive, or cause to be driven any motor vehicle on a closed road when the vehicle bears a licensed hunter, angler or trapper.

(6) **Handicapped license:**

(a) Shooting from a vehicle: The holder of a handicap license is authorized to shoot at and kill protected species during their respective open seasons from a stationary motor-driven vehicle that is not on a public road or highway. The director may issue permits to shoot from a stationary vehicle to applicants who provide certification that the applicant is permanently disabled in accordance with the American Disability Act. Such certification shall be signed by an M.D. or O.D. licensed to practice in the applicant's state of residence.

(b) Driving off established roads: Holders of a handicap license may, with permission of the landowner, lessee, or land management agency, drive off established roads to hunt for or take migratory game birds, during open seasons.

(c) Assistance for handicapped hunter: The holder of a handicapped license may be accompanied by another person to assist in reducing to possession any resident small game animal which has clearly been wounded by the licensed handicapped hunter. EXCEPTION: Persons assisting in reducing to possession any wounded migratory game birds shall be fully licensed (see Subsection A of 19.31.6.8 NMAC).

O. Lands and waters owned, administered, controlled, or managed by the state game commission:

(1) **Posting of signs:** The state game commission may prohibit, modify, condition, or otherwise control the use of areas under its control by posting of signs as may be required in any particular area.

(2) **Violating provisions of posted signs:** It shall be unlawful to violate the provisions of posted signs on areas under the control of the state game commission.

(3) **Trespass on state game commission owned lands:** It shall be unlawful to hunt, fish, camp, or trespass upon state game commission owned lands unless allowed under regulation or provided for under Subsection O of 19.31.6.9 NMAC.

(4) The **Sandia ranger district** of the Cibola national forest shall be open to archery only hunting of species listed herein during established seasons.

(5) State waterfowl areas open, species that can be hunted, and days hunting open:

(a)

DAYS OF WEEK OPEN FOR HUNTING

<u>AREA</u>	<u>SPECIES</u>	<u>SUN</u>	<u>MON</u>	<u>TUE</u>	<u>WED</u>	<u>THU</u>	<u>FRI</u>	<u>SAT</u>
Bernardo WMA (See note below) (600 feet S of US-60 and portions N of US-60; W of unit 7 drain)	Group 1*	X				X		
(600 feet S of US-60 and portions N of US-60; E of unit 7 drain)	Group 1		X		X			X
La Joya WMA Group 1 (south portion of refuge)		X				X		
La Joya WMA Group 1 (north portion of refuge)			X		X			X
Jackson lake WMA Group 2**			X		X			X

(W of NM-170)

Seven Rivers WMA (portion of Brantley WMA— see specific closure in Paragraph (3) of Subsection A of 19.31.6.15 NMAC)	Group 2	X	X	X
Tucumcari WMA	Group 2	X	X	X
Salt lake and Charette lake WMAs	Group 2	X	X	X
McAllister lake WMA	Group 3***	X	X	X

*Group 1 Ducks, light geese, dark geese if in possession of a MRGV dark goose permit, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

**Group 2 Ducks, geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

***Group 3 Ducks, light geese, Virginia Rail, Sora, Common moorhen, American coot, and Common snipe.

Note: Bernardo WMA will be closed to all waterfowl hunting during those days scheduled for the special permit light goose hunts (see Subsection A of 19.31.6.12 NMAC) During the light goose conservation order, designated areas north of U.S. highway 60 are open and shall follow the schedule described in the table above.

(b) The wildlife management areas open during the youth waterfowl days (see section 19.31.6.15 NMAC) shall be Bernardo WMA, all portions of La Joya WMA, Seven Rivers WMA, Salt lake WMA, Charette lake WMA, McAllister lake WMA and Tucumcari WMA.

(c) Portions of the Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of at least one youth hunter with a supervising adult; see 19.31.6.16 NMAC).

(d) Falconry hunting for migratory game birds shall be permitted on those portions of the WMAs open to hunting during the seasons in Subsection A of 19.31.6.11 NMAC, except for Jackson lake WMA.

(e) Falconry hunting for migratory game birds shall be permitted on those portions of Jackson lake WMA open to hunting during the seasons in Subsection A of 19.31.6.11 NMAC, including that portion east of N.M. 170.

P. Areas closed to migratory game bird hunting: The following areas shall remain closed to hunting, except as permitted by regulation.

(1) All wildlife management areas.

(2) Rio Grande wild and scenic river area.

(3) Sub-Unit 6B (Valles Caldera national preserve).

(4) Sugarite canyon state park.

(5) Valle Vidal area.

(6) The Old McMillan lake spillway arm of Brantley lake extending from the mouth of South Seven Rivers draw north to the railroad trestle shall be closed to all hunting from January 1 through February 29.

(7) That portion of the Canadian river arm of Ute reservoir lying between lines running parallel to and 100 feet above the high-water marks on each side of the Canadian arm and extending from the San Miguel and Quay county line to a posted buoy line across Horseshoe Bend.

(8) That portion of the stilling basin below Navajo dam lying within a line starting from N. M. 511 at the crest of the bluff west of the Navajo dam spillway and running west along the fence approximately 1/4 mile downstream, southwest along the fence to N. M. 511 to the Navajo dam spillway, across the spillway, and to the crest of the bluff.

Q. Regulations pertaining to boats, other floating devices, and motors:

(1) On **Bernardo, La Joya, Salt Lake and Jackson Lake WMAs** only boats and other floating devices using no motors shall be permitted during waterfowl season.

(2) On **Tucumcari WMA**, only boats and other floating devices using electric motors or with motors that are not in use shall be permitted.

(3) On **Charette and McAllister lakes** boats and other floating devices with or without motors shall be permitted; provided, however, that boats or floating devices shall not be operated at greater than normal trolling speed.

(4) Department of game and fish personnel or persons authorized by the director of the department of game and fish may use gasoline powered outboard motors on all lakes mentioned in this chapter while performing official duties.

R. Electronic motion decoys: It shall be unlawful to use electronic motion decoys while hunting waterfowl on those portions of Bernardo WMA, north of US highway 60.
[19.31.6.9 NMAC - Rp, 19.31.6.9 NMAC, 8-30-2007]

19.31.6.10 SPECIES, OPEN AREAS, SEASON DATES, AND DAILY BAG LIMITS:

A. 2007-2008 season; all dates are 2007 unless otherwise specified:

CENTRAL FLYWAY

<u>SPECIES</u>	<u>SEASON DATES</u>	<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>
Ducks: North zone:	Oct. 6 - Jan. 9, 2008	6— which consists of no more than 5 Mallard (of which only 2 may be

		female Mallard); 2 Scaup; 2 Redhead; 2 Wood duck, 2 Hooded Mergansers.
Pintail and Canvasback	Oct. 6 - Nov. 13	1 Pintail; 1 Canvasback may be in the bag
South zone: Same as North zone	Oct. 24 - Jan. 27, 2008	
Pintail and Canvasback	Dec. 20 - Jan. 27, 2008	1 Pintail; 1 Canvasback may be in the bag
American coot:	Same as above Zone dates	15
Common moorhen:	Oct. 6 - Dec. 14	1
Common snipe	Oct. 6 - Jan. 20, 2008	8
Virginia Rail & Sora	Sept. 15 - Nov. 23	10 daily (singly or in the aggregate)
Dark goose: (Regular season closed in Bernalillo, Sandoval, Sierra, Socorro, and Valencia counties)	Oct. 17 - Jan. 31, 2008	4
Special MRGV season *Special permit required; See information in Section 14	Dec. 27 - Jan. 6, 2008	2 (2 per season)
Light goose:	Oct. 17 - Jan. 31, 2008	20/80 possession

PACIFIC FLYWAY

<u>SPECIES</u>	<u>SEASON DATES</u>		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSED</u>	
Ducks:	Oct. 15 - Jan. 27, 2008		7— which consists of no more than 2 female Mallard; 2 Redhead; 2 Scaup; 1 Pintail; 2 Canvasback.
American coot and Common moorhen:	Oct. 15 - Jan. 27, 2008		12 daily (singly or in the aggregate)
Common snipe:	Oct. 6 - Jan. 20, 2008		8
Virginia Rail & Sora:	Sept. 15 - Nov. 23		10 daily (singly or in the aggregate)
Goose: North zone:	Sept. 22 - Oct. 7 and Oct. 29 - Jan. 27, 2008		3 Dark geese, 1 Light goose
South zone:	Oct. 13 - Jan. 27, 2008		2 Dark geese, 1 Light goose

B. Light goose conservation measures: Under the director's discretion the department may implement the light goose conservation measures approved by the U.S. fish and wildlife service (USFWS). Methods, bag and possession limits, and dates allowed shall be those as approved by the USFWS.

CENTRAL FLYWAY

<u>SPECIES</u>	<u>SEASON DATES</u>		<u>DAILY BAG LIMIT</u>
	<u>OPEN</u>	<u>CLOSE</u>	
Light geese	Feb. 01, 2008 - Mar. 10, 2008		No bag or possession limit

[19.31.6.10 NMAC - Rp, 19.31.6.10 NMAC, 8-30-2007]

19.31.6.11 FALCONRY SEASONS:

- A.** Species that can be taken, open areas, and hunting seasons; 2007-2008 season, all dates are 2007 unless otherwise specified:
- (1) Duck: Central flyway seasons shall be open in the north zone - September 15 through September 23, September 29-30 (youth waterfowl days), and October 6 through January 9, 2008; south zone - September 15 through September 23, October 13-14 (youth waterfowl days), and October 24 through January 27, 2008. Pacific flyway seasons shall be as follows: October 6-7 (youth waterfowl days), and October 15 through January 27, 2008.
 - (2) Light goose: Central flyway seasons shall be open October 17 through January 31, 2008. Pacific flyway season shall be open

in the north zone - September 22 through October 7, and October 29 through January 27, 2008; south zone - October 13 through January 27, 2008.

(3) Dark goose: Central flyway seasons shall be open October 17 through January 31, 2008. Pacific flyway season shall be open in the north zone - September 22 through October 7, and October 29 through January 27, 2008; south zone - October 13 through January 27, 2008.

(4) Common snipe: Central and Pacific flyways seasons shall be: October 6 through January 20, 2008.

(5) Common Moorhen: Central flyway season shall be: October 6 through January 20, 2008. Pacific flyway season shall be: October 15 through January 27, 2008.

(6) Sora and Virginia rails: Central and Pacific flyways seasons shall be: September 15 through December 30, 2007.

B. Daily bag limits: shall be three birds (in the aggregate) and possession limits shall be six birds (in the aggregate) as established herein.

[19.31.6.11 NMAC - Rp, 19.31.6.11 NMAC, 8-30-2007]

19.31.6.12 REQUIREMENTS AND PERMITS FOR BERNARDO LIGHT GOOSE HUNT:

A. Bernardo WMA will be open for light goose hunting by permit only on December 29, 31, and January 19 and 21.

B. Up to 24 permits at Bernardo WMA, per hunting day, will be available (except on December 29; see 19.31.6.13 NMAC below). Applications submitted for the LTG-O-102 hunt must have a minimum of one youth hunter and one hunter over 18 years of age.

C. Hunt packages for the Bernardo light goose hunts.

LTG-O-101 12/31

LTG-O-102 1/19

LTG-O-103 1/21

[19.31.6.12 NMAC - Rp, 19.31.6.12 NMAC, 8-30-2007]

19.31.6.13 REQUIREMENTS AND PERMITS FOR BERNARDO YOUTH-ONLY LIGHT GOOSE HUNT: Up to 12 permits will be available for the December 29 (YLG-O-101) youth-only light goose hunt at Bernardo WMA.

[19.31.6.13 NMAC - Rp, 19.31.6.13 NMAC, 8-30-2007]

19.31.6.14 REQUIREMENTS AND PERMITS FOR THE SPECIAL MIDDLE RIO GRANDE VALLEY DARK GOOSE SEASON: Unlimited permits obtained at department offices will be available to hunt dark geese in a selected portion of the middle Rio Grande valley with a daily bag limit of two dark geese and a season limit of two dark geese.

[19.31.6.14 NMAC - Rp, 19.31.6.14 NMAC, 8-30-2007]

19.31.6.15 YOUTH WATERFOWL HUNTING DAYS:

A. Requirements for youth hunters to participate in this hunt are as follows:

(1) Youth hunters must be under 16 years old.

(2) An adult, at least 18 years old, must accompany the youth hunter in the field (the adult may not hunt ducks; but may participate in other seasons that are open on the special youth day).

(3) Only ducks and coots may be taken by the youth hunter (sandhill cranes, geese or any other waterfowl species may not be taken).

B. Season dates for youth waterfowl days:

Central flyway: North zone: September 29-30

South zone: October 13-14

Pacific flyway: October 6-7

C. The bag limit for youth waterfowl days shall be the same as the regular season in the respective flyways.

[19.31.6.15 NMAC - Rp, 19.31.6.15 NMAC, 8-30-2007]

19.31.6.16 REQUIREMENTS AND HUNT CODES FOR THE SPECIAL BERNARDO YOUTH WATERFOWL HUNT AREA:

A. The Bernardo WMA ponds north of highway U.S. 60 will be open for waterfowl hunting to groups consisting of a minimum of a youth hunter, under 18 years of age, and a supervising adult.

B. Requirements for blind selection:

(1) Blind selection on weekdays between September 15 through December 13 and January 7-27, 2008 is on a first come basis. Once all blinds are selected, no other hunters may enter the area.

(2) Blind selection on all weekends and weekdays December 15 through January 6, 2008 will be available by permit only (see Paragraph (5) of Subsection C of 19.31.6.8 NMAC). 2007-2008 season, hunt codes and permits available:

Hunt Date	Hunt Code	No. of permits	Hunt Date	Hunt Code	No. of permits
October 13	BNY-0-101	6	December 19	BNY-0-120	6
October 14	BNY-0-102	6	December 20	BNY-0-121	6
October 27	BNY-0-103	6	December 22	BNY-0-122	6
October 28	BNY-0-104	6	December 23	BNY-0-123	6
November 3	BNY-0-105	6	December 24	BNY-0-124	6
November 4	BNY-0-106	6	December 26	BNY-0-125	6

November 10	BNY-0-107	6	December 27	BNY-0-126	6
November 11	BNY-0-108	6	December 30	BNY-0-127	6
November 17	BNY-0-109	6	January 2	BNY-0-128	6
November 18	BNY-0-110	6	January 3	BNY-0-129	6
November 24	BNY-0-111	6	January 5	BNY-0-130	6
November 25	BNY-0-112	6	January 6	BNY-0-131	6
December 1	BNY-0-113	6	January 12	BNY-0-132	6
December 2	BNY-0-114	6	January 13	BNY-0-133	6
December 8	BNY-0-115	6	January 20	BNY-0-134	6
December 9	BNY-0-116	6	January 26	BNY-0-135	6
December 15	BNY-0-117	6	January 27	BNY-0-136	6
December 16	BNY-0-118	6			
December 17	BNY-0-119	6			

C. Bernardo WMA will be closed to waterfowl hunting during the special permit Bernardo light goose hunts on December 29, 31 and January 19, 21.

D. Designated areas open for Bernardo youth waterfowl hunts are: north of highway U.S. 60, between U.S. 60 and the post-closure areas (see Subparagraph (a) of Paragraph (5) of Subsection O of 19.31.6.9 NMAC above).

E. Use of motorized motion decoys is prohibited.
[19.31.6.16 NMAC - Rp, 19.31.6.16 NMAC, 8-30-2007]

NEW MEXICO GAMING CONTROL BOARD

This is an amendment to 15.1.13 NMAC, Section 9, effective 8/30/07.

15.1.13.9 RENEWAL FEES:

A. Renewal license fees are as follows:

(1) gaming machine or associated equipment manufacturer's license, [~~\$3,500;~~] \$2,000;

(2) gaming machine or associated equipment distributor's license, [~~\$750;~~] \$400;

(3) gaming operator's license for racetrack, [~~\$5,000;~~] \$4,000;

(4) gaming operator's license for nonprofit organization, \$100;

(5) gaming machine license, [~~\$50]~~ \$25 per machine [~~for nonprofit organizations];~~

(6) [~~gaming machine license, \$100 per machine for racetracks;~~] work permit, \$25; and

(7) [~~work permit, \$40 for nonprofit organization;~~] certification of finding of suitability, \$25.

[(8) work permit \$75.00 for manufacturers, distributors and racetracks;

(9) certification of finding of suitability \$100 for each person requiring investigation for nonprofit organizations;

(10) certification of finding of suitability, \$225 for each person requiring investigation for manufacturers, distributors and racetracks.]

B. Any renewal application shall be deemed incomplete, and shall be subject to late fees and penalties, if the applicant does not include full payment for the license renewal fee with the application or if the applicant's check is returned due to insufficient funds.

C. The board or its designee may prorate the license fee in cases it deems appropriate.
[12/31/98; 15.1.13.9 NMAC - Rn, 15 NMAC 1.13.9, 3/31/00; A, 11/30/05; A, 5/15/07; A, 8/30/07]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

5.7.18 NMAC, Residency for Tuition Purposes, filed August 1, 2000 is repealed and replaced by 5.7.18 NMAC, Residency for Tuition Purposes, effective August 30, 2007.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

TITLE 5 POST-SECONDARY EDUCATION CHAPTER 7 TUITION AND FINANCIAL AID PART 18 RESIDENCY FOR TUITION PURPOSES

5.7.18.1 ISSUING AGENCY: State of New Mexico Higher Education Department
[5.7.18.1 NMAC - Rp, 5.7.18.1 NMAC, 8/30/2007]

5.7.18.2 SCOPE: Provisions of 5.7.18 NMAC apply to all state public post-secondary institutions in the state of New Mexico.
[5.7.18.2 NMAC - Rp, 5.7.18.2 NMAC, 8/30/2007]

5.7.18.3 S T A T U T O R Y

AUTHORITY: Section 21-1-4G NMSA 1978
[5.7.18.3 NMAC - Rp, 5.7.18.3 NMAC, 8/30/2007]

5.7.18.4 D U R A T I O N : Permanent.
[5.7.18.4 NMAC - Rp, 5.7.18.4 NMAC, 8/30/2007]

5.7.18.5 EFFECTIVE DATE: August 30, 2007, unless a later date is cited at the end of a section.
[5.7.18.5 NMAC - Rp, 5.7.18.5 NMAC, 8/30/2007]

5.7.18.6 OBJECTIVE: The objective of 5.7.18 NMAC is to establish a policy for the purpose of determining resident and nonresident tuition classifications for students enrolling at public post-secondary institutions in New Mexico.
[5.7.18.6 NMAC - Rp, 5.7.18.6 NMAC, 8/30/2007]

5.7.18.7 DEFINITIONS:
A. "Armed forces" means the United States army, navy, air force, marine corps or coast guard.

B. "Department" means state of New Mexico higher education department.

C. "Dependent minor" means a person determined to be financially dependent upon a parent or guardian and who has not reached the age of majority (eighteen years of age) or is not an emancipated minor. The legal residence of a dependent minor is that of their parent(s) or custodial parents; or, if both parents are dead, of their legally appointed guardian(s) or of the adult person with whom he or she lives with for more than one-half of the preceding consecutive twelve months. In the event a non-custodial parent is a legal resi-

dent of New Mexico as determined in 5.7.18.9 NMAC the dependent minor shall be accorded resident status.

D. "Emancipated minor" means any person sixteen years of age or older shall be regarded as an adult for the purposes of determining residency status for tuition charges, provided they:

(1) have entered into a valid marriage, whether or not such marriage was terminated by dissolution; or

(2) are on active duty with any of the armed forces of the United States of America; or

(3) are willingly living separate and apart from their parents, guardian or custodian, are managing their own financial affairs and the court finds it in the minors best interest to grant a declaration of emancipation pursuant to Section 32A-21-7 NMSA 1978. Mere absence from parental residence does not prove emancipation.

E. "Enrollment" means the first day of the term or semester for the student.

F. "Financially dependent" means that dependency will be determined according to Section 152 of the 1954 Internal Revenue Code. This includes any person for whom the parent, guardian, or spouse provides at least one-half of their support.

G. "General fees" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. An institution may charge fees in addition to general fees that are course-specific or that pertain to a smaller proportion of students.

H. "New Mexico resident for tuition purposes" means a person who has satisfied the requirements and regulations of 5.7.18.9 NMAC.

I. "Nonresident" means a student who enters and remains in this state principally to enroll in postsecondary education, is presumed to continue to reside outside this state, and such presumption continues in effect until rebutted by clear and convincing evidence of bona fide residence.

J. "Permanent residence" means a place in which habitation is fixed, and to which, whenever absent, there is intention to return. Further, a person does not gain or lose residence solely while a student at an institution of postsecondary education.

K. "Tuition" means the amount of money charged to students for instructional services, which may be

charged per term, per course or per credit.

L. "Tuition reciprocity participants" mean any nonresident, undergraduate student participating in a tuition reciprocity agreement. Pursuant to Section 21-1-6 NMSA 1978, these participants are ineligible for residency. Furthermore, students may not begin to establish residency (i.e., 12-month durational requirement) until discontinuing from such a program. Refer to department negotiated reciprocity agreements for additional detail.

[5.7.18.7 NMAC - Rp, 5.7.18.7 NMAC, 8/30/2007]

5.7.18.8 DETERMINATION OF RESIDENCY STATUS:

A. At time of first admission. A person's residency classification for tuition purposes shall be determined at time of admission and must be completed by the census date of that first enrollment in a given public postsecondary educational institution. A person not meeting the residency requirements shall be classified as a nonresident for purposes of tuition charges. The student's classification at time of admission remains in effect unless the individual is re-admitted to the institution or until the individual petitions to become a New Mexico resident.

B. Petition for resident tuition classification. Once determined a nonresident at the time of census date, a student can petition to be classified as a New Mexico resident by completing the "petition for resident tuition classification" form (see Paragraph (3) of Section B of 5.7.18.12 NMAC, procedure to petition for resident tuition classification).

[5.7.18.8 NMAC - Rp, 5.7.18.10 NMAC, 8/30/2007]

5.7.18.9 REQUIREMENTS TO ESTABLISH NEW MEXICO RESIDENCY: To become a legal resident of New Mexico for tuition purposes each of the following requirements must be satisfied.

A. Twelve month durational requirement. A person must physically reside in New Mexico for the twelve consecutive months immediately preceding the term for which the resident classification is requested.

B. Financial independence requirement. Only persons who are financially independent may establish residency apart from parents or guardians. A student cannot be approved for residency who is financially dependent upon his or her parents or legal guardians who are nonresidents of New Mexico. Dependency will be determined according to the 1954 Internal Revenue Service Code, Section 152 and is

always based on the previous tax year for residency purposes. If under the age of 23 at the time the student applies for residency, a copy of his/her parents' or guardians' 1040 or 1040A U.S. income tax form for the previous tax year is required. If the student is shown to be a dependent on this tax form, he/she will not be considered financially independent or eligible for residency during the current year.

C. Written declaration of intent requirement. The student or person must sign a written declaration of intent to relinquish residency in any other state and to establish it in New Mexico.

D. Overt acts requirement.

(1) Overt acts are required to evidence support of the written declaration of intent to establish permanent residency in New Mexico. Any act considered inconsistent with being a New Mexico resident, such as having a valid driver's license from another state, will cause the request for resident classification to be denied. The required overt acts are evidence of any two of the following:

(a) if the applicant is financially dependent, a copy of the parent or guardians' previous year income tax showing the applicant as a dependent and the parent address as New Mexico; or

(b) a New Mexico high school transcript issued in the past year confirming attendance at a New Mexico public or private high school within the past twelve (12) months; or

(c) a transcript from an online high school showing a New Mexico address confirming attendance within the past twelve (12) months; or

(d) a New Mexico driver's license or ID card with an original date of issue or a renewal date issued prior to the first day of the term or semester; or

(e) proof of payment of New Mexico state income tax for the previous year; or

(f) evidence of employment within the state of New Mexico; or

(g) New Mexico vehicle registration; or

(h) voter registration in New Mexico; or

(i) proof of residential property ownership in New Mexico; or

(j) a rental agreement within New Mexico; or

(k) utility bills showing the applicant name and a New Mexico address; or

(l) other evidence which would reasonably support the individual's intent to establish and maintain New Mexico residency.

(2) The department recognizes that there may be circumstances in which a

student would not be able to fulfill the requirements of an overt act as listed in this section, such as: 1) individual is physically disabled and does not have a driver's license, or 2) individual is a convicted felon and therefore cannot vote, etc. In instances such as these, the institution will afford the student an opportunity to provide other documentary evidence or reasonable explanation which demonstrates that permanent residency in New Mexico has been established by the student.

E. Exceptions to the twelve (12) month requirement. If a student has met the requirements of one of the following exceptions, and is granted residency status, the student shall continue to be classified and reported as a resident for subsequent, continuing enrollment.

(1) An individual married to a legal resident of New Mexico and providing appropriate evidence shall not be required to complete the 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(2) Any person, their spouse and dependents who move to New Mexico or who now live in New Mexico and who provide appropriate evidence that they work in a permanent full-time position or practice a profession or conduct a business full-time in New Mexico, shall not be required to complete the 12-month durational requirement but must satisfy all other requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

(3) Any person entering the active service of the United States while a resident of New Mexico and who enters a state institution of postsecondary education in New Mexico after separation from such service may be classified as having been a legal resident in New Mexico during the time spent in the service provided they:

(a) have not while in the service done anything (such as voting in another state) to show abandonment of their New Mexico residency;

(b) have not established residence in some other state subsequent to being separated from service;

(c) return to New Mexico within one year after separation from service with the intention of maintaining this state as their legal residence;

(d) are not a dependent minor with parent(s) or guardian(s) whose place of residence classifies him or her as a nonresident of New Mexico.

(4) Any person who is at least 65 years of age, their spouse and dependents, who move to New Mexico for retirement purposes, or who provide appropriate evidence of retirement, shall not be required to complete the 12-month durational requirement. They must, however, satisfy the other

requirements listed in Subsections B, C, and D of 5.7.18.9 NMAC.

[5.7.18.9 NMAC - Rp, 5.7.18.11 & 12 NMAC, 8/30/2007]

5.7.18.10 WAIVERS: If a student has met the requirement of one of the following waivers, the student shall continue to be considered a non-resident for reporting purposes but will receive the benefit of the in-state tuition rates. In receiving such a waiver, the student does not become eligible for state funded student financial aid, unless the regulations for a particular aid program allow for such eligibility.

A. American Indian nations, tribes and pueblos. All out of state members of an American Indian nation, tribe and pueblo, located wholly or partially in New Mexico, regardless of the residence of the member prior to acceptance at a post-secondary educational institution shall be eligible to pay the in-state tuition rate. These include members of the following tribes or pueblos: Jicarilla Apache, Mescalero Apache, Taos pueblo, Picuris pueblo, Ohkay Owingeh, Santa Clara pueblo, Nambe pueblo, San Ildefonso pueblo, Pojoaque pueblo, Tesuque pueblo, Cochiti pueblo, Jemez pueblo, Santo Domingo pueblo, San Felipe pueblo, Zia pueblo, Santa Ana pueblo, Sandia pueblo, Isleta pueblo, Laguna pueblo, Acoma pueblo, Zuni pueblo, and the Ute Mountain tribe.

B. Navajo nation. All out of state members of the Navajo nation who reside on the Navajo reservation, as certified by the Navajo department of higher education, will be assessed in-state tuition rates.

C. Armed forces. Any person, their spouse or dependent child, not otherwise entitled to claim residence, who is a member of the armed forces of the United States or armed forces of a foreign country assigned to active duty in the state of New Mexico, will be assessed in-state tuition rates.

(1) Assignment to active duty within New Mexico must be certified by the military person's commanding officer upon the student's initial enrollment. Such students may continue paying resident rates for as long as they attend consecutive semesters at the same institution.

(2) Pursuant to Section 21-1-4.5 NMSA 1978, a spouse or child of an active member of the armed forces who dies or is killed becomes a resident of New Mexico within sixty (60) days of the date of death.

(3) Pursuant to Section 21-1-4.5 NMSA 1978, if an active member of the armed forces is stationed outside New Mexico following assignment to duty in New Mexico, and the member's spouse or child established residence in New Mexico

and registers a letter of intent to establish and continue residing in New Mexico, the spouse or child shall be assessed in-state tuition rates.

D. National guard. Pursuant to Section 20-4-14, NMSA 1978, an active member of the national guard and the member's spouse and children shall be deemed in-state residents for purposes of determining tuition and fees at all state institutions of higher learning.

E. Part-time students. During regular academic year semesters, nonresident tuition may be waived, according to the institution's tuition policy, for students (U.S. citizens and foreign nationals) enrolling for no more than six semester hours during a regular term.

F. Summer session. During summer sessions, nonresident tuition may be waived according to the institution's tuition policy.

G. Certain Texas residents. Pursuant to Section 21-1-3D, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, the board of regents of any post-secondary, state educational institution, as defined in Article 12, Section 11 of the constitution of New Mexico (specifically, NMHU, ENMU, NMSU, or WNMU), may determine that any Texas resident who resides within a (one hundred thirty-five) 135 mile radius of that institution may qualify for in-state tuition rates.

H. Colorado and Arizona reciprocity. Tuition reciprocity participants from Colorado and Arizona shall be selected by eligible institutions to pay in-state tuition rates based on criteria set by forth by each eligible institution. The department will notify each eligible institution of the maximum waivers allocated on an annual basis.

I. Athletic scholarship recipients. Pursuant to Section 21-1-3E, NMSA 1978, for the purposes of tuition payment and budget and revenue calculations, any student (U.S. citizens and foreign nationals) receiving an athletic scholarship from a post-secondary educational institution set forth in Article 12, Section 11 of the Constitution of New Mexico (specifically, UNM, NMSU, NMHU, ENMU, or WNMU) may qualify for in-state tuition rates.

J. Competitive scholarship recipients. Any student participating in this program shall be recognized as a competitive scholar and reported as such, unless the student petitions for and is granted residency status.

K. Graduate assistants, including research and teaching assistants, employed at least one-fourth time (10 hours weekly), will be assessed in-state tuition rates. To be eligible, students (U.S. citizens

and foreign nationals) must be enrolled full-time, as defined in the graduate catalogue of the public postsecondary institution, during regular terms.

L. SB 582. Any tuition or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a general educational development certificate in New Mexico. State-funded financial aid programs with an employment component may require U.S. citizenship or eligible non-citizen status.

[5.7.18.10 NMAC - Rp, 5.7.18.12 NMAC, 8/30/2007]

5.7.18.11 STUDENT EXCHANGE PROGRAMS: programs established under the auspices of the western interstate commission on higher education (WICHE). Participating students may not begin to establish residency (i.e., 12-month durational requirement) until discontinuing from such a program.

A. Western undergraduate exchange (WUE). Institutions must apply to the WICHE to participate in the WUE program where students in western states may enroll in many two-year and four-year college programs at a reduced tuition level, which is 150 percent of the institution's regular resident tuition

B. Western regional graduate program (WRGP). Residents of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming are eligible to enroll in available graduate programs outside of their home state at resident tuition rates. Students need not meet financial aid criteria. To be included in WRGP, programs must meet the criteria of distinctiveness and quality. Programs are nominated by their institutions, peer reviewed by other graduate institutions in the West, and approved biannually by the student exchange program advisory council, a policy body that represents all participating states.

[5.7.18.11 NMAC - N, 8/30/2007]

5.7.18.12 ADMINISTRATION OF POLICY:

A. The higher education department shall:

(1) publish, disseminate, and distribute pamphlets on residency determination; the department assumes responsibility for the publishing, printing, distribution of the residency pamphlets, and other related printed matter;

(2) develop a standard "petition for change in residency classification;" this standardization petition form for residency for tuition purposes shall be utilized by all postsecondary institutions; similarly, all applications for admission shall require standardized information for the initial residency determination;

(3) convene an annual meeting to review residency issues; classification officers shall meet at least annually to review and discuss residency cases in order to assure uniformity and fairness in residency determination;

(4) conduct audits to ascertain compliance with policy; at least a random audit of each postsecondary institution's residency decisions shall take place on an annual basis by members of the department staff;

(5) annually prepare and disseminate a report of the number and type of exceptions granted, by institution; the report shall include exceptions granted to both U.S. citizens and foreign nationals.

B. Institution of postsecondary education shall:

(1) designate a classification officer. An officer designated by each state postsecondary educational institution shall be responsible for determining the residence status of students for tuition purposes under the terms of this policy.

(a) Such administrators or residency classification officers shall strive for uniformity in applying this policy. A common brochure, "establishing New Mexico residency for in-state tuition classification," shall be utilized by all postsecondary educational institutions.

(b) Nothing contained herein precludes a student from contesting the postsecondary institution's decision in the courts.

(c) Classification officers may require copies of appropriate legal, personal, business, or family documents in order to make an informed decision on residency. Such documents are considered confidential and are to be utilized for the residency determination alone.

(2) develop procedures for determining residency; the burden of proving a change of status from nonresident to resident shall be on the applicant in every case by submitting satisfactory evidence thereof to the designated official of the postsecondary educational institution; such evidence shall include:

(a) information demonstrating that the applicant, or their parent or guardian if the applicant is a minor, has been physically present in this state for a period of at least twelve consecutive months immediately preceding the enrollment date on which the change of status is to take

effect;

(b) for purposes of determining financial dependency, a signed copy of page 1 of the 1040 or 1040A United States internal revenue service income tax form for the previous year for the applicant's parent(s) or guardian(s) is required (if under age of 23). Such dependency will be determined according to Section 152 of the 1954 Internal Revenue Code;

(3) develop procedure to petition for resident tuition classification; a nonresident student must obtain a "petition for resident tuition classification" from the appropriate postsecondary institutional residency classification officer and file the petition with this officer; all petitions must be filed before the third Friday after the beginning of classes for that term or the institution's census date if different;

(4) develop procedure for appeal; each postsecondary institution shall organize an appeals board for students who feel the residency classification officer has made a wrongful determination; the appeals board shall be the student's last recourse prior to the courts.

[5.7.18.12 NMAC - Rp, 5.7.18.13 NMAC, 8/30/2007]

HISTORY OF 5.7.18 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives under:

BEF Rule 910, Residency for Tuition Purposes, filed 2/27/85;

CHE Rule 910, Residency for Tuition Purposes, filed 3/8/90;

CHE Rule 910, Residency for Tuition Purposes, filed 6/29/92;

CHE Rule 910, Residency for Tuition Purposes, filed 12/21/94.

History of Repealed Material:

5.7.18 NMAC, Residency for Tuition Purposes, filed 8/1/2000, Repealed 8/30/2007.

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.13 NMAC, Sections 1 and 7 through 15, effective August 30, 2007.

5.7.13.1 ISSUING AGENCY: State of New Mexico [~~Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87505-4295~~] Higher Education Department.

[5.7.13.1 NMAC - N, 11/15/2001, A, 8/30/2007]

5.7.13.7 DEFINITIONS:

A. ~~["Commission" means the New Mexico commission on higher education.] "Department" means the New Mexico higher education department.~~

B. "Committee" means the teaching professions advisory committee of the ~~[commission] department.~~

C. "Loan" means a grant of funds to defray the costs incidental to an eligible teacher preparation education, under a contract between the ~~[commission] department~~ and a student, requiring repayment with services or repayment of principal and interest and any fees.

D. "Student" means a United States citizen or eligible non-citizen and resident of New Mexico who is enrolled in or accepted by an undergraduate or graduate teacher preparation program at a regionally accredited post-secondary educational institution in New Mexico.

E. ~~["Teacher preparation program" means one that has been formally approved as meeting the requirements of the New Mexico State board of education and leads to the initial licensure or to additional licensure endorsements.] "Teacher preparation program" means a program that has been formally approved as meeting the requirements of the public education department and that leads to initial licensure or to additional licensure endorsements, including a program in a two-year post-secondary educational institution that meets the requirements for a teacher education transfer module established pursuant to Subsection C of Section 21-1B-4 NMSA 1978.~~

F. "Eligible institution" means an accredited post-secondary educational institution in New Mexico offering a teacher education program which meets the requirements of the ~~[New Mexico state board of education (NMSBE)] public education department.~~

G. "Service" means full-time, on site practice as a certified/licensed public school teacher in a designated teacher shortage area of New Mexico.

H. "Teacher shortage area" means one of the areas of unmet teacher demand which may be either geographic locations or specific teaching fields.

I. "Extenuating circumstances" means circumstances not within the control of the recipient.

[5.7.13.7 NMAC - N, 11/15/2001; A, 8/30/2007]

5.7.13.8 TEACHING PROFESSION ADVISORY COMMITTEE:

The teaching profession advisory committee is created to advise the ~~[commission] department~~ on matters relating to the administration of the Teaching Loan-For-Service Act.

A. The committee shall be appointed by the ~~[commission] department~~ pursuant to policies and procedures of the ~~[commission] department~~ and shall be composed of:

(1) a representative from the state department of education;

(2) a representative from a teacher organization;

(3) representatives selected from local school districts;

(4) representatives from teacher preparation programs; and

(5) other representatives as appointed by the ~~[commission] department.~~

B. The responsibilities of the committee shall include:

(1) designate teaching shortage areas of the state;

(2) make recommendations to the ~~[commission] department~~ on applicants for the teacher loan-for-service program; and

(3) give advice or other assistance to the ~~[commission] department~~ as requested.

[5.7.13.8 NMAC - N, 11/15/2001; A, 8/30/2007]

5.7.13.9 TEACHER LOANS AUTHORIZED/QUALIFICATIONS:

To be eligible for this program, a student must:

A. be pursuing an eligible teacher preparation program, as defined in Subsection E in 5.7.13.7 NMAC, and enrolled in or accepted by an eligible public institution as defined in Subsection F in 5.7.13.7 NMAC;

B. be enrolled at the time the loan is awarded and disbursed, for at least half-time in a program leading to initial licensure or to additional licensure endorsements at an eligible institution;

C. be a citizen of the United States, or eligible non-citizen and a resident of New Mexico as defined in 5.7.18.9 NMAC; and

D. declare ~~[his/her] the~~ intent to serve as a public school teacher in a designated shortage area (either geographic or discipline specific) for at least one year.

[5.7.13.9 NMAC - N, 11/15/2001; A, 8/30/2007]

5.7.13.10 SELECTION OF LOAN RECIPIENTS:

Selection shall be based on the following considerations and preferences:

A. the ability, character, and qualifications of each applicant; this is to include a review of the applicant's educational transcripts, letters of recommendation, and references;

B. the demonstrated interest of the applicant in serving in a designated shortage area of the state;

C. the applicant's lack of resources to pay for ~~[his/her]~~ education expenses, as determined by a standardized needs analysis system, and shall be the basis for preference among otherwise eligible students; and

D. a designated shortage area endorsement for the applicant.

[5.7.13.10 NMAC - N, 11/15/2001; A, 08/30/2007]

5.7.13.11 RESPONSIBILITIES OF THE [COMMISSION] DEPARTMENT:

A. develop program guidelines;

B. advertise the program;

C. process applications, and present a list of eligible candidates to the committee;

D. administer the loans, including:

(1) disbursing funds;

(2) keeping records on borrowers and processing of contracts;

(3) administration of and record keeping on loan repayments;

(4) record keeping on location and time of service of those student loan recipients who have completed their education and are providing teaching service in a designated shortage area in New Mexico;

(5) verification of qualification for forgiveness for service as defined in 5.7.13.13 NMAC; and

(6) preparing the following information for the teacher loan-for-service program:

(a) number of loans granted;

(b) names and addresses of borrowers;

(c) names of accredited programs attended; and

(d) names and locations of practice of those who have completed their education and have become public school teachers in New Mexico.

[5.7.13.11 NMAC - N, 11/15/2001; A, 8/30/2007]

5.7.13.12 LOANS: Loans may be made to students to defray expenses incurred in obtaining initial licensure or to additional licensure endorsements under the following conditions and limitations:

A. The amount is dependent upon the relative need of each student, but may not exceed four thousand dollars (\$4,000) per academic year for five consecutive years (maximum of \$20,000.00). The ~~[commission] department~~ may set lower maximum award amounts based on the level of degree being obtained and available funding. The exact amount of the loan for which the applicant is eligible will be determined as a result of an analysis of the financial situation of each applicant using a stan-

standard needs analysis carried out by the financial aid office of the student's institution.

B. A loan recipient enrolled in an eligible education program in an institution for less than the regular academic year, less than full-time study, or during summer sessions, may receive a pro rata share of the authorized loan amount at the discretion of the [commission] department. The total loan amount may not exceed four thousand dollars (\$4,000) in a twelve (12) month period.

C. Upon approval of the loan, a contract shall be drawn between the student and the [commission] department and signed by the student (for additional contract details see 5.7.13.14 NMAC). [5.7.13.12 NMAC - N, 11/15/2001; A, 8/30/2007]

5.7.13.13 LOAN REPAYMENT AND FORGIVENESS: All loans shall be repaid to the state together with interest or forgiven according to the following:

A. If a loan recipient of the Teacher Student Loan-for-Service Act completes his/her professional education and does not serve in a designated shortage area in a public school for a period of at least one year, the [commission] department shall assess a penalty of up to three (3) times the principal due, plus eighteen percent (18%) interest, unless the [commission] department finds acceptable extenuating circumstances for why the student cannot serve and comply with the forgiveness provisions outlined in this section.

(1) The full penalty shall apply unless the circumstances reflect that the penalty should be reduced on a prorated basis reasonably reached based upon the degree of control which the recipient has over the decision not to serve. The recipient shall have the burden of proof.

(2) If the [commission] department does not find acceptable extenuating circumstances for the student's failure to carry out his/her declared intent to serve in a designated shortage area in the state, the [commission] department shall require immediate repayment of the unpaid principal amount of the loan plus accrued interest owed the state plus the amount of any penalty assessed pursuant to this subsection.

(3) In all other cases, loans will bear interest at seven percent (7%) per year.

B. Loans made to students who fail to complete their graduate or undergraduate teaching program shall come due together with interest immediately upon termination of their education. The [commission] department, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

C. The contract shall fur-

ther provide that immediately upon completion or termination of the student's teaching program, all interest then accrued due shall be capitalized on all loans prior to July 1, 2005. On all loans made after July 1, 2005, provide a statement that the loan shall not accrue interest until:

(1) the department determines the loan recipient has terminated the recipient's education prior to completion;

(2) the department determines the loan recipient has failed to fulfill the recipient's obligation to serve in a designated teacher shortage area; or

(3) the department cancels a contract.

D. If the borrower, after completion of their teaching program serves in one of the designated shortage areas of the state, loan principal and interest may be forgiven according to the following formula:

(1) loan terms of one (1) academic year or less shall require one (1) year of practice in a designated shortage area; upon completion of service, one hundred percent (100%) of the principal plus accrued interest shall be forgiven;

(2) loan terms of two (2) academic years shall require one (1) year of practice in a designated shortage area for each academic year of the loan; upon completion of the first year of service, fifty percent (50%) of the principal plus accrued interest shall be forgiven; upon completion of the second year of service, the remainder of the principal plus accrued interest shall be forgiven; and

(3) for loan terms of three (3) academic years or more, forty percent (40%) of the principal plus accrued interest shall be forgiven upon completion of the first year of service in a designated shortage area, thirty percent (30%) of the principal plus accrued interest shall be forgiven upon completion of the second year of service and the remainder of the principal plus accrued interest shall be forgiven upon completion of the third year of service.

E. Recipients must serve a complete year of service in order to receive credit for that year. The minimum credit for a year of service shall be established by the [commission] department.

F. Subject to applicable statutory limitations, the [commission] department may extend or modify the foregoing repayment periods for good cause.

G. In the event it becomes necessary, the [commission] department may suspend loan payments using the following forbearance provisions:

(1) If the borrower is willing, but financially unable to make payments under the repayment schedule, the borrower may request forbearance to allow for any of the

following:

(a) a short period during which no payments are made, interest would continue to accrue;

(b) an extension of time for making payments, interest would continue to accrue; or

(c) a period during which the borrower makes smaller payments than were originally scheduled, interest would continue to accrue on the unpaid principal.

(2) Forbearance following completion of program, internship, or residency will not be granted for periods extending beyond six (6) months. The granting of a subsequent forbearance must be approved by the designated staff representative of the [commission] department.

(3) The borrower must submit a written request accompanied by a financial statement and a consent-waiver for authorization for current employment and address information concerning the borrower, and other information as requested.

(4) Deferral of repayment obligation may be as follows, at the determination of the [commission] department:

(a) the borrower is serving up to a maximum of three (3) years as an active duty member of the armed forces of the United States;

(b) the borrower is temporarily [totally] disabled, for a period not to exceed three (3) years, as established by sworn affidavit of a qualified physician;

(c) the borrower is seeking but unable to find full-time employment for a single period not to exceed twelve (12) months;

(d) the borrower is unable to secure employment for a period not to exceed twelve (12) months while caring for a disabled spouse;

(e) the borrower is unable to satisfy the terms of the repayment schedule while seeking but unable to find full-time employment in an eligible public school system, in a designated shortage area, for a single period not to exceed twenty-seven (27) months; or

(f) other extenuating circumstances as provided for under the American Family Leave Act.

H. Loans may be prepaid at any time, subject to the penalty provision set forth in Subsection A of this section. Payment on a loan not in repayment may be made in any amount. Payments on a matured promissory note shall be in the amounts of and be applied on the principal installments due on such note in the inverse order of the maturities of such installments, unless otherwise agreed.

I. Authorized charges and fees:

(1) Late charges: Borrower may

be charged a late charge in the amount of five percent (5%) of the installment payment or five dollars (\$5.00), whichever is less, on any payment made later than ten (10) days after it is due.

(2) Attorney's fees, other charges, and costs: Borrower shall agree to pay all reasonable attorney's fees, and other costs and charges necessary for the collection of any loan amount not paid when due.

J. Borrower has the responsibility to notify the ~~[commission]~~ department in advance of any change of address and of any action which necessitates reconsideration of a promissory note (the failure to serve in a designated shortage area, the termination of service in a designated shortage area, or his/her ceasing to be enrolled in an eligible institution in an eligible health profession program. Borrower's failure to notify the ~~[commission]~~ department and to execute a promissory note on request shall cause the full amount of principal and accumulated interest to become due immediately.

[5.7.13.13 NMAC - N, 11/15/2001; A, 8/30/2007]

5.7.13.14 CONTRACTS: A contract shall be drawn between each student receiving a loan and the ~~[commission]~~ department on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the ~~[commission]~~ department of a specified sum as determined in 5.7.13.13 NMAC;

B. state that the borrower shall select from the list of designated shortage areas at the time he/she is ready to begin service;

~~[C. state that immediately upon completion or termination of the student's eligible teaching program, all interest then accrued shall be capitalized;]~~

~~[D.]~~ C. state the conditions of repayment or forgiveness as detailed in 5.7.13.13 NMAC;

~~[E.]~~ D. state that the loan shall bear interest ~~[at the designated rate per annum from the date of disbursement until paid, make provision for conversion to a payout note as shown in 5.7.13.13 NMAC, and state that interest will be charged on the unpaid balance of the principal only;]~~ as detailed in 5.7.13.13 NMAC;

~~[F.]~~ E. state the legal responsibilities of the borrower and that delinquent loans shall be referred to the ~~[commission]~~ department for appropriate action, which may include referral to the office of the attorney general, if deemed necessary;

~~[G.]~~ F. state that the borrower's obligations of the contract with the ~~[commission]~~ department shall be binding on borrower's estate;

~~[H.]~~ G. state that the ~~[commis-~~

~~ion]~~ department may cancel any contract on thirty (30) days written notice for any reasonable and sufficient cause;

~~[I.]~~ H. state that in the event the borrower fails to make any payment when due, the entire indebtedness including interest due and accrued thereon shall, at the option of the ~~[commission]~~ department, become immediately due and payable; and

~~[J.]~~ I. state that jurisdiction and venue shall be proper in Bernalillo or Santa Fe county, New Mexico for purposes of any suit to enforce the contract.

[5.7.13.14 NMAC - N, 11/15/2001; A, 8/30/2007]

5.7.13.15 REPORTS: The ~~[commission]~~ department shall submit a report to the governor and the legislature prior to each regular legislative session. The report shall describe the activities during the previous years, including the statistics, and analysis of the progress of the Teacher Loan-For-Service Act in addressing New Mexico's teaching shortages and the needs of the citizens of the state.

[5.7.13.15 NMAC - N, 11/15/2001; A, 8/30/2007]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.8 NMAC, Sections 1 through 3, 6 through 8, 11 and repealing Sections 9, 12 and 13, effective August 30, 2007. This rule was also renumbered and reformatted from 5 NMAC 7.8 to comply with current NMAC requirements. The part name was also amended.

PART 8 [STATE] NEW MEXICO STUDENT INCENTIVE GRANT [SSIG] (NMSIG) PROGRAM

5.7.8.1 ISSUING AGENCY: State of New Mexico ~~[Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87501 4295, (505) 827-7383]~~ Higher Education Department [7/15/98; 5.7.8.1 NMAC - Rn & A, 5 NMAC 7.8.1, 8/30/2007]

5.7.8.2 SCOPE: Provisions for 5.7.8 NMAC apply to the ~~[commission on higher education]~~ higher education department and any public or private non-profit post-secondary institution in New Mexico. [7/15/98; 5.7.8.2 NMAC - Rn & A, 5 NMAC 7.8.2, 8/30/2007]

5.7.8.3 STATUTORY AUTHORITY: Title IV, ~~[Part A, Subpart 3]~~ Part 692, Subparts A and B, HEA of 1965

as amended.

[7/15/98; 5.7.8.3 NMAC - Rn & A, 5 NMAC 7.8.3, 8/30/2007]

5.7.8.6 OBJECTIVE: The objective and purpose of 5.7.8 NMAC is to provide aid for undergraduate students with substantial financial need who are attending public and selected private non-profit post-secondary institutions in New Mexico.

A. Title IV, ~~[Part A, Subpart 3]~~ Part 692, Subparts A and B, of the Higher Education Act of 1965, as amended, established the ~~[state student incentive grant (SSIG)]~~ leveraging educational assistance partnership (LEAP) program to make federal funds available to the states for the establishment or expansion of grant ~~[and scholarship]~~ programs for undergraduate students who are able to demonstrate substantial financial need.

B. Utilizing these funds, New Mexico can provide grants to qualified students of up to \$2,500 per academic year, including summer session enrollment. Recipients of such grants must be residents of New Mexico who exhibit substantial financial need. They must also be undergraduates enrolled at least half-time at accredited public and private non-profit post-secondary institutions within the state.

C. To obtain the ~~[SSIG]~~ LEAP funds, New Mexico has designated the ~~[commission on higher education]~~ higher education department as the "single state agency" to administer the ~~[SSIG]~~ program under Title IV, ~~[Part A, Subpart 3]~~ Part 692, Subparts A and B, of the Higher Education Act of 1965, as amended.

[7/15/98; A, 6/30/99; 5.7.8.6 NMAC - Rn & A, 5 NMAC 7.8.6, 8/30/2007]

5.7.8.7 DEFINITIONS:

~~[A. "Academic year" means a period of time during which a full-time student is expected to complete the equivalent of one of the following:~~

- ~~(1) two semesters;~~
- ~~(2) two trimesters;~~
- ~~(3) three quarters; or~~
- ~~(4) 900 clock hours of instruction.~~

~~B. "Act" means the Higher Education Act of 1965, as amended.~~

~~C. "Clock hour" means a period of time which is the equivalent of either:~~

- ~~(1) a 50 to 60 minute class, lecture or recitation; or~~
- ~~(2) a 50 to 60 minute period of faculty supervised laboratory, shop training or internship.~~

~~D. "Commission" means the New Mexico commission on higher education.~~

~~E. "Cost of education" means the cost of attending an institution as defined by the institution and approved by~~

the state agency.

F. **"Dependent student"** is a student who does not qualify as "self-supporting or independent student."

G. **"Expected family contribution of a dependent student"** means the sum of the amounts which reasonably may be expected from the student and his or her spouse to meet the student's cost of education and the amount which reasonably may be expected to be provided by his or her parents for such purpose.

H. **"Expected family contribution of an independent or self-supporting student"** means the amount which reasonably may be expected from the student and his or her spouse to meet the student's cost of education.

I. **"Full-time student"** means a student carrying a full-time academic workload, other than by correspondence, as measured by both of the following:

(1) coursework or other required activities, as determined by the institution that the student attends or by the state;

(2) the tuition and fees normally charged for full-time study by that institution.

J. **"Half-time student"** means an enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester or quarter system;

(2) 12 semester hours or 18 quarter hours per academic year for an institution using standard credit hours to measure progress, but not using a standard semester, trimester or quarter system, or the prorated equivalent for a program of less than 1 year;

(3) 12 clock hours per week for an institution using clock hours.

K. **"Independent or self-supporting student"** means a student who:

(1) has not been and will not be claimed as an exemption for federal income tax purposes by any person except himself or herself for the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested;

(2) has not received and will not receive financial assistance of more than \$750 from his or her parent(s) for the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested; and

(3) has not lived or will not live for more than six weeks in the home of a

parent during the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested.

L. **"Institution of higher education"** means an educational institution in any state which:

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered;

(2) is legally authorized within such the state to provide a program of education beyond secondary education;

(3) provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree;

(4) is an institution or school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and grants a certificate or diploma;

(5) is a state public or other non-profit post-secondary institution; and

(6) is accredited by a nationally recognized accrediting agency or association (north central accrediting association is the recognized accrediting agency for New Mexico).

M. **"National of the United States"** means a citizen of the United States, or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

N. **"Parent"** means the mother or father of the student, unless any other person, except the student's spouse, provides more than one-half of the student's support and claims or is eligible to claim the student as an exemption for federal income tax purposes, in which case such person shall be considered the parent.

O. **"State"** means New Mexico.

P. **"Substantial financial need"** is defined as a student whose family contribution, not including expected summer savings, as determined by the federal methodology, is less than one-half the cost of education.

Q. **"Undergraduate student"** means a student who:

(1) is in attendance at an institution of higher education; and

(2) has not earned his first baccalaureate or professional degree. A student who has not earned his first baccalaureate or professional degree and who is enrolled in a program of study at the post-secondary level which is designed to extend for more

than four academic years shall not be considered an undergraduate student in that portion of the program that involves study beyond the fourth academic year unless that program leads to a first degree and is designed to extend for a period of five academic years.]

A. **"Academic year"** means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

B. **"Act"** means the Higher Education Act of 1965, as amended.

C. **"Department"** means the higher education department.

D. **"Cost of education"** means the cost of attending an institution as defined by the institution and approved by the state agency.

E. **"Expected family contribution"** is defined and calculated according to a formula established by federal law.

F. **"Full-time student"** means a student carrying a full-time academic workload, other than by correspondence, as measured by both of the following:

(1) coursework or other required activities, as determined by the institution that the student attends or by the state;

(2) the tuition and fees normally charged for full-time study by that institution.

G. **"Half-time student"** means an enrolled student who is carrying a half-time academic work load as determined by the institution according to its own standards and practices. However, the institution's half-time standards must equal or exceed the equivalent of the following minimum requirements:

(1) 6 semester hours or 6 quarter hours per academic term in an institution using standard semester, trimester or quarter system;

(2) 12 semester hours or 18 quarter hours per academic year for an institution using standard credit hours to measure progress, but not using a standard semester, trimester or quarter system, or the prorated equivalent for a program of less than 1 year;

(3) 12 clock hours per week for an institution using clock hours.

H. **"National of the United States"** means a citizen of the United States, or a person who is an eligible non-citizen.

I. **"State"** means New Mexico.

J. **"Substantial financial need"** is defined as the relative need, as measured by cost of attendance minus available resources.

K. **"Undergraduate stu-**

dent” means a student who:

(1) is in attendance at an institution of higher education; and

(2) has not earned his or her first baccalaureate degree.

[7/15/98; 5.7.8.7 NMAC - Rn & A, 5 NMAC 7.8.7, 8/30/2007]

5.7.8.8 ADMINISTRATION OF THE PROGRAM: ~~The commission shall operate this program under the following guidelines:~~

~~A. The program shall be administered by the commission staff under regulations adopted by the commission.~~

~~B. The primary responsibility of the commission is to provide for the equitable distribution of available funds.~~

~~C. The commission staff shall maintain files and review participating institutions’ records to assure that federal and state laws and regulations are followed. The staff shall report to the commission at least once each year on this activity.~~

~~D. The commission shall request annually the total amount of funds available to the state from the federal program.~~

~~E. The commission shall recommend annually state funding to the New Mexico legislature equal to the amount available from the federal government.~~

~~F. The commission shall approve grant awards to eligible students.]~~

A. The program shall be called the New Mexico student incentive grant program (NMSIG).

B. The department provides that such grants will not be in excess of \$2,500 per academic year for attendance on a full-time basis at approved post-secondary institutions as designated by the state;

C. The program shall be administered by the department staff under regulations adopted by the department.

D. The primary responsibility of the department is to provide for the equitable distribution of available funds.

E. The department shall request annually the total amount of funds available to the state from the federal program.

F. The department shall maintain files and review participating institutions’ records to assure that federal and state laws and regulations are followed.

G. The department shall request the total federal funds available to New Mexico for each fiscal year be reserved to be matched by an equal amount of state funds.

H. The department as the designated state agency will provide decentralized administration of the New Mexico student incentive grant program by allocating general funds and federal matching con-

tributions to eligible institutions based on a need formula approved by the department.

I. The department shall submit to the U.S. department of education periodic fiscal and performance reports, based on data provided by the participating institutions.

J. Reallocation of unused New Mexico student incentive grant program funds: Any New Mexico student incentive grant program funds which have been allocated to an eligible participating institution and which cannot be used by that institution will be reallocated by the department. These unused funds will be reallocated in an equitable manner.

K. It is the responsibility of each institution to comply with all requirements of federal laws, rules and regulations of the LEAP program, in addition to the operating procedures contained herein.

L. If a student withdraws or drops below half-time student status and is entitled to a refund for any tuition, fee or other charges as determined by each institution’s refund policy, the institution shall pay back to the NMSIG fund in the same ratio as the NMSIG has to the total aid awarded

M. The institutional financial aid officers will:

(1) determine whether or not the student meets the eligibility requirements for a New Mexico student incentive grant award;

(2) determine the financial need of the student;

(3) recommend the amount of the NMSIG awards;

(4) disburse the NMSIG award to the student in accordance with the established procedures of the department and the institution;

(5) maintain adequate fiscal control and accounting records in accordance with approved state and federal procedures; and

(6) provide to the department such financial and other information as may be required to meet federal reporting and auditing requirements.

[7/15/98; 5.7.8.8 NMAC - Rn & A, 5 NMAC 7.8.8 & 13, 8/30/2007]

5.7.8.9 [F E D E R A L REQUIREMENTS: ~~Federal SSIG program regulations require that the funds allotted to the state of New Mexico must be expended pursuant to a state program which:~~

~~A. is administered by a single state agency. The governor of New Mexico has designated as the responsible state agency the commission on higher education;~~

~~B. awards grants only to students who meet the eligibility and finan-~~

~~cial need requirements as outlined in Sections 10 and 11;~~

~~C. provides that such grants will not be in excess of \$2,500 per academic year for attendance on a full time basis at approved post-secondary institutions as designated by the state;~~

~~D. provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for federal funds paid to the state;~~

~~E. provides for making such reports, in such format and containing such information, as may be reasonably necessary to enable the U.S. department of education to perform his functions;~~

~~F. provides for payment of the nonfederal share of grants awarded under this Part from funds supplied from nonfederal sources; and~~

~~G. provides that no payment may be made to a student under this program unless the student:~~

~~(1) is maintaining satisfactory progress in a course of study, according to the standards and practices of the institution at which the student is enrolled;~~

~~(2) does not owe a refund on a grant previously received at that institution under the Pell grant, supplemental educational opportunity grant or state student incentive grant programs; or~~

~~(3) is not in default on a loan made, insured or guaranteed under the national direct student loan or guaranteed student loan programs for attendance at the institution at which the student is enrolled;~~

~~H. conforms to the federal regulation which requires that participating states maintain proper financial control and accounting procedures. Records must be maintained which provide a clear audit trail to assure that state funds match federal funds for each grant that is made. In addition, records must provide other information for reports to the U.S. department of education.][RESERVED]~~

[7/15/98; 5.7.8.9 NMAC – Rn, 5 NMAC 7.8.9, Repealed, 8/30/2007]

5.7.8.11 STUDENT ELIGIBILITY: To be eligible for a grant from the New Mexico student incentive grant program, a student must:

A. be a United States citizen or eligible non-citizen;

B. be a resident of the state of New Mexico as defined [by the commission regulations for residency] in 5.7.18.11 NMAC;

C. be enrolled or accepted for enrollment at least as a half-time undergraduate level student at a New Mexico post-secondary educational institution which has met the institutional eligibility requirements in [Section 10] 5.7.8.10

NMAC;

D. ~~[fill out an application for student financial assistance to the institution the student wishes to attend (forms may be obtained from the financial aid officer at the institution where the student is enrolled)]~~ complete the free application for federal student aid (FAFSA) or other financial aid applications that may be required at an eligible institution;

~~[E. provide to the financial aid officer the information needed for the financial need analysis as specified in Section 12;]~~

~~[F.] E.~~ have a substantial financial need ~~[as determined annually in accordance with the provisions given in Section 12];~~

~~[G.] E.~~ maintain satisfactory progress;

~~[H.] G.~~ not owe a refund on a grant ~~[received for attendance at that institution]~~ overpayment under the Pell grant or supplemental educational opportunity grant ~~[or state student incentive grant]~~ programs; if a student owes a refund on a LEAP overpayment, the student is still eligible to receive additional federal student aid (FSA) funds as long as he or she meets all other eligibility requirements and as long as the school can eliminate the overpayment by adjusting financial aid payments (other than federal Pell grants) in the same award period in which the overpayment occurred;

~~[I.] H.~~ not be in default on a loan made by the institution under the national defense/direct student loan programs unless the student has made arrangements satisfactory to the institution to repay the loan;

~~[J.] I.~~ not be in default on a loan insured under the guaranteed student loan or the parent loans for undergraduate students (PLUS) program unless the secretary or a guarantee agency determines that the student has made satisfactory arrangements to repay the loan ~~[; and]~~.

[7/15/98; 5.7.8.11 NMAC - Rn & A, 5 NMAC 7.8.11, 8/30/2007]

5.7.8.12 ~~[STANDARDS FOR DETERMINING FINANCIAL NEED:~~

~~The financial need of eligible students will be determined annually, or more often if need be, by the financial aid officer of the institution the student is attending, or will attend, using the method of calculating expected family contribution used in the Pell grant program. The commission will verify the student eligibility according to student rosters submitted.] [RESERVED]~~

[7/15/98; 5.7.8.12 NMAC - Rn, 5 NMAC 7.8.12, Repealed, 8/30/2007]

5.7.8.13 ~~[ADMINISTRATION OF FUNDS:~~

~~A. The program shall be called the New Mexico student incentive grant program (NMSIG).~~

~~B. The commission shall request the total federal funds available to New Mexico for each fiscal year be reserved to be matched by an equal amount of state funds.~~

~~C. The commission as the designated state agency will administer the New Mexico student incentive grant program, including disbursement of general fund and federal matching contributions.~~

~~D. All administrative costs for the program will be borne by participating schools. No New Mexico general fund monies (Section 11-2-3.1, NMSA 1978) appropriated for the New Mexico student incentive grant program will be expended for administration. In addition, should an audit be required, costs will accrue to the school involved in the program and will in no way represent an obligation of the state of New Mexico.~~

~~E. The commission shall maintain necessary records to assure that all program requirements are being met. These records shall include, but not be limited to:~~

~~(1) a record of deposits made into the NMSIG account, together with a set aside from federal SSIG funds credited to each of the participating institutions;~~

~~(2) records of disbursements which will reflect, for each student grant awarded, the payment to each institution.~~

~~F. The commission shall have the final authority for approval or denial of such awards. However, any audit exceptions resulting from this process shall be the responsibility of the participating institutions and not the responsibility of the state of New Mexico.~~

~~G. The commission shall submit to the U.S. department of education periodic fiscal and performance reports, based on data provided by the participating institutions on forms provided by the federal SSIG office (e.g., ED Form 868).~~

~~H. The commission will tentatively allocate New Mexico student incentive grant program funds to New Mexico public and private nonprofit post-secondary educational institutions based on a need formula approved by the commission. The tentative allocations will be used as a guide only and do not guarantee that any institution will receive the tentatively allocated amount.~~

~~I. Disbursements will normally be made to the eligible participating institutions in proportional installments based upon CHE approval of specific student awards. Disbursements to student recipients will be made from the federal and New Mexico general fund portions of the New Mexico student incentive grant pro-~~

~~gram accounts.~~

~~J. Reallocation of unused New Mexico student incentive grant program funds: Any New Mexico student incentive grant program funds which have been allocated to an eligible participating institution and which cannot be used by that institution will be reallocated by the commission. These unused funds will be reallocated in an equitable manner for the benefit of commission approved student awards to those eligible participating institutions which have a need for additional funds.~~

~~K. It is the responsibility of each institution to comply with all requirements of federal laws, rules and regulations of the SSIG program, in addition to the operating procedures contained herein.~~

~~L. If a student withdraws or drops below half time student status and is entitled to a refund for any tuition, fee or other charges as determined by each institution's refund policy, the institution shall pay back to the NMSIG fund in the same ratio as the NMSIG has to the total aid awarded.~~

~~M. The institutional financial aid officers will:~~

~~(1) determine whether or not the student meets the eligibility requirements for a New Mexico student incentive grant award;~~

~~(2) determine the financial need of the student, using one of the need analysis systems specified in Section 12;~~

~~(3) recommend the amount of the SSIG awards, showing a breakout of state funds and federal funds;~~

~~(4) receive approved rosters and disburse the SSIG award to the student in accordance with the established procedures of the commission and the institution;~~

~~(5) maintain adequate fiscal control and accounting records in accordance with approved state and federal procedures; and~~

~~(6) provide to the commission such financial and other information as may be required to meet federal reporting and auditing requirements.] [RESERVED]~~

[7/15/98; 5.7.8.13 NMAC - Rn, 5 NMAC 7.8.13, Repealed, 8/30/2007]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.9 NMAC, Sections 1, 2, 3, 7, 8, 11 and 12, effective August 30, 2007. This rule was also renumbered and reformatted from 5 NMAC 7.9 to comply with current NMAC requirements.

5.7.9.1 ISSUING AGENCY: State of New Mexico [Commission on Higher Education, 1068 Cerrillos Road,

Santa Fe, New Mexico, 87501-4295, (505) 827-7383] Higher Education Department. [7/15/98; 5.7.9.1 NMAC - Rn & A, 5 NMAC 7.9.1, 8/30/2007]

5.7.9.2 SCOPE: Provisions of 5.7.9 NMAC apply to the ~~[commission on higher education]~~ higher education department and any public or private non-profit post-secondary institution in New Mexico. [7/15/98; 5.7.9.2 NMAC - Rn & A, 5 NMAC 7.9.2, 8/30/2007]

5.7.9.3 STATUTORY AUTHORITY: Section ~~[21-21-9]~~ 21-21-H-1, NMSA 1978.

[7/15/98; 5.7.9.3 NMAC - Rn & A, 5 NMAC 7.9.3, 8/30/2007]

5.7.9.7 DEFINITIONS:

A. "Academic year" means any consecutive period of two semesters, three quarters or other comparable units commencing with the fall term each year.

B. "Award recipient" means a student awarded a New Mexico Scholars Act scholarship.

C. "Combined family income" means the adjusted gross income for the student's family as taken from the federal income tax form(s) filed in compliance with internal revenue service (IRS) regulations and guidelines.

D. ~~["Commission" means the New Mexico commission on higher education]~~ "Department" means the higher education department.

E. "Eligible institution" means any public or private non-profit post-secondary institution in New Mexico.

F. "Satisfactory academic progress" means completion of at least twenty-four semester credit hours per year (or the equivalent in quarter hours) and maintenance of a cumulative grade point average of a minimum of 3.0 or higher on a scale of 4.0.

G. "Scholarship" means a scholarship awarded pursuant to the New Mexico Scholars Act.

H. "Top five percent" means total headcount of the student's New Mexico high school graduating class times .05 rounded upward to the next whole number regardless of the fraction.

I. "Tuition ~~[, required fees and books]~~" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

~~[(1) "tuition" is the basic educational charge that all students are required to pay as a condition of admission to the institution. The actual rates per semester or year are set forth by each institution;]~~

~~[(2) J. "Required fees" are~~

~~the special fee charges students are required to pay for additional services financed through the fee and also as a condition of admission to the institution;] means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. Excluded are ["specific service fees" charged only to students enrolled in certain programs or courses (i.e., course specific fees), or receiving.] specific services or fines (transcript copy fees, graduation fees, library fines, etc.)[;].~~

~~[(3) K. "Books" is the amount used by the financial aid office for books in the calculation of cost of attendance for campus based programs.~~

~~[7/15/98; 5.7.9.7 NMAC - Rn & A, 5 NMAC 7.9.7, 8/30/2007]~~

5.7.9.8 STUDENT ELIGIBILITY:

A. First year eligibility. A scholarship may be awarded to a New Mexico high school graduate who:

(1) is a citizen of the United States or ~~[a permanent resident alien]~~ an eligible non-citizen and resident ~~[(for tuition purposes)]~~ of New Mexico as defined in 5.7.18.9 NMAC;

(2) will graduate or has graduated from a New Mexico high school and who enrolls in an eligible institution by the end of his twenty-first year provided that the graduate meets the resident requirements defined in 5.7.18.9 NMAC;

(3) has met the admission requirements and is accepted for enrollment as a full-time undergraduate student at an eligible institution;

(4) has maintained a level of performance in high school reflected by a junior or senior score or placement level of:

(a) a composite score of at least twenty-five on the American college test (ACT) or a total of at least one thousand one hundred and forty on the scholastic aptitude test (SAT); or

(b) top five percent of the student's high school graduating class in either the student's junior or senior year;

(5) has a total combined family income of no more than thirty thousand dollars (\$30,000) per year in either of the calendar years ending within the student's junior or senior years in high school; in the case of a student whose immediate family has more than one family member enrolled full-time in an eligible institution of post-secondary education, the total combined family income shall be an amount as determined by the ~~[commission to be equivalent to thirty thousand dollars (\$30,000) (as of~~

~~August 19, 1991, the equivalent amount has been determined to be forty thousand dollars (\$40,000) per year.)]~~ department as of August 19, 1991; and

(6) has complied with all the rules and regulations adopted by the ~~[commission]~~ department for award of the scholarship and the provisions regarding the administration of scholarships adopted pursuant to the New Mexico Scholars Act.

B. Continuing eligibility. A New Mexico scholars award may be re-awarded to a student who:

(1) maintains satisfactory academic progress as defined in these rules and regulations;

(2) stays enrolled for consecutive academic years.

[7/15/98; 5.7.9.8 NMAC - Rn & A, 5 NMAC 7.9.8, 8/30/2007]

5.7.9.11 ADMINISTRATION OF SCHOLARS PROGRAM:

A. Institution of higher education shall designate an officer responsible for the scholars program. The officer designated by the institution shall be responsible for determining initial and continuing student eligibility for the scholars program under the terms of these rules and regulations and shall:

(1) maintain a listing of each participating student to include but not be limited to:

(a) social security number;

(b) ACT composite or SAT total;

(c) high school graduating class ranking (e.g., 2 of 140);

(d) total family adjusted gross income;

(e) cumulative GPA (for continuing students);

(f) proof of initial or continuing enrollment;

(2) send to the ~~[commission]~~ department or its authorized agent a request for payment of tuition, required fees and book stipend for each consecutive period of enrollment; the request for payment shall include a listing of participants by name, social security number, tuition, required fees and book stipend; and

(3) ~~[determine eligibility according to a standard needs analysis or when a financial aid officer exercises professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant adjusting the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program] adjust the cost of attendance, expected family contribution or other factors to make the program respon-~~

sive to a student's special financial circumstances, within the parameters authorized for this program when a financial aid officer may exercise professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant and adjustment.

B. ~~[Commission on]~~ Higher education ~~department~~ shall:

(1) develop a standard request for payment; this request for payment shall be used by all participating institutions;

(2) convene an annual meeting with the responsible officers; the responsible officers shall meet at least annually to review the scholars program; and

(3) conduct audits to ascertain compliance with rules and regulations; at least a random audit of each participating institution's records shall take place on an annual basis by members of the ~~[commission]~~ department staff.

[7/15/98; 5.7.9.11 NMAC - Rn & A, 5 NMAC 7.9.11, 8/30/2007]

5.7.9.12 TERMINATION OF SCHOLARSHIPS: A scholarship is terminated upon substantial noncompliance by the award recipient with the New Mexico Scholars Act or the rules, regulations or procedures promulgated by the ~~[commission]~~ department pursuant to that act.

[7/15/98; 5.7.9.12 NMAC - Rn & A, 5 NMAC 7.9.12, 8/30/2007]

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.11 NMAC, Sections 1, 2, and 7 through 10, effective August 30, 2007

This rule was also renumbered and reformatted from 5 NMAC 7.11 to comply with current NMAC requirements.

5.7.11.1 ISSUING AGENCY: State of New Mexico ~~[commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87501 4295, (505) 827-7383]~~ Higher Education Department.

[7/15/98; 5.7.11.1 NMAC - Rn & A, 5 NMAC 7.11.1, 8/30/2007]

5.7.11.2 SCOPE: Provisions of 5.7.11 NMAC apply to the ~~[commission on higher education]~~ higher education department and selected private non-profit post-secondary institutions in New Mexico.

[7/15/98; 5.7.11.2 NMAC - Rn & A, 5 NMAC 7.11.2, 8/30/2007]

5.7.11.7 DEFINITIONS:

A. "Academic year" means a period of time during which a full-time student is expected to complete the equivalent of two semesters.

B. "Act" means the New Mexico Student Choice Act.

C. ~~["commission" means the New Mexico commission on higher education]~~ "Department" means the higher education department.

D. "Cost of education" means the cost of attending an institution, as defined by the institution and approved by the ~~[commission]~~ state agency.

~~[E. "Dependent student" is a student who does not qualify as an independent or self-supporting student.]~~

~~[F.] E. ["Expected family contribution" of a dependent student" means the amount of money which reasonably may be expected to be contributed by the student, his or her spouse, and/or his or her parents to meet the student's cost of education, as determined by the commission]. "Expected family contribution" is defined by and calculated according to a formula established by federal law.~~

~~[G. "Expected family contribution of an independent or self-supporting student" means the amount of money which reasonably may be expected to be contributed by the student and his or her spouse to meet the student's cost of education, as determined by the commission.]~~

~~[H.] E. "Full-time student" means a student carrying twelve semester credit hours or more in a semester.~~

~~[I. "Independent or self-supporting student" means a student who:~~

~~(1) has not been and will not be claimed as an exemption for federal income tax purposes by any person except himself or herself for the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested;~~

~~(2) has not received and will not receive financial assistance of more than \$750 from his or her parent(s) for the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested;~~

~~(3) has not lived or will not live for more than six weeks in the home of a parent during the calendar year(s) in which aid is received and the calendar year prior to the academic year for which aid is requested.]~~

~~[J.] G. "Institution" means a financially independent non-profit nonsectarian four-year college or university whose New Mexico campus is accredited by the north central accreditation association.~~

~~[K. "Parent" means the mother or father of the student, or any other~~

~~person, except the student's spouse, who provides more than one-half of the student's support and claims or is eligible to claim the student as an exemption for federal income tax purposes.]~~

~~[L.] H. "Part-time student" means a student carrying less than twelve semester credit hours, but at least six semester credit hours in a semester.~~

~~[M.] L. "Student choice grant" means a grant awarded to a student by the ~~[commission]~~ department pursuant to the provisions of the Student Choice Act.~~

~~[N.] J. "Substantial financial need" [means the financial need of a student whose family contribution, not including expected summer saving, is less than one-half of the cost of education, which need is to be determined by the commission.] is defined as the relative need, as measured by cost of attendance minus available resources.~~

~~[O.] K. "Undergraduate student" means a student who:~~

~~(1) is in attendance at an institution of higher education;~~

~~(2) has not earned his or her first baccalaureate degree [a student shall not be considered an undergraduate student beyond the time when he/she has completed enough credit hours to equal four academic years of study; the following provisions shall apply:~~

~~(a) enrollment between six and twelve credit hours in a semester will equal one-fourth of an academic year;~~

~~(b) enrollment of twelve or more credit hours in a semester will equal one-half of an academic year;~~

~~(c) a semester in which a student enrolls in twelve or more credit hours and subsequently drops below that number will be counted as one-half of an academic year].~~

[7/15/98; 5.7.11.7 NMAC - Rn & A, 5 NMAC 7.11.7, 8/30/2007]

5.7.11.8 STUDENT ELIGIBILITY: To be eligible for a grant, a student shall:

A. ~~[be a citizen of the United States or a permanent resident alien and resident (for tuition purposes) of New Mexico]~~ be a resident of New Mexico as defined in 5.7.18.9 NMAC or be eligible for a waiver as defined in 5.7.18.10 NMAC, provided all other eligibility requirements are fulfilled;

B. be enrolled at the time the grant is awarded and disbursed, for at least six semester credit hours in a program leading to a degree, at an eligible institution;

C. offer proof of substantial financial need;

D. be in satisfactory aca-

demetic standing, as defined by the institution, or be making his first application to the institution;

E. not owe a refund on a grant received for attendance at any institution under the federal Pell grant, federal supplemental educational opportunity grant, [state] New Mexico student incentive grant program or student choice grant program;

F. not be in default on a loan made by the institution under the Perkins loan program unless the student has made arrangements satisfactory to the institution to repay the loan;

G. not be in default on a loan insured under the Stafford loan or the parent loans for undergraduate students (PLUS) program unless the secretary of education or a guarantee agency determines that the student has made satisfactory arrangements to repay the loan;

~~[H. provide the commission with written authorization to inspect any of the academic or financial records of the student which are in the possession or under the control of the institution, which records are necessary to the proper administration of the provisions of the act and the regulations promulgated thereunder;]~~

~~[I. H. complete an application for financial assistance supplied by the institution the student wishes to attend.~~

~~[7/15/98; 5.7.11.8 NMAC - Rn & A, 5 NMAC 7.11.8, 8/30/2007]~~

5.7.11.9 INSTITUTIONAL REQUIREMENTS: For its students to participate in the student choice grant program, an institution shall:

~~[A. agree to refund directly to the commission or its agent, any tuition refund due to a student and previously paid with commission funds;]~~

~~[B. A. grant to the [commission] department or its agent authority to inspect any of the academic or financial records of the student in the possession or under the control of the institution, which records are necessary to the proper administration of the provisions of the act and the regulations promulgated thereunder;~~

~~[C. B. determine each applicant's financial need; [including:~~

~~(1) expected family financial contribution of a dependent student; and~~

~~(2) expected contribution of an independent or self-supporting student;]~~

~~[D. C. recommend the amount of grant for the student in accordance with the established procedures of the [commission] department and the institution;~~

~~[E. D. disburse the grant to the student in accordance with the established procedures of the [commission] department and the institution;~~

~~[F. E. audit the program annually and report the findings to the [commis-~~

~~sion] department or its agent;~~

~~[G.] E. [determine eligibility according to a standard needs analysis or when a financial aid officer exercises professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant adjusting the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program.] adjust the cost of attendance, expected family contribution or other factors to make the program responsive to a student's special financial circumstances, within the parameters authorized for this program when a financial aid officer may exercise professional judgment in accordance with the institution's and applicable federal financial aid standards to determine that circumstances, for which documentation exists in the student's file, warrant an adjustment.~~

~~[7/15/98; 5.7.11.9 NMAC - Rn & A, 5 NMAC 7.11.9, 8/30/2007]~~

5.7.11.10 ADMINISTRATION AND ALLOCATION OF FUNDS:

A. The [commission] department shall administer the student choice grant program in accordance with the act and the regulations promulgated thereunder. Administration shall include but not be limited to disbursements of funds to eligible institutions for students approved by the [commission] department.

B. Administrative costs for the program shall be borne by participating institutions. Each institution shall maintain all records concerning student eligibility.

C. The [commission] department shall maintain financial records of all disbursements made under the act. These records shall include the amount of each student grant and the period for which it was disbursed.

D. At year end the names of students who received individual grants shall be submitted to the [commission] department by each institution via data reporting methods specified by the [commission] department. Annual reporting [date information] schedules shall be [transmitted] submitted to the participating colleges. Any audit exceptions shall be the responsibility of the participating institution, and not the responsibility of the [commission] department.

E. The [commission] department shall allocate student choice grant funds to an institution based on methodology approved by the [commission] department.

F. Any funds which have

been allocated to an institution, but cannot be used by that institution, as determined by the [commission] department, may be reallocated by the [commission] department.

G. If a student withdraws from an institution and is entitled to a refund of tuition or other charges, as determined by the institution's refund policy, the institution shall refund to the [commission] department the amount previously paid by the [commission] department to the institution on behalf of the student. Such funds shall be paid at the ratio of the grant to the total financial aid disbursed, not to exceed the amount of the student choice grant disbursed to the student.

H. The maximum amount of the student choice grant shall be equal to the number of semester credit hours for which the student is enrolled (maximum of eighteen semester credit hours), multiplied by the [commission] department certified hourly rate. The hourly rate shall be calculated by taking the general fund appropriations for instruction and general purposes for the university of New Mexico, New Mexico state university, New Mexico Highlands university, eastern New Mexico university and western New Mexico university for the fiscal year in which the student choice grant is to be made, subtracting from that sum the portion deemed by the [commission] department to be attributable to other than undergraduate education, and dividing by the aggregate number of undergraduate credit hours which are used in the calculation by the [commission] department of the general fund appropriations.

I. A student choice grant to a part-time student shall be proportional to a student choice grant paid to a full-time student, during the same academic term, and shall be based on the ratio of part-time credit hours to full-time credit hours.

~~[7/15/98; 5.7.11.10 NMAC - Rn & A, 5 NMAC 7.11.10, 8/30/2007]~~

NEW MEXICO HIGHER EDUCATION DEPARTMENT

This is an amendment to 5.7.14 NMAC, Sections 1, 3, 7, 10, 11, 13 and 14, effective August 30, 2007. This rule was also renumbered and reformatted from 5 NMAC 7.14 to comply with current NMAC requirements.

5.7.14.1 ISSUING AGENCY: State of New Mexico [Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87501-4295, (505) 827-7383] Higher Education Department. [9/30/98; 5.7.14.1 NMAC - Rn & A, 5 NMAC 7.14.1, 8/30/2007]

5.7.14.3 STATUTORY

AUTHORITY: ~~[Section 21-1-4E]~~ Section 21-1-4G, NMSA 1978. [9/30/98; 5.7.14.3 NMAC - Rn & A, 5 NMAC 7.14.3, 8/30/2007]

5.7.14.7 DEFINITIONS:

A. "ACT score" means the ACT composite score.

B. ~~["Commission" means the New Mexico commission on higher education.]~~ "Department" means the New Mexico higher education department.

C. "Declaration of residency" means a nonspecific intention to remain a resident of New Mexico.

D. "GPA" means the student's cumulative grade point average.

E. "Large university" means a university that produces more than 150,000 student credit hours per academic year.

F. "SAT equivalent" means the total score of both verbal and mathematical scores on the SAT test.

(1) ACT score of 20 equals 950 total points on the SAT test;

(2) ACT score of 23 equals 1,070 total points on the SAT test;

(3) ACT score of 26 equals 1,180 total points on the SAT test.

G. "Small university" means a university that produces 150,000 or fewer student credit hours per academic year.

H. ~~["Tuition and fees" means the tuition and fees normally charged for full-time study by the educational institution.]~~ "Tuition" means the amount of money charged to students for instructional services, which may be charged per term, per course or per credit.

I. "Required fees" means a fixed sum charged to students for items not covered by tuition and required of such a proportion of all students that the student who does not pay the charge is an exception. General fees include fees for matriculation, library services, student activities, student union services, student health services, debt service and athletics. Excluded are specific services or fines (transcript copy fees, graduation fees, library fines, etc.).

[9/30/98; 5.7.14.7 NMAC - Rn & A, 5 NMAC 7.14.7, 8/30/2007]

5.7.14.10 AMOUNT OF SCHOLARSHIP:

Out-of-state undergraduate students who are granted a competitive scholarship of at least \$100 per semester are eligible ~~[to be considered residents for the purpose of assessing tuition and fees]~~ to receive in-state tuition and fee rates at institutions of higher education in New Mexico. [9/30/98; 5.7.14.10 NMAC - Rn & A, 5

NMAC 7.14.10, 8/30/2007]

5.7.14.11 SELECTION OF SCHOLARSHIP RECIPIENTS:

A. Students who wish to apply for a competitive scholarship must:

(1) submit a scholarship application to the institution the student wishes to attend;

(2) have an official high school and/or college transcript on file with the institution's admissions office; and

(3) have an official report of their ACT scores or SAT scores on file with the institution's admissions office.

B. Scholarships may be renewed annually for up to four years provided the student completes the appropriate number of semester credits with the minimum grade point average as required of other academic scholarships at the university in which the student is enrolled. This may vary from university to university but will be a similar policy to that required under other academic scholarships at that school.

C. The number of competitive scholarships selected are not to exceed the number outlined in Subsection A of 5.7.14.13 NMAC. Should the number of eligible applicants exceed this allotment, selection will be from criteria determined by each educational institution.

D. If the scholarship recipient does not meet the criteria listed in Subsection B of 5.7.14.11 NMAC, the student will be placed on provisional status and will assume the responsibility of non-resident tuition. Reinstatement to the scholarship requires that the student meet the minimum semester credits and grade point average as determined by the institution in which the student is enrolled.

E. Participation in the competitive scholarship program does not serve to fulfill residency requirements established by the ~~[commission]~~ department.

[9/30/98; 5.7.14.11 NMAC - Rn & A, 5 NMAC 7.14.11, 8/30/2007]

5.7.14.13 ADMINISTRATION OF COMPETITIVE SCHOLARSHIPS:

A. The number of competitive scholarships granted by any small university cannot exceed 6 percent of their previous year's full-time equivalent enrollment (FTE). The number of competitive scholarships granted by any large university cannot exceed 2.5 percent of their previous year's FTE enrollment. The total number of participants in both small and large universities may never exceed 6 percent of the previous year's FTE enrollment for the small universities and 2.5 percent of the previous year's FTE enrollment for the larger universities.

B. The ~~[commission on higher education]~~ higher education department is the authorizing agency and shall maintain the necessary records to assure that all program requirements are being met~~[and]~~.

C. Each institution will have the responsibility to assure that all program requirements are being met.

[9/30/98; 5.7.14.13 NMAC - Rn & A, 5 NMAC 7.14.13, 8/30/2007]

5.7.14.14 REPORTS:

Each institution shall forward a report to the ~~[commission on higher education]~~ higher education department staff at the end of each academic year and each report will provide the number of students participating in the program, the average ACT/SAT score and average GPA for each academic year.

[9/30/98; 5.7.14.14 NMAC - Rn & A, 5 NMAC 7.14.14, 8/30/2007]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

TITLE 8 SOCIAL SERVICES CHAPTER 139 FOOD STAMP PROGRAM PART 502 STATE FOOD STAMP SUPPLEMENT

8.139.502.1 ISSUING AGENCY: New Mexico Human Services Department [8.139.502.1 NMAC - N, 8/30/07]

8.139.502.2 SCOPE: General public [8.139.502.2 NMAC - N, 08/30/07]

8.139.502.3 STATUTORY AUTHORITY: The food stamp program is authorized by the Food Stamp Act of 1977 as amended (7 U.S.C. 2011 et. seq.). Regulations issued pursuant to the act are contained in 7 CFR Parts 270-282. State authority for administering the food stamp program is contained in Chapter 27 NMSA 1978. Administration of the human services department (HSD), including its authority to promulgate regulations, is governed by Chapter 9, Article 8, NMSA 1978 (Repl. 1983). [8.139.502.3 NMAC - N, 8/30/07]

8.139.502.4 DURATION: Permanent [8.139.502.4 NMAC - N, 08/30/07]

8.139.502.5 EFFECTIVE DATE: August 30, 2007, unless a later date is cited at the end of a section.

[8.139.502.5 NMAC - N, 08/30/07]

8.139.502.6 OBJECTIVE: The objective of the state food stamp supplement benefit is to reduce hunger and improve nutrition among the elderly or disabled by increasing their ability to purchase food and meet their dietary needs.

[8.139.502.6 NMAC - N, 08/30/07]

8.139.502.7 DEFINITIONS:
[Reserved]

8.139.502.8 STATE FOOD STAMP SUPPLEMENT BENEFITS

A. Purpose: The state food stamp supplement program is aimed at providing the elderly and disabled with increased food purchasing power resulting in better nutrition.

B. Maximum benefit amount: The benefit amount shall be established by the HSD secretary based on available state funds.

C. Eligibility process: The state food stamp supplement shall be determined only for households that meet all eligibility requirements identified in Subsection D of 8.139.502.8 NMAC.

D. Eligibility requirements: The state food stamp supplement benefits shall be subject to all federal food stamp application, eligibility, certification and reporting requirements. The state food stamp supplement benefits shall be extended only to a household with a federal allotment amount less than \$20.00 federal food stamp benefits and meeting the program requirements. State food stamp supplement benefits shall be provided to a household under the following qualifications and eligibility requirements:

(1) all household members qualify and receive federal food stamp program benefits;

(2) all household members are elderly or disabled as defined in Subsection A of 8.139.100.7 NMAC;

(3) the household does not receive any earned income; and

(4) the household receives a federal food stamp program allotment amount, prior to any claim recoupment, of less than \$20.00.

[8.139.502.8 NMAC - N, 08/30/07]

8.139.502.9 DETERMINING THE BENEFIT

A. Application: A household shall not be required to submit an application in addition to the application for federal food stamp benefits to qualify or be determined eligible for the state food stamp supplement amount.

B. Eligibility determination: Eligibility shall be determined for a household meeting all eligibility require-

ments at:

(1) the time of application approval;

(2) the time of recertification;

(3) the month following a reported change which qualifies the household; or

(4) the month following a change that becomes known to the agency in which the change qualifies the household; or

(5) at time of implementation of this program.

C. Calculating the state food stamp supplement amount: A household qualified and eligible for the state food stamp supplement shall receive a state supplement to the federal food stamp allotment amount to a maximum of \$20.00 per month before any recoupments and overpayments have been applied to the benefit amount.

(1) Application month: The state food stamp supplement shall be determined by subtracting the federal FSP benefit amount, after the federal FSP benefit is prorated and prior to any recoupment, from \$20.00. The state food stamp supplement shall not be prorated.

(2) Ongoing month: The state food stamp supplement shall be determined by subtracting the federal FSP benefit amount, prior to any recoupment, from \$20.00.

(3) Eligibility for a prior month:

(a) The state food stamp supplement shall not be provided to a household for a benefit month prior to July, 2007.

(b) A household in which the federal benefit amount is adjusted for a prior month may be eligible for the state food stamp supplement provided the household qualifies and is eligible for the supplement.

(4) Current FSP households: Households which meet the qualifications and eligibility requirements for the state food stamp supplement shall be eligible for the supplement without any action required by the household. The household shall be eligible for a supplement for any month beginning July 2007 and after upon implementation of the program for which the household qualifies.

D. Ineligibility: A household shall become ineligible for the state food stamp supplement if the household does not meet the eligibility requirements specified in 8.139.502.8 NMAC the month following the month the notice of adverse action expires. The household's eligibility for the state food stamp supplement shall be made at the time of:

(1) application approval;

(2) recertification;

(3) a reported change;

(4) a change becomes known to the agency; or

(5) at the time of a mass change.

E. Notice: A household

that qualifies and is eligible for food stamp benefits shall be issued notice in accordance with 8.139.110.14 NMAC. A notice of adverse action shall not be considered if the household federal food stamp and state food stamp supplement does not decrease below \$20.00. A household that qualifies and is eligible for the state food stamp supplement shall be issued a notice for the following circumstances:

(1) Approval: A household shall be issued an approval notice at the time the household is determined eligible for the state food stamp supplement. The approval notice shall identify the amount of the state food stamp supplement.

(2) Benefit change: A household shall be issued a notice at the time the state food stamp supplement is increased or decreased. The amount of benefit is subject to change when the federal food stamp benefit is increased or decreased.

(3) Ineligibility: A household shall be issued a notice when the household no longer qualifies or is eligible for the state food stamp supplement as indicated in Subsection D of 8.139.502.8 NMAC.

[8.139.502.9 NMAC - N, 08/30/07]

8.139.502.10 BENEFIT ISSUANCE AND DELIVERY

A. Benefit issuance: The state food stamp supplement benefits are issued at the same time as the federal food stamp benefits, through issuance into a household's electronic benefit transfer (EBT) food stamp account as defined in 8.139.610 NMAC.

B. Expungement: The state food stamp supplement shall be subject to expungement in accordance with 8.139.610.8 NMAC.

C. Issuance and replacement of EBT card: To access and use the state food stamp supplement benefit, the household may use the same EBT card issued for the federal food stamp benefits.

D. Approval notification: Upon approval of the state food stamp supplement benefit, the household shall be notified of the new food stamp benefit amount and the notice shall be mailed to the applicant as per 8.139.110.14 NMAC.

E. Household use of state food stamp supplement benefits: The household shall only be allowed to use the state food stamp supplement for food purchases in accordance with 8.139.610.11 NMAC.

[8.139.502.10 NMAC - N, 08/30/07]

8.139.502.11 OVERPAYMENT AND RECOUPMENT

A. Overpayment: A household that has received the state food stamp supplement benefit and has been determined ineligible or does not qualify for

some or all of the state food stamp supplement benefit shall not have a claim established against the household for the state food stamp supplement benefit amount.

B. Recoupment:

(1) The household shall not be required to repay any amount of the state food stamp supplement benefit due to an established claim or overpayment of the federal food stamp benefit.

(2) The household shall remain subject to claim establishment and recoupment for the federal portion of the food stamp benefit in accordance with 8.139.640 NMAC.

(3) The human services department may not recoup any portion of the state food stamp supplement without the household agreeing to the collection. [8.139.502.11 NMAC - N, 08/30/07]

**HISTORY OF 8.139.502 NMAC:
[Reserved]**

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an amendment to 8.139.500 NMAC, Section 10, effective 08/30/2007.

**8.139.500.10 DETERMINING
INCOME**

A. Anticipating income:

In determining a household's eligibility and food stamp benefit amount the caseworker shall use income already received by the household during the certification period and any income the household and the caseworker are reasonably certain shall be received during the remainder of the certification period.

(1) If the amount of income or date of receipt is uncertain, that portion of the household's income that is uncertain shall not be counted.

(2) If the exact amount of the income is not known, that portion of the income which can be anticipated with reasonable certainty shall be considered income.

(3) In cases where the receipt of income is reasonably certain but the monthly amount may fluctuate, a household may choose to average its income.

B. Income received during ~~[the last four (4) weeks]~~ any past 30 day consecutive period that includes 30 days prior to the date of application through the date of timely disposition shall be used as an indicator of the income that is and shall be available to the household during the certification period.

(1) Past income is not used as an indicator of income anticipated for the cer-

tification period if changes in income have occurred or can be anticipated during the certification period.

(2) If income fluctuates to the extent that a single four-week period does not provide an accurate indication of anticipated income, a longer period of past time can be used if it gives a more accurate indication of anticipated fluctuations in income.

(3) Income already received is not used and verification is obtained from the income source, if the household and the caseworker decide that income already received by the household is not indicative of income expected to be received in future months.

C. Semiannual reporting: A household filing a semiannual report is subject to the income methodology specified at Subsection H of 8.139.120.9 NMAC.

D. Income anticipated during the certification period shall be counted only in the month it is expected to be received, unless the income is averaged.

E. Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to a monthly amount by multiplying weekly amounts by 4.3 and biweekly amounts by 2.15. Use of the conversion factor shall negate the necessity to adjust the monthly income amounts for those months in which an extra weekly or biweekly paycheck is received. Instead, the amount of the extra paycheck is averaged over the certification period.

F. Held wages:

(1) Wages withheld at the request of an employee shall be considered income to a household in the month the wages would otherwise have been paid by the employer.

(2) Wages withheld by the employer as a general practice, even in violation of the law, shall not be counted as income to a household, unless the household anticipates that it will ask for and receive an advance.

(3) If a household anticipates asking for and receiving income from wages that were previously withheld by the employer as a general practice, the income shall be counted to determine eligibility.

G. Earned income:
~~[Earned income is anticipated as follows:]~~

(1) ~~[Income received in the four weeks before the date of interview shall be used to anticipate income for the month of application. The same income is used for the remaining months of the certification period, provided that the applicant and the caseworker are reasonably certain the income amounts are indicative of future income.]~~ Earned income shall be anticipated based on income received when the fol-

lowing criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification period ; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

~~(2) [If the applicant and the caseworker determine that the income is not indicative of income anticipated to be received during the certification period, a longer period of past time shall be used if it will provide a more accurate indicator of anticipated income.]~~ When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

H. Unearned income:

~~(1) [In order to anticipate unearned income, income from the four weeks prior to the date of interview shall be used, provided the income is expected to continue.]~~ Unearned income shall be anticipated based on income received when the following criteria are met:

(a) the applicant and the caseworker are reasonably certain the income amounts received are indicative of future income and expected to continue during the certification; and

(b) the anticipated income is based on income received from any consecutive past 30-day period that includes 30 days prior to the date of application through the date of timely disposition of the application.

(2) When the applicant and the caseworker determine that the income received is not indicative of future income that will be received during the certification period, a longer period of time may be used if it will provide a more accurate indicator of anticipated income.

(3) Provided the applicant and the caseworker are reasonably certain the income amounts are indicative of future income, the anticipated income shall be used for the month of application and the remaining months of the certification period.

~~(2)~~ (4) Households receiving

state or federal assistance payments, such as Title IV-A, GA, SSI or social security payments on a recurring monthly basis are not considered to have varied monthly income from these sources simply because mailing cycles may cause two payments to be received in one month.

I. Income received more frequently than weekly: The amount of monthly gross income paid more frequently than weekly (i.e., daily) is determined by adding all the income received during the past four weeks. The gross income amount is used to anticipate income in the application month and the remainder of the certification period. Conversion factors shall not be applied to this income.

J. Income received less frequently than monthly: The amount of monthly gross income paid less frequently than monthly is determined by dividing the total income by the number of months it is intended to cover. The caseworker shall carefully explain to the household how the monthly income was computed and what changes might result in a reportable change. Documentation shall be filed in the case record to establish clearly how the anticipated income was computed.

K. Conversion factors: Whenever a full month's income is anticipated but is received on a weekly or biweekly basis, the income shall be converted to monthly amount as follows:

(1) income received on a weekly basis is multiplied by 4.3;

(2) income received on a biweekly basis is multiplied by 2.15;

(3) using the conversion factors accounts for those months in which an extra paycheck is received;

(4) averaged income shall be rounded to the nearest whole dollar prior to application of the conversion factor; amounts resulting in \$.50 or more are rounded up; amounts resulting in ~~\$.40~~ \$.49 or lower are rounded down.

L. Known changes in income for future months at application:

(1) At application or recertification, it shall be determined if any factors affecting income will change in future months. Such factors include a new income source, termination of income, or increases or decreases in income.

(2) Income is considered only when the amount of the income and the date it will be received are reasonably certain.

(3) In the event that a change is known for future months, benefits are computed by taking into account the change in income.

M. Averaging income over the certification period:

(1) All households may choose to have their income averaged. Income is usually not averaged for destitute households

because averaging would result in assigning to the month of application income from future periods which is not available for its current food needs.

(2) To average income, the caseworker uses a household's anticipation of income fluctuations over the certification period. The number of months used to arrive at the average income need not be the same as the number of months in the certification period.

(3) Contract income: Households which, by contract, derive their annual income in a period of less than one year shall have that income averaged over a ~~twelve (12)~~ 12 month period, provided that the income is not received on an hourly or piecework basis.

(a) Contract income includes income for school employees, farmers, self-employed households, and individuals who receive annual payments from the sale of real estate.

(b) These procedures do not include migrant or seasonal farm worker households.

(4) Educational monies: Households receiving scholarships, deferred educational loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it is provided. All months which the income is intended to cover shall be used to average income, even if the income is received during the certification period. If the period has elapsed completely, the educational monies shall not be considered income.

N. Using exact income: Exact income, rather than averaged income, shall be used if:

(1) the household has chosen not to average income;

(2) income is from a source terminated in the application month;

(3) employment has just begun in the application month and the income represents only a partial month;

(4) in the month of application, the household qualifies for expedited service or is considered a destitute, migrant or seasonal farm worker household; or

(5) income is received more frequently than weekly, (i.e., daily).

[02/01/95, 11/01/95, 07/01/97, 06/01/99; 8.139.500.10 NMAC - Rn, 8 NMAC 3.FSP.502.7, 05/15/2001; A, 02/14/2002; A, 01/01/2004; A, 08/30/2007]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.14.3 NMAC, Section 11, effective September 1, 2007.

13.14.3.11 PREMIUM DIVISION WITH AGENTS — OTHER FEES AND EXPENSES:

A. On or after May 1, 2000, all agency contracts, agency agreements and other contracts between licensed New Mexico title insurance agents and insurers admitted to write title insurance in New Mexico shall provide that agents shall retain the following amounts of all gross premiums on commitments, binders, policies and endorsements issued on or after April 1, 1995, and shall remit to the insurer the remainder of all such gross premiums:

(1) for amounts of insurance up to two million dollars (\$2,000,000), agents shall retain ~~seventy-eight to eighty percent (78%—80%)~~ eighty-four and two-tenths percent (84.2%);

(2) for additional amounts of insurance over two million dollars (\$2,000,000) and up to five million dollars (\$5,000,000), agents shall retain seventy-five percent (75%);

(3) for additional amounts of insurance over five million dollars (\$5,000,000) and up to ten million dollars (\$10,000,000), agents shall retain seventy percent (70%);

(4) for additional amounts of insurance over ten million dollars (\$10,000,000) and up to twenty-five million dollars (\$25,000,000), agents shall retain sixty-five percent (65%);

(5) for additional amounts of insurance over twenty-five million dollars (\$25,000,000) and up to fifty million dollars (\$50,000,000), agents shall retain sixty percent (60%); and

(6) for additional amounts of insurance over fifty million dollars (\$50,000,000), agents shall retain fifty percent (50%).

B. In addition, agents shall retain no part of the additional twenty-five cents (\$0.25) per one thousand dollars (\$1,000) collected on policy amounts in excess of ten million dollars (\$10,000,000) as provided for in 13.14.9.18 NMAC.

C. This premium division shall not apply to replacement policies in the case of insolvent insurers issued pursuant to 13.14.6.22 NMAC, 13.14.7.20 NMAC, and 13.14.9.26 NMAC. Agents shall retain forty-two and one-half percent (42.5%) of the gross premium collected for such replacement policies and shall remit to the insurer the remainder of said gross premium. These premium divisions shall remain in effect until altered by the superintendent who shall review the same annually at the title insurance hearing held in November of each year or as otherwise specifically provided by these regulations. Fees, which are not premium, such as inspection fees, cancellation fees, escrow fees, and other charges (whether mentioned

in these regulations or not) are not subject to division between agent and insurer. No agent or insurer shall pay or receive any consideration for title insurance business (or referral of business) other than that division of premiums set forth herein. No agent shall be required to contribute or pay any amount to an insurer for reinsurance or otherwise, and any contractual provision to the contrary shall, as of April 1, 1995, be void and unenforceable. Insurers shall not reward or otherwise compensate agents (or vice versa) directly or indirectly for business other than as herein provided.

D. Title insurers may pay on behalf of, or reimburse their agents for expenses associated with any instruction, lectures or seminars conducted by that title insurer for its agents, if such instruction, lectures or seminars have been approved in advance by the department of insurance for continuing education credit under NMSA 1978 Section 59A-12-26. An insurer conducting such instruction, lectures or seminars shall submit to the superintendent for approval, in advance, an agenda and detailed budget for such instruction, lectures or seminars. Such courses of instruction, lectures or seminars shall be offered by the title insurer to all of its agents on a non-discriminatory basis.

[6-16-86..4-3-95; 13.14.3.11 NMAC - Rn, 13 NMAC 14.4.11 & A, 5-15-00; A, 7-1-05; A, 9-1-07]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.14.5 NMAC, Section 5, effective September 1, 2007.

**13.14.5.8 ISSUANCE UPON
REQUEST AND RECEIPT OF BONA
FIDE ORDER:**

A. Upon receipt of a bona fide order for any type of title insurance policy or policies to be issued pursuant to 13.14.6 NMAC, an insurer or title insurance agent must deliver to the proposed insured, its authorized agent, other person in a fiduciary relationship with the proposed insured, or the proposed insured's attorney, and if none of the aforementioned persons are available after using the insurer's or title insurance agent's best efforts, then to the person designated by the person opening the order for insurance, a commitment showing the exceptions which will appear in the proposed policy as of the date of the commitment and requirements to be met to insure the title in accordance with the order for insurance. Such commitment shall be delivered as soon as practicable, using the

insurer's or title insurance agent's best efforts, allowing reasonably sufficient time for review prior to the completion of closing of the transaction. No commitment may be issued except upon receipt by the insurer or title insurance agent of a bona fide order for title insurance as set out above.

B. The term "binder" is defined in Subsection B of 13.14.1.8 NMAC as "a commitment for title insurance" and the use of the terms 'binder' and 'commitment' shall refer to the same thing. This regulation shall not apply if the bona fide order is placed after the transaction has been closed. A commitment or binder shall not be issued for the purpose of determining the state of the title of property subject to or to be subject in the future to a foreclosure action, quiet title suit or other litigation.

C. When a commitment or binder for one to four family residential property is required to be produced and delivered in accordance with this regulation it shall be delivered with a notice to purchaser/insured NM form 35, 13.14.18.48 NMAC, as the cover page. However, the purchaser(s) need not be identified nor sign the Notice until closing. The Notice, when required, shall be signed by purchaser(s) at or before the time of closing and retained in the closing file. The notice to purchaser/insured is not required if, prior to the delivery of the commitment or binder, the proposed insured(s) sign a contract for sale of the insured land that includes substantially identical language to that included in NM form 35 and that is completed by checking all appropriate blanks.

D. When requested by a proposed insured lender the following language may be added to a title commitment "Note: According to the public records, there have been no deeds conveying the property in this commitment within a period of [six to twenty-four] months prior to the date of this commitment, except as follows:"

[6-16-86...4-3-95; 13.14.5.8 NMAC - Rn, 13 NMAC 14.5.8, 5-15-00; A, 9-1-07]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
INSURANCE DIVISION**

This is an amendment to 13.14.9 NMAC, Sections 18 and 40, effective September 1, 2007.

**13.14.9.18 PREMIUM RATES
FOR ORIGINAL OWNER'S POLI-
CIES:** The following schedule of premium rates for original owner's policies shall be in effect from ~~July 1, 2006~~ September 1, 2007 until modified by the superintendent:

[Please see Schedule on page 758]

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	[176] <u>164</u>	24,000	[289] <u>269</u>	38,000	[388] <u>361</u>
11,000	[184] <u>171</u>	25,000	[296] <u>275</u>	39,000	[394] <u>366</u>
12,000	[193] <u>179</u>	26,000	[304] <u>283</u>	40,000	[401] <u>373</u>
13,000	[201] <u>187</u>	27,000	[311] <u>289</u>	41,000	[407] <u>379</u>
14,000	[210] <u>195</u>	28,000	[319] <u>297</u>	42,000	[414] <u>385</u>
15,000	[218] <u>203</u>	29,000	[327] <u>304</u>	43,000	[421] <u>392</u>
16,000	[227] <u>211</u>	30,000	[334] <u>311</u>	44,000	[427] <u>397</u>
17,000	[235] <u>219</u>	31,000	[342] <u>318</u>	45,000	[434] <u>404</u>
18,000	[244] <u>227</u>	32,000	[348] <u>324</u>	46,000	[440] <u>409</u>
19,000	[251] <u>233</u>	33,000	[355] <u>330</u>	47,000	[447] <u>416</u>
20,000	[259] <u>241</u>	34,000	[361] <u>336</u>	48,000	[454] <u>422</u>
21,000	[266] <u>247</u>	35,000	[368] <u>342</u>	49,000	[460] <u>428</u>
22,000	[274] <u>255</u>	36,000	[375] <u>349</u>	50,000	[467] <u>434</u>
23,000	[281] <u>261</u>	37,000	[381] <u>354</u>		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission, add	Agent retention percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$ [5.68] <u>5.28</u>	[78-80] <u>84.2%</u>		\$ [5.68] <u>5.28</u>
over \$100 to \$500	\$ [4.47] <u>4.16</u>	[78-80] <u>84.2%</u>		\$ [4.47] <u>4.16</u>
over \$500 to \$2,000	\$ [3.51] <u>3.26</u>	[78-80] <u>84.2%</u>		\$ [3.51] <u>3.26</u>
over \$2,000 to \$5,000	\$ [2.82] <u>2.62</u>	75%		\$ [2.82] <u>2.62</u>
over \$5,000 to \$10,000	\$ [2.34] <u>2.18</u>	70%		\$ [2.34] <u>2.18</u>
Over \$10,000 to \$25,000	\$ [2.01] <u>1.87</u>	65%	\$ 0.25	\$ [2.26] <u>2.12</u>
over \$25,000 to \$50,000	\$ [1.75] <u>1.63</u>	60%	\$ 0.25	\$ [2.00] <u>1.88</u>
over \$50,000	\$ [1.40] <u>1.30</u>	50%	\$ 0.25	\$ [1.65] <u>1.55</u>

[6-16-86...4-3-95; A, 5-1-99; 13.14.9.18 NMAC - Rn, 13 NMAC 14.9.8.11 & A, 5-15-00; A, 5-31-00; A, 8-1-00; A, 3-1-02; A, 7-1-03; A, 7-1-04; A, 7-1-05; A, 7-1-06; A, 9-1-07]

13.14.9.40 INSURING CONSTRUCTION LOANS AND DELETING STANDARD EXCEPTION 4 IN STANDARD LOAN POLICIES:

A. Construction Loan Policy Rates. A construction loan policy may be issued pursuant to 13.14.7.18 NMAC for a premium of thirty dollars (\$30.00) plus one (1) dollar per thousand calculated upon the face amount of the construction mortgage.

B. Extension Endorsement Rates. A construction loan policy may be extended beyond its initial two (2) year term pursuant to 13.14.7.18 NMAC for an additional premium of twenty-five dollars (\$25.00) per six (6) month endorsement.

C. No Subsequent Credit on Substitution Loan. The issuance of a construction loan policy may not be used as a basis for claiming a credit or discount on a substitution loan pursuant to 13.14.9.36 NMAC.

D. Endorsement "A" Rates. An "A" endorsement may be issued at the same time as and attached to a construction loan policy pursuant to 13.14.7.14 NMAC for an additional extra hazard risk premium of five dollars (\$5.00) per thousand of the face amount of the policy. At the time of each subsequent disbursement and upon a date down of the title having been made to the date thereof, an additional endorsement "A" may be issued pursuant to 13.14.7.17 NMAC at an additional premium of twenty-five dollars (\$25.00) per endorsement.

E. Endorsement "D" Rates. A "D" endorsement may be issued at the same time as and attached to a construction loan policy pursuant to 13.14.7.14 NMAC for an additional premium of twenty-five dollars (\$25.00). A reasonable fee, in addition to the premium provided herein, may be charged for any inspection necessary to determine the priority of the lien insured; such fee is not premium.

F. Standard Loan Policy with Pending Disbursements Clause Rates. A construction lender may be issued a standard loan policy containing the pending disbursements clause pursuant to 13.14.7.19 NMAC at ninety (90%) percent of the basic premium rates according to the schedule as of the date of the policy, or at the simultaneous issue rate under 13.14.9.30 NMAC or the subsequent issue rate

under 13.14.9.36 NMAC if applicable. No additional premium shall be charged to insert or attach the required pending disbursement language when the same is done simultaneously with the issuance of the policy; if it is done subsequent to the issuance of the policy at the request of the lender, an additional premium of twenty-five dollars (\$25.00) dollars shall be collected.

G. Mechanics' and Materialmen's Lien Coverage in Standard Loan Policy [~~evidence of priority requirement not met~~]. The standard exception numbered 4 in 13.14.5.9 NMAC may be deleted from a standard loan policy or a standard loan policy insuring a construction loan pursuant to 13.14.7.14 NMAC. The premium for deletion of the exception shall be twenty-five dollars (\$25.00) when the insurer's underwriting requirements for evidence of priority have been met or five dollars (\$5.00) per thousand of the face amount of the policy if said requirements have not been met as provided in 13.14.7.14 NMAC.
[6-16-86...4-1-94; 6-1-97; 6-1-98; 13.14.9.40 NMAC - Rn, 13 NMAC 14.9.13, 5-15-00; A, 3-1-02; A, 9-1-07]

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

Repealer: The New Mexico Public Regulation Commission repeals its Rule 17.9.572 NMAC, "Renewable Energy For Electric Utilities" (filed 12-29-2004). Effective date of Repeal: August 30, 2007.

**NEW MEXICO PUBLIC
REGULATION
COMMISSION
UTILITY DIVISION**

**TITLE 17 PUBLIC UTILITIES
AND UTILITY SERVICES
CHAPTER 9 ELECTRIC SERVICES
PART 572 RENEWABLE ENERGY FOR ELECTRIC UTILITIES**

17.9.572.1 ISSUING AGENCY:
New Mexico Public Regulation Commission.
[17.9.572.1 NMAC - Rp, 17.9.572.1 NMAC, 8-30-07]

17.9.572.2 SCOPE:
A. All electric public utilities are subject to 17.9.572.1 through 17.9.572.19 NMAC.
B. Rural electric distribution cooperatives are subject to 17.9.572.1

through 17.9.572.6, 17.9.572.13, 17.9.572.20 and 17.9.572.21 NMAC.
[17.9.572.2 NMAC - Rp, 17.9.572.1 NMAC, 8-30-07]

17.9.572.3 STATUTORY AUTHORITY: NMSA 1978 Sections 62-16-7 and 62-16-9.
[17.9.572.3 NMAC - Rp, 17.9.572.3 NMAC, 8-30-07]

17.9.572.4 DURATION: Permanent.
[17.9.572.4 NMAC - Rp, 17.9.572.4 NMAC, 8-30-07]

17.9.572.5 EFFECTIVE DATE: August 30, 2007, unless a later date is cited at the end of a section.
[17.9.572.5 NMAC - Rp, 17.9.572.5 NMAC, 8-30-07]

17.9.572.6 OBJECTIVE: The purpose of this rule is to implement the Renewable Energy Act, NMSA 1978 Section 62-16-1, et seq., and to bring significant economic development and environmental benefits to New Mexico.
[17.9.572.6 NMAC - Rp, 17.9.572.6 NMAC, 8-30-07]

17.9.572.7 DEFINITIONS: Unless otherwise specified, as used in this rule:

A. procure means to generate or purchase renewable energy and/or renewable energy certificates or to commit to generate or purchase renewable energy and/or renewable energy certificates;

B. public utility means an entity certified by the commission to provide retail electric service in New Mexico pursuant to the Public Utility Act but does not include rural electric cooperatives;

C. reasonable cost threshold means the cost established by the commission above which a public utility shall not be required to add renewable energy to its electric energy supply portfolio pursuant to the renewable portfolio standard;

D. renewable energy means electrical energy generated by means of a low or zero emissions generation technology with substantial long-term production potential and generated by use of renewable energy resources that may include solar, wind, hydropower resources brought into service after July 1, 2007, geothermal, fuel cells that are not fossil fueled and biomass resources; biomass resources are fuels, such as agriculture or animal waste, small diameter timber, salt cedar and other phreatophyte or woody vegetation removed from river basins or watersheds in New Mexico, landfill gas and anaerobically

digested waste biomass; renewable energy does not include fossil fuel or nuclear energy;

E. renewable energy certificate means a document evidencing that the enumerated renewable energy kilowatt-hours have been generated from a renewable energy generating facility, and shall represent all of the environmental attributes associated with the generation of renewable energy;

F. renewable portfolio standard means the percentage of retail sales by a public utility to electric consumers in New Mexico that is required to be supplied by renewable energy;

G. fully diversified renewable energy portfolio is one in which no less than twenty percent of the renewable portfolio standard requirement is met using wind energy, no less than twenty percent is met using solar energy, no less than ten percent is met using one or more of the other renewable energy technologies, as defined by this section, and no less than the following percentages are met through distributed generation:

(1) no less than one and one-half percent for calendar years 2011 through 2014; and

(2) no less than three percent beginning in calendar year 2015;

H. emissions means all emissions regulated by state or federal authorities, including but not limited to all criteria pollutants and hazardous air pollutants, plus mercury and carbon dioxide (CO2);

I. distributed generation means electric generation sited at a customer's premises, providing electric energy to the customer load at that site and/or providing electric energy to a public utility or a rural electric distribution cooperative for use by multiple customers in one or more contiguous distribution substation service areas.

[17.9.572.7 NMAC - Rp, 17.9.572.7 NMAC, 8-30-07]

17.9.572.8 LIBERAL CONSTRUCTION: This rule shall be liberally construed to carry out its intended purposes. If any provision of this rule, or the application thereof to any person or circumstance, is held invalid, the remainder of the rule, or the application of such provision to other persons or circumstances, shall not be affected thereby.

[17.9.572.8 NMAC - Rp, 17.9.572.8 NMAC, 8-30-07]

17.9.572.9 RELATIONSHIP TO OTHER COMMISSION RULES: Unless otherwise specified, this rule does not supersede any other rule of the commis-

sion but supplements rules applying to public utilities.

[17.9.572.9 NMAC - Rp, 17.9.572.9 NMAC, 8-30-07]

17.9.572.10 RENEWABLE PORTFOLIO STANDARD:

A. Each public utility must develop a reasonable cost renewable energy portfolio. In developing its renewable energy portfolio, a public utility shall take into consideration the potential for environmental and economic benefits to New Mexico. Renewable energy resources that are in a public utility's electric energy supply portfolio on July 1, 2004 shall be counted in determining compliance with this rule. However, renewable energy sold to customers through a premium-priced renewable energy tariff shall not be counted in determining compliance with this rule. Other factors being equal, preference shall be given to renewable energy generated in New Mexico.

B. The renewable portfolio standard shall be no less than five percent (5%) of annual retail jurisdictional energy sales for calendar year 2006 and six percent (6%) for calendar years 2007 through 2010, except as modified by Subsection C of this section. The renewable portfolio standard shall be no less than ten percent (10%) for calendar years 2011 through 2014. The renewable portfolio standard shall be no less than fifteen percent (15%) for calendar years 2015 through 2019. The renewable portfolio standard shall be no less than twenty percent (20%) for calendar year 2020 and subsequent years.

C. The renewable portfolio standard will be reduced, as necessary, to limit the kilowatt-hours of renewable energy procured by a public utility for non-governmental customers at a single location or facility, regardless of the number of meters, with consumption exceeding ten million kilowatt-hours per year. A public utility shall limit the amount of its renewable portfolio standard so that the additional cost of the standard, inclusive of all interconnection and transmission costs, to each customer on and after January 1, 2006, does not exceed the lower of one percent of that customer's annual electric charges or forty-nine thousand dollars (\$49,000). This procurement limit will increase by one-fifth percent or ten thousand dollars (\$10,000) per year until January 1, 2011, when the procurement limit will remain fixed at the lower of two percent of that customer's annual electric charges or ninety-nine thousand dollars (\$99,000). After January 1, 2012, the ninety-nine thousand dollar (\$99,000) limit is adjusted for inflation by the amount of the cumulative increase change in the *consumer price index, urban*

(*CPI-U*) published by the bureau of labor statistics between January 1, 2011 and January 1 of the procurement plan year.

D. In determining the amount of the reduction specified in Subsection C of this section, a public utility shall assume that electric rates in effect on the day of the procurement plan filing will be in effect for the year during which the procurement reduction will apply. A public utility with a fuel and purchased power cost adjustment clause (FPPCAC) shall also assume that FPPCAC charges to the customer during the year immediately preceding its procurement plan filing will be in effect, in identical amounts, during the year for which the procurement reduction will apply.

E. A public utility that, as of July 1, 2004, has an all-requirements contract which would not reasonably permit it to procure renewable energy for purposes of meeting the renewable portfolio standard, may apply to be exempted from the renewable portfolio standard until the earlier of the date of their next contract forward or the first date on which the all-requirements contract is amended or renegotiated, at which time such public utility shall be subject to the renewable portfolio standard. A public utility seeking such exemption shall file with the commission a petition for exemption no later than January 31, 2005. The petition shall include a copy of the public utility's all-requirements contract as well as testimony and exhibits demonstrating that the public utility is unable, with due diligence, to procure renewable resources needed to meet the renewable portfolio standard. The public utility shall serve a copy of the petition on staff, the attorney general, and all parties to the public utility's last general rate case.

[17.9.572.10 NMAC - Rp, 17.9.572.10 NMAC, 8-30-07]

17.9.572.11 REASONABLE COST THRESHOLD:

A. A public utility shall not be required to add renewable energy to its electric energy supply portfolio, pursuant to the renewable portfolio standard, above the reasonable cost threshold established by the commission.

B. The reasonable cost threshold for 2006 is one percent of all customers' aggregated overall annual electric charges, increasing by one-fifth percent per year until January 1, 2011, at which time it will be two percent. As changing circumstances warrant, and after notice and hearing, the commission may prospectively modify the reasonable cost threshold applicable to new contracts, but not the threshold applicable to existing contracts which have been previously approved by the commission as part of a procurement plan to meet a

public utility's renewable portfolio standard. In modifying the reasonable cost threshold, the commission will take into account:

(1) the price of renewable energy at the point of sale to the public utility;

(2) transmission and interconnection costs required for the delivery of renewable energy to retail customers;

(3) the impact of the cost for renewable energy on retail customer rates;

(4) overall diversity, reliability, availability, dispatch flexibility, cost per kilowatt-hour and life cycle cost on a net present value basis of renewable energy resources available from suppliers; and

(5) other factors, including public benefits, the commission deems relevant.

C. The commission may establish reasonable cost thresholds for individual renewable energy technologies.

D. In any given year, if the cost to procure renewable energy is greater than the reasonable cost threshold, a public utility will not be required to incur that cost or to procure that resource, provided that the condition excusing performance under the renewable portfolio standard in any given year will not operate to delay the annual increases in the renewable portfolio standard in subsequent years. A public utility that believes its procurement will exceed the reasonable cost threshold shall file with the commission a request for waiver of the renewable portfolio standard for the applicable calendar year. The request shall explain in detail why the public utility cannot procure resources at a cost less than the reasonable cost threshold and shall include an explanation and evidence of all efforts the public utility undertook to procure resources at a cost within the reasonable cost threshold. Waiver requests shall be deemed granted if not acted upon within sixty (60) days.

[17.9.572.11 NMAC - Rp, 17.9.572.11 NMAC, 8-30-07]

17.9.572.12 COST RECOVERY FOR RENEWABLE ENERGY:

A public utility shall recover the reasonable costs of complying with the renewable portfolio standard through the rate making process. A public utility shall also recover its reasonable interconnection and transmission costs to deliver renewable energy to retail New Mexico customers. Costs that are consistent with commission-approved procurement plans or transitional procurement plans are deemed to be reasonable. A public utility that is permitted to defer the recovery of renewable energy costs pursuant to commission order may, through the ratemaking process, recover from customers that are not subject to the rate impact limitations of Subsection C of 17.9.572.10 NMAC the cumulative sum of those

deferred amounts, plus a carrying charge on those amounts. For customers that are subject to the rate impact limitations of Subsection C of 17.9.572.10 NMAC, a public utility may, through the ratemaking process, recover from those customers the cumulative sum of those Subsection C of 17.9.572.10 NMAC limited deferred amounts, plus carrying charges on those amounts.

[17.9.572.12 NMAC - Rp, 17.9.572.12 NMAC, 8-30-07]

17.9.572.13 R E N E W A B L E ENERGY CERTIFICATES:

A. Each public utility shall annually establish its compliance with the renewable portfolio standard through the filing of an annual report, as provided in 17.9.572.17 NMAC, documenting the retirement of renewable energy certificates. Effective for services provided on and after January 1, 2015, each rural electric distribution cooperative shall annually establish its compliance with the renewable portfolio standard through the filing of an annual report, as provided in 17.9.572.21 NMAC, documenting the retirement of renewable energy certificates.

B. Renewable energy certificates shall contain the following information:

(1) the name and contact information of the renewable energy generating facility owner and/or operator;

(2) the name and contact information of the public utility or rural electric distribution cooperative purchasing the renewable energy certificate;

(3) the type of generator technology and fuel type;

(4) the generating facility's physical location, nameplate capacity in MW, location and ID number of revenue meter, and date of commencement of commercial generation;

(5) the public utility or rural electric distribution cooperative to which the generating facility is interconnected;

(6) the control area operator for the generating facility; and

(7) the quantity in kWh and the date of the renewable energy certificate creation.

C. Renewable energy certificates:

(1) are owned by the generator of the renewable energy unless:

(a) the renewable energy certificates are transferred to the purchaser of the energy through specific agreement with the generator;

(b) the generator is a qualifying facility, as defined by the federal Public Utility Regulatory Policies Act of 1978, in which case the renewable energy certifi-

cates are owned by the public utility or rural electric distribution cooperative, purchaser of the renewable energy unless retained by the generator through specific agreement with the public utility or rural electric distribution cooperative purchaser of the energy; or

(c) a contract for the purchase of renewable energy is in effect prior to January 1, 2004, in which case the purchaser of the energy owns the renewable energy certificates for the term of such contract;

(2) may be traded, sold or otherwise transferred by their owner to any other party; such transfers and use of the certificate by a public utility or rural electric distribution cooperative for compliance with the renewable energy portfolio standard do not require physical delivery of the electric energy represented by the certificate to a public utility or rural electric distribution cooperative, so long as the electric energy represented by the certificate was contracted for delivery in New Mexico, or consumed or generated by an end-use customer of the public utility or rural electric distribution cooperative in New Mexico, unless the commission determines that there is an active regional market for trading renewable energy and renewable energy certificates in any region in which the public utility or rural electric distribution cooperative is located;

(3) that are used once by a public utility or rural electric distribution cooperative to satisfy the renewable portfolio standard and are retired, or that are traded, sold or otherwise transferred by the public utility or rural electric distribution cooperative shall not be further used by the public utility or rural electric distribution cooperative; and

(4) that are not used by a public utility or rural electric distribution cooperative to satisfy the renewable portfolio standard and that are not traded, sold or otherwise transferred by the public utility or rural electric distribution cooperative may be carried forward for up to four (4) years from the date of creation and, if not used by that time, shall be retired by the public utility or rural electric distribution cooperative.

D. Public utilities and rural electric distribution cooperatives are responsible for demonstrating that a renewable energy certificate used for compliance with the renewable portfolio standard is derived from eligible renewable energy resources and has not been retired, traded, sold or otherwise transferred to another party. Public utilities and rural electric distribution cooperatives shall maintain records sufficient to meet the demonstration requirement of this subsection.

E. The acquisition, sale or transfer, and retirement of any renewable

energy certificates used to meet renewable portfolio standards on or after January 1, 2008 shall be registered with the western renewable energy generation information system (WREGIS) or its direct successor(s), except as provided in Subsection (F) of this section. Certificates whose retirement has been registered by the public utility or rural electric distribution cooperative with WREGIS shall be deemed to meet the requirements of Subsection (D) of this section.

F. Renewable energy certificates representing electricity delivered to New Mexico, but generated in a jurisdiction that requires certificates to be registered with a tracking system other than WREGIS, may be used to meet renewable portfolio standards so long as WREGIS lacks the capability to import certificates from that other tracking system.

G. The requirement for registration and trading of renewable energy certificates through WREGIS shall not constitute a finding by the commission that a regional renewable energy market is generally available.

H. Until such time as the commission has determined that there is a regional market for exchanging renewable energy and renewable energy certificates that is generally available for all public utilities and rural electric distribution cooperatives in the state, any public utility or rural electric distribution cooperative may seek approval from the commission to meet some or all of its renewable portfolio standard using individual renewable energy certificates that represent energy generated by a renewable energy resource within a regional renewable energy market or trading system in any region where the public utility or rural electric cooperative is located.

[17.9.572.13 NMAC - Rp, 17.9.572.13 NMAC, 8-30-07]

17.9.572.14 DIVERSIFICATION REQUIREMENTS FOR PORTFOLIOS:

Each public utility must meet its renewable portfolio standard requirements using a diversified portfolio of resources, taking into consideration the overall reliability, availability, dispatch flexibility and cost of the various renewable resources as follows:

A. Except as provided in this section, public utility procurement plans shall be designed to achieve a fully diversified renewable energy portfolio no later than January 1, 2011.

B. Public utilities shall not be required to provide a fully diversified renewable portfolio when doing so would conflict with reasonable cost thresholds established by the commission or when full

diversification is prevented by technical constraints or limitations. For the purposes of this section, technical constraints or limitations include, but are not limited to, transmission constraints, limitations on system integration, limited availability of particular renewable resources, and limitations on system reliability, but shall not include constraints or limitations that the public utility is capable of overcoming at reasonable cost or effort. Notwithstanding the provisions of this Subsection B excusing the failure by a public utility to meet the requirement to provide a fully diversified renewable energy portfolio, each public utility must meet its overall renewable portfolio standard.

C. In any year for which a public utility's annual renewable energy procurement plan does not provide for a fully diversified portfolio, the public utility shall describe its plan for achieving a fully diversified portfolio in a timely manner.

D. Renewable energy certificates used to meet the distributed generation diversity requirement may not also be used to meet a resource-specific diversity requirement.

[17.9.572.14 NMAC - Rp, 17.9.572.14 NMAC, 8-30-07]

17.9.572.15 VOLUNTARY RENEWABLE TARIFFS:

A. Each public utility shall offer a voluntary renewable energy tariff for those customers who want the option to purchase additional renewable energy.

B. The voluntary renewable tariff may also include provisions to enable consumers to purchase renewable energy within certain energy blocks and by source of renewable energy. Additionally, each public utility must develop an educational program on the benefits and availability of its voluntary renewable energy program. The tariff, along with the details of the consumer education program, shall be on file with the commission.

[17.9.572.15 NMAC - Rp, 17.9.572.15 NMAC, 8-30-07]

17.9.572.16 ANNUAL RENEWABLE ENERGY PORTFOLIO PROCUREMENT PLAN:

A. On September 1, 2007, July 1, 2008 and July 1 of each year thereafter, each public utility must file with the commission an annual portfolio procurement plan. The portfolio procurement plan is to include:

(1) the cost of procurement in the next calendar year for any new renewable energy resource required to comply with the renewable portfolio standard;

(2) the amount of renewable energy the public utility plans to provide in the calendar year commencing sixteen (16) months later, to satisfy the percentages

specified in this rule, less any reductions authorized by this rule or by law;

(3) an explanation and exhibits demonstrating how the amount specified in Paragraph (2) of this subsection was determined;

(4) the reductions, if any, to the renewable portfolio standard for procurements for nongovernmental customers with consumption exceeding ten (10) million kilowatt hours per year and/or due to the reasonable cost threshold, including an explanation and exhibits demonstrating how the reduction was determined;

(5) testimony and exhibits that demonstrate that the proposed procurement is reasonable as to its terms and conditions considering price, costs of interconnection and transmission, availability, dispatchability, renewable energy certificate values and portfolio diversification requirements; or

(6) demonstration that the plan is otherwise in the public interest.

B. A public utility may file a transitional procurement plan requesting that the commission determine that the costs of renewable energy resources that the public utility has committed to or may commit to, prior to the establishment of a reasonable cost threshold, are reasonable and recoverable. A transitional procurement plan is subject to the same filing requirements as an annual portfolio procurement plan.

C. A public utility shall serve notice and a copy of its annual portfolio procurement plan filing by first class mail on renewable resource providers requesting such notice from the commission, the New Mexico attorney general, and the intervenors in the public utility's most recent rate case. A public utility shall also post on its website the most recent and the pending renewable energy portfolio procurement plans.

[17.9.572.16 NMAC - Rp, 17.9.572.16 NMAC, 8-30-07]

17.9.572.17 ANNUAL RENEWABLE ENERGY PORTFOLIO REPORT:

On September 1, 2007, July 1, 2008 and July 1 of each year thereafter, each public utility must file with the commission a report on its renewable energy generation or purchases of renewable energy during the prior calendar year. This report shall:

A. itemize all renewable energy generation and/or renewable energy certificate purchases and sales;

B. list, and include copies of, all renewable energy certificates, including acquired, issued or retired certificates;

C. state, for each purchase or sale of a renewable energy certificate, including those to be applied in future years:

(1) the seller's name, address,

telephone number, and electronic mail address;

(2) the purchaser's name, address, telephone number, and electronic mail address;

(3) the dates and terms of each transaction involving renewable energy certificates;

(4) the quantity of renewable energy certificates purchased or sold;

(5) the purchase price;

(6) the type of renewable energy resource used to generate the renewable energy and its valuation pursuant to 17.9.572.14 NMAC; and

(7) other data useful to the commission in evaluating the public utility's efforts to acquire renewable energy in accordance with its portfolio procurement plan; if the acquired renewable energy was not acquired in accordance with a public utility's portfolio procurement plan, the public utility must demonstrate that the renewable energy was acquired at the lowest reasonable price consistent with reliability, availability, and portfolio requirements, including renewable resource diversity; and

D. describe and quantify the implementation of the voluntary renewable tariff requirements in 17.9.572.15 NMAC.

[17.9.572.17 NMAC - Rp, 17.9.572.17 NMAC, 8-30-07]

17.9.572.18 REVIEW BY COMMISSION:

The commission shall approve or modify annual portfolio procurement plans and transitional procurement plans within ninety (90) days and may approve such plans without a hearing, unless a protest is filed that demonstrates to the commission's reasonable satisfaction that a hearing is necessary. The commission may modify a plan after notice and hearing, and may, for good cause, extend the time to approve a procurement plan for an additional ninety (90) days. If the commission has not acted within the ninety -day period, a procurement plan or transitional plan is deemed approved. The commission may reject a procurement plan or transitional plan if the commission finds that the plan does not contain the required information; upon such rejection the public utility's obligation to procure additional resources will be suspended for the time necessary to file a revised plan. In such instances, the total amount of renewable energy to be procured by the public utility will not change.

[17.9.572.18 NMAC - Rp, 17.9.572.18 NMAC, 8-30-07]

17.9.572.19 EXEMPTION AND VARIANCE:

Any interested person may file an application for an exemption or a variance from the requirements of this rule. Such application shall:

A. identify the section of this rule for which the exemption or variance is requested;

B. describe the situation that necessitates the exemption or variance;

C. set out the effect of complying with this rule on the public utility and its customers if the exemption or variance is not granted;

D. define the result the request will have if granted;

E. state how the exemption or variance will be consistent with the purposes of this rule;

F. state why no other reasonable alternative is preferable; and

G. state why the proposed alternative is in the public interest.

[17.9.572.19 NMAC - Rp, 17.9.572.19 NMAC, 8-30-07]

17.9.572.20 RURAL ELECTRIC DISTRIBUTION COOPERATIVES VOLUNTARY RENEWABLE TARIFFS:

Rural electric distribution cooperatives must offer their retail customers a voluntary renewable energy tariff to the extent that their suppliers under their all-requirements contracts make such renewable resources available. Rural electric distribution cooperatives must report to the commission by April 30 of each year concerning the availability to them of renewable energy and the annual demand for renewable energy pursuant to their voluntary tariff.

[17.9.572.20 NMAC - Rp, 17.9.572.20 NMAC, 8-30-07]

17.9.572.21 RURAL ELECTRIC DISTRIBUTION COOPERATIVES RENEWABLE PORTFOLIO STANDARD:

Each rural electric distribution cooperative organized under the Rural Electric Cooperative Act shall meet a renewable portfolio standard as follows:

A. "renewable energy," "renewable energy certificate" shall have the same definitions as provided in Subsections D and E of 17.9.572.7 NMAC.

B. no later than January 1, 2015, renewable energy shall comprise no less than five percent of each distribution cooperative's total retail sales to New Mexico customers; the renewable portfolio standard shall increase by one percent per year thereafter until January 1, 2020, at which time the renewable portfolio standard shall be ten percent.

C. the renewable portfolio standard of each distribution cooperative shall be diversified as to the type of renewable energy resource, taking into consideration the overall reliability, availability, dispatch flexibility and the cost of the various renewable energy resources made available to the distribution cooperative by its suppliers

of electric power;

D. renewable energy resources that are in a distribution cooperative's energy supply portfolio on January 1, 2008 shall be counted in determining compliance with this rule;

E. if a distribution cooperative determines that, in any given year, the cost of renewable energy that would need to be procured or generated for purposes of compliance with the renewable portfolio standard would be greater than the reasonable cost threshold, the distribution cooperative shall not be required to incur that cost; provided that the existence of this condition excusing performance in any given year shall not operate to delay any renewable portfolio standard in subsequent years; for purposes of the Rural Electric Cooperative Act, "reasonable cost threshold" means an amount that shall be no greater than one percent of the distribution cooperative's gross receipts from business;

F. by March 1 of each year, a distribution cooperative shall file with the public regulation commission a report on its purchases and generation of renewable energy during the preceding calendar year; the report shall include the cost of the renewable energy resources purchased and generated by the distribution cooperative to meet the renewable portfolio standard; the report shall provide the information required below:

(1) a summary of the distribution cooperative's purchases and generation of renewable energy and purchases of renewable energy certificates that occurred during the preceding calendar year;

(2) the total amount of monies collected by the distribution cooperative from its customers during the preceding calendar year through the assessment of a renewable energy and conservation fee and the balance of funds in the distribution cooperative's renewable energy and conservation fund, as of January 1 and December 31 of the preceding calendar year;

(3) the amount of monies withheld by the distribution cooperative from the inspection and supervision fees due to the state that were placed in the renewable energy and conservation fund as a partial match of the renewable energy and conservation fees collected during the preceding calendar year;

(4) the amount of monies received by the distribution cooperative from any third party that were placed in the renewable energy and conservation fund;

(5) whether and to what extent the distribution cooperative will assess its customers for a renewable energy and conservation fee in the succeeding calendar year; and,

(6) a summary of each renewable

energy project, energy efficiency or load management program upon which monies from the renewable energy and conservation fund were expended during the preceding calendar year, which includes:

(a) a description of the anticipated benefits to the distribution cooperative's members from each project or program;

(b) the amount of monies spent on each project or program; and,

(c) the current status of each project or program;

G. A distribution cooperative shall report to its membership a summary of its purchases and generation of renewable energy during the preceding calendar year.

[17.9.572.21 NMAC - N, 8-30-07]

HISTORY OF 17.9.572 NMAC:

Pre-NMAC History: None.

History of Repealed Material:

17 NMAC 10.572, Renewable Energy Development Program (filed 11-30-98) repealed 7-1-03.

17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6-16-03) repealed 1-14-05.

17.9.572 NMAC, Renewable Energy For Electric Utilities (filed 12-29-04) repealed 8-30-07.

Other History:

17 NMAC 10.572, Renewable Energy Development Program (filed 11-30-98) replaced by 17.9.572 NMAC, Renewable Energy as a Source of Electricity, effective 7-1-03, 17.9.572 NMAC, Renewable Energy as a Source of Electricity (filed 6-16-03) replaced by 17.9.572, Renewable Energy for Electric Utilities, effective 1-14-05. 17.9.572 NMAC, Renewable Energy for Electric Utilities (filed 12-29-04) replaced by 17.9.572 NMAC, Renewable Energy For Electric Utilities, effective 8-30-07.

NEW MEXICO RACING COMMISSION

This is an amendment to 15.2.1.7 NMAC amending and adding definitions beginning with the letters A through J. Effective 08/30/2007.

15.2.1.7 DEFINITIONS: A. DEFINITIONS BEGINNING WITH THE LETTER "A":

(1) "Act" means the New Mexico Horseracing Act, New Mexico Statutes Annotated, 1978 Compilation, and Sections 60-1-1 through 60-1-26 including any amendments to that statute.

(2) "Added money" is the

amount added into the purses for a stakes race by the association, or by sponsors, state-bred programs or other funds added to those monies gathered by nomination, entry, sustaining and other fees coming from owners of horses participating in the race.

(3) "Age" of a horse foaled in North America shall be reckoned from the first day of January of the year of foaling.

(4) "Also eligible" pertains to: a number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; in a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(5) "Allowance race" is an overnight race for which eligibility and weight to be carried are determined according to specified conditions which include age, sex, earnings and number of wins.

(6) "Appeal" is a request for the commission or its designee to investigate, consider and review any decisions or rulings of stewards of a meeting.

(7) "Arrears" are all monies owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules and are past due.

(8) "Association" is an individual or business entity holding a license from the commission to conduct racing with pari-mutuel wagering.

(9) "Association grounds" are all real property utilized by the association in the conduct of its race meeting, including the racetrack, grandstand, concession stands offices, barns, stable area, employee housing facilities and parking lots.

(10) "Authorized agent" is a person licensed by the commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act.

B. DEFINITIONS BEGINNING WITH THE LETTER "B":

(1) "Beneficial interest" is profit, benefit, or advantage resulting from a contract, or the ownership of an estate as distinct from the legal ownership or control. When considered as designation of character of an estate, is such an interest as a devisee, legatee, or donee takes solely for his own use or benefit, and not as holder of title for use and benefit of another.

(2) "Betting interest" refers to one or more contestants in a pari-mutuel contest, which are identified by a single program number for wagering purposes.

(3) "Bleeder" is any horse, which exhibits symptoms of epistaxis and/or respiratory tract hemorrhage.

(4) "Bleeder list" is a tabulation of all bleeders to be maintained by the commission.

(5) "Board" means the gaming control board.

~~(5) (6) "Breakage" [is the net pool minus payout.]~~ means the odd cents by which the amount payable on each dollar wagered exceeds a multiple of ten.

~~(6) (7) "Breeder"~~ is the owner of the horse's dam at the time of foaling.

C. DEFINITIONS BEGINNING WITH THE LETTER "C":

(1) "Carryover" refers to non-distributed monies, which are retained and added to a corresponding pool in accordance with these rules.

(2) "Claiming race" is a race in which any horse starting may be claimed (purchased for a designated amount) in conformance with the rules.

(3) "Classified handicap" is a free handicap race in which contestants are assigned weights to be carried by the handicapper for the purpose of equaling their respective chances of winning.

~~(4) "Commission" [is the regulatory agency with the authority to regulate racing and/or pari-mutuel wagering.]~~ means the state racing commission.

(5) "Conditions" are qualifications, which determine a horse's eligibility to be entered in a race.

(6) "Contest" is a competitive event on which pari-mutuel wagering is conducted.

(7) "Contestant" is an individual participant in a contest.

(8) "Controlled substance" is any substance included in the five classification schedules of the (U.S.) Controlled Substance Act of 1970.

~~(9) "Coupled entry" refers to two (2) or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes.]~~

~~(10) (9) "Course"~~ is the track over which horses race.

D. DEFINITIONS BEGINNING WITH THE LETTER "D":

(1) "Day" is a 24-hour period ending at midnight.

(a) Dark day - a day during a live or a simulcast race meeting when no pari-mutuel wagering is conducted.

(b) Race day - a day during a race meeting when pari-mutuel wagering is conducted on live racing.

(c) Simulcast race day - a day during a race meeting when pari-mutuel wagering is conducted on simulcast racing.

(2) "Dead heat" is the finish of a race in which the noses of two (2) or more horses reach the finish line at the same time.

(3) "Declaration" is the act of

withdrawing an entered horse from a race prior to the closing of entries.

(4) "Draw" is the process of assigning postpositions and the process of selecting contestants in a manner to ensure compliance with the conditions of the rules of racing.

E. DEFINITIONS BEGINNING WITH THE LETTER "E":

(1) "Entry" is: a horse eligible for and entered in a race; two or more horses entered in the same race, which have common ties of ownership, lease or training (see "coupled entry").

(2) "Equipment" as applied to a horse, means whip, blinkers, tongue strap, muzzle, hood, nose band, bit, shadow roll, martingale, breast plate, bandage, boot, plates, and all other paraphernalia common or otherwise which might be used on or attached to a horse while racing.

(3) "Exhibition race" is a race for which a purse is offered but no wagering is permitted.

(4) "Exotic wagering" means all wagering other than on win, place or show, through pari-mutuel wagering.

~~(4) (5) "Expired ticket"~~ is an outstanding ticket, which was not presented for redemption within the required time period for which it was issued.

(6) "Export" means to send a live audiovisual broadcast of a horse race in the process of being run at a horse racetrack from the originating horse racetrack to another location.

F. DEFINITIONS BEGINNING WITH THE LETTER "F":

(1) "Financial interest" is an interest that could result in directly or indirectly receiving a pecuniary gain or sustaining a pecuniary loss as a result of ownership or interest in a horse or business entity; or as a result of salary, gratuity, or other compensation or remuneration from any person. Being the lessee or lessor of a horse shall be construed as having a financial interest.

(2) "Flat race" is a race run over a course on which no jumps or other obstacles are placed.

(3) "Forfeit" is money due from a licensee because of error, fault, neglect of duty, breach of contract or a penalty imposed by the stewards or the commission.

G. DEFINITIONS BEGINNING WITH THE LETTER "G":

(1) "Guarantee purse money" is the same as a stake with a guarantee by the association that the gross purse shall not be less than the amount stated.

(2) "Guest association" is an association, which offers licensed pari-mutuel wagering on contests conducted, by another association (the host) in either the

same state or another jurisdiction.

(3) **"Guest state"** means a jurisdiction, other than a jurisdiction in which a horse race is run, in which a horse racetrack, off-track wagering facility or other facility that is a member of and subject to an interstate common pool is located.

(4) **"Guest track"** means a horse racetrack, off-track wagering facility or other licensed facility in a location other than the state in which a horse race is run that is a member of and subject to an interstate common pool.

H. DEFINITIONS BEGINNING WITH THE LETTER "H":

(1) **"Handicap"** is a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

(2) **"Handle"** is the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

(3) **"Horse"** is any horse or mule (including and designated as a mare, filly, stallion, colt, ridgling or gelding) registered for racing.

(4) **"Horse race"** means a competition among racehorses on a predetermined course in which the horse completing the course in the least amount of time generally wins.

(4) (5) **"Host association"** is the association conducting a licensed pari-mutuel meeting from which authorized contests or entire performances are simulcast.

(6) **"Host track"** means the horse racetrack from which a horse race subject to an interstate common pool is transmitted to members of that interstate common pool, also known as a "sending track."

I. DEFINITIONS BEGINNING WITH THE LETTER "I":

(1) **"Import"** means to receive a live audiovisual broadcast of a horse race.

(4) (2) **"Inquiry"** is an investigation by the stewards of potential interference in a contest prior to declaring the result of said contest official.

(3) **"Interstate common pool"** means a pari-mutuel pool that combines comparable pari-mutuel pools from one or more locations that accept wagers on a horse race run at a sending track for purposes of establishing payoff prices at the pool members' locations, including pools in which pool members from more than one state simultaneously combine pari-mutuel pools to form an interstate common pool.

(2) (4) **"Invitational handicap"** is a handicap for which the racing secretary or handicapper has selected the contestants and assigned the weights.

J. DEFINITIONS

BEGINNING WITH THE LETTER "J":

(1) **"Jockey"** is a person licensed to ride in races.

(2) **"Jockey club"** means an organization that administers thoroughbred registration records and registers thoroughbreds.

K. DEFINITIONS BEGINNING WITH THE LETTER "K": [Reserved.]

L. DEFINITIONS BEGINNING WITH THE LETTER "L": **"Licensee"** is any person or entity holding a license from the commission to engage in racing or a regulated activity.

M. DEFINITIONS BEGINNING WITH THE LETTER "M":

(1) **"Maiden"** is a horse, which shows in the *daily racing form* or the *American quarter horse chart book* as never having won a race at a recognized meeting. A maiden, which has been disqualified after finishing first in a race, is still a maiden.

(2) **"Maiden race"** is a race restricted to maidens.

(3) **"Match race"** is a race between two (2) horses under conditions agreed to by their owners.

(4) **"Meeting"** is the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission. For purposes of this rule, the meeting begins on the first date prior to actual racing that entries are accepted by the racing secretary. Entries shall be accepted no sooner than five days before racing commences.

(5) **"Minus pool"** occurs when the payout is in excess of the net pool.

(6) **"Month"** is a calendar month.

(7) **"Mutuel field"** refers to two (2) or more contestants in a contest that are treated as a single betting interest for pari-mutuel wagering purposes because the number of betting interests exceeds the number that can be handled individually by the pari-mutuel system.

N. DEFINITIONS BEGINNING WITH THE LETTER "N":

(1) **"Net pool"** is the amount of gross ticket sales less refundable wagers and statutory commissions.

(2) **"New Mexico bred"** is a foal conceived in the state of New Mexico, foaled in the state of New Mexico, weaned in the state of New Mexico whose dam was not outside the state of New Mexico during pregnancy.

(3) **"New Mexico bred race"** is a race in which the contestants are registered as New Mexico bred horses.

(4) **"No contest"** is a race cancelled for any reason by the stewards.

(5) **"Nomination"** is the naming

of a horse to a certain race or series of races.

(6) **"Nominator"** is the person or entity in whose name a horse is nominated for a race or series of races.

O. DEFINITIONS BEGINNING WITH THE LETTER "O":

(1) **"Objection"** is a written complaint made to the stewards concerning a horse entered in a race and filed in a timely manner prior to the scheduled post time of the first race on the day in which the questioned horse is entered; or a verbal claim of foul in a race lodged by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official.

(2) **"Official or racing official"** means assistant racing secretary, chief of security, director of racing or similar position, clerk of scales, clocker, general manager, handicapper, horse identifier, horsemen's bookkeeper, jockey room custodian, official veterinarian, paddock judge, pari-mutuel manager, patrol judge, placing judges, racing secretary, racing veterinarian, stable superintendent, starter, steward, timer, and track superintendent.

(3) **"Official order of finish"** is the order of finish of the contestants in a contest as declared official by the stewards.

(4) **"Official starter"** is the official responsible for dispatching the horses for a race.

(5) **"Official time"** is the elapsed time from the moment the first horse crosses the starting point until a horse crosses the finish line.

(6) **"Off time"** is the moment, at which, on the signal of the official starter, the doors of the starting gate are opened, officially dispatching the horses in each contest.

(7) **"Optional claiming race"** is a contest restricted to horses entered to be claimed for a stated claiming price and to those which have started previously for that claiming price or less.

(8) **"Outstanding ticket"** is a winning or refundable pari-mutuel ticket, which was not cashed during the performance for which it was issued; also known as "outs".

(9) **"Overnight race"** is a race for which entries close at a time set by the racing secretary and for which the owners of the horses do not contribute to the purse.

(10) **"Owner"** is defined as a person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse.

P. DEFINITIONS BEGINNING WITH THE LETTER "P":

(1) **"Paddock"** is an enclosure in which contestants scheduled to compete in a contest are confined prior to racing.

(2) **"Pari-mutuel system"** is the

manual, electromechanical, or computerized system and all software (including the totalisator, account betting system and off-site betting equipment) that is used to record bets and transmit wagering data.

(3) **"Pari-mutuel wagering"** is a form of wagering on the outcome of an event in which all wagers are pooled and held by an association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning horses.

(4) **"Patron"** is a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

(5) **"Payout"** is the amount of money payable to winning wagers.

(6) **"Performance"** is a schedule of races run consecutively as one program.

(7) **"Person"** is one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustee, receiver, syndicate, or any other legal entity.

(8) **"Positive test"** means the result of a test, conducted as provided in these rules, on a urine, blood or other sample, which test indicated the presence of any stimulant, depressant, narcotic, local anesthetic, or of any drug, chemical or chemical agent of any kind which is foreign to the body of the horse.

(9) **"Post position"** is the pre-assigned position from which a horse will leave the starting gate.

(10) **"Post time"** is the scheduled starting time for a contest.

(11) **"Prima facie evidence"** is evidence that, until its effect is overcome by other evidence, will suffice as proof of fact in issue.

(12) **"Private barn"** is a barn and real property owned or leased by a trainer in which stalls are provided for races at a licensed New Mexico racetrack and who have direct access to a New Mexico racetrack.

(13) **"Profit"** is the net pool after deduction of the amount bet on the winners.

(14) **"Profit split"** is a division of profit amongst separate winning betting interests or winning betting combinations resulting in two (2) or more payout prices.

(15) **"Prohibited substance"** is any chemical which, when administered to a horse can create a change in the normal physiological performance of the horse's racing ability, such as narcotics, anesthetics, depressants, anti-convulsants, tranquilizers, hallucinogenics and stimulants; when administered to a horse, may interfere with testing procedures and is not a therapeutic medication.

(16) **"Program"** is the published listing of all contests and contestants for a specific performance.

(17) **"Protest"** is a written complaint alleging that a horse is or was ineligible to race.

(18) **"Purse"** is the total cash amount for which a race is contested whether paid at the time of the race or at a future date.

Q. DEFINITIONS BEGINNING WITH THE LETTER "Q": [Reserved]

R. DEFINITIONS BEGINNING WITH THE LETTER "R":

(1) **"Race"** is a contest between contestants at a licensed meeting.

(2) **"Restricted area"** is an enclosed portion of the association grounds to which access is limited to licensees whose occupation or participation requires access.

(3) **"Result"** is that part of the official order of finish to determine the pari-mutuel payout of pools for each individual contest.

S. DEFINITIONS BEGINNING WITH THE LETTER "S":

(1) **"Scratch"** is the act of withdrawing an entered horse from a contest after the closing of entries.

(2) **"Scratch time"** is the deadline set by the association for withdrawal of entries from a scheduled performance.

(3) **"Simulcast"** refers to the live audio and visual transmission of a contest to another location for pari-mutuel wagering purposes.

(4) **"Single price pool"** is an equal distribution of profit to winning betting interests or winning betting combinations through a single payout price.

(5) **"Sponsor added money"** is added to a race in return for name and/or advertising recognition and is not added money.

(6) **"Stable name"** is a name used other than the actual legal name of an owner or lessee and registered with the commission.

(7) **"Stakes race"** is a contest in which nomination, entry and/or starting fees contribute to the purse. No overnight race shall be considered a stakes race.

(8) **"Starter"** refers to a horse, which becomes an actual contestant in a race by virtue of the starting gate opening in front of it upon dispatch by the official starter.

(9) **"Starter allowance"** is a race in which a horse establishes eligibility by starting for a claimed price pursuant to the conditions of the race.

(10) **"Steeplechase race"** is a contest in which horses mounted by jockeys run over a course on which jumps or other obstacles are placed.

(11) **"Steward"** is a duly appointed racing official with powers and duties

specified by the act and these rules.

T. DEFINITIONS BEGINNING WITH THE LETTER "T":

(1) **"Takeout"** is the total amount of money, excluding breakage, withheld from each pari-mutuel pool, as authorized by statute or rule.

(2) **"Therapeutic medication"** is any drug, chemical, or chemical agent, that when administered to a horse is calculated to improve and/or protect the health and soundness of said horse. The promotion of formful racing performance is the intent of administering a therapeutic medication.

(3) **"Totalisator"** is the system used for recording, calculating, and disseminating information about ticket sales, wagers, odds and payout prices to patrons at a pari-mutuel wagering facility.

(4) **"Trial race"** is part of a series of races in which horses participate for the purpose of determining eligibility for a subsequent race.

(5) **"Tubing"** is the administration of any substance via a naso-gastric tube.

U. DEFINITIONS BEGINNING WITH THE LETTER "U": [Reserved.]

V. DEFINITIONS BEGINNING WITH THE LETTER "V": [Reserved.]

W. DEFINITIONS BEGINNING WITH THE LETTER "W":

(1) **"Walkover"** is a race in which only one (1) contestant starts or in which all the starters are owned by the same interest. To claim the purse the horse(s) must start and go the distance of the race.

(2) **"Week"** is a period of seven consecutive 24-hour periods.

(3) **"Weigh in"** is the presentation of a jockey to the clerk of scales for weighing after a race.

(4) **"Weigh out"** is the presentation of a jockey to the clerk of scales for weighing prior to a race.

(5) **"Weight for age"** is a race in which a fixed scale is used to assign the weight to be carried by individual horses according to age, sex, distance of the race, and season of the year.

(6) **"Winner"** is the horse whose nose reaches the finish line first or is placed first through disqualification by the stewards.

X. DEFINITIONS BEGINNING WITH THE LETTER "X": [Reserved.]

Y. DEFINITIONS BEGINNING WITH THE LETTER "Y": "Year" shall be a calendar year.

Z. DEFINITIONS BEGINNING WITH THE LETTER "Z": [Reserved.]

[15.2.1.7 NMAC - Rp, 15 NMAC 2.1.7, 03/15/2001; A, 02/14/2002; A, 08/30/2007]

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Subsection B of 15.2.2.8 NMAC allowing an association to offset a portion of its jockey and exercise rider insurance premium from gaming monies; to Subsection D of 15.2.2.8 NMAC giving an association 90 days after fiscal year-end to file an annual audit; and to Subsection E of 15.2.2.8 NMAC no longer requiring approval of concession items and prices by the commission. Effective 08/30/2007.

15.2.2.8 ASSOCIATIONS: B. FINANCIAL REQUIREMENTS: INSURER OF THE RACE MEETING

(1) Approval of a race meeting by the commission does not establish the commission as the insurer or guarantor of the safety or physical condition of the association's facilities or purse of any race.

(2) An association shall agree to indemnify, save and hold harmless the commission from any liability, if any, arising from unsafe conditions of association grounds and default in payment of purses.

(3) An association shall provide the commission with a certificate of liability insurance as required by the commission.

(4) An association shall maintain one or more trust accounts in financial institutions insured by the FDIC or other federal government agency for the deposit of nominations and futurity monies and those amounts deducted from the pari mutuel handle for distribution to persons other than the association according to the Act and commission rules. An association may invest nominations and futurities monies paid by owners in a U.S. Treasury Bill or other appropriate U.S. Government financial instrument instead of an account in a financial institution, in which case the provisions of this Rule shall apply to such instrument.

(5) An association shall keep its operating funds and other funds that belong exclusively to the association separate and apart from the funds in its trust accounts and from other funds or accounts it maintains for persons other than itself, such as a horsemen's book account.

(6) An association shall employ proper accounting procedures to insure accurate allocation of funds to the respective purses, parties and organizations and detailed records of such accounts shall be made available to the commission or its staff on demand in connection with any commission audit or investigation.

(7) An association shall insure that sufficient funds for the payment of all

purses on any race day are on deposit in a trust account at least two business days before the race day and shall provide the commission with documentation of such deposits prior to the race day. Exceptions to this subsection may be made by the commission or the agency director for good cause shown.

(8) An association shall add all interest accrued on funds in a trust account to the balance in the account and distribute the interest proportionally to those for whom the funds are held.

(9) An association and its managing officers are jointly and severally responsible to ensure that the amounts retained from the pari mutuel handle are distributed according to the Act and commission rules and not otherwise.

(10) An association and its managing officers shall ensure that all purse monies, disbursements and appropriate nomination race monies are available to make timely distribution in accordance with the Act, commission rules, association rules and race conditions.

(11) An association is authorized to offset a portion of the jockey and exercise rider insurance premium from gaming monies subject to the approval of the commission.

D. FINANCIAL REPORTS:

(1) The commission may require periodic audits to determine that the association has funds available to meet those distributions for the purposes required by the Act, commission rules, the conditions and nomination race program of the race meeting and the obligations incurred in the daily operation of the race meeting.

(2) An association shall file a copy of all tax returns, a balance sheet and a profit and loss statement.

(3) An association shall file with the commission an unaudited balance sheet and profit and loss statement as required by the commission. Those submissions must be in a format, which conforms to the requirements set out in the association license application.

(4) An association shall file an annual audit with the commission within ~~[60]~~ 90 days after the association's fiscal year-end. The commission, upon good cause shown, may extend the time for filing.

E. FACILITIES AND EQUIPMENT: FACILITIES FOR PATRONS AND LICENSEES:

(1) An association shall ensure that the public areas of the association grounds are designed and maintained for the comfort and safety of the patrons and licensees and are accessible to all persons with disabilities as required by federal law.

(2) An association shall provide and maintain adequate restroom facilities

for the patrons and licensees.

(3) An association shall provide an adequate supply of free drinking water.

(4) An association shall maintain all facilities on association grounds to ensure the safety and cleanliness of the facilities at all times.

(5) During a race performance, the association shall provide a first aid room equipped with at least two beds and other appropriate equipment; the services of at least one physician or certified emergency medical technician (EMT).

(6) An association shall provide two properly equipped ambulances, ready for immediate duty at any time the racetrack is open for racing or exercising. The ambulance shall be staffed with one certified paramedic or an intermediate EMT (as long as physician is on the grounds). The other staff will be certified EMTs. If the ambulance is being used to transport an individual, the association may not conduct a race until a properly equipped and staffed ambulance is in place, or a physician is on duty.

(7) Unless otherwise approved by the commission or the stewards, an ambulance shall follow the field at a safe distance during the running of races.

(8) The ambulance must be parked at an entrance to the racing strip except when the ambulance is being used to transport an individual or when it is following the field during the running of a race.

(9) An association shall provide adequate office space for the use of the stewards and other commission personnel as required by the commission. The location and size of the office space, furnishings and equipment required under this section must be approved by the commission.

(10) An association shall promptly post commission notices in places that can be easily viewed by patrons and licensees.

(11) An association shall ensure that all concessions provide prompt and efficient service to the public at all race meets or simulcast performances. The associations shall specifically ensure that concessions have adequate staff and inventory to provide prompt and efficient service to the public.

~~[(12) All concession items and prices showing size of food quantities, beverages, etc., and prices for the previous two years are to be submitted to the commission for approval a minimum of thirty (30) days prior to the first day of the race meet.]~~

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Paragraph (3) Subsection B of 15.2.3.8 NMAC amending the disciplinary actions of the stewards. Effective 08/30/2007.

15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

B. Stewards

(1) General Authority: The stewards for each meeting shall be responsible to the commission for the conduct of the race meeting in accordance with the laws of this state and these rules.

(a) The stewards shall enforce these rules and the racing laws of this state.

(b) The stewards' authority includes supervision of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with the act and these rules.

(c) The stewards shall have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of these rules.

(d) The stewards have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules. Whenever the stewards find any person culpable for any act or omission in violation of these regulations or any violation of the Horse Racing Act, the person shall be subject to disciplinary action, which could include a fine, suspension, or revocation/denial of license or any combination of these penalties.

(2) Period of Authority: The stewards' period of authority shall commence up to ten days prior to the beginning of each meeting and shall terminate with the completion of their business pertaining to the meeting. Following the completion of the stewards' business, the agency director shall carry out the duties of the stewards as described in this chapter.

(3) Disciplinary Action: The stewards shall take notice of alleged misconduct or rule violations and initiate investigations into the matters.

(a) The stewards shall have authority to charge any licensee for a violation of these rules, to conduct hearings and to impose disciplinary action in accordance with these rules.

(b) The stewards may compel the attendance of witnesses and the submission of documents or potential evidence related to any investigation or hearing.

(c) The stewards may at any time inspect license documents, registration papers, and other documents related to racing.

(d) The stewards have the power to administer oaths and examine witnesses.

(e) The stewards shall consult with the official veterinarian to determine the nature and seriousness of a laboratory finding or an alleged medication violation.

(f) The stewards may impose any of the following penalties on a licensee for a violation of the act or these rules: issue a reprimand; assess a fine; require forfeiture or redistribution of purse or award, when specified by applicable rules and/or at their discretion; place a licensee on probation; suspend a license or racing privileges; revoke a license; exclude from grounds under the jurisdiction of the commission.

(g) ~~The stewards may suspend a license for not more than the balance of the meet plus 45 days per violation; or they may impose a fine not to exceed \$1,500 per violation; or they may suspend and fine; or they~~ The stewards may order that a person be ineligible for licensing; or they may deny a license to an applicant on grounds set forth in the act or these rules.

(h) The stewards shall submit a written report to the commission of every inquiry and hearing.

(i) A stewards' ruling shall not prevent the commission from imposing a more severe penalty.

(j) The stewards may refer any matter to the commission and may include recommendations for disposition. The absence of a steward's referral shall not preclude commission action in any matter.

(k) Purses, prizes, awards, and trophies shall be redistributed if the stewards or commission order a change in the official order of finish.

(l) All fines imposed by the stewards shall be paid to the commission within 30 days after the ruling is issued, unless otherwise ordered.

(4) Protests, Objections, and Complaints: The stewards shall investigate promptly and render a decision in every protest, objection and complaint made to them. They shall maintain a record of all protests, objections and complaints. The stewards shall file daily with the commission a copy of each protest, objection or complaint and any related ruling.

(5) Stewards' Presence: Three stewards shall be present in the stewards' stand during the running of each race.

(6) Order of Finish for Pari-Mutuel Wagering:

(a) The stewards shall determine the official order of finish for each race in accordance with 15.2.5 NMAC.

(b) The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, shall be final for purposes of distribution of the pari-mutuel wagering

pool.

(7) Cancel Wagering: The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering.

(8) Records and Reports:

(a) The stewards shall prepare a daily report, on a form approved by the commission, detailing their actions and observations made during each day's race program. The report shall contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, and objections and any unusual circumstances or conditions. The report shall be signed by each steward and be filed with the commission not later than 24 hours after the end of each race day.

(b) The stewards shall maintain a detailed log of the stewards' official activities. The log shall describe all questions, disputes, protests, complaints, or objections brought to the attention of the stewards and all interviews, investigations and rulings made by the stewards. The log shall be available at all times for inspection by the commission or its designee.

(c) Not later than seven days after the last day of a race meeting, the stewards shall submit to the commission a written report regarding the race meeting. The report shall contain: the stewards' observations and comments regarding the conduct of the race meeting and the overall conditions of the association grounds during the race meeting; any recommendations for improvement by the association or action by the commission.

(9) Stewards' List:

(a) The stewards shall maintain a stewards' list of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that endangers the health or safety of other participants in racing.

(b) The stewards may place a horse on the stewards' list when there exists a question as to the exact identification or ownership of said horse.

(c) A horse which has been placed on the stewards' list because of inconsistent performance or behavior, may be removed from the stewards' list when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing.

(d) A horse which has been placed on the stewards' list because of questions as to the exact identification or ownership of said horse, may be removed from the stewards' list when, in the opinion of the stewards, proof of exact identification and/or ownership has been established.

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Section 12 of 15.2.5 NMAC regarding when a horse is ineligible to start in a race, and an amendment to Subsection A of 15.2.5.13 NMAC adding toe grabs no greater than four millimeters as equipment and stating the penalty for a violation. Effective 08/30/2007.

15.2.5.12 HORSES INELIGIBLE:

A horse shall be ineligible to start in a race when:

(1) it is not stabled on the grounds of the association or present by the time established by the commission;

(2) its breed registration certificate is not on file with the racing secretary or horse identifier; unless the racing secretary has submitted the certificate to the appropriate breed registry for correction; or when the stewards are satisfied the horse has been properly identified;

(3) it is not fully identified and tattooed on the inside of the upper lip;

(4) it has been fraudulently entered or raced in any jurisdiction under a different name, with an altered registration certificate or altered lip tattoo;

(5) it is wholly or partially owned by a disqualified person or a horse is under the direct or indirect training or management of a disqualified person;

(6) it is wholly or partially owned by the spouse of a disqualified person or a horse is under the direct or indirect management of the spouse of a disqualified person, in such cases, it being presumed that the disqualified person and spouse constitute a single financial entity with respect to the horse, which presumption may be rebutted;

(7) the stakes or entrance money for the horse has not been paid, in accordance with the conditions of the race;

(8) the losing jockey mount fee is not on deposit with the horsemen's bookkeeper;

(9) its name appears on the starter's list, stewards' list or veterinarian's list;

(10) it is a first time starter and has not been approved to start by the starter;

(11) it is owned in whole or in part by an undisclosed person or interest;

(12) it lacks sufficient official published workouts or race past performance(s);

(13) it has been entered in a stakes race and has subsequently been transferred with its engagements, unless the racing secretary has been notified of such prior to the start;

(14) it is subject to a lien which has not been approved by the stewards and

filed with the horsemen's bookkeeper;

(15) it is subject to a lease not filed with the stewards;

(16) it is not in sound racing condition;

(17) it has had a surgical neurectomy performed on a heel nerve, which has not been approved by the official veterinarian;

(18) it has been trachea tubed to artificially assist breathing;

(19) it has been blocked with alcohol or otherwise drugged or surgically denerved to desensitize the nerves above the ankle;

(20) it has impaired eyesight in both eyes;

(21) it is barred or suspended in any recognized jurisdiction;

(22) it does not meet the eligibility conditions of the race;

(23) its owner or lessor is in arrears for any stakes fees, except with approval of the racing secretary;

(24) its owner(s), lessor(s) and/or trainer have not completed the licensing procedures required by the commission;

(25) it is by an unknown sire or out of an unknown mare;

(26) there is no current negative test certificate for Equine Infectious Anemia attached to its breed registration certificate, as required by ~~statute~~ the commission.

15.2.5.13 RUNNING OF THE RACE:

A. EQUIPMENT:

(1) No whip shall weigh more than one pound nor exceed 31 inches in length, including the popper. No whip shall be used unless it has affixed to the end a looped popper not less than one and one-quarter (1 1/4) inches in width, and not over three (3) inches in length, and be feathered above the popper with not less than three (3) rows of feathers, each feather not less than one (1) inch in length. There shall be no holes in the popper. All whips are subject to inspection and approval by the stewards.

(2) No bridle shall exceed two pounds.

(3) Toe grabs with a height greater than four millimeters worn on the front shoes of horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

~~(3)~~ (4) A horse's tongue may be tied down with clean bandages, gauze or tongue strap.

~~(4)~~ (5) No licensee may add blinkers to a horse's equipment or discontinue their use without the prior approval of the starter, the paddock judge, and the stewards.

~~(5)~~ (6) No licensee may change any equipment used on a horse in its last

race without approval of the paddock judge or stewards.

~~(6)~~ (7) All jockeys and exercise riders must wear a fastened protective helmet and fastened safety vest when mounted. The safety vest shall weigh no more than two pounds and shall be designed to provide shock-absorbing protection to the upper body of at least a rating of five, as defined by the British Equestrian Trade Association (BETA).

NEW MEXICO RACING COMMISSION

Explanatory Paragraph: This is an amendment to Section 9 of 15.2.6 NMAC amending the disciplinary ability of the stewards and to Subsection C of 15.2.6.9 NMAC of Paragraph (3) Subsection B of 15.2.3.8 NMAC amending the levels of furosemide per milliliter of serum or plasma and an amendment to Subsection E of 15.2.6.11 NMAC amending the Equine Infection Anemia (EIA) requirements. Effective 08/30/2007.

15.2.6.9 MEDICATIONS AND PROHIBITED SUBSTANCES:

The "uniform classification guidelines for foreign substances and recommended penalties and model rule", revised April 15, 2004, as issued by the association of racing commissioners international, is incorporated by reference. Upon a finding of a violation of these medication and prohibited substances rules, the stewards shall consider the classification level of the violation as listed at the time of the violation by the uniform classification guidelines of foreign substances as promulgated by the association of racing commissioners international and impose penalties and disciplinary measures consistent with the recommendations contained therein. The guidelines and recommended penalties shall be provided to all license holders by attachment to this section. Provided, however, that in the event a majority of the stewards determine that mitigating circumstances require imposition of a lesser penalty they may impose the lesser penalty. ~~[In the event a majority of the stewards wish to impose a greater penalty or a penalty in excess of the authority granted them, then, and in such event, they may impose the maximum penalty authorized and refer the matter to the commission with specific recommendations for further action.]~~

C. MEDICATION RESTRICTIONS:

(1) A finding by the official chemist of a prohibited drug, chemical or other substance in a test specimen of a horse is prima facie evidence that the prohibited drug, chemical or other substance was

administered to the horse and, in the case of a post-race test, was present in the horse's body while it was participating in a race. Prohibited substances include: drugs or medications for which no acceptable levels have been established; therapeutic medications in excess of established acceptable levels; substances present in the horse in excess of levels at which such substances could occur naturally; substances foreign to a horse at levels that cause interference with testing procedures.

(2) Drugs or medications in horses are permissible, provided: the drug or medication is listed by the association of racing commissioners international's drug testing and quality assurance program; the maximum permissible urine or blood concentration of the drug or medication does not exceed the published limit.

(3) Except as otherwise provided by this part, a person may not administer or cause to be administered by any means to a horse a prohibited drug, medication, chemical or other substance, including any restricted medication pursuant to this part during the 24-hour period before post time for the race in which the horse is entered.

(a) **Phenylbutazone:** The use of phenylbutazone shall be permitted under the following conditions: Any horse to which phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s). The permitted quantitative test level of phenylbutazone or oxyphenbutazone shall be administered in such dosage amount that the official test sample shall not exceed 5 micrograms per milliliter of plasma.

(b) **Furosemide (Salix):** furosemide (Salix) may be administered intravenously to a horse, which is entered to compete in a race. Except under the instructions of the official veterinarian for the purpose of removing a horse from the veterinarian's list or to facilitate the collection of a post-race urine sample, furosemide (Salix) shall be permitted only after the trainer enters the horse on the bleeder list by so declaring it as a bleeder on the entry card.

(i) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for the race for which the horse is entered. A horse qualified for a furosemide (Salix) administration must be brought to the detention barn within time to comply with the three-hour administration requirement specified above. ~~The dose administered in such dosage amount that the official test sample~~

~~shall not exceed 250 milligrams nor be less than 100 milligrams.]~~ After treatment, the horse shall be required by the commission to remain in the detention barn in the care, custody and control of its trainer or the trainer's designated representative under association and/or commission security supervision until called to the saddling paddock.

(ii) The use of furosemide (Salix) shall be permitted under the following circumstances on association grounds where a detention barn is not utilized: furosemide (Salix) shall be administered no less than three hours prior to post time for the race for which the horse is entered; the furosemide (Salix) dosage administered shall not exceed 250 milligrams nor be less than 100 milligrams; the trainer of the treated horse shall cause to be delivered to the official veterinarian or his/her designee no later than one hour prior to post time for the race for which the horse is entered the following information under oath on a form provided by the commission: the racetrack name, the date and time the furosemide (Salix) was administered to the entered horse; the dosage amount of furosemide (Salix) administered to the entered horse; the printed name and signature of the attending licensed veterinarian who administered the furosemide (Salix).

(iii) Quantitation of furosemide in serum or plasma shall be performed when specific gravity of the corresponding urine sample is not measured or if measured below 1.010. Concentrations may not exceed 100 nanograms of furosemide per milliliter of serum or plasma.

~~(iii)~~ (iv) **Bleeder List.** The official veterinarian shall maintain a bleeder list of all horses, which have been certified as bleeder horses. Such certified horses must have been entered by the trainer as a bleeder to obtain certification.

~~(iv)~~ (v) The confirmation of a bleeder horse must be certified in writing by the official veterinarian or the racing veterinarian and entered on the bleeder list. Copies of the certification shall be issued to the owner of the horse or the owner's designee upon request. A copy of the bleeder certificate shall be attached to the horse's certificate of registration.

~~(v)~~ (vi) Every confirmed bleeder, regardless of age, shall be placed on the bleeder list.

~~(vi)~~ (vii) A horse may be removed from the bleeder list only upon the direction of the official veterinarian, who shall certify in writing to the stewards the recommendation for removal and only after remaining on the bleeder list for a minimum of sixty (60) days.

~~(vii)~~ (viii) A horse, which has been placed on a bleeder list in

another jurisdiction, may be placed on a bleeder list in this jurisdiction by entering the horse into a race by so declaring it on the entry card as a bleeder in another jurisdiction.

(c) **Flunixin:** In addition to phenylbutazone and furosemide, flunixin may be administered in such dosage amount that the official test sample shall not exceed 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(d) **Meclofenamic acid:** In addition to phenylbutazone and furosemide, meclofenamic acid may be administered in such dosage amount that the official test sample shall not exceed 1.0 microgram per milliliter of the drug substance, its metabolites, or analogs, per milliliter of blood plasma.

(e) **Ketoprofen:** In addition to phenylbutazone and furosemide, ketoprofen may be administered in such dosage amount that the official test sample shall not exceed 50 nanograms per milliliter of the drug substance, its metabolites, or analogs, per milliliter of plasma.

(4) The official urine test sample may contain one of the following drug substances, their metabolites or analogs, in any amount that does not exceed the specified levels:

(a) **Acepromazine:** The use of acepromazine shall be permitted under the following conditions: Any horse to which acepromazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of acepromazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

(b) **Albuterol:** The use of albuterol shall be permitted under the following conditions: Any horse to which albuterol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of albuterol shall not exceed 1 nanogram per milliliter of urine, or its blood equivalent.

(c) **Atropine:** The use of atropine shall be permitted under the following conditions: Any horse to which atropine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The

permitted quantitative test level of atropine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(d) Benzocaine: The use of benzocaine shall be permitted under the following conditions: Any horse to which benzocaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of benzocaine shall not exceed 50 nanograms per milliliter of urine, or its blood equivalent.

(e) Mepivacaine: The use of mepivacaine shall be permitted under the following conditions: Any horse to which mepivacaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of mepivacaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(f) Procaine: The use of procaine shall be permitted under the following conditions: Any horse to which procaine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of procaine shall not exceed 10 nanograms per milliliter of urine, or its blood equivalent.

(g) Promazine: The use of promazine shall be permitted under the following conditions: Any horse to which promazine has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of promazine shall not exceed 25 nanograms per milliliter of urine, or its blood equivalent.

(h) Salicylates: The use of salicylates shall be permitted under the following conditions: Any horse to which salicylates have been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of salicylates shall not exceed 750 micrograms per milliliter of urine, or its blood equivalent.

(i) Clenbuterol: The use of clenbuterol shall be permitted under the following conditions: Any horse to which clenbuterol has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the official veterinarian to determine the quantitative level(s) and/or the presence of other drugs, which may be present in the blood or urine sample. The permitted quantitative test level of clenbuterol shall be administered in such dosage amount that the official test sample shall not exceed 5 nanograms per milliliter of urine, or its blood equivalent.

15.2.6.11 TRAINER RESPONSIBILITY: The purpose of this subsection is to identify responsibilities of the trainer that pertain specifically to the health and well being of horses in his/her care.

A. The trainer is responsible for the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug, medication or other substance, including permitted medication in excess of the maximum allowable level, in such horses. A positive test for a prohibited drug, medication or substance, including permitted medication in excess of the maximum allowable level, as reported by a Commission-approved laboratory, is prima facie evidence of a violation of this rule.

B. A trainer shall prevent the administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

C. A trainer whose horse has been claimed remains responsible for any violation of rules regarding that horse's participation in the race in which the horse is claimed.

D. The trainer is responsible for: maintaining the assigned stable area in a clean, neat and sanitary condition at all times; using the services of those veterinarians licensed by the Commission to attend horses that are on association grounds.

E. Additionally, with respect to horses in his/her care or custody, the trainer is responsible for:

(1) the proper identity, custody, care, health, condition and safety of horses;

~~**(2)** ensuring that at the time of arrival at locations under the jurisdiction of the Commission a valid health certificate and a valid negative Equine Infectious Anemia (EIA) test certificate within one year accompany each horse and which, where applicable, shall be filed with the racing secretary;~~

(3) **(2)** having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) and for filing evi-

dence of such negative test results with the racing secretary as required by the commission;

~~**(4)**~~ **(3)** immediately reporting the alteration of the sex of a horse to the horse identifier and the racing secretary;

~~**(5)**~~ **(4)** promptly reporting to the racing secretary and the official veterinarian when a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

~~**(6)**~~ **(5)** promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

~~**(7)**~~ **(6)** promptly reporting the serious injury and/or death of any horse at locations under the jurisdiction of the Commission to the stewards and the official veterinarian and compliance with the rules in this part governing postmortem examinations;

~~**(8)**~~ **(7)** maintaining knowledge of the medication record and status;

~~**(9)**~~ **(8)** immediately reporting to the stewards and the official veterinarian knowledge or reason to believe, that there has been any administration of a prohibited medication, drug or substance;

~~**(10)**~~ **(9)** ensuring the fitness to perform creditably at the distance entered;

~~**(11)**~~ **(10)** ensuring that every horse he/she has entered to race is present at its assigned stall for a pre-race soundness inspection as prescribed in this part;

~~**(12)**~~ **(11)** ensuring proper bandages, equipment and shoes;

~~**(13)**~~ **(12)** presence in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

~~**(14)**~~ **(13)** personally attending in the paddock and supervising the saddling thereof, unless excused by the stewards;

~~**(15)**~~ **(14)** attending the collection of a urine or blood sample or delegating a licensed employee or the owner to do so;

~~**(16)**~~ **(15)** immediately reporting to the stewards any administration of any medication or drugs, except as provided, within twenty-four (24) hours of post time of the race in which the horse has been entered;

~~**(17)**~~ **(16)** immediately submitting to the official veterinarian and the racing secretary the necessary forms to scratch any horse treated with any medication, or drug, within twenty-four (24) hours of the post time of the race in which the horse has been entered unless such treatment is permitted herein.

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection C of 16.47.1.10 NMAC amending trainer's responsibility regarding new restrictions on the length of toe grabs, health certificates and EIA requirements; to 16.47.1.18 NMAC and 16.47.1.20 NMAC regarding stewards' authority. Effective 08/30/2007.

16.47.1.10 TRAINERS A. ELIGIBILITY:

(1) An applicant for a license as trainer or assistant trainer must be at least 18 years of age; be qualified, as determined by the stewards or other commission designee, by reason of experience, background and knowledge of racing; a trainer's license from another jurisdiction, having been issued within a 24 month period by the commission, may be accepted as evidence of experience and qualifications; evidence of qualifications may require passing one or more of the following: a written examination; an interview or oral examination; a demonstration of practical skills in a barn test given by a committee of trainers appointed by the New Mexico Horsemen's Association and approved by the commission.

(2) Applicants not previously licensed as a trainer shall be required to pass a written/oral examination, demonstrate practical skills, and submit at least two written statements as to the character and qualifications of the applicant, and documentation of having completed a six month apprenticeship under the direct supervision of a licensed trainer or assistant trainer.

(a) Applicants failing the first written/oral examination must wait thirty (30) days before retaking the trainer's test.

(b) Applicants failing the second written/oral examination must wait sixty (60) days before retaking the trainer's test.

(c) Applicants failing the third written/oral examination must wait one (1) year before retaking the trainer's test.

B. ABSOLUTE INSURER:

(1) The trainer is the absolute insurer of the condition of horses entered in an official workout or race and is responsible for the presence of any prohibited drug or medication, or other prohibited substance in such horses. A positive test for a prohibited drug or medication or other prohibited substance or the presence of permitted medication in excess of maximum allowable levels as reported by a commission-approved laboratory is prima facie evidence of a violation of this rule. The trainer is absolutely responsible regardless of the acts of third parties.

(2) A trainer must prevent the

administration of any drug or medication or other prohibited substance that may cause a violation of these rules.

(3) A trainer whose horse has been claimed remains the absolute insurer for the race in which the horse is claimed.

C. OTHER RESPONSIBILITY: A trainer is responsible for:

(1) the condition and contents of stalls, tack rooms, feed rooms, sleeping rooms and other areas which have been assigned by the association;

(2) maintaining the assigned stable area in a clean, neat, and sanitary condition at all times;

(3) ensuring that fire prevention rules are strictly observed in the assigned stable area;

(4) providing a list to the chief of security of the trainer's employees on association grounds and any other area under the jurisdiction of the commission; the list shall include each employee's name, occupation, social security number, and occupational license number; the chief of security shall be notified by the trainer, in writing, within 24 hours of any change;

(5) the proper identity, custody, care, health, condition, and safety of horses in his/her charge;

(6) disclosure of the true and entire ownership of each horse in his/her care, custody or control; any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary;

(7) training all horses owned wholly or in part by him/her which are participating at the race meeting; registering with the racing secretary each horse in his/her charge within 24 hours of the horse's arrival on association grounds;

(8) immediately notify the stewards and commission veterinarian of all out-of-state certified horses on **Salix@**;

~~(9) ensuring that, at the time of arrival at a licensed racetrack, each horse in his/her care is accompanied by a valid health certificate as required by the commission;~~

~~(10)~~ (9) having each horse in his/her care that is racing, or is stabled on association grounds, tested for Equine Infectious Anemia (EIA) [~~within one year~~] and for filing evidence of such negative test results with the racing secretary as required by the commission;

(11) using the services of those veterinarians licensed by the commission to attend horses that are on association grounds;

(12) immediately reporting the alteration in the sex of a horse in his/her care to the horse identifier and the racing secretary, whose office shall note such alteration on the certificate of registration;

(13) promptly reporting to the

racing secretary and the official veterinarian any horse on which a posterior digital neurectomy (heel nerving) is performed and ensuring that such fact is designated on its certificate of registration;

(14) promptly notifying the official veterinarian of any reportable disease and any unusual incidence of a communicable illness in any horse in his/her charge;

(15) promptly reporting the death of any horse in his/her care on association grounds to the stewards and the official veterinarian and compliance with the rules in Subsection C of 15.2.6.12 NMAC governing post-mortem examinations;

(16) maintaining a knowledge of the medication record and status of all horses in his/her care;

(17) immediately reporting to the stewards and the official veterinarian if he/she knows, or has cause to believe, that a horse in his/her custody, care or control has received any prohibited drugs or medication;

(18) representing an owner in making entries and scratches and in all other matters pertaining to racing; horses entered as to eligibility and weight or other allowances claimed;

(19) horses entered as to eligibility and weight or other allowances claimed;

(20) ensuring the fitness of a horse to perform creditably at the distance entered;

(21) ensuring that his/her horses are properly shod, bandaged, and equipped;

(a) Toe grabs with a height greater than four millimeters worn on the front shoes of horses while racing are prohibited. The horse shall be scratched and the trainer may be subject to fine.

(22) presenting his/her horse in the paddock at least 20 minutes before post time or at a time otherwise appointed before the race in which the horse is entered;

(23) personally attending to his/her horses in the paddock and supervising the saddling thereof, unless excused by the stewards;

(24) instructing the jockey to give his/her best effort during a race and that each horse shall be ridden to win;

(25) attending the collection of urine or blood sample from the horse in his/her charge or delegating a licensed employee or the owner of the horse to do so;

(26) notifying horse owners upon the revocation or suspension of his/her trainer's license; upon application by the owner, the stewards may approve the transfer of such horses to the care of another licensed trainer, and upon such approved transfer, such horses may be entered to race.

D. ASSISTANT TRAINERS:

(1) A trainer may employ an assistant trainer, who shall be equally responsi-

ble with the employing trainer for the condition of the horses in their care. The name of the assistant trainer shall be shown on the official program along with that of the employing trainer.

(2) Qualifications for obtaining an assistant trainer's license shall be prescribed by the stewards and the commission may include those requirements prescribed in Subsection A, Paragraph 1 of 16.47.1.10 NMAC.

(3) An assistant trainer shall assume the same duties and responsibilities as imposed on the licensed trainer.

(4) The trainer shall be jointly responsible for the assistant trainer's compliance with the rules governing racing.

E. SUBSTITUTE TRAINERS:

(1) If any licensed trainer is prevented from performing his duties or is absent from the track where he is participating, the stewards shall be immediately notified, and at the same time, a substitute trainer or assistant trainer, acceptable to the stewards, shall be appointed. The stewards shall be advised when the regular trainer resumes his duties.

(2) A substitute trainer must accept responsibility for the horses in writing and be approved by the stewards.

(3) A substitute trainer and the absent trainer shall be jointly responsible as absolute insurers of the condition of their horses entered in an official workout or race pursuant to Subsection B, Paragraphs (1), (2) and (3) of 16.47.1.10.

[16.47.1.10 NMAC - Rp, 16 NMAC 47.1.10, 03/15/2001; A, 11/15/2001; A, 03/30/2007; A, 08/30/2007]

16.47.1.18 ASSESSMENT/TREATMENT REQUIREMENTS:

A. GENERAL: A licensee penalized or restricted pursuant to this chapter shall retain rights of due process with respect to any determination of alleged violations which may adversely affect the right to hold a license. If there has been an offense, under 16.47.1.17 NMAC, above, the procedures in Subsections B, C and D of 16.47.1.18 NMAC will be followed.

B. FIRST-TIME OFFENDERS:

(1) The board of stewards or the commission may, at its discretion, order the licensee to obtain a professional assessment to determine whether there is a substantial probability that the licensee is dependent on, or abuses, alcohol or other drugs or the board of stewards or the commission may act on the information at hand.

(2) Actions in the case of first offenders may include revocation of the license, suspension of the license for up to six (6) months, placing the offender on pro-

bation for up to ninety (90) days or ordering formal assessment and treatment.

(3) Treatment or assessment, if ordered, must meet the conditions given in 16.47.1.18.C NMAC.

C. SECOND-TIME OFFENDERS:

(1) The license of the person may be revoked or suspended for a period of up to one year or a professional assessment of the person may be ordered by the commission.

(2) If a professional assessment indicates presence of a problem or alcohol or other drug abuse that is not treatable within the reasonably foreseeable future (360 days) the license may be suspended for a period of up to one year.

(3) If a professional assessment indicates presence of a treatable problem of alcohol or other drug abuse or dependence, the board of stewards or the commission may order the licensee to undergo treatment as a condition of continuing licensure. Such treatment will be through a program or by a practitioner, acceptable to the licensee and the board of stewards or the commission. Required features of any program or practitioner acceptable to the board of stewards or the commission will be: accreditation or licensure by an appropriate government agency, if required by state statute; a minimum of one year follow-up treatment; and, a formal contract indicating the elements of the treatment and follow-up program that will be completed by the licensee and, upon completion, certified to the board of stewards or the commission as completed. To effect the contract, the licensee will authorize release of information by the treating agency, hospital or individual.

D. THIRD-TIME OFFENDERS: For third-time offenders, the offender's license may be revoked and the offender may be deemed ineligible for licensure for up to five years.

[16.47.1.18 NMAC - Rp, 16 NMAC 47.1.18, 03/15/2001; A, 08/30/2007]

16.47.1.20 POST-RELAPSE PROCEDURES

A. When a licensee is determined to have failed in maintaining abstinence, the licensee shall furnish to the board of stewards or the commission an assessment by the treating agency, hospital or individual practitioner indicating whether the licensee was compliant with the agreed upon program of recovery, and an opinion as to whether a "new offense" occurred.

B. The board of stewards or the commission will determine whether a new offense has occurred in each instance. If a new offense has occurred, the board of stewards or the commission will proceed under Subsections B or C of 16.47.1.18

NMAC. Otherwise, the licensee shall continue in the agreed upon program of recovery.

[16.47.1.20 NMAC - Rp, 16 NMAC 47.1.20, 03/15/2001; A, 08/30/2007]

NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION

14.7.2 NMAC, 2003 New Mexico Commercial Building Code (filed 5-27-04) was replaced by 14.7.2 NMAC, 2006 New Mexico Commercial Building Code, effective 1-1-08.

14.7.3 NMAC, 2003 New Mexico Residential Building Code (filed 5-27-04) was replaced by 14.7.3 NMAC, 2006 New Mexico Residential Building Code, effective 1-1-08.

14.7.4 NMAC, 2003 New Mexico Earthen Building Materials Code (filed 10-18-04) was replaced by 14.7.4 NMAC, 2006 New Mexico Earthen Building Materials Code, effective 1-1-08.

14.7.5 NMAC, 2003 New Mexico Non-Load Bearing Baled Straw Construction Building Standards (filed 10-18-04) was replaced by 14.7.5 NMAC, 2006 New Mexico Non-Load Bearing Baled Straw Construction Building Standards, effective 1-1-08.

14.7.6 NMAC, 2003 New Mexico Energy Conservation Code (filed 5-27-04) was replaced by 14.7.6 NMAC, 2006 New Mexico Energy Conservation Code, effective 1-1-08.

14.7.7 NMAC, 2003 New Mexico Existing Building Code (filed 5-27-04) was replaced by 14.7.7 NMAC, 2006 New Mexico Existing Building Code, effective 1-1-08.

14.7.8 NMAC, 2003 New Mexico Historic Earthen Buildings (filed 1-3-06) was replaced by 14.7.8 NMAC, 2006 New Mexico Historic Earthen Buildings, effective 1-1-08.

14.8.2 NMAC, 2003 New Mexico Plumbing Code (filed 5-27-04) was replaced by 14.8.2 NMAC, 2006 New Mexico Plumbing Code, effective 1-1-08.

14.9.2 NMAC, 2003 New Mexico Mechanical Code (filed 5-27-04) was replaced by 14.9.2 NMAC, 2006 New Mexico Mechanical Code, effective 1-1-08.

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 2 2006 NEW MEXICO
COMMERCIAL BUILDING CODE**

14.7.2.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.7.2.1 NMAC - Rp, 14.7.2.1 NMAC, 1-1-08]

14.7.2.2 SCOPE: This rule applies to the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of every building or structure or any appurtenances connected or attached to such building or structure performed in New Mexico on or after January 1, 2008, 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.

A. Exception 1. Detached one- and two-family dwellings and multiple single-family dwellings (town houses) not more than three (3) stories high with separate means of egress, and their accessory structures shall comply with the 14.7.3 NMAC, 2006 New Mexico residential building code (NMRBC).

B. Exception 2. Existing buildings, not subject to the NMRBC, undergoing a change of occupancy, repair, alterations or additions shall comply with either 14.7.2 NMAC, 2006 New Mexico commercial building code, or 14.7.7 NMAC, 2006 New Mexico existing building code, as applicable. [14.7.2.2 NMAC - Rp, 14.7.2.2 NMAC, 1-1-08]

14.7.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 60-13-9 and 60-13-44. [14.7.2.3 NMAC - Rp, 14.7.2.3 NMAC, 1-1-08]

14.7.2.4 DURATION: Permanent. [14.7.2.4 NMAC - Rp, 14.7.2.4 NMAC, 1-1-08]

14.7.2.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section. [14.7.2.5 NMAC - Rp, 14.7.2.5 NMAC, 1-1-08]

14.7.2.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for the general construction of commercial buildings in New Mexico. [14.7.2.6 NMAC - Rp, 14.7.2.6 NMAC, 1-1-08]

14.7.2.7 DEFINITIONS: See 14.5.1 NMAC, General Provisions and chapter 2 of the 2006 international building code (IBC) as amended in 14.7.2.10 NMAC. [14.7.2.7 NMAC - Rp, 14.7.2.7 NMAC, 1-1-08]

14.7.2.8 ADOPTION OF THE 2006 INTERNATIONAL BUILDING CODE:

A. This rule adopts by reference the 2006 international building code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2006 international building code.

[14.7.2.8 NMAC - Rp, 14.7.2.8 NMAC, 1-1-08]

14.7.2.9 CHAPTER 1 ADMINISTRATION:

A. Section 101 - General.

(1) 101.1 Title. Delete this section of the IBC and substitute: This code shall be known as the 2006 New Mexico commercial building code (NMCBC).

(2) 101.2 Scope. Delete this section of the IBC and see 14.7.2.2 NMAC, Scope.

(3) 101.2.1 Appendices. This rule adopts the following appendices as amended herein:

(a) Appendix C - group U- agricultural buildings;

(b) Appendix E - supplementary accessibility requirements; and

(c) Appendix J - grading.

(4) 101.3 Intent. Delete this section of the IBC and see the scope section above, at 14.7.2.6 NMAC, Objective.

(5) 101.4 Referenced codes. The codes referenced in the NMCBC are:

(a) 101.4.1 Electrical. Delete this section of the IBC and substitute: The 2005 New Mexico electrical code (NMEC) applies to all electrical wiring as defined in CILA Section 60-13-32. All references in the IBC to the ICC electrical code are deemed references to the NMEC.

(b) 101.4.2 Gas. Delete this section of the IBC and substitute: The 2006 New Mexico mechanical code (NMMC) applies to "gas fittings" as that term is defined in CILA Section 60-13-32. All references in the IBC to the international fuel gas code are deemed references to the NMMC or the LPG standards, 19.15.40 NMAC and NMSA 1978 70-5-1 et seq., col-

lectively. Gas piping, systems and appliances for use with liquefied propane gas (LPG), or compressed natural gas (CNG), shall be governed by the LPG standards.

(c) 101.4.3 Mechanical. Delete this section of the IBC and substitute: The 2006 NMMC applies to the installation, repair and replacement of mechanical systems including equipment, appliances, fixtures, fittings and/or appurtenances including ventilating, heating, cooling, air conditioning and refrigeration systems, incinerators and other energy related systems. All references in the IBC to the international mechanical code are deemed references to the NMMC.

(d) 101.4.4 Plumbing. Delete this section of the IBC and substitute: The 2006 New Mexico plumbing code (NMPC) applies to the installation, alterations, repairs and replacement of plumbing systems, including equipment, appliances, fixtures, fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. All references in the IBC to the international plumbing code are deemed references to the NMPC.

(e) 101.4.5 Property maintenance. Delete this section of the IBC.

(f) 101.4.6 Fire prevention. Delete this section of the IBC.

(g) 101.4.7 Energy. Delete this section of the IBC and substitute: The provisions of the 2006 New Mexico energy conservation code (NMECC) shall apply to the energy conservation aspects of general commercial construction.

B. Section 102 - Applicability.

(1) Section 102.1 General. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions.

(2) Section 102.2 Other laws. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions.

(3) Section 102.3 Application of references. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions.

(4) Section 102.4 Referenced codes and standards. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions.

(5) Section 102.5 Partial invalidity. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions.

(6) Section 102.6 Existing structures. Delete this section of the IBC and substitute: The legal occupancy of any structure existing on the effective date of this rule shall be permitted to continue without change, except as is specifically provided otherwise in this rule, in the 2006 New Mexico existing building code, or by the building official in consideration of the general safety and welfare of the occupants of any such building and the general public.

C. Section 103 - Department of building safety. Delete this section of the IBC.

D. Section 104 - Duties and powers of building official. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions.

E. Section 105 - Permits. Delete this section of the IBC except as provided in 14.5.2 NMAC, Permits.

F. Section 106 - Construction documents. Delete this section of the IBC except as provided in 14.5.2 NMAC, Permits.

G. Section 107 - Temporary structures and uses. Delete this section of the IBC and see 14.5.2 NMAC, Permits.

H. Section 108 - Fees. Delete this section of the IBC and see 14.5.5 NMAC, Fees.

I. Section 109 - Inspections.

(1) 109.1 General. Delete this section of the IBC except as provided in 14.5.3 NMAC, Inspections.

(2) 109.2 Preliminary inspection. Delete this section of the IBC except as provided in 14.5.2 NMAC, Permits.

(3) 109.3 Required inspections. Delete this section of the IBC except as provided in 14.5.3 NMAC, Inspections.

(4) 109.4 Inspection agencies. Delete this section of the IBC and see 14.5.3 NMAC, Inspections.

(5) 109.5 Inspection requests. Delete this section of the IBC except as provided in 14.5.3 NMAC, Inspections.

(6) 109.6 Approval required. Delete this section of the IBC except as provided in 14.5.3 NMAC, Inspections.

J. Section 110 - Certificate of Occupancy. Delete this section of the IBC and see 14.5.2 NMAC, Permits.

K. Section 111 - Service Utilities. Delete this section of the IBC and see 14.5.2 NMAC, Permits.

L. Section 112 - Board of Appeals. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions.

M. Section 113 - Violations. Delete this section of the IBC and see 14.5.3 NMAC, Inspections.

N. Section 114 - Stop Work Order. Delete this section of the IBC and see 14.5.3 NMAC, Inspections.

O. Section 115 - Unsafe Structures and Equipment. Delete this section of the IBC and see 14.5.1 NMAC, General Provisions. [14.7.2.9 NMAC - Rp, 14.7.2.9 NMAC, 1-1-08]

14.7.2.10 CHAPTER 2 DEFINITIONS: See this section of the IBC except as provided below.

A. Section 201.1 Scope. See this section of the IBC except add the following: If the same term is defined in the New Mexico construction codes and in the IBC, it shall have the meaning given it in the New Mexico construction codes.

B. Section 201.3 Terms defined in other codes. Delete this section of the IBC and substitute: If a term is not defined in this code and is defined in a New Mexico construction code, the term shall have the meaning given it in the New Mexico construction code.

C. Section 202. Definitions. See this section of the IBC and add the following definition. **Unbalanced backfill height** means the difference in height between the exterior finish ground level and the lower of the top of the concrete footing that supports the foundation wall or the interior finish ground level. Where an interior concrete slab on grade is provided and is in contact with the interior surface of the foundation wall, the unbalanced backfill height is permitted to be measured from the exterior finish ground level to the top of the interior concrete slab. [14.7.2.10 NMAC - Rp, 14.7.2.10 NMAC, 1-1-08]

14.7.2.11 CHAPTER 3 USE AND OCCUPANCY CLASSIFICATION: See this chapter of the IBC except **Section 304.1** is amended to add fire and police stations to the business "B" occupancy group. [14.7.2.11 NMAC - Rp, 14.7.2.11 NMAC, 1-1-08]

14.7.2.12 CHAPTER 4 SPECIAL DETAILED REQUIREMENTS BASED ON USE AND OCCUPANCY: See this chapter of the IBC with the following exception: Section 404.1.1, the definition of the term "ATRIUM," is amended to substitute the words "floor levels" for the word "stories." [14.7.2.12 NMAC - Rp, 14.7.2.12 NMAC, 1-1-08]

14.7.2.13 CHAPTER 5 GENERAL HEIGHTS AND BUILDING AREAS: See this chapter of the IBC. [14.7.2.13 NMAC - Rp, 14.7.2.13 NMAC, 1-1-08]

14.7.2.14 CHAPTER 6 TYPES OF CONSTRUCTION: See this chapter of the IBC. [14.7.2.14 NMAC - Rp, 14.7.2.15 NMAC, 1-1-08]

14.7.2.15 CHAPTER 7 FIRE-RESISTANCE-RATED CONSTRUCTION: See this chapter of the IBC with the following exception: Section 702 is amended to change the definition of "shaft" by

deleting the reference to "stories" and substituting the words "floor levels." [14.7.2.15 NMAC - Rp, 14.7.2.15 NMAC, 1-1-08]

14.7.2.16 CHAPTER 8 INTERIOR FINISHES: See this chapter of the IBC.

[14.7.2.16 NMAC - Rp, 14.7.2.16, NMAC, 1-1-08]

14.7.2.17 CHAPTER 9 FIRE PROTECTION SYSTEMS:

A. Section 901 - General. See this section of the IBC.

B. Section 902 - Definitions. See this section of the IBC with the following exception: the definition of "standpipe system, classes of" is amended by adding the following provision: 1.5-inch hoses and hose cabinets shall not be provided, unless required by the New Mexico laws applicable to fire protection FOR class II and class III standpipe systems.

C. Section 903 - Automatic sprinkler systems. See this section of the IBC except in section 903.2 delete the paragraph entitled "exception" in its entirety.

D. Section 904 - Alternative automatic fire-extinguishing systems. See this section of the IBC except in section 904.11 delete the paragraph entitled "exception" in its entirety.

E. Sections 905 through 908. See these sections of the IBC.

F. Section 909 - Smoke control systems.

(1) 909.1 through 909.7 See these sections of the IBC.

(2) 909.8 Exhaust method.

(a) 909.8.1 Exhaust rate. Delete the text of this provision of the IBC and substitute: the height of the lowest horizontal surface of the accumulating smoke layer shall be maintained at least 6 feet (1829 mm) above any walking surface which forms a portion of a required egress system within the smoke zone. The required exhaust rate for the zone shall be the largest of the calculated plume mass flow rates for the possible plume configurations. Provisions shall be made for a natural or mechanical supply of air from outside or adjacent smoke zones to make up for the air exhausted. Makeup airflow rates, when measured at the potential fire locations shall not increase the smoke production rate beyond the capabilities of the smoke control system. The temperature of the makeup air shall be such that it does not expose temperature-sensitive fire protection systems beyond their limits.

(b) 909.8.2 through 909.8.5. See these sections of the IBC.

(3) 909.9 Design fire. Delete this

section of the IBC and substitute: the design fire shall be based on a rational analysis performed by a registered design professional and approved by the building official. The design fire shall be based on the analysis in accordance with section 909.4 and this section.

(4) **909.10 through 909.19.** See these sections of the IBC.

(5) **909.20 Smokeproof enclosures.** See this section of the IBC except that subsection 909.20.4.1 is amended by deleting the references to "section 715.4" and replacing them with "section 715.3.3."

(6) **909.21 Underground building smoke exhaust system.** See this section of the IBC.

G. Sections 910 and 911. See these sections of the IBC. [14.7.2.17 NMAC - Rp, 14.7.2.17 NMAC, 1-1-08]

14.7.2.18 CHAPTER 10 MEANS OF EGRESS:

A. Sections 1001 through 1007. See these sections of the IBC.

B. Section 1008 - Doors, gates and turnstiles. See this section of the IBC exception as provided below.

(1) **Section 1008.1.3.4 Access-controlled egress doors.** See this section of the IBC and add the words "When approved by the building official" at the beginning of the section.

(2) **Section 1008.1.8.6. Delayed egress locks.** See this section of the IBC and add the words "When approved by the building official" at the beginning of the section.

(3) **Section 1008.3 Turnstiles.** See this section of the IBC and add the words "When approved by the building official" at the beginning of the section.

C. Sections 1009 through 1025. See these sections of the IBC. [14.7.2.18 NMAC - Rp, 14.7.2.18 NMAC, 1-1-08]

14.7.2.19 CHAPTER 11 ACCESSIBILITY:

A. Section 1101 General. See this section of the IBC.

B. Section 1102 Definitions. See this section of the IBC and add the following definition: **primary entrance** means the entrance through which most people enter the building. A building may have more than one primary entrance.

C. Section 1103 - Scoping requirements. See this section of the IBC.

D. Section 1104 - Accessible route. See this section of the IBC except as provided below. Delete exception to number 1 of section 1104.4 and substitute the following: An accessible route is not required to floors and mezzanines above and below accessible levels that

have an area of less than 3,000 square feet (278.7m²) per story located either above or below the accessible level in buildings or buildings that are less than three (3) stories. This exception shall not apply to:

(1) multiple tenant facilities of group M occupancies containing five or more tenant spaces;

(2) levels containing offices of health care providers (group B or I);

(3) passenger transportation facilities and airports (groups A-3 or B); or

(4) the facility that is owned or leased by a governmental agency.

E. Section 1105 - Accessible entrances. See this section of the IBC except as provided below.

(1) Delete the text of section 1105.1, public entrances, and substitute: in addition to accessible entrances required by sections 1105.1.1 through 1105.1.6, at least 60% of all public entrances, but not less than one primary entrance shall be accessible, except an accessible entrance is not required to areas that are not required to be accessible; and loading and service entrances that are not the only entrance to a tenant space are not required to be accessible.

(2) Add the following new provision. **Section 1105.1.7 Other entrances.** In buildings owned or leased by a public entity, all entrances not required to be accessible, having a walking surface within 6 inches (152.4 mm) or less of the adjacent grade, shall be accessible to the adjacent grade.

F. Section 1106 - Parking and passenger loading facilities. See this section of the IBC except that table 1106.1 is deleted and the following table is substituted:

Table 1106.1 Accessible Parking Spaces

Total Parking Spaces	Total Required Accessible Parking Spaces	Number Required to be Van Accessible
1-25	1	1
26-35	2	1
36-50	3	1
51-100	4	1
101-300	8	1
301-500	12	2
501-800	16	2
801-1000	20	3
Over 1,000	20 spaces plus 1 space for every 100 spaces, or fraction thereof, over 1,000	1 of every 8 accessible parking spaces, or fraction thereof

G. Section 1107 - Dwelling units and sleeping units. See this section of the IBC except as provided below.

(1) Delete the text of section 1107.6.2.1 and substitute: in occupancies in group R-2 containing more than 20 dwelling units or sleeping units, at least 2%, but not less than one of the units shall be a type A unit. In type A units, one in 10, but not less than one of the units shall provide a roll-in shower including a permanently mounted folding shower seat. All units on a site shall be considered to determine the total number of units and the required number of type A units. Type A units shall be dispersed among the various classes of units.

(2) The following provision is inserted after table 1107.6.1.1: for publicly funded projects, the total number of accessible rooms shall be 5%, or fraction thereof. Of these rooms, 1%, or fraction thereof, shall be provided with roll-in showers.

H. Section 1108 - Special occupancies. See this section of the IBC except add subsections to section 1108.2.4 designated aisle seats as follows:

(1) **1108.2.4.1 signage:** signage notifying patrons of the availability of designated aisle seats shall be posted at the ticket office;

(2) **1108.2.4.2 location:** at least one of each four (4) required designated aisle seats shall be located not more that two (2) rows from an accessible route serving such seats.

I. Section 1109 - Other features and facilities. See this section of the IBC except as provided below.

(1) Insert the following sentence at the end of section 1109.2: when 20 or more fixtures of any type are installed, at least two of that type shall be accessible.

(2) Add the following provision to the exceptions to section 1109.2: exception 6: toilet fixtures and bathing facilities that are in excess of those required by the minimum

number of plumbing fixtures pursuant to the New Mexico construction codes and located in private restricted areas in other than government owned or leased facilities.

(3) Add the following provision to section 1109.3: where only one accessible sink is provided, it shall be located in a toilet compartment.

(4) Add the following exception to section 1109.6: limited-use/limited-application elevators may be used to access spaces or areas that have five or fewer occupants.

J. Section 1110 - Signage. See this section of the IBC except as provided below.

(1) Delete the text of Section 1110.1 and substitute: required accessible elements shall be identified by the international symbol of accessibility where the total number of parking spaces provided is five or more as follows:

(a) accessible parking spaces shall be identified by a sign centered at the head of each parking space; and

(b) van accessible parking spaces shall have an additional sign mounted below the international symbol of accessibility identifying the space as "van accessible," unless all the accessible parking spaces comply with the standards for van accessible parking.

(2) Delete the text of number 5 of section 1110.1 and substitute: accessible entrances where not all entrances are accessible, except entrances to individual dwelling units and sleeping units.

(3) Add the following new provision at the end of section 1110.3: 5. accessible parking spaces required by section 1106 shall be identified by the international symbol of accessibility. A clearly visible depiction of the symbol shall be painted in blue on the pavement surface, except where the total number of parking spaces provided is four or less, and the access aisle shall be clearly marked by diagonal, blue pavement striping.

[14.7.2.19 NMAC - Rp, 14.7.2.19 NMAC, 1-1-08]

14.7.2.20 CHAPTER 12 INTERIOR ENVIRONMENT: See this chapter of the IBC.

[14.7.2.20 NMAC - Rp, 14.7.2.20 NMAC, 1-1-08]

14.7.2.21 CHAPTER 13 ENERGY EFFICIENCY: Delete this chapter of the IBC and see the 2006 New Mexico energy conservation code.

[14.7.2.21 NMAC - Rp, 14.7.2.21 NMAC, 1-1-08]

14.7.2.22 CHAPTER 14 EXTERIOR WALLS: See this chapter of the IBC.

[14.7.2.22 NMAC - Rp, 14.7.2.22 NMAC, 1-1-08]

14.7.2.23 CHAPTER 15 ROOF ASSEMBLIES AND ROOFTOP STRUCTURES:

A. Section 1501. General. See this section of the IBC.

B. Section 1502.1 Definitions. See this section of the IBC except that the following definitions are amended as indicated.

(1) "Roof Replacement" is amended to read: the process of removing the existing roof covering to the structural roof deck, repairing any substrate, and installing a new roof covering.

(2) "Positive Roof Drainage" is amended to read: the drainage condition in which consideration has been made for all loading deflections of the roof deck, and the additional slope has been provided to ensure drainage of the roof within 48 hours of precipitation. Drainage has occurred when no more than ½ inch of standing water remains after 48 hours of precipitation in normal drying conditions.

C. Sections 1503 through 1505. See these sections of the IBC.

D. Section 1506 - Materials. See this section of the IBC and add the following new sections:

(1) **Section 1506.5 Loose granular fill.** Pumice and other granular fill type materials are not permitted in roofing assemblies.

(2) **Section 1506.6 - Roof deck transitions.** Where roof sheathing is overlapped to create "crickets" or valleys to canals, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

(3) **Section 1506.7 - Canales/Scuppers.** All canales and/or scuppers must have a metal pan lining extending not less than 6 inches (152 mm) past the inside of the parapet and not less than 6 inches (152 mm) from each side of the canale or scupper opening. All canales and scuppers must have positive drainage.

E. Sections 1507 through 1509. See these sections of the IBC.

F. Section 1510 - Reroofing.

(1) **1510.1 and 1510.2.** See these sections of the IBC.

(2) **1510.3 Recovering versus replacing.** Delete the first three lines of the text of this section and substitute the following: "new roof coverings shall not be installed without first removing existing roof coverings down to the structural roof deck where any of the following conditions occur:" and add a new subsection 4 as follows: where pumice or other granular fill are present, existing roofing and granular fill must be removed prior to re-roofing.

(3) **1510.4 through 1510.6.** See these sections of the IBC.

[14.7.2.23 NMAC - Rp, 14.7.2.23 NMAC, 1-1-08]

14.7.2.24 CHAPTER 16 STRUCTURAL DESIGN: See this chapter of the IBC.

[14.7.2.24 NMAC - Rp, 14.7.2.24 NMAC, 1-1-08]

14.7.2.25 CHAPTER 17 STRUCTURAL TESTS AND SPECIAL INSPECTIONS: See this chapter of the IBC except as provided below.

A. Section 1704.4 Concrete construction. See this section of the IBC except:

(1) delete subsection 2 and substitute: continuous concrete footings supporting walls of buildings three stories or less in height that are fully supported on earth or rock.

(2) delete subsection 3 and substitute: nonstructural concrete slabs supported directly on the ground, except pre-stressed slabs-on-grade.

(3) delete subsection 4.

B. Section 1704.5 Masonry Construction. See this section of the IBC except delete exception 2.

C. Section 1709.1 Structural observations. See this section of the IBC except delete the last paragraph and substitute: deficiencies shall be reported in writing to the owner and made available to the building official.

[14.7.2.25 NMAC - Rp, 14.7.2.25 NMAC, 1-1-08]

14.7.2.26 CHAPTER 18 SOILS AND FOUNDATIONS: See this chapter of the IBC except as provided below.

A. Section 1802.2.1 Questionable soil. Delete the text of this section of the IBC and substitute: where the safe-sustaining capacity of the soil is in doubt, or where a load bearing value superior to that specified in this code is authorized, a subsurface investigation shall be made.

B. Section 1802.2.2 Expansive soils. Delete the text of this section of the IBC and substitute: in areas likely to have expansive or collapsible soil, the building official is authorized to require a subsurface investigation.

C. Section 1802.5 Soil boring and sampling. See this section of the IBC except after the words "the design professional" in the second sentence, add the words "directing the investigation."

D. Section 1804.2 Presumptive load-bearing values. See this section of the IBC except after the word "peat" in the third paragraph, add the words

“moisture sensitive soils.”

E. Section 1805.5 Foundation walls. See this section of the IBC except delete the following: foundation walls that are laterally supported at the top and bottom and within the parameters of tables 1805.5(1) through 1805.5(5) are permitted to be designed and constructed in accordance with sections 1805.5.1 through 1805.5.5. Delete tables 1805.5(1) thru 1805.5(5). In **section 1805.5.1.2.** See this section of the IBC except after the words “shall comply with the requirements of” add the words “chapter 19”.

F. Section 1805.5.6 Foundation wall drainage. Delete the text of this section of the IBC and substitute: When required by a subsurface investigation or the building official, foundation walls shall be designed to support the weight of the full hydrostatic pressure of un-drained backfill unless a drainage system is installed in accordance with sections 1807.4.2 and 1807.4.3 of the IBC.

G. Section 1807.2 Dampproofing required. Delete this section of the IBC and substitute the following: the thickness of foundation walls shall comply with the requirements of IBC chapter 19.

H. Section 1807.2.1 Floors. Delete this section of the IBC.

I. Section 1807.4 Subsoil drainage system. See this section of the IBC except, at the beginning of section, delete the words “where a hydrostatic pressure condition does not exist” and substitute: when required by a subsurface investigation or the building official.”

J. Section 1808.2.8.4 Allowable friction resistance. See this section of the IBC.

K. Section 1808.2.9.2 Unbraced piles. See this section of the IBC except delete the words “the building official” before the words “a foundation investigation,” and delete the words “by an approved agency” after the words “a foundation investigation.”

L. Section 1808.2.10 Use of higher allowable pier or pile stresses. Delete the text of this section of the IBC and substitute: allowable stresses greater than those specified for piers or for each pile type in sections 1809 and 1810 of the IBC are permitted when supporting data justifying higher stresses is substantiated by a soil investigation conducted according to section 1802 of the IBC, and/or pier or pile load tests conducted according to section 1808.2.8.3, regardless of the load supported by the pier or pile. The installation of the pier foundation shall be under the supervision of a registered design professional knowledgeable in the field of soil mechanics and pier or pile foundations who shall submit documentation to the building offi-

cial indicating that the piers or piles, as installed, satisfy the design criteria.

M. Section 1810.1.2 Reinforcement. Delete this section of the IBC and substitute: except for steel dowels embedded five feet (1524 mm) or less in the pile and as provided in section 1809.3.4 of the IBC reinforcement, when required, shall be assembled and tied together and shall be placed in the pile as a unit before the reinforced portion of the pile is filled with concrete. When concrete is placed by pumping through a hollow-stem auger into augured uncased cast-in-place piles, tied reinforcement shall be placed after piles are concreted while the concrete is still in a semi-fluid state.

N. Section 1810.3.2 Dimensions. See this section of the IBC except delete the exception and substitute: the length of the pile is permitted to exceed 30 times the diameter, provided that the installation of the pile foundation is under the supervision of a registered design professional knowledgeable in the field of soil mechanics and pile foundations. The registered design professional shall submit documentation to the building official indicating that the piles were installed in compliance with the approved construction documents.

O. Section 1810.4.2 Dimensions. See this section of the IBC except delete the exception and substitute: the length of the pile is permitted to exceed 30 times the diameter, provided that the installation of the pile foundation is under the supervision of a registered design professional knowledgeable in the field of soil mechanics and pile foundations. The registered design professional shall submit documentation to the building official indicating that the piles were installed in compliance with the approved design

[14.7.2.26 NMAC - Rp, 14.7.2.26 NMAC, 1-1-08]

14.7.2.27 CHAPTER 19 CONCRETE: See this chapter of the IBC except as provided below.

A. Section 1906 See this section of the IBC.

B. Section 1908.1.15 ACI 318, Section 22.10. See this section of the IBC except delete sections (a) thru (c) and exceptions.

C. Section 1909.4 Design. See this section of the IBC except delete the exception.

D. Section 1915.2 Design. Delete the text of this section of the IBC as substitute: the safe supporting capacity of concrete-filled pipe columns shall be computed in accordance with generally accepted engineering practice.

E. Section 1915.6 Approvals. Delete this section of the IBC. [14.7.2.27 NMAC - Rp, 14.7.2.27 NMAC,

1-1-08]

14.7.2.28 CHAPTER 20 ALUMINUM: See this chapter of the IBC. [14.7.2.28 NMAC -Rp, 14.7.2.28 NMAC, 1-1-08]

14.7.2.29 CHAPTER 21 MASONRY: See this chapter of the IBC except as provided below.

A. Section 2109.5.3.2 Design requirement. Delete this section of the IBC.

B. Section 2109.8.4.3.1 Foundation support. See this section of the IBC and add the following exception: when perimeter **insulation** is used, a variance is allowed for the stem wall width to be 2 inches (51 mm) smaller than the width of the adobe it supports.

C. Section 2111.4.1 Anchorage. Delete this section of the IBC and substitute: two 3/16-inch by 1-inch (4.8 mm by 25.4mm) straps shall be embedded a minimum of 12 inches (305 mm) into the chimney with a 180 degree bend with a 6-inch (152 mm) extension around the vertical reinforcing bars in the outer face of the chimney. Each strap shall be fastened to the structural framework of the building with two 1/2-inch (12.7 mm) diameter bolts per strap. Where the joists do not head into the chimney, the anchor strap shall be connected to 2-inch by 4-inch (51 mm by 102 mm) ties crossing a minimum of four joists. The ties shall be connected to each joist with two 16d nails. As an alternative to the 2-inch by 4-inch (51 mm by 102 mm) ties, each anchor strap shall be connected to the structural framework by two 1/2-inch (12.7 mm) diameter bolts in an approved manner. [14.7.2.29 NMAC - Rp, 14.7.2.29 NMAC, 1-1-08]

14.7.2.30 CHAPTER 22 STEEL: See this chapter of the IBC. [14.7.2.30 NMAC - Rp, 14.7.2.30 NMAC, 1-1-08]

14.7.2.31 CHAPTER 23 WOOD: See this chapter of the IBC except as provided below.

A. Section 2305.3.4 Construction. See this section of the IBC.

B. Section 2305.3.10 Adhesives. See this section of the IBC.

C. Section 2308.8.3 Framing around openings. See this section of the IBC except delete the first sentence and substitute: trimmer and header joists shall be of sufficient size to support the load.

D. Section 2308.8.4 Supporting bearing partitions. See this section of the IBC except delete the first sentence and substitute: bearing partitions parallel to joists shall be supported on

beams, girders, built-up joists of sufficient size to carry the load, walls or other bearing partitions.

[14.7.2.31 NMAC - Rp, 14.7.2.31 NMAC, 1-1-08]

14.7.2.32 CHAPTER 24 GLASS AND GLAZING: See this chapter of the IBC except that section 2403 is amended as set forth below.

A. Section 2403.1 - Identification. Delete the first paragraph of this section of the IBC and substitute: each pane shall bear the manufacturer's label designating the type and thickness of the glass or glazing material. The identification shall not be omitted unless approved by the building official. The building official is authorized to require an affidavit from the glazing contractor certifying that each light is glazed in accordance with approved construction documents that comply with the provisions of this chapter. Safety glazing shall be identified in accordance with section 2406.2.

B. Section 2403.2 - Glass supports. Delete this section of the IBC and substitute: where one or more sides of any pane of glass is not firmly supported, or is subject to unusual load conditions, detailed construction documents, detailed shop drawings and analysis or test data assuring safe performance for the specific installation shall be submitted when required by the building official.
[14.7.2.32 NMAC - Rp, 14.7.2.32 NMAC, 1-1-08]

14.7.2.33 CHAPTER 25 GYPSUM BOARD AND PLASTER: See this chapter of the IBC except as provided below.

A. Section 2510.6 Weather - resistant barrier. See also sections 1403.2, 1405.3 and 1503.2.

B. Section 2512.1.1 On grade floor slab. On wood framed or steel stud construction with an on-grade concrete floor slab system, approved acrylic based exterior plaster systems and acrylic based color coats shall be applied in such a manner as to cover but not to extend below, the lath, paper and screed. When a cement plaster stucco and cement plaster color coat is installed, and no perimeter insulation is on the exterior of a concrete or masonry foundation, the color coat shall terminate not further than 6 inches (153 mm) below finished grade. All excess plaster shall be removed from the site and no drip screeds shall comply with ASTM C 1063.

C. Section 2512.1.2 Weep Screeds. Delete the test of section 2512.1.2 and substitute the following: when an approved acrylic based exterior finish stucco system or acrylic based color coat is

applied, a minimum 0.019 -inch (0.48 mm)(no.26 galvanized sheet gage), corrosion-resistant weep screed or plastic weep screed, with a minimum vertical attachment flange of 3 1/2 inches (89 mm) shall be provided at or below foundation plate line on exterior stud wall in accordance with ASTM C 926. The weep screed shall be placed a minimum of 2 inches (51mm) above the earth or 1/2 inch (13 mm) above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building. The weather-resistant barrier shall lap the attachment flange. The exterior lath shall lap the attachment flange of the weep screed. Weep screeds are not required under covered porches, covered patios, or when a non-acrylic based conventional cement plaster and cement plaster color coat as approved in 2512.1 is installed.

D. Add new section to the IBC. Section 2512.1.3 Plaster to Roof Separation. A reglet, plaster stop, weep screed or equivalent metal flashing shall be applied where all stucco wall surfaces terminate at a roof.

[14.7.2.33 NMAC - Rp, 14.7.2.33 NMAC, 1-1-08]

14.7.2.34 CHAPTER 26 PLASTIC: See this chapter of the IBC.

[14.7.2.34 NMAC - Rp, 14.7.2.34 NMAC, 1-1-08]

14.7.2.35 CHAPTER 27 ELECTRICAL: Delete this chapter of the IBC and see the NMEC except as provided below.

A. Section 2701 - General.

(1) 2701.1 Scope. Delete the text of this section of the IBC and substitute: electrical systems, including emergency and standby power systems, and electrical equipment, appliances, fixtures, fittings and appurtenances thereto, shall be installed, altered, repaired, replaced, maintained, tested and designed pursuant to the provisions of the NMEC.

(2) All references in the IBC to the international electrical code are deemed references to the NMEC.

B. Section 2702 - Emergency and Standby Power Systems.

(1) 2702.1 Installation (delete this section of the IBC).

(2) 2702.1.1 Stationary Generators (delete this section of the IBC).

(3) 2702.2 Where required. Emergency and standby power systems shall be required as follows.

(a) 2702.2.1 Group A Occupancies. See section 907.2. 1. of the IBC.

(b) 2702.2.2 Smoke control systems. See section 909.11 of the IBC.

(c) 2702.2.3 Exit signs. See section 1011.5.3 of the IBC.

(d) 2702.2.4 Means of egress illumination. See section 1006.3 of the IBC.

(e) 2702.2.5 Accessible means of egress elevators. See section 1007.4 of the IBC.

(f) 2702.2.6 Accessible means of egress platform lifts. See section 1007.5 of the IBC.

(g) 2702.2.7 Horizontal sliding doors. See section 1009.1.3.3 of the IBC.

(h) 2702.2.8 Semiconductor fabrication facilities. See section 415.9.10 of the IBC.

(i) 2702.2.9 Membrane structures. See section 3102.8.2 of the IBC for standby power provision, and the international fire code for emergency power for exit signs in tents and membrane structures.

(j) 2702.2.10 Hazardous materials. See section 14.5.4 of the IBC.

(k) 2702.11 Highly toxic and toxic materials. See the international fire code.

(l) 2702.2.12 Organic peroxides. See the international fire code.

(m) 2702.2.13 Pyrophoric materials. See the international fire code.

(n) 2702.2.14 Covered mall buildings. See section 402.13 of the IBC.

(o) 2702.2.15 High-rise buildings. See sections 403.10 and 403.11 of the IBC.

(p) 2702.2.16 Underground buildings. See sections 405.9 and 405.10 of the IBC.

(q) 2702.2.17 Group I-3 occupancies. See section 408.4.2 of the IBC.

(r) 2702.2.18 Airport traffic control towers. See section 412.1.5 of the IBC.

(s) 2702.2.19 Elevators. See section 3003.1 of the IBC.

(t) 2702.2.20 Smoke proof enclosures. See section 909.20 of the IBC.

(u) 2702.3 Maintenance. Delete this section of the IBC.

[14.7.2.35 NMAC - Rp, 14.7.2.35 NMAC, 1-1-08]

14.7.2.36 CHAPTER 28 MECHANICAL SYSTEMS: Delete this chapter of the IBC and see the NMMC.

[14.7.2.36 NMAC - Rp, 14.7.2.36 NMAC, 1-1-08]

14.7.2.37 CHAPTER 29 PLUMBING SYSTEMS:

A. Section 2901 - General.

(1) 2901.1 Scope. Delete the text of this section of the IBC and substitute the following provision: plumbing systems, including equipment, appliances, fixtures,

fittings and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system, shall be installed, altered, repaired, replaced, maintained, tested and designed pursuant to the provisions of the NMPC.

(2) **2901.2** All references in chapter 29 of the IBC to the international plumbing code are deemed references to the NMPC.

B. Section 2902 - Minimum Plumbing Facilities.

(1) **2902.1 Minimum number of fixtures.** See this section of the IBC and add the following language to the end of the first paragraph: urinals may be substituted for up to fifty percent (50%) of the maximum number of water closets in other than A or E occupancies. In A and E occupancies, urinals may be substituted for up to sixty-seven percent (67%) of the maximum number of water closets.

(a) **Table 2902.1 Minimum Number of Required Plumbing Facilities.** See this table in the IBC.

(b) **2902.1.1 Unisex toilet and bath fixtures.** Delete this section of the IBC and see 14.7.2.19 NMAC, Accessibility.

(2) **2902.2 to 2902.6.3** See these sections of the IBC.

[14.7.2.37 NMAC - Rp, 14.7.2.37 NMAC, 1-1-08]

14.7.2.38 CHAPTER 30 ELEVATORS AND CONVEYING SYSTEMS: See this chapter of the IBC.

[14.7.2.38 NMAC - Rp, 14.7.2.38 NMAC, 1-1-08]

14.7.2.39 CHAPTER 31 SPECIAL CONSTRUCTION: See this chapter of the IBC.

[14.7.2.39 NMAC - Rp, 14.7.2.39 NMAC, 1-1-08]

14.7.2.40 CHAPTER 32 ENCROACHMENTS INTO THE PUBLIC RIGHT-OF-WAY: See this chapter of the IBC.

[14.7.2.40 NMAC - Rp, 14.7.2.40 NMAC, 1-1-08]

14.7.2.41 CHAPTER 33 SAFEGUARDS DURING CONSTRUCTION: See this chapter of the IBC.

[14.7.2.41 NMAC - Rp, 14.7.2.41 NMAC, 1-1-08]

14.7.2.42 CHAPTER 34 EXISTING STRUCTURES: Delete this chapter of the IBC and see the NMEBC.

[14.7.2.42 NMAC - Rp, 14.7.2.42 NMAC, 1-1-08]

14.7.2.43 CHAPTER 35 REFERENCED SAMPLES: See this chapter

of the IBC.

[14.7.2.43 NMAC - Rp, 14.7.2.43 NMAC, 1-1-08]

14.7.2.44 APPENDIX E SUPPLEMENTARY ACCESSIBILITY REQUIREMENTS:

A. E101 - General. See this section of the IBC.

B. E102 - Definitions. See this section of the IBC and add the following definition: **children's use** means spaces and elements specifically designed for use primarily by people 12 years old and younger.

C. E103 - Accessible route. See this section of the IBC.

D. E104 - Special occupancies. See this section of the IBC.

E. E105 - Other features and facilities. See this section of the IBC except delete subsection E105.1.

F. E106 - Telephones. See this section of the IBC.

G. E107 - Signage. See this section of the IBC except delete subsection E107.1.

H. E108 through E111. See these sections of the IBC.

I. E112. Children's standards. The technical requirements in the main body of the IBC are based on adult dimensions and anthropometrics. This section contains technical requirements based on children's dimensions and anthropometrics in addition to those in the ICC/ANSI 2003.

(1) **E112.1.** The predominant use of an element (rather than a building or facility) shall guide the determination of whether to use specifications for adults or children for that element. If children are the primary users of the element, children's specifications shall be applied.

(2) **E112.2 Children's accessible elements.** When children are the primary users of a building or facility (such as day care centers, schools, children's areas of libraries, etc.), the accessibility standards shall correspond to the children's provisions of this section.

(3) **E112.3. Ramps.** Ramps primarily for children's use shall comply with ICC A117.1 with the following revisions.

(a) **E112.3.1. Slope.** When children are the primary users of a ramp, the maximum slope of the ramp shall be 1:16. Where 1:16 is not feasible, a maximum slope of 1:12 is permitted.

(b) **E112.3.2 Width.** When children are the primary user of a ramp, the maximum clear width of ramps shall be 44 inches (1118 mm) and the minimum clearance width for two wheelchairs shall be 88 inches (2236 mm).

(4) **E112.4 Mirrors.** Mirrors primarily for the use of children shall be full

length mirrors 60 inches high with the bottom of the reflecting surface 12 inches above the finished floors.

(5) **E112.5 Ambulatory stall.** When children are the primary user of the water closet seat, the seat height shall comply with ICC A117.1 Section 604.10.4.

(6) **E112.6 Urinals.** Urinals primarily for children's use shall have the rim at 14 inches (356 mm) above the floor.

(7) **E112.7 Position of Grab Bars.** Delete ICC A117.1 section 609.4.1 and add the following new section 609.4.2 children's position of grab bars. At water closets primarily for children's use complying with ICC A117.1 section 604.10, grab bars shall be installed in a horizontal position 18 inches (455 mm) minimum to 27 inches (685 mm) maximum above the floor measured to the top of the gripping surface. A vertical grab bar shall be mounted with the bottom of the bar located between 21 inches (533 mm) minimum and 30 inches (760 mm) maximum above the floor and with the centerline of the bar located between 34 inches (865 mm) minimum and 36 inches (915 mm) maximum from the rear wall.

(8) **E112.8 Benches.** Benches primarily for children's use shall be permitted to be 11 inches (280 mm) minimum to 17 inches (430 mm) maximum above the floor, measured to the top of the seat.

(9) **E112.9 Tray slides.** Tray slides primarily for use by children shall be permitted to be 28 inches (710 mm) and 30 inches (762 mm) maximum above the floor.

(10) **E112.10 Storage Facilities.** Storage provided primarily for children's use shall be permitted to be 20 inches (508 mm) minimum and 44 inches (925 mm) maximum above the floor.

[14.7.2.45 NMAC - Rp, 14.7.2.45 NMAC, 1-1-08]

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 3 2006 NEW MEXICO
RESIDENTIAL BUILDING CODE**

14.7.3.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.7.3.1 NMAC - Rp, 14.7.3.1, NMAC, 1-1-08]

14.7.3.2 SCOPE: This rule applies to all construction, alteration, relo-

cation, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of all detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three (3) stories high with separate means of egress, and their accessory structures that is performed in New Mexico on or after January 1, 2008, and 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. Any repair, alteration or addition to such building that is associated with a change of occupancy, and any construction not addressed in the NMRBC, shall be subject to and shall comply with the NMCBC. [14.7.3.2 NMAC - Rp, 14.7.3.2, NMAC, 1-1-08]

14.7.3.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9 and 60-13-44. [14.7.3.3 NMAC - Rp, 14.7.3.3, NMAC, 1-1-08]

14.7.3.4 DURATION: Permanent. [14.7.3.4 NMAC - Rp, 14.7.3.4, NMAC, 1-1-08]

14.7.3.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section. [14.7.3.5 NMAC - Rp, 14.7.3.5, NMAC, 1-1-08]

14.7.3.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for the general construction of residential buildings in New Mexico. [14.7.3.6 NMAC - Rp, 14.7.3.6, NMAC, 1-1-08]

14.7.3.7 DEFINITIONS: [See 14.5.1 NMAC, General Provisions and chapter 2 of the 2006 international residential code (IRC) as amended in 14.7.3.10 NMAC.] [14.7.3.7 NMAC - Rp, 14.7.3.7, NMAC, 1-1-08]

14.7.3.8 ADOPTION OF THE 2006 INTERNATIONAL RESIDENTIAL CODE:

A. This rule adopts by reference the 2006 international residential code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2006 international residential code. [14.7.3.8 NMAC - Rp, 14.7.3.8, NMAC, 1-1-08]

14.7.3.9 CHAPTER 1

ADMINISTRATION:

A. Section R101 - Title, Scope and Purpose.

(1) R101.1 Title. Delete this section of the IRC and substitute: This code shall be known as the 2006 New Mexico residential building code (NMRBC).

(2) R101.2 Scope. Delete this section of the IRC and see 14.7.3.2 NMAC, Scope.

(3) R101.3 Purpose. See 14.7.3.6 NMAC, Objective.

B. Section R102 - Applicability.

(1) R102.1 General. Delete this section of the IRC and see 14.5.1 NMAC, General Provisions.

(2) R102.2 Other laws. Delete this section of the IRC and see 14.5.1 NMAC, General Provisions.

(3) R102.3 Application of references. Delete this section of the IRC and see 14.5.1 NMAC, General Provisions.

(4) R102.4 Referenced codes and standards. Delete this section of the IRC and substitute the following: The codes referenced in the NMRBC are set forth below. See also 14.5.1 NMAC, General Provisions.

(a) Electrical. The NMEC applies to all electrical wiring as defined in NMSA 1978 Section 60-13-32. All references in the IRC to the ICC electrical code are deemed references to the NMEC.

(b) Gas. The NMMC applies to "gas fittings" as that term is defined in NMSA 1978 Section 60-13-32. All references in the IRC to the international mechanical code are deemed references to the NMMC.

Gas piping, systems and appliances for use with liquefied propane gas (LPG), or compressed natural gas (CNG), shall be governed by the LPG standards (NMSA 1978, Section 70-5-1 et seq., LPG and CNG Act, and the rules promulgated pursuant thereto, 19.15.4.1 through 19.15.4.24 NMAC.)

(c) Mechanical. The NMMC applies to the installation, repair, and replacement of mechanical systems including equipment, appliances, fixtures, fittings and/or appurtenances including ventilating, heating, cooling, air conditioning, and refrigeration systems, incinerators, and other energy related systems. All references in the IRC to the international mechanical code are deemed references to the NMMC.

(d) Plumbing. The NMPC applies to the installation, alterations, repairs, and replacement of plumbing systems, including equipment, appliances, fixtures, fittings, and appurtenances, and where connected to a water or sewage system and all aspects of a medical gas system. All references in the IRC to the international plumbing code are deemed references to

the NMPC.

(e) Energy. The NMECC applies to all energy-efficiency-related requirements for the design and construction of buildings that are subject to the New Mexico construction codes. All references in the IRC to the international energy code are deemed references to the NMECC.

(5) R102.5 Appendices. This rule adopts the following appendices as amended herein:

(a) appendix G - swimming pools and spas;

(b) appendix H - patio covers;

(c) appendix J - existing buildings;

(d) appendix K - sound transmission.

(6) R102.6 Partial Invalidity. Delete this section of the IRC and see 14.5.1 NMAC, General Provisions.

(7) R102.7 Existing structures. See this section, and sub-section R102.7.1, additions, alterations or repairs, of the IRC, except that the references to the international property maintenance code and the international fire code are deleted.

C. Section R103 - Department of Building Safety. Delete this section of the IRC.

D. Section R104 - Duties and Powers of Building Official. Delete this section of the IRC and see 14.5.1 NMAC, General Provisions.

E. Section R105 - Permits. Delete this section of the IRC and see 14.5.2 NMAC, Permits.

F. Section R106 - Construction Documents. Delete this provision of the IRC and see 14.5.2 NMAC, Permits.

G. Section R107 - Temporary Structures and Uses. Delete this section of the IRC and see 14.5.2 NMAC, Permits.

H. Section R108 - Fees. Delete this section of the IRC and see 14.5.5 NMAC, Fees.

I. Section R109 - Inspections. Delete this section of the IRC and see 14.5.3 NMAC, Inspections.

J. Section R110 - Certificate of Occupancy. Delete this section of the IRC and see 14.5.3 NMAC, Inspections.

K. Section R111 - Service Utilities. Delete this section of the IRC and see 14.5.3 NMAC, Inspections.

L. Section R112 - Board of Appeals. Delete this section of the IRC and see 14.5.1 NMAC, General Provisions.

M. Section R113 - Violations. Delete this section of the IRC and see CILA 60-13-1 et seq., and 14.5.3 NMAC, Inspections.

N. Section R114 - Stop

Work Order. Delete this section of the IRC and see 14.5.3 NMAC, Inspections. [14.7.3.9 NMAC - Rp, 14.7.3.9, NMAC, 1-1-08]

14.7.3.10 CHAPTER 2 DEFINITIONS:

A. Section R101 General.

(1) R201.1, R201.2 and R201.4.

See these sections of the IRC.

(2) R201.3 Terms defined in other codes. Delete this section of the IRC and substitute the following provision: Defined terms not listed in this rule have the meanings given in 14.5.1.7 NMAC, General Provisions, and in the other New Mexico codes.

B. Section R202

Definitions.

(1) Board of appeals. Delete this definition and see 14.5.1 NMAC, General Provisions.

(2) Building official. Delete this definition and see 14.5.1 NMAC, General Provisions.

(3) Design Professional and Registered Design Professional. Delete these definitions and see 14.5.1 NMAC, General Provisions.

(4) Earthen building materials has the meaning given in 14.7.4 NMAC, 2006 New Mexico earthen building materials code.

(5) Exterior finish coating means a single coat of plaster, cementitious or other approved material applied to a concrete or masonry surface for cosmetic purposes only.

(6) ICC means the international code council.

(7) Manufactured Home. Delete this definition from the IRC.

(8) Sleeping room means a room designated as a sleeping room or bedroom on the plans.

(9) Unbalance backfill height is the difference in height between the exterior finish ground level and the lower of the top of the concrete footing that supports the foundation wall, retaining wall or the interior finished ground level. Where an interior concrete slab on grade is provided and is in contact with the interior surface of the foundation wall, the unbalanced backfill height is permitted to be measured from the exterior finished ground level to the top of the interior concrete slab.

(10) Decorative coating. A single coat of plaster, cementitious or other approved material applied to a concrete or masonry surface for cosmetic purposes only.

(11) All other terms defined in this section of the IRC have the meanings given in that section.

[14.7.3.10 NMAC - Rp, 14.7.3.10, NMAC, 1-1-08]

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 sub-section 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. See this section of the IRC and add the following new section **R302.2 Zero lot line separation.** Where perpetual, platted, and recorded easements create a non-buildable minimum fire separation distance of at least six (6) feet between structures on adjacent properties, the one-hour fire-resistive rating shall not apply.

Table R302.1 is amended as follows:

Exterior Wall Element		Minimum Fire-Resistance Rating	Minimum Fire Separation Distance
Walls	(Fire-resistance Rated)	1 hour with exposure from both sides	0 Feet
	(Not fire-resistance Rated)	0 - Hours	3 Feet
Projections	(Fire-resistance Rated)	1 hour on the underside	2 Feet
	(Not fire-resistance Rated)	0 - Hours	3 Feet
Openings	Not Allowed	N/A	<3 Feet
	24% Maximum of Wall Area	0 - Hours	3 Feet
	Unlimited	0 - Hours	5 Feet
Penetrations	All	Comply with Section R317.3	>5 Feet
		None Required	5 Feet

C. Section R303 through Section R308. See these sections of the IRC.

D. Section R309. See this section of the IRC except delete the text of sections R309.1 and R309.2 and substitute the following:

(1) R309.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with self-closing, tight fitting solid wood doors not less than 1 3/8 inches (35 mm) in thickness, solid or honeycomb core steel doors not less than 1 3/8 inches (35 mm) thick or self-closing, tight fitting 20-minute fire-rated doors.

(2) R309.1.1 Duct penetration. See this section of the IRC.

(3) R309.1.2 Other penetrations. See this section of the IRC.

(4) R309.2 Separation required. The garage shall be separated from the residence and its attic area by not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent applied to the garage side. Garages beneath habitable shall be separated from all habitable rooms above by not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent. Where separation is a floor-ceiling assembly, the structure supporting the separation shall also be protected by not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent. Garages located less than three (3) feet (914 mm) from a dwelling unit on the same lot shall be protected with not less than 5/8 inch (15.9 mm) type x gypsum board or equivalent applied to the interior side of exterior walls that are within this area. Openings in these walls shall be regulated by section R309.1. This provision does not apply to garage walls that are perpendicular to the adjacent dwelling unit wall.

E. 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.

F. Section R311 Means of Egress.

(1) **R311.1 through R311.3.** See these sections 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 (2003mm).

(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 R311.5.3.1 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.

G. Section R312 through Section R323. See these sections of the IRC.

[14.7.3.11 NMAC - Rp, 14.7.3.11, NMAC, 1-1-08]

14.7.3.12 CHAPTER 4 FOUNDATIONS:

A. Section R401 and R402. See these sections of the IRC.

B. Section R403 Footings. See this section of the IRC except that the text of section R403.1.4 is deleted and the following language is inserted: All exterior footings shall be placed at least 12 inches (305 mm) below the grade. Where applicable, the depth of footings shall also conform to sections R403.1.4.1 and R403.1.4.2.

C. Section R404 Foundations. See this section of the IRC except for the following.

(1) **R404.1 Concrete and masonry foundation walls.** See this section of the IRC, except delete tables R404.1(1), R404.1(2), R404.1(3) and the following: foundation walls that meet all of the following shall be considered laterally supported.

(a) 1. Full basement floor shall be 3.5 inches (89 mm) thick concrete slab poured tight against the bottom of the foundation wall.

(b) 2. Floor joists and blocking shall be connected to the sill plate at the top of wall by the prescriptive method called out in Table R404.1(1), or; shall be connected with an approved connector with listed capacity meeting Table R404.1(1).

(c) 3. Bolt spacing for the sill plate shall be no greater than per Table R404.1(2).

(d) 4. Floor shall be blocked perpendicular to the floor joists. Blocking shall be full depth within two joist spaces of the foundation wall, and be flat-blocked with minimum 2-inch by 4-inch (51mm by 102mm) blocking elsewhere.

(e) 5. Where foundation walls support unbalanced load on opposite sides of the building, such as a daylight basement, the building aspect ratio, L/W, shall not exceed the value specified in Table

R404.1(3). For such foundation walls, the rim board shall be attached to the sill with a 20 gage metal angle clip at 24 inches (610 mm) on center, with five 8d nails per leg, or an approved connector supplying 230 pounds per linear foot (3.36 kN/m) capacity.

(2) R404.5 Retaining walls.

Delete this section of the IRC and add the following: Retaining walls that are not laterally supported at the top and that retain in excess of 36 inches (915 mm) of unbalanced fill shall be designed to ensure stability against overturning, sliding, excessive foundation pressure and water uplift. Retaining walls shall be designed for a safety factor of 1.5 against lateral sliding and overturning.]

[14.7.3.12 NMAC - Rp, 14.7.3.12, NMAC, 1-1-08]

14.7.3.13 CHAPTER 5 FLOORS:

See this chapter of the IRC.

[14.7.3.13 NMAC - Rp, 14.7.3.13, NMAC, 1-1-08]

14.7.3.14 CHAPTER 6 WALL CONSTRUCTION:

A. Section R601. General. See this section of the IRC.

B. Section R602. Wood Wall Framing. See this section of the IRC except as provided below.

(1) Add a new section as follows: R602.1.3 native timber. Rough-sawn lumber and timber, including vigas, used for any load bearing application shall be identified by a report of a lumber grader or inspection agency that has been approved by CID.

(2) **Section R602.10.5 Continuous wood structural panel sheathing.** Delete this section of the IRC and substitute as follows: when continuous wood structural panel sheathing is provided in accordance with method 3 of R602.10.3, including areas above and below openings, braced wall panel lengths shall be in accordance with table R602.10.5. Wood structural panel sheathing shall be installed at corners in accordance with figures R602.10.5. The bracing amounts in table R602.10.1 for method 3 shall be permitted to be multiplied by a factor of 0.9 for walls with a maximum opening height that does not exceed 85 percent of the wall height or a factor of 0.8 for walls for the maximum opening height that does not exceed 67 percent of the wall height.

(3) **Table R602.10.5 Length requirements for braced wall panels in a continuously sheathed wall.** See this table of the IRC and revise note 'c' as follows: c. Walls on either or both sides of openings in garages shall be permitted to be built in accordance with section R602.10.6.2 and

Figure R602.10.6.2 except that a single bottom plate shall be permitted and two anchor bolts shall be placed at 1/3 points. In addition, tie-down devices shall not be required and the vertical wall segment shall have a maximum 6:1 height-to-width ratio (with height being measured from top of header to the bottom of the sill plate). This option shall be permitted for the first story of two-story applications in seismic design categories A through C.

(4) Delete the text of section R602.10.6 and substitute: alternate braced wall lines constructed in accordance with (a) or (b), below, shall be permitted to replace each 4 feet (1219 mm) of braced wall panel as required by section R602.10.4.

(a) In one-story buildings, each panel shall have a length of not less than 16 inches (406 mm) and a height of not more than 10 feet (3048 mm). Each panel shall be sheathed on one face with 3/8 inch (9.5 mm) minimum thickness wood structural panel sheathing nailed with 8d common or galvanized box nails in accordance with table R602.3.(1) and blocked at all wood structural panel sheathing edges. Anchor bolts shall be placed at panel quarter points. For walls between 12 inches (305 mm) and 16 inches (406 mm) in length and a height of not more than 10 feet (3048 mm), panels shall be nailed as above and have one anchor bolt placed at the center of the panel. The panels shall be supported directly on a foundation or on floor framing supported directly on a foundation, which is continuous across the entire length of the braced wall line. This foundation shall be reinforced with not less than one No. 4 bar top and bottom. When the continuous foundation is required to have a depth greater than 12 inches (305 mm), a minimum 12-inch-by-12-inch (305 mm by 305 mm) continuous footing or turned down slab edge shall be reinforced with not less than one No. 4 bar top and bottom. This reinforcement shall be lapped 15 inches (381 mm) with the reinforcement required in the continuous foundation located directly under the braced wall line.

(b) In the first story of two-story buildings, each braced wall panel shall be in accordance with (a), above, except that the wood structural panel sheathing shall be provided on both faces, sheathing edge nailing spacing shall not exceed 4 inches (101.6 mm) on center, at least three anchor bolts shall be placed at one-fifth points.

C. Section R603 through Section R612. See these sections of the IRC. [14.7.3.14 NMAC - Rp, 14.7.3.14, NMAC, 1-1-08]

14.7.3.15 CHAPTER 7 WALL COVERING:

A. Section R701 and Section R702. See these sections of the IRC.

B. Section R703 Exterior Covering. See this section of the IRC except insert the following at the end of the first paragraph of section R703.6.2: exterior finish coatings which have a current [ICBO] ICC evaluation report, and applied to a concrete or masonry surface shall be installed in accordance with the manufacturer's installation instructions and are not required to comply with table 702.1(1).

C. Section R703.6.2 Plaster. Delete the text of this section of the IRC and insert the following: plastering with Portland cement plaster shall be not less than three coats when applied over metal lath or wire lath and shall not be less than two coats when applied over masonry, concrete, pressure-preservative treated wood or decay-resistant wood as specified in section R319.1 or gypsum backing. Decorative coatings applied to concrete or masonry surface shall be installed in accordance with the manufacturer's installation instructions and are not required to comply with table R702.1(1). If the plaster surface is completely covered by veneer or other facing material or is completely concealed, plaster application need be only two coats, provided the total thickness is as set forth in table R702.1(1). On wood frame construction with an on-grade floor slab system, approved acrylic based exterior plaster systems and acrylic based color coats shall be applied in such a manner as to cover, but not extend below, lath, paper and screed. When a cement plaster stucco and cement plaster color is installed, and no perimeter insulation is on the exterior of a concrete or masonry foundation, the color coat shall terminate not further than 6 inches (153 mm) below finished grade. All excess plaster shall be removed from the site and no plaster material may remain on the adjoining soil or footing.

D. Section R703.6.2.1 Weep screeds. Delete the text of this section of the IRC and substitute the following: When an approved acrylic based exterior finish stucco system or acrylic based color coat is applied, a minimum 0.019 inch (0.48 mm) (No. 26 galvanized sheet gage), corrosion-resistant weep screed or plastic weep screed, with a minimum vertical attachment flange of 3 1/2 inches (89 mm) shall be provided at or below the foundation plate line on exterior stud wall in accordance with ASTM C 926. The weep screed shall be placed a minimum of 2 inches (51mm) above the earth or 1/2 inch 13 mm above paved areas and shall be of a type that will allow trapped water to drain to the exterior of the building. The weather-resistant barrier shall lap the attachment flange. The exterior lath shall lap the attachment flange of

the weep screed. Weep screeds are not required under covered porches, covered patios, or when a non-acrylic based conventional cement plaster and cement plaster color coat as approved in R703.6.2 is installed.

E. Plaster to roof separation. A reglet, plaster stop, weep screed or equivalent metal flashing shall be applied where all stucco wall surfaces terminate at a roof. [14.7.3.15 NMAC - Rp, 14.7.3.15, NMAC, 1-1-08]

14.7.3.16 CHAPTER 8 ROOF-CEILING CONSTRUCTION: See this chapter of the IRC.

[14.7.3.16 NMAC - Rp, 14.7.3.16, NMAC, 1-1-08]

14.7.3.17 CHAPTER 9 ROOF ASSEMBLIES:

A. Section R901 through Section R902. See these sections of the IRC

B. Section R903. See this section of the IRC except delete section R903.5 and Figure R903.5.

C. Section R904. See this section of the IRC except add the following new section: **Section R904.5 Loose granular fill.** Pumice and other granular fill type materials are not permitted in roof assemblies.

D. Section R905. See this section of the IRC except add the following new sections:

(1) Section R905.9.4 Roof deck transitions. Add new section of the IRC as follows: where roof sheathing is overlapped to create drainage "crickets" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

(2) Section R905.9.5 Canales and Scuppers. All canales or scuppers must have a metal pan lining extending 6 inches minimum past the inside of the parapet and 6 inches minimum to each side of the canale or scupper opening. All canales or scuppers must have positive drainage.

(3) Section R905.11.4 Modified bitumen roofing. Where roof sheathing is overlapped to create drainage "cricket" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

(4) Section R905.12.4 Thermoset single-ply roofing. Where roof sheathing is overlapped to create drainage "crickets" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

(5) Section R905.13.4 Thermoplastic single-ply roofing. Where roof sheathing is overlapped to create

drainage "crickets" or valleys to canales, taperboard or equivalent shall be used to transition between the two deck levels to create a uniform substrate.

E. Section R907.3 Re-covering versus replacement. Delete the text of section R907.3 and substitute: New roof covering shall not be installed without first removing existing roof coverings where any of the following conditions occur:

(1) where the existing roof or roof covering is water soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing;

(2) where the existing roof covering is wood shake, slate, clay, cement or asbestos-cement tile;

(3) where the existing roof has two or more applications of any type of roof covering;

(4) where pumice or other granular fill are present; existing roofing and granular fill must be removed prior to re-roofing.

[14.7.3.17 NMAC - Rp, 14.7.3.17, NMAC, 1-1-08]

14.7.3.18 CHAPTER 10 CHIMNEYS AND FIREPLACES: See this chapter of the IRC.

[14.7.3.18 NMAC - Rp, 14.7.3.18, NMAC, 1-1-08]

14.7.3.19 CHAPTER 11 ENERGY EFFICIENCY: Delete this chapter of the IRC and see 14.7.6 NMAC, the NMECC.

[14.7.3.19 NMAC - Rp, 14.7.3.19, NMAC, 1-1-08]

14.7.3.20 CHAPTERS 12 THROUGH 23 MECHANICAL: Delete these chapters of the IRC and see 14.9.2, NMMC.

[14.7.3.20 NMAC - Rp, 14.7.3.20, NMAC, 1-1-08]

14.7.3.21 CHAPTER 24 FUEL GAS: Delete this chapter of the IRC and see the NMMC.

[14.7.3.21 NMAC - Rp, 14.7.3.21, NMAC, 1-1-08]

14.7.3.22 CHAPTERS 25 THROUGH 32 PLUMBING: Delete these chapters of the IRC and see the NMPD.

[14.7.3.22 NMAC - Rp, 14.7.3.22, NMAC, 1-1-08]

14.7.3.23 CHAPTERS 33 THROUGH 42 ELECTRICAL: Delete these chapters of the IRC and see the NMEC.

[14.7.3.23 NMAC - Rp, 14.7.3.23, NMAC,

1-1-08]

14.7.3.24 CHAPTER 43 REFERENCED STANDARDS: See this section of the IRC.

[14.7.3.24 NMAC - Rp, 14.7.3.24, NMAC, 1-1-08]

14.7.3.25 APPENDIX J EXISTING BUILDINGS AND STRUCTURES.

A. Section AJ101

Purpose and intent. See this section of the IRC.

B. Section AJ102

Compliance. See this section of the IRC except add the following new section: **Section AJ102.4.1 Compliance.** When alterations and repairs are made to exterior stud framed walls of existing bedrooms and exterior wall framing adjoining the window is exposed, then the window shall be made to comply with section R310.

[14.7.3.25 NMAC - N, 1-1-08]

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL**

**PART 4 2006 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, 14.7.4.1 NMAC, 1-1-08]

14.7.4.2 SCOPE: This rule applies to all earthen building materials contracting work performed in New Mexico on or after January 1, 2008, 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, 14.7.4.2 NMAC, 1-1-08]

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

[14.7.4.3 NMAC - Rp, 14.7.4.3 NMAC, 1-1-08]

14.7.4.4 DURATION: Permanent.

[14.7.4.4 NMAC - Rp, 14.7.4.4 NMAC, 1-1-08]

14.7.4.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.

[14.7.4.5 NMAC - Rp, 14.7.4.1 NMAC, 1-1-08]

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, 14.7.4.1 NMAC, 1-1-08]

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 figures supplement).

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 of the earthen building figures supplement).

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 of the earthen building figures supplement).

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. Round-cap nails means fasteners that include nails or screws in combination with caps of at least three-fourths (3/4) inches diameter or three-fourths (3/4) inch square.

M. 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.

N. **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, 14.7.4.7 NMAC, 1-1-08]

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.

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, 14.7.4.8 NMAC, 1-1-08]

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.

E. **Passive solar structures.** Passive solar structures incorporating the use of solar mass walls (trombes), direct gain arrays or sunspaces (greenhouses) as defined by the passive solar heating worksheet, dated June, 2004 and prepared by the state of New Mexico energy, minerals and natural resources department, are allowed.

[14.7.4.9 NMAC - Rp, 14.7.4.9 NMAC, 1-1-08]

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, 14.7.4.10 NMAC, 1-1-08]

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, 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				
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

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. 3 000 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 or 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. When rigid insulation board is used, round-cap nails shall attach it to the adobe wall. Cap nails shall have a maximum spacing of sixteen (16) inches from each other. Additionally, cap nails shall secure the rigid insulation boards around their perimeter edges, with nails spaced no less than twelve (12) inches apart. All cap nails shall penetrate a minimum of two (2) inches into the adobe wall when securing rigid insulation board up to two (2) inches in thickness, and three (3) inches when securing insulation board greater than two (2) inches in thickness.

[14.7.4.11 NMAC - Rp, 14.7.4.11 NMAC, 1-1-08]

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. Exception: Exterior walls that are also designed as solar mass walls (trombes) as defined by the passive solar heating worksheet, dated June 2004 and prepared by the state of New Mexico energy, minerals and natural resources department, are allowed and shall be minimum thickness of ten (10) inches, not to exceed twelve (12) inches. They shall be fully attached to or integrated with any adjacent structural wall and topped with a bond beam that fully attaches them to the bond beam of any adjacent structural wall as described in 14.7.4.17 NMAC.

(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 earthen building figures supplement).

(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 2006 New Mexico Residential Building Code (NMRBC), unless otherwise provided for in this rule.

(9) Passive solar structures incorporating the use of solar mass walls (trombes), direct gain arrays or sunspaces (greenhouses) as defined by the passive solar heating worksheet, dated June 2004 and prepared by the state of New Mexico energy, minerals and natural resources department, are allowed.

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 earthen building figures supplement); an adobe wall of bond beam height and at least ten (10) 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

earthen building figures supplement); a minimum twenty 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 earthen building figures supplement); a buttress configuration that intersects the running wall at ninety (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 earthen building figures supplement). 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 earthen building figures supplement). 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 earthen building figures supplement).

[14.7.4.12 NMAC - Rp, 14.7.4.12 NMAC, 1-1-08]

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 of the earthen building figures supplement). 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-eighty (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, 14.7.4.13 NMAC, 1-1-08]

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 sta-

bilization 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 imme-

diately 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 earthen building figures supplement); 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 earthen building figures supplement). 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 earthen building figures supplement); 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 earthen building figures supplement). 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, 14.7.4.14 NMAC, 1-1-08]

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, 14.7.4.15 NMAC, 1-1-08]

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 earthen building figures supplement).

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 earthen building figures supplement). 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 earthen building figures supplement).

D. Attachment of a load-bearing 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 earthen building figures supplement).

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. When rigid insulation board is used, round-cap nails shall attach it to the rammed earth wall. Cap nails shall have a maximum spacing of sixteen (16) inches from each other. Additionally, cap nails shall secure the rigid insulation boards around their perimeter edges, with nails spaced no less than twelve (12) inches apart. All cap nails shall penetrate a minimum of two (2) inches into the rammed earth wall when securing rigid insulation board up to two (2) inches in thickness, and three (3) inches when securing insulation board greater than two (2) inches in thickness.

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 earthen building figures supplement).

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, 14.7.4.16 NMAC, 1-1-08]

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 earthen building figures supplement.

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, 14.7.4.17 NMAC, 1-1-08]

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 earthen building figures supplement).

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.

Table 4 Concrete Lintels Over Openings in Rammed Earth Walls [1]					
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.		
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.		
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.		
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, 14.7.4.18 NMAC, 1-1-08]

[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, 14.7.4.19 NMAC, 1-1-08]

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, 14.7.4.20 NMAC, 1-1-08]

14.7.4.21 PLUMBING:

A. General. Code compliant plumbing systems may be rammed into the wall system, either vertically or horizontally, pro-

vided 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, 14.7.4.21 NMAC, 1-1-08]

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, 14.7.4.22 NMAC, 1-1-08]

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. Passive solar structures incorporating the use of solar mass walls (trombes), direct gain arrays or sunspaces (greenhouses) as defined by the passive solar heating worksheet, dated June 2004 and prepared by the

state of New Mexico energy, minerals and natural resources department, are allowed.

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, 14.7.4.23 NMAC, 1-1-08]

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, 14.7.4.24 NMAC, 1-1-08]

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, 14.7.4.25 NMAC, 1-1-08]

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				

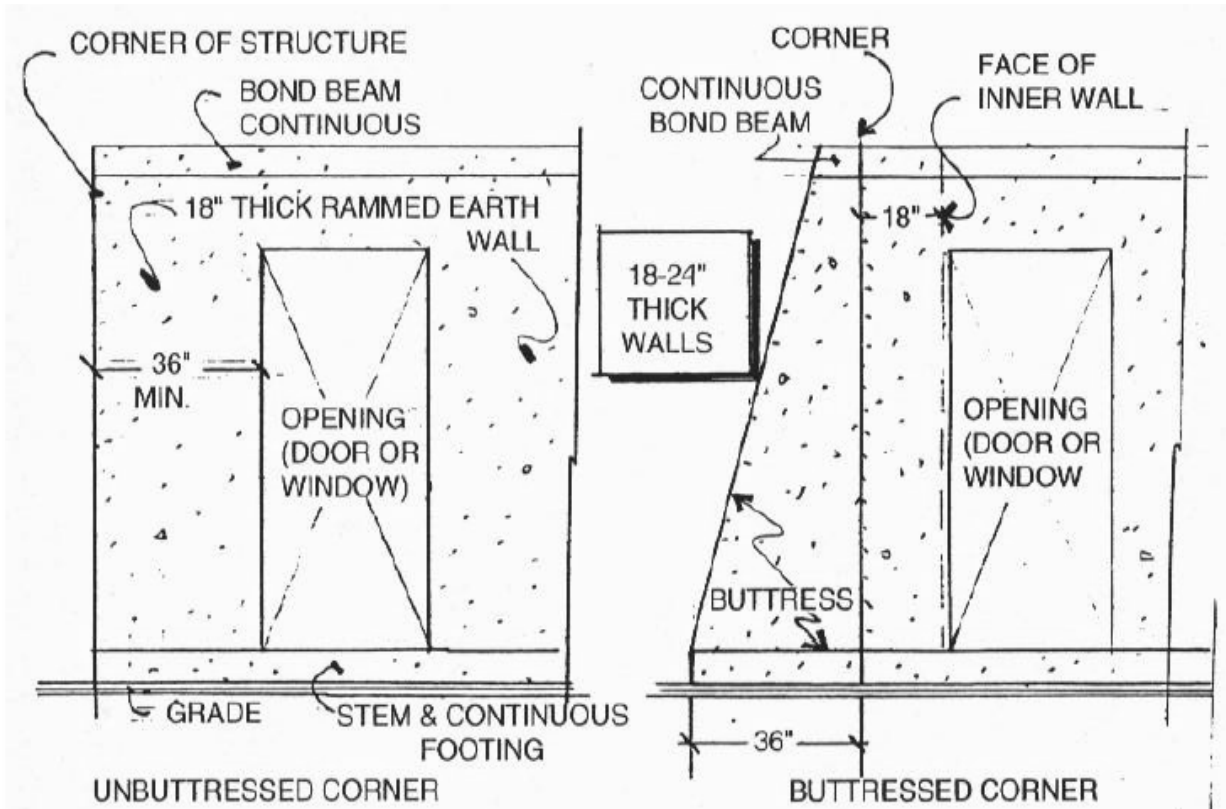
[14.7.4.26 NMAC - Rp, 14.7.4.26 NMAC, 1-1-08]

14.7.4.27 ATTACHMENTS AND CONNECTIONS: When rigid insulation board is used, round-cap nails shall attach it to the CEB wall. Cap nails shall have a maximum spacing of sixteen (16) inches from each other. Additionally, cap nails shall secure the rigid insulation boards around their perimeter edges, with nails spaced no less than twelve (12) inches apart. All cap nails shall penetrate a minimum of two (2) inches into the CEB wall when securing rigid insulation board up to two (2) inches in thickness, and three (3) inches when securing insulation board greater than two (2) inches in thickness.

[14.7.4.27 NMAC - Rp, 14.7.4.27 NMAC, 1-1-08]

14.7.4.28

FIGURE 1 - BUTTRESS

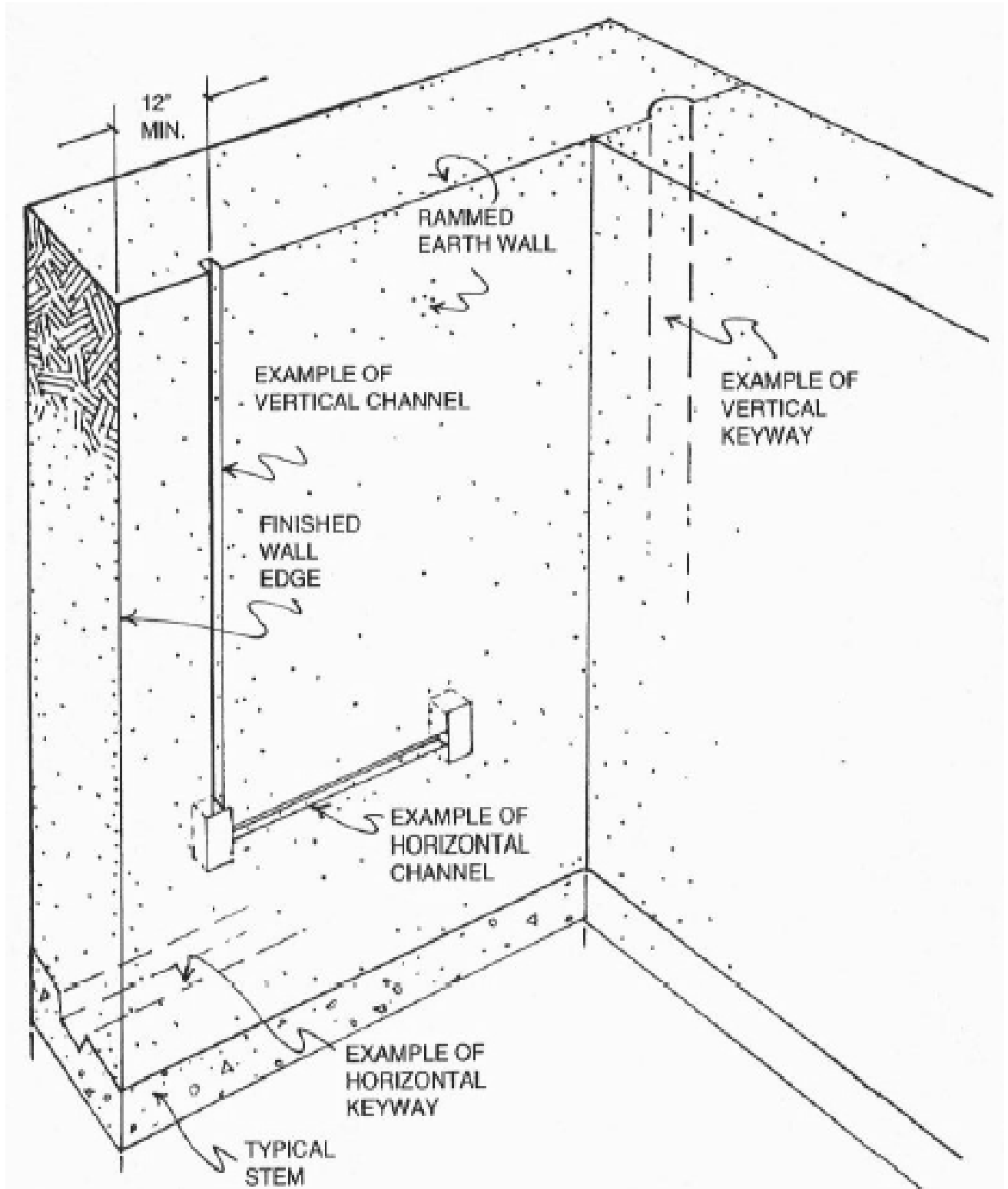


[14.7.4.28 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.29

FIGURE 2 - CHANNEL

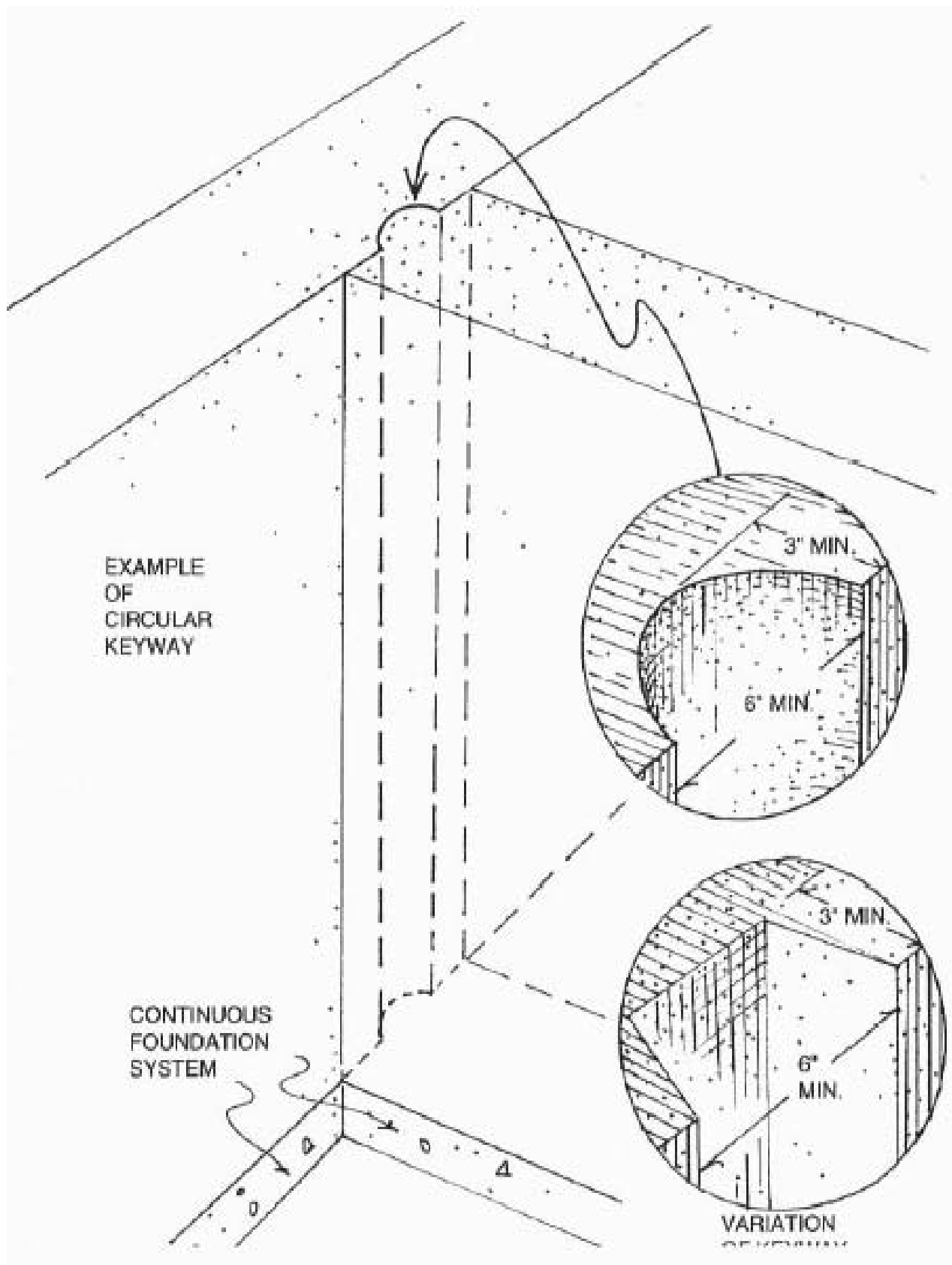


[14.7.4.29 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.30

FIGURE 3 - KEYWAY

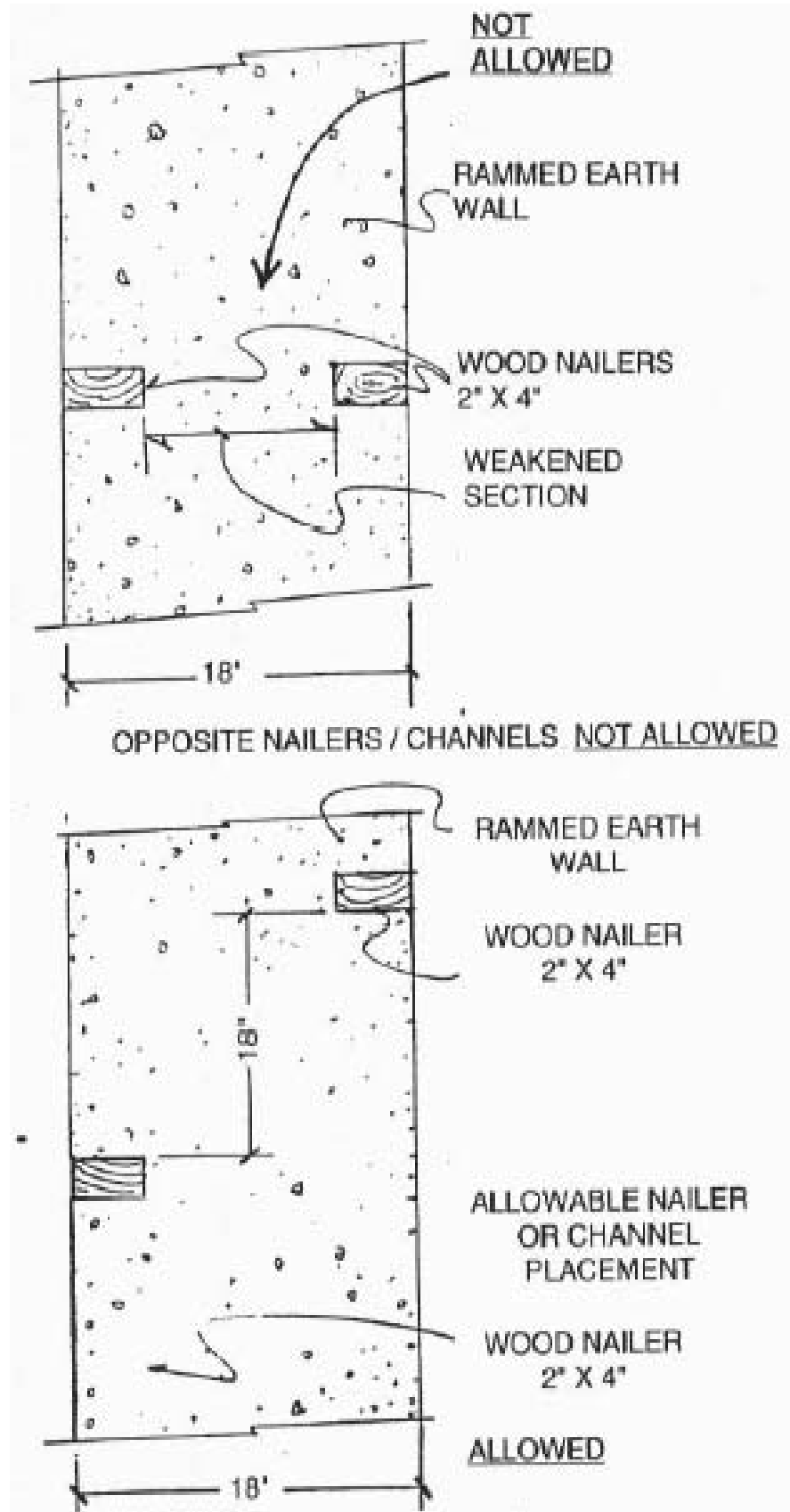


[14.7.4.30 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.31

FIGURE 4 - NAILER:

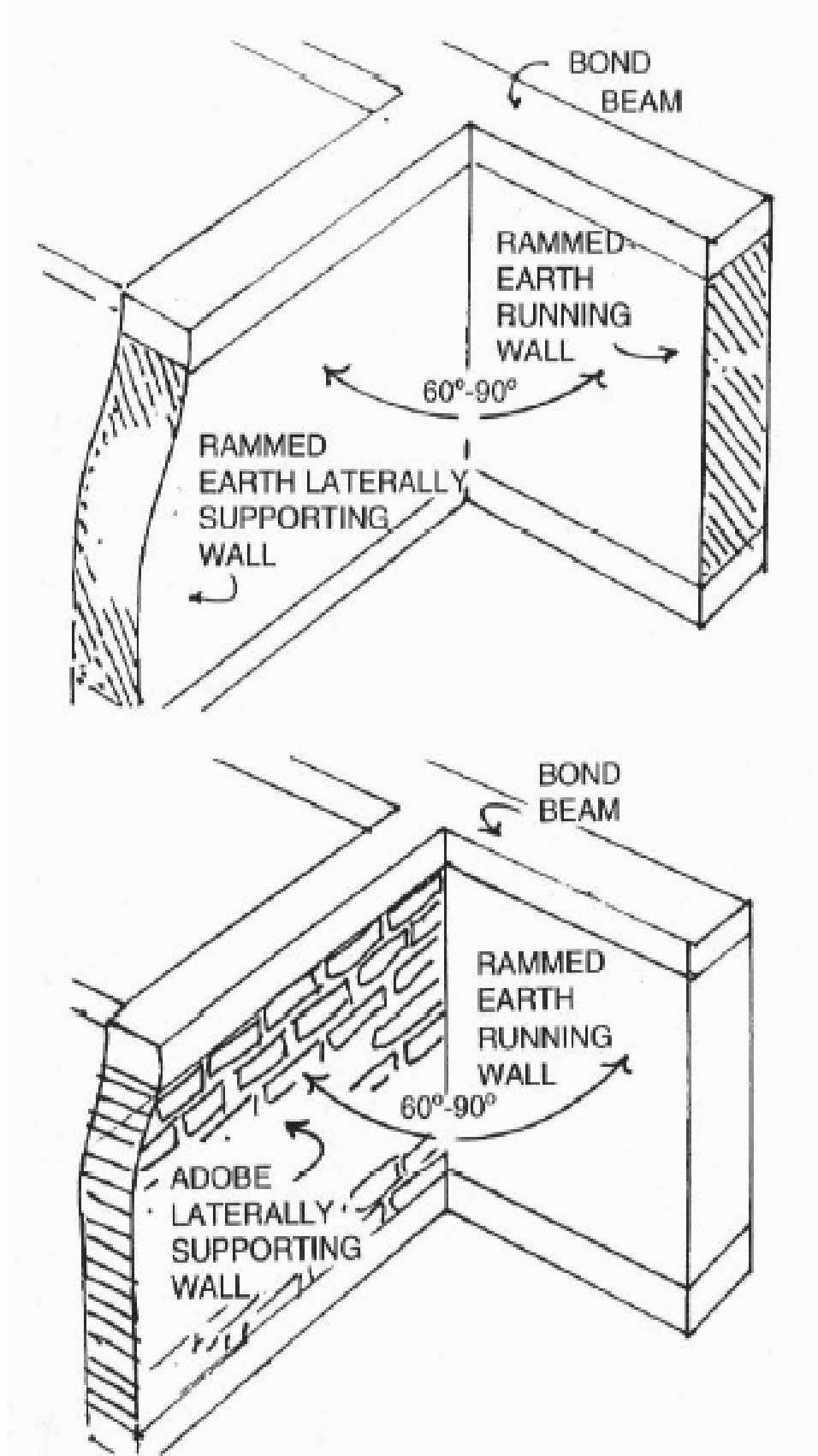


[14.7.4.31 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.32

FIGURE 5 - LATERAL SUPPORT

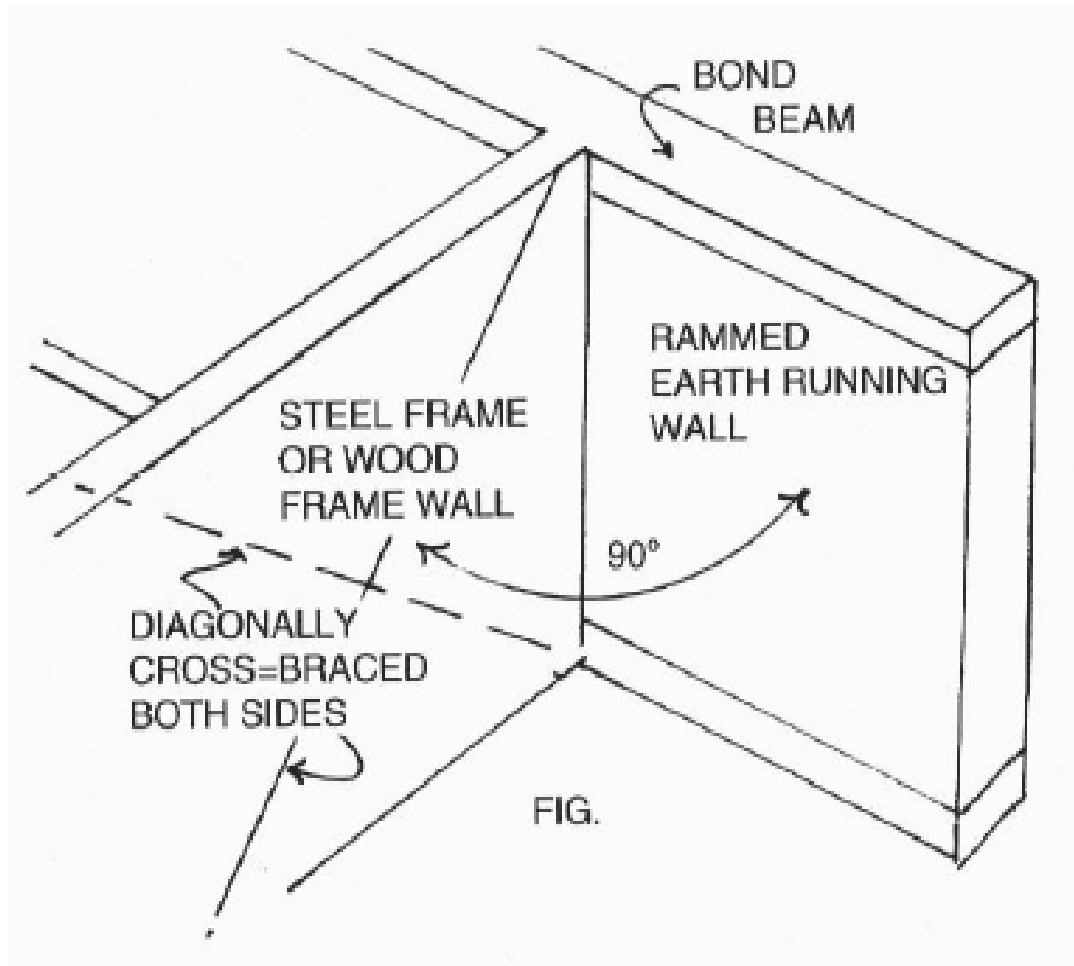


[14.7.4.32 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.33

FIGURE 6 - LATERAL SUPPORT

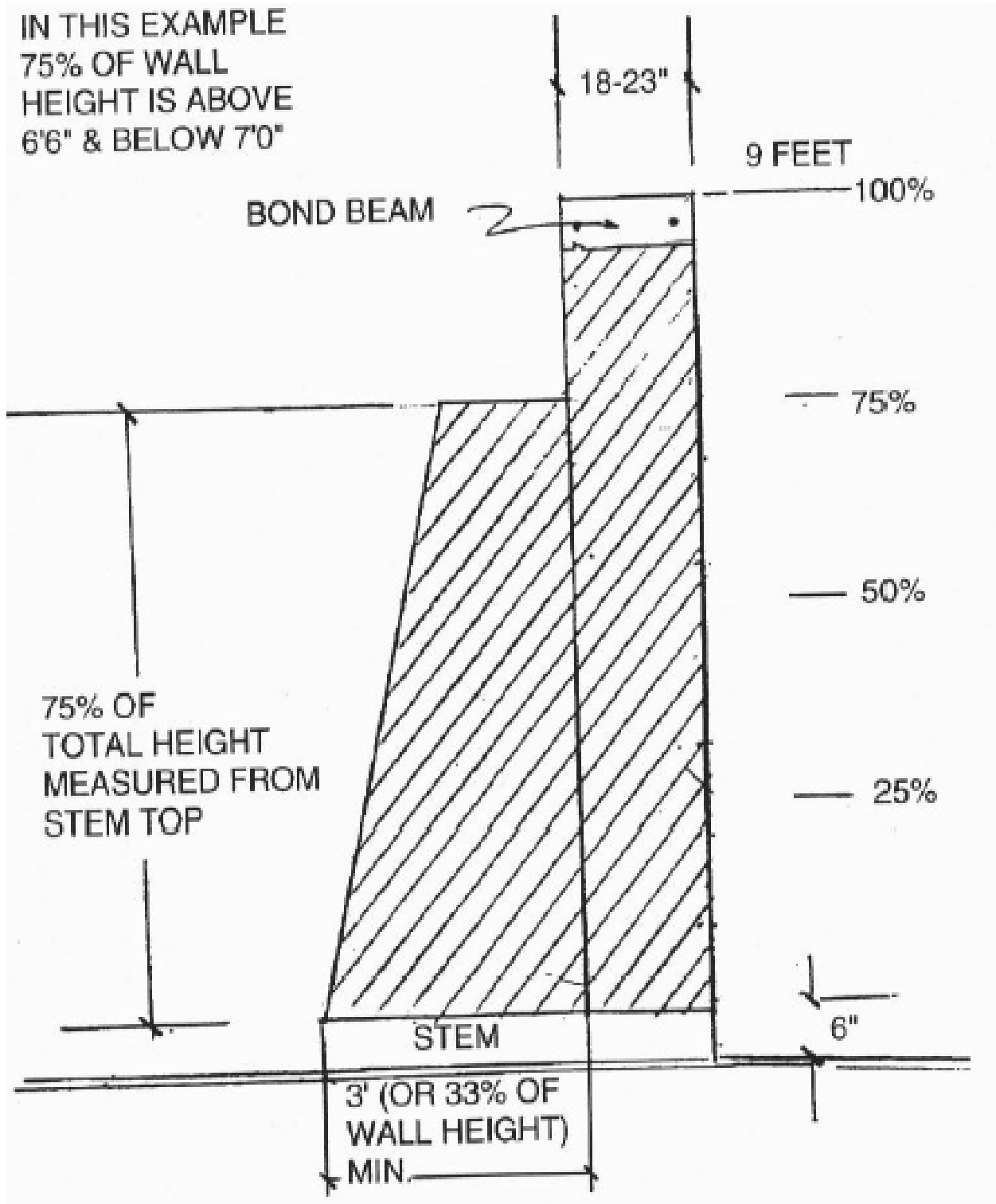


[14.7.4.33 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.34

FIGURE 7 - LATERAL SUPPORT:

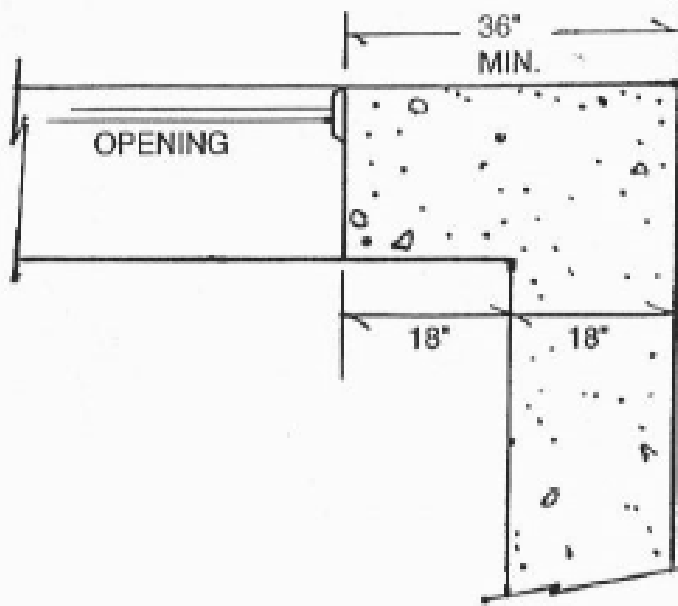


[14.7.4.34 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

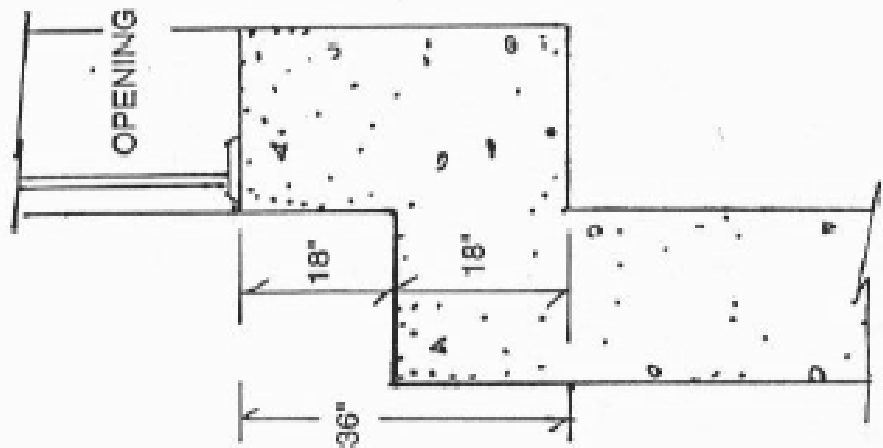
[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.35

FIGURE 8 - OPENINGS:



THE MINIMUM DISTANCE MEASURED FROM THE EDGE OF ANY OPENING TO THE NEAREST CORNER, PLUS THE ADJOINING WALL THICKNESS SHALL NOT BE LESS THAN 36 INCHES

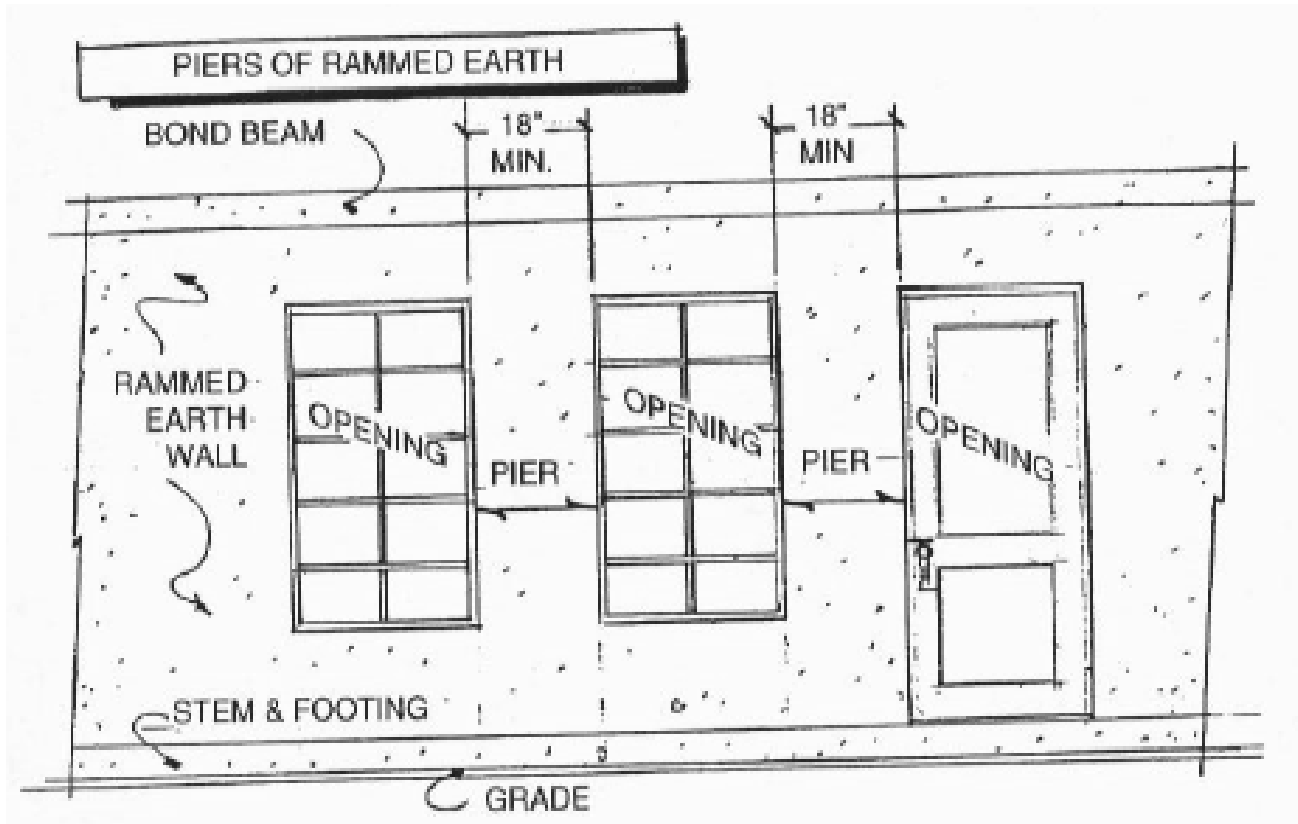


[14.7.4.35 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.36

FIGURE 9 - A PIERS:

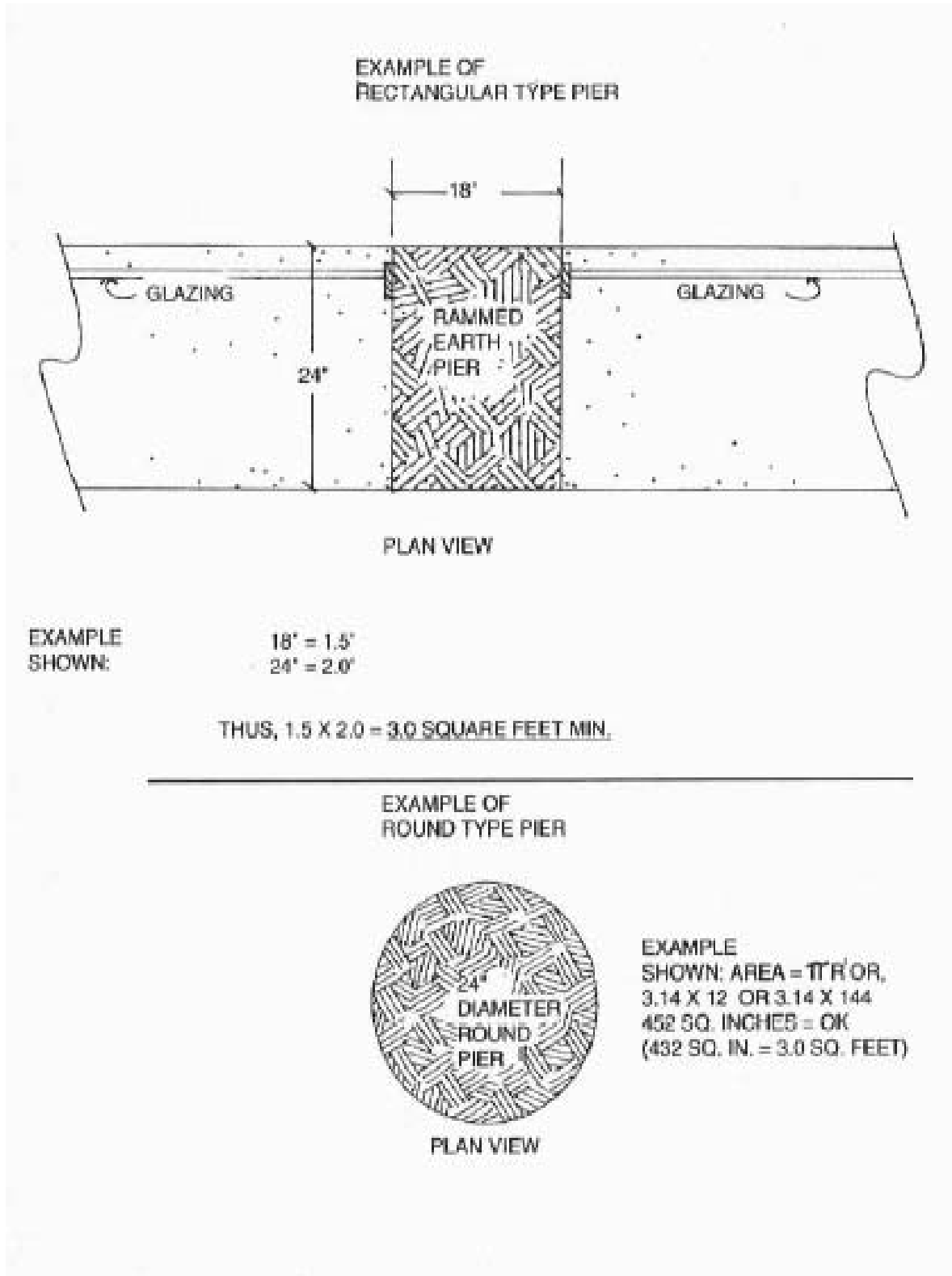


[14.7.4.36 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.37

FIGURE 9 - B PIERS:

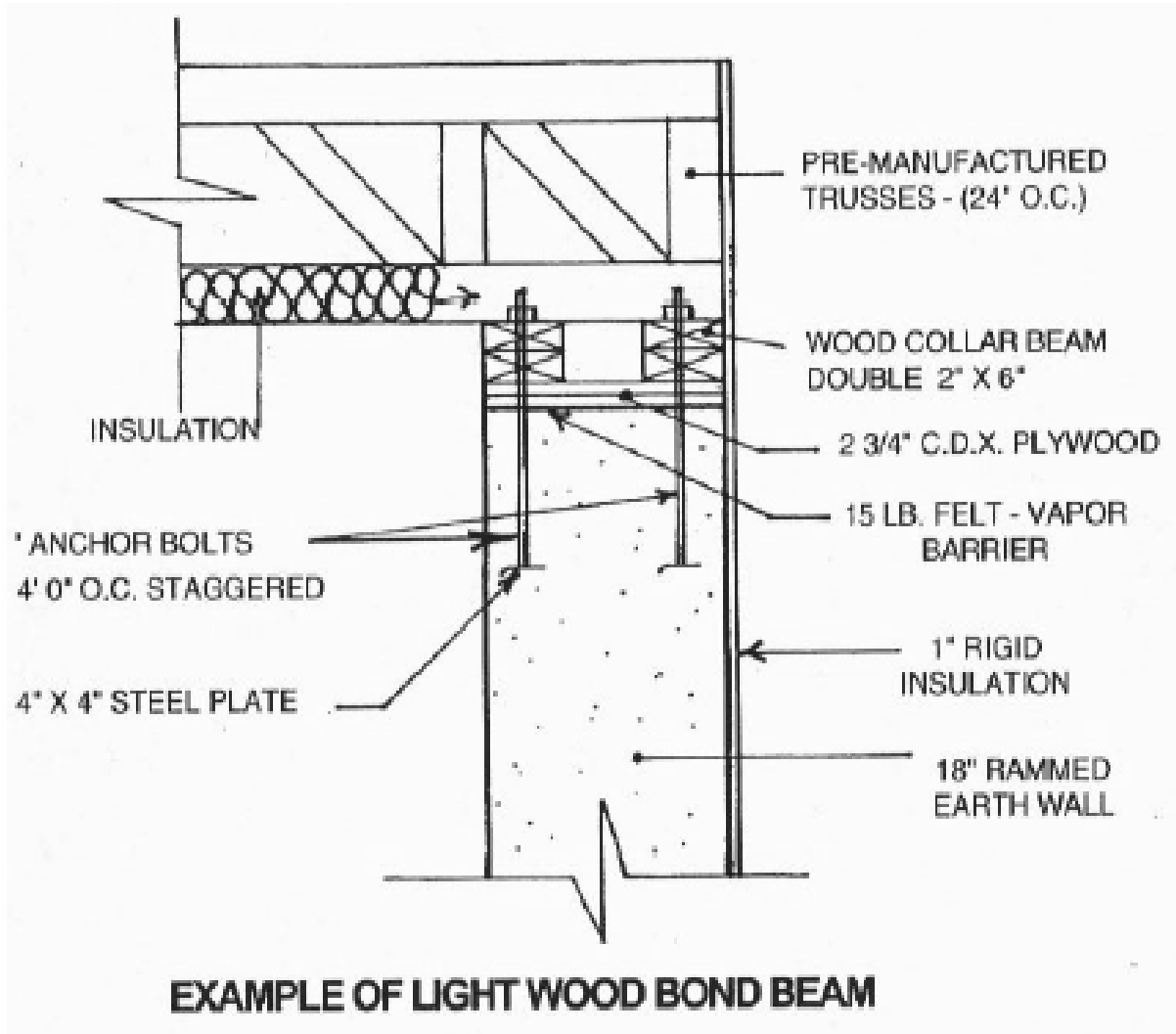


[14.7.4.37 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.38

FIGURE 10 - WOOD BOND BEAM CONSTRUCTION:

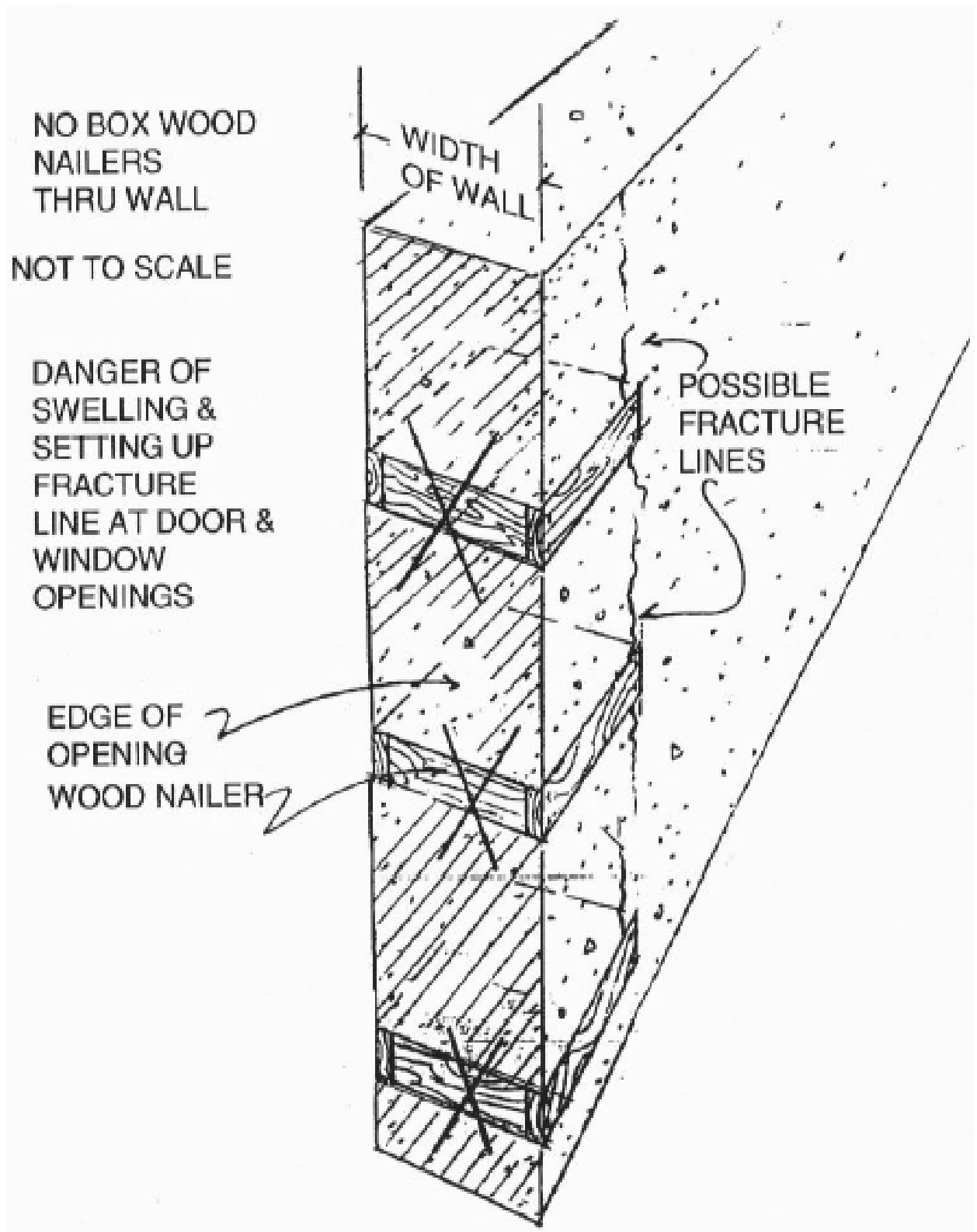


[14.7.4.38 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.39

FIGURE 11 - PLACEMENT OF ATTACHED MATERIALS:

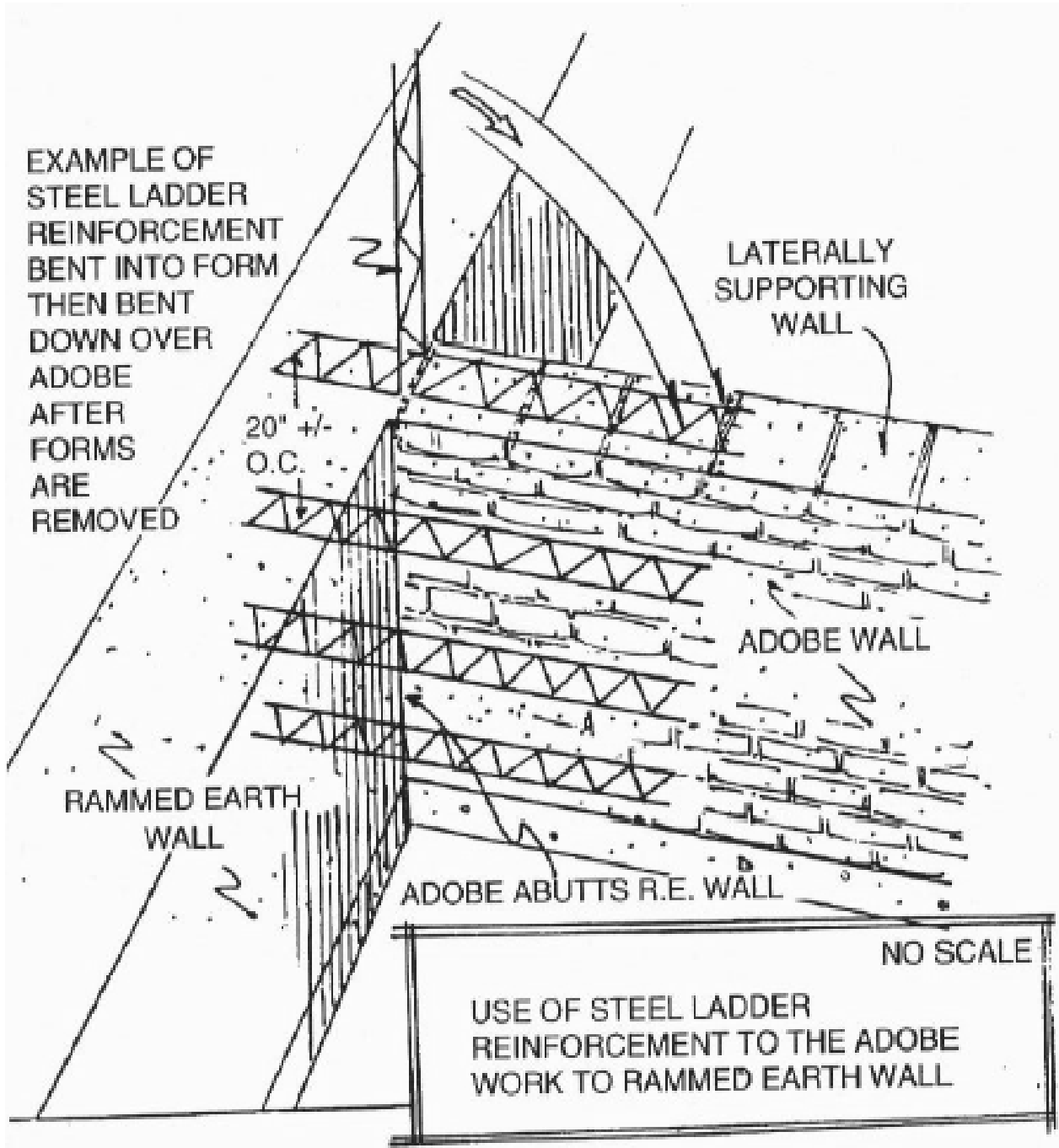


[14.7.4.39 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.40

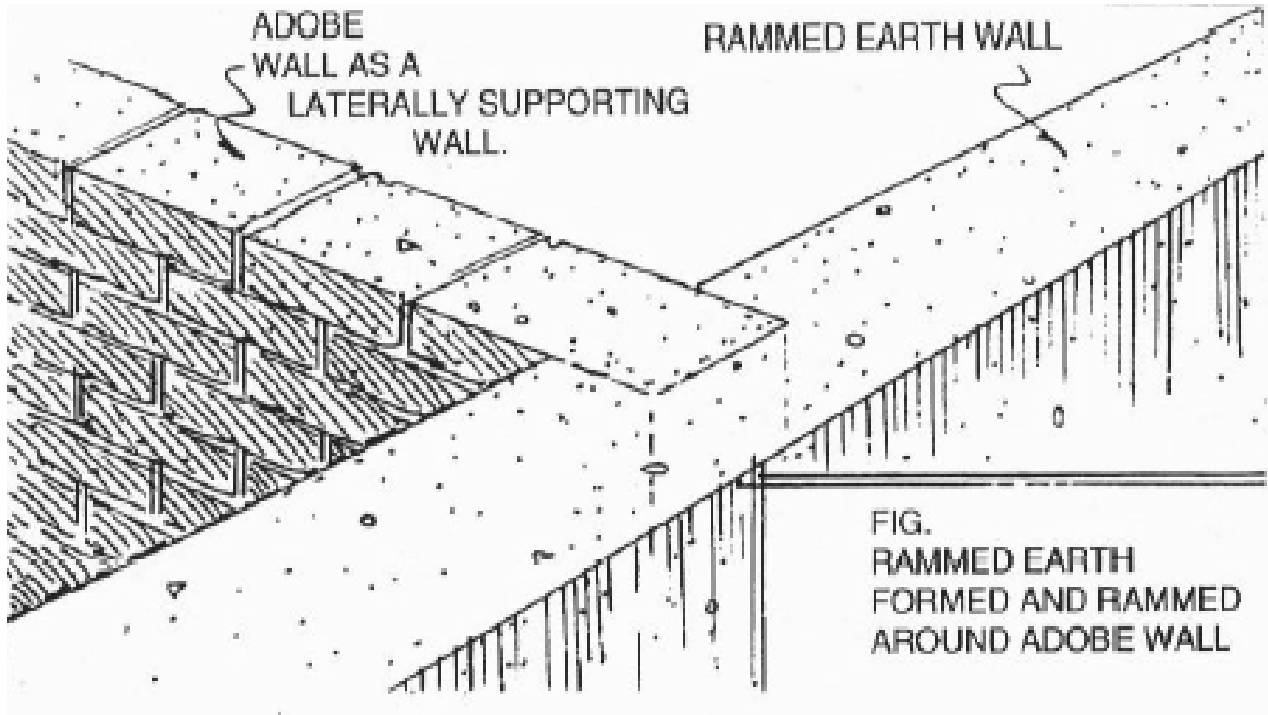
FIGURE 12 - ATTACHMENT OF AN ADOBE WALL TO A RAMMED EARTH WALL:



[14.7.4.40 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

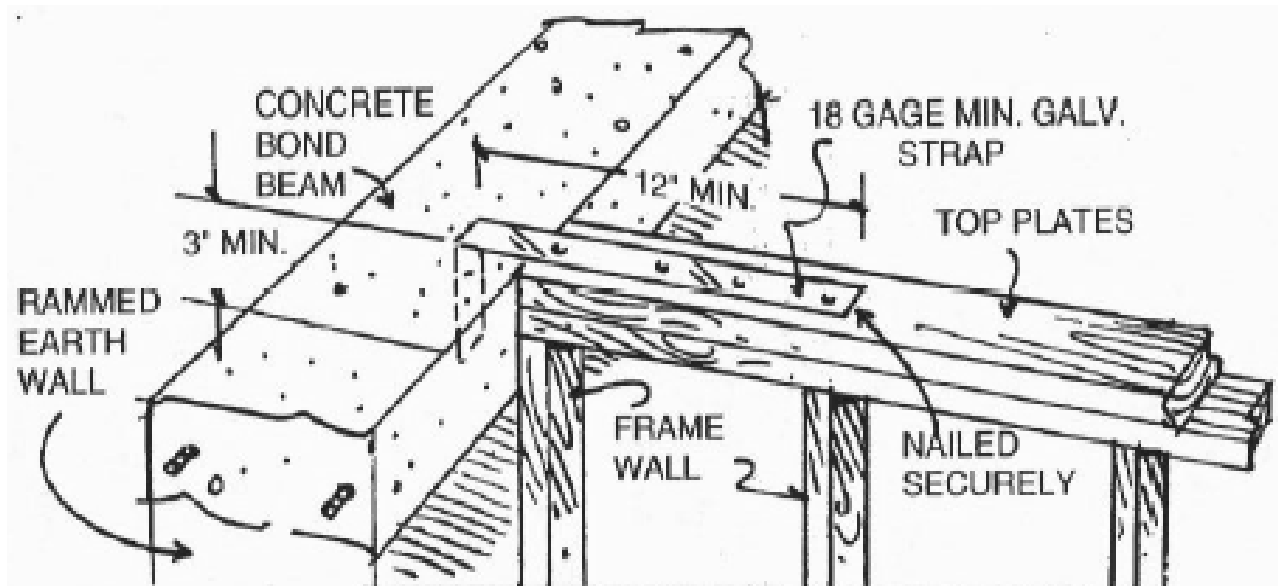
[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.41 FIGURE 13 - ATTACHMENT OF AN ADOBE WALL TO A RAMMED EARTH WALL:



[14.7.4.41 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]
 [This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

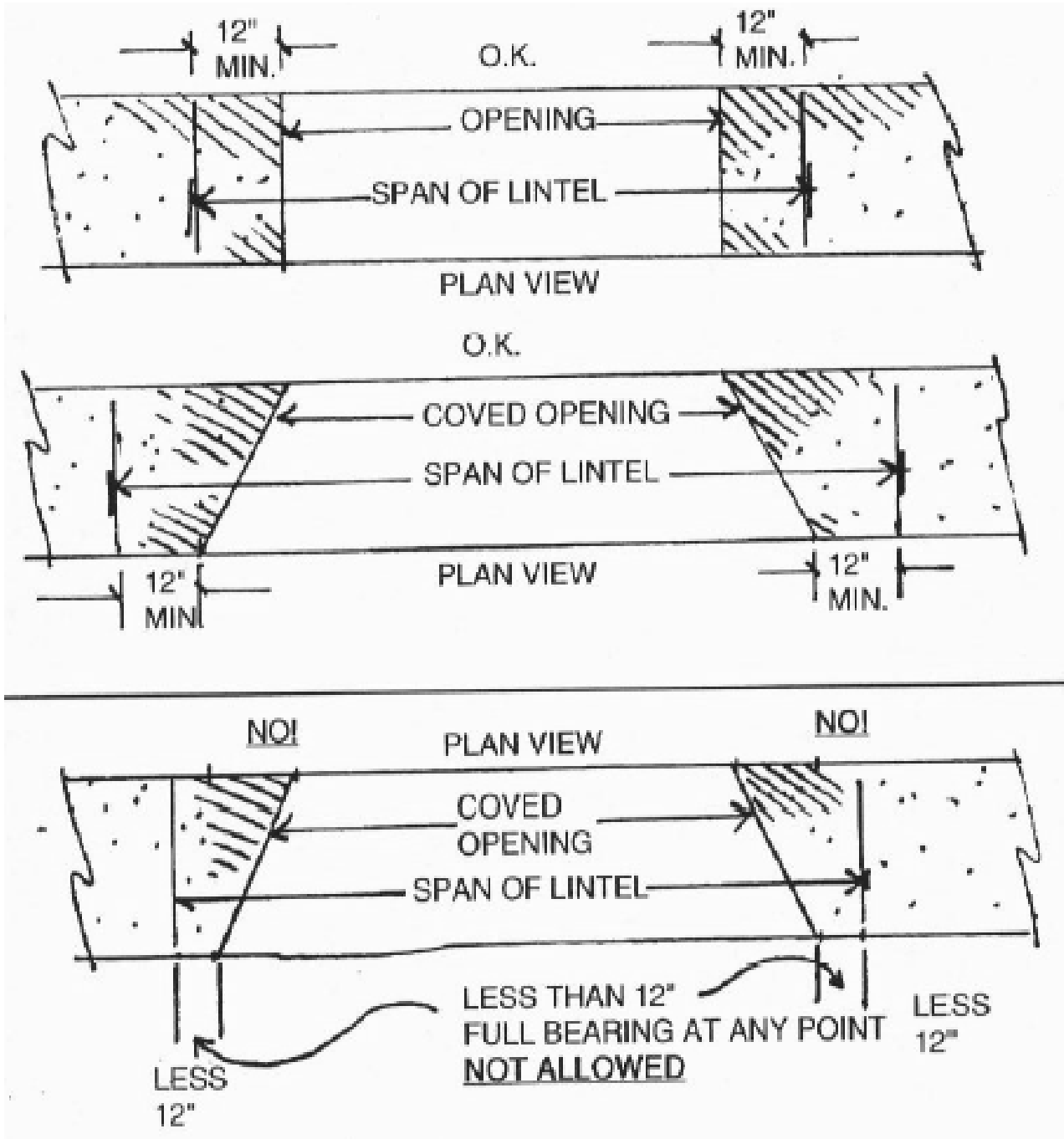
14.7.4.42 FIGURE 14 - ATTACHMENT OF A LOAD BEARING WOOD OR STEEL FRAME WALL TO A RAMMED EARTH WALL:



[14.7.4.42 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]
 [This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.43

FIGURE 15 - BEARING LIMITATIONS:

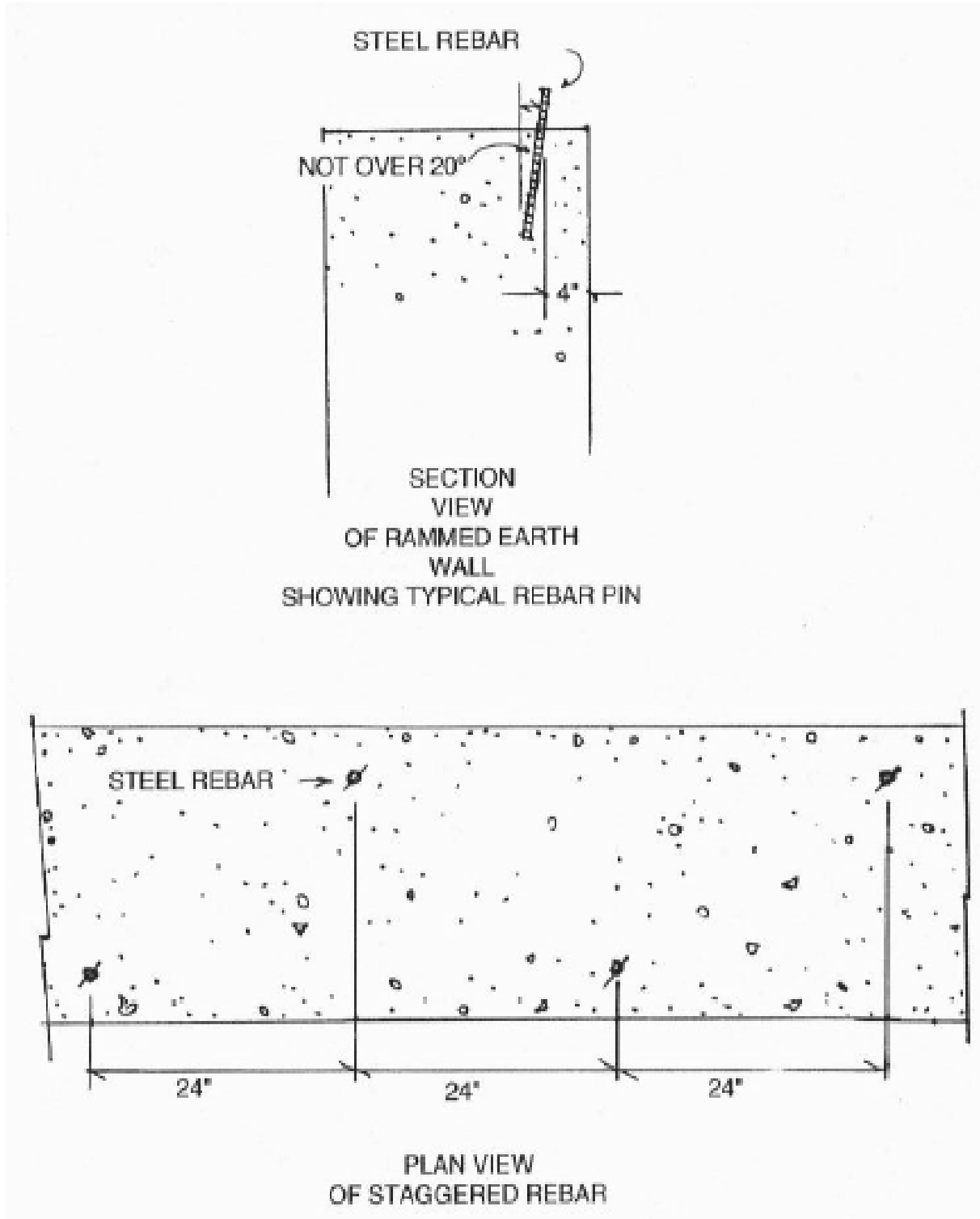


[14.7.4.43 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

14.7.4.44

FIGURE 16 - ATTACHMENT OF A CONCRETE BOND BEAM TO A RAMMED EARTH WALL:



[14.7.4.44 NMAC - Rp, 14.11.11.8 NMAC, 1-1-08]

[This figure was not included in the first version of 14.7.4 NMAC (filed 10-18-04).]

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 5 2006 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, 14.7.5.1 NMAC, 1-1-08]

14.7.5.2 SCOPE: This rule applies to single family residential contracting work performed within the state of New Mexico on or after January 1, 2008, 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, 14.7.5.2 NMAC, 1-1-08]

14.7.5.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9(F).
[14.7.5.3 NMAC - Rp, 14.7.5.3 NMAC, 1-1-08]

14.7.5.4 DURATION: Permanent.
[14.7.5.4 NMAC - Rp, 14.7.5.4 NMAC, 1-1-08]

14.7.5.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.
[14.7.5.5 NMAC - Rp, 14.7.5.5 NMAC, 1-1-08]

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, 14.7.5.6 NMAC, 1-1-08]

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, 14.7.5.7 NMAC, 1-1-08]

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 2006 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 2006 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, 14.7.5.8 NMAC, 1-1-08]

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, 14.7.5.9 NMAC, 1-1-08]

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-resistant barrier to protect the interior wall covering as required by 14.7.3.15 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, 14.7.5.10 NMAC, 1-1-08]

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, 14.7.5.11 NMAC, 1-1-08]

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, 14.7.5.12 NMAC, 1-1-08]

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, 14.7.5.13 NMAC, 1-1-08]

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 - Rp, 14.7.5.14 NMAC, 1-1-08]

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 **14.7.3.15** NMAC and R703 Exterior Coverings for moisture barrier types.

[14.7.5.15 NMAC - Rp, 14.7.5.15 NMAC, 1-1-08]

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, 14.7.5.16 NMAC, 1-1-08]

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, 14.7.5.17 NMAC, 1-1-08]

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, 14.7.5.18 NMAC, 1-1-08]

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 6 2006 NEW MEXICO
ENERGY CONSERVATION CODE**

14.7.6.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.7.6.1 NMAC - Rp, 14.7.6.1, NMAC, 1-1-08]

14.7.6.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after January 1, 2008, 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, except that commercial buildings, which comply with the requirements of the 2004 edition of ASHRAE/IESNA 90.1, are excepted from the requirements of this rule. [14.7.6.2 NMAC - Rp, 14.7.6.2, NMAC, 1-1-08]

14.7.6.3 STATUTORY AUTHORITY: NMSA 1978 sections 60-13-9 and 60-13-44. [14.7.6.3 NMAC - Rp, 14.7.6.3, NMAC, 1-1-08]

14.7.6.4 DURATION:

Permanent.

[14.7.6.4 NMAC - Rp, 14.7.6.4, NMAC, 1-1-08]

14.7.6.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.

[14.7.6.5 NMAC - Rp, 14.7.6.5, NMAC, 1-1-08]

14.7.6.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for energy conservation in construction in New Mexico.

[14.7.6.6 NMAC - Rp, 14.7.6.6, NMAC, 1-1-08]

14.7.6.7 DEFINITIONS: [See 14.5.1 NMAC, General Provisions and chapter 2 of the IECC as amended in 14.7.6.10 NMAC.]

[14.7.6.7 NMAC - Rp, 14.7.6.7, NMAC, 1-1-08]

14.7.6.8 ADOPTION OF THE 2006 NEW MEXICO ENERGY CONSERVATION CODE:

A. This rule adopts by reference the 2006 international energy conservation code (IECC), as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2006 international energy conservation code.

[14.7.6.8 NMAC - Rp, 14.7.6.8, NMAC, 1-1-08]

14.7.6.9 CHAPTER 1 ADMINISTRATION:

A. Section 101 - General.

(1) 101.1 Title. Delete this section of the IECC and substitute: this rule shall be known as the 2006 New Mexico energy conservation code (NMECC).

(2) 101.2 Scope. Delete this section of the IECC and see 14.7.6.2 NMAC, Scope.

(3) 101.3 Intent. Delete this section of the IECC and see 14.7.6.6 NMAC, Objective.

(4) 101.4 Applicability. See this section of the IECC.

(5) 101.5.1 Compliance Materials. Delete this section of the IECC and substitute the following: the code official shall be permitted to approve specific computer software, worksheets, compliance manuals and other similar materials that meet the intent of this code, such as ComCheck, ResCheck, and worksheet or trade-off sheets from the *New Mexico energy conservation code residential applications manual*.

B. Section 102 - Materials, systems and equipment. See this section of the IECC. **102.3**

Maintenance information. Delete this section of the IECC.

C. Section 103 - Alternate materials - method of construction, design or insulating systems. Delete this section of the IECC and see 14.5.1.11 NMAC, General Provisions.

D. Section 104 - Construction documents. See this section of the IECC and 14.5.2 NMAC, Permits.

E. Section 105 - Inspections. Delete this section of the IECC and see 14.5.3 NMAC, Inspections.

F. Section 106 - Validity. Delete this section of the IECC and see 14.5.1 NMAC, General Provisions.

G. Section 107 - Referenced standards.

(1) 107.1 General. See this section of the IECC.

(2) 107.2 Conflicting requirements. Delete this section of the IECC and see 14.5.1.9 NMAC, General Provisions.

(3) 107.3 Referenced codes. All references in the IECC to the international building code shall be deemed references to 14.7.2 NMAC, the 2006 New Mexico commercial building code (NMCBC). All references to the international residential code shall be deemed references to 14.7.3 NMAC, the 2006 New Mexico residential building code (NMRBC). All references to the international plumbing code shall be deemed references to 14.8.2 NMAC, the 2006 New Mexico plumbing code (NMPC). All references to the international mechanical code shall be deemed references to 14.9.2, the 2006 New Mexico mechanical code (NMMC). All references to the ICC or international electrical code shall be deemed references to 14.10.4 NMAC, the 2005 New Mexico electrical code (NMEC). All references to the international energy conservation code shall be deemed references to 14.7.6 NMAC, the 2006 New Mexico energy conservation code (NMECC). All references to the international fuel gas code are deemed references to the NMMC or the LP gas standards found at 19.15.40 NMAC, and NMSA 1978 70-5-1 et seq.

[14.7.6.9 NMAC - Rp, 14.7.6.9, NMAC, 1-1-08]

14.7.6.10 CHAPTER 2 DEFINITIONS: See this chapter of the IECC except as provided below.

A. Section 201.1 Scope. See this section of the IECC and add the following: If the same term is defined in the New Mexico construction codes and in the IECC, the term shall have the meaning given it in the New Mexico construction codes.

B. Section 201.2 Interchangeability. See this chapter of the IECC.

C. Section 201.3 Terms defined in other codes. Delete this section of the IECC and substitute: if a term is not defined in this code but is defined in a New Mexico construction code, the term shall have the meaning given it in the New Mexico construction code.

D. Section 201.4 Terms not defined. See this chapter of the IECC. [14.7.6.10 NMAC - Rp, 14.7.6.10, NMAC, 1-1-08]

14.7.6.11 CHAPTER 3 CLIMATE ZONES: See this section of the IECC.

A. Section 301.1 General. See this section of the IECC and add the following sentence at the end of the section: "the building official may adjust the climate zones within a particular jurisdiction when site-specific climate conditions exist."

B. Section 301.2. through 301.3.1. See these sections of the IECC. [14.7.6.11 NMAC - Rp, 14.7.6.11, NMAC, 1-1-08]

14.7.6.12 CHAPTER 4 RESIDENTIAL ENERGY EFFICIENCY.

A. 401 General. See this section of the IECC.

B. 402 Building thermal envelope. See this section of the IECC except as provided below.

(1) 402.1 General (prescriptive). See this section of the IECC.

(2) 402.2. Specific insulation requirements (prescriptive).

(a) 402.2.7 Slab-on-grade floors. See this section of the IECC and add the following exception: for slab-on-grade installations, the placement of vertical perimeter insulation shall not be required to penetrate the top four (4) inches of the slab at door thresholds or between unheated garages, storage or mechanical areas, and heated living spaces. The required depth and placement of perimeter insulation shall not be required to a depth that exceeds that of the top of the spread footing or the bottom of the monolithically-poured footing as determined for frost protection.

(b) 402.3 Fenestration. (Prescriptive.) See this section of the IECC except add the following new section: **Section 402.3.7. Glazing-to-opaque wall area ratio.** The ratio of glazing to opaque wall area shall not exceed eighteen percent (18%). Exception: when the ratio of glazing to opaque wall area exceeds eighteen percent (18%), compliance shall be demonstrated by using the calculation methods in the residential applications manual trade-off worksheet, dated June 2004, as prepared by the state of New Mexico energy, minerals and natural resources department.

(c) 402.4.1 Building Thermal Envelope. See this section of the IECC

except delete the text of subsection (3) and replace it with the following: "openings between windows and door assemblies and curb mounted skylights and their respective jambs and framing."

[14.7.6.12 NMAC - Rp, 14.7.6.12, NMAC, 1-1-08]

14.7.6.13 CHAPTER 5 COMMERCIAL ENERGY EFFICIENCY See this section of the IECC.

[14.7.6.13 NMAC - Rp, 14.7.6.13, NMAC, 1-1-08]

14.7.6.14 CHAPTER 6 REFERENCED STANDARDS: See this section of the IECC.

[14.7.6.14 NMAC - Rp, 14.7.6.14, NMAC, 1-1-08]

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

TITLE 14 HOUSING AND CONSTRUCTION

CHAPTER 7 BUILDING CODES GENERAL

PART 7 2006 NEW MEXICO EXISTING BUILDING CODE

14.7.7.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department.

[14.7.7.1 NMAC - Rp, 14.7.7.1, NMAC, 1-1-08]

14.7.7.2 SCOPE: This rule applies to contracting performed on existing buildings in New Mexico, but not contracting performed on detached one- and two-family dwellings or townhouses not more than three stories above grade plane in height with a separate means of egress, and their accessory structures, on or after January 1, 2008, 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, with the following exceptions:

A. Electrical. Electrical wiring as defined in CILA section 60-13-32, including installation, repair, alteration, change of occupancy, addition and relocation of existing buildings shall be in accordance with 14.10.4 NMAC, the 2005 New Mexico electrical code (NMEC).

B. Mechanical. All mechanical work, including installation, repair, alteration, change of occupancy, addition and relocation, on existing buildings shall be in accordance with 14.9.2 NMAC, the 2006 New Mexico mechanical

code (NMMC).

C. Plumbing. All plumbing work, including installation, repair, alteration, change of occupancy, addition and relocation, on existing buildings shall be in accordance with 14.8.2 NMAC, the 2006 New Mexico plumbing code (NMPC).

D. LP Gas. All liquid petroleum and compressed natural gas work, including installation, repair, alteration, change of occupancy, addition and relocation, on existing buildings shall be in accordance with the NMMC or 19.15.40 NMAC, Liquefied petroleum gas standards, and NMSA 1978 70-5-1 et seq., Liquefied and compressed gasses (collectively the LP gas standards).

[14.7.7.2 NMAC - Rp, 14.7.7.2, NMAC, 1-1-08]

14.7.7.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9.

[14.7.7.3 NMAC - Rp, 14.7.7.3, NMAC, 1-1-08]

14.7.7.4 DURATION: Permanent.

[14.7.7.4 NMAC - Rp, 14.7.7.4, NMAC, 1-1-08]

14.7.7.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.

[14.7.7.5 NMAC - Rp, 14.7.7.5, NMAC, 1-1-08]

14.7.7.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for construction work performed on existing buildings in New Mexico.

[14.7.7.6 NMAC - Rp, 14.7.7.6, NMAC, 1-1-08]

14.7.7.7 DEFINITIONS: [See 14.5.1 NMAC, General Provisions, and chapter 2 of the IEBC as amended in 14.7.7.10 NMAC.]

[14.7.7.7 NMAC - Rp, 14.7.7.7, NMAC, 1-1-08]

14.7.7.8 ADOPTION OF THE 2006 NEW MEXICO EXISTING BUILDING CODE:

A. This rule adopts by reference, and amends, the 2006 international existing building code.

B. In this rule, each provision is numbered to correspond with the numbering of the 2006 international existing building code.

[14.7.7.8 NMAC - Rp, 14.7.7.8, NMAC, 1-1-08]

14.7.7.9 CHAPTER 1 ADMINISTRATION:

A. Section 101 - General.

(1) **101.1 Title.** Delete this section of the IEBC and substitute: this code shall be known as the 2006 New Mexico existing building code.

(2) **101.2 Scope.** Delete this section of the IEBC and see 14.7.7.2 NMAC, Scope.

(3) **101.3 Intent.** Delete this section of the IEBC and see 14.7.7.6 NMAC, Objective.

(4) **101.4 Applicability.** Delete this section of the IEBC and substitute: the legal occupancy of any structure existing on the effective date of this rule shall be permitted to continue without change, except as is specifically provided otherwise in this rule, in the 2006 New Mexico existing building code, or by the building official in consideration of the general safety and welfare of the occupants of any such building and the general public.

(5) **101.5 Maintenance.** Delete this section of the IEBC.

(6) **101.6 Safeguards during construction.** Delete this section of the IEBC.

(7) **101.7 Appendices.** Delete this section of the IEBC and substitute: this rule adopts appendices A and B of the IEBC as they may be amended herein.

(8) **101.8 Correction of violations of other codes.** Delete this section of the IEBC.

B. Section 102 - Applicability.

(1) **Section 102.1 General.** Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

(2) **Section 102.2 Other laws.** Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

(3) **Section 102.3 Application of references.** Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

(4) **Section 102.4 Referenced codes.** Delete this section of the IEBC and substitute the following. All references in the IEBC to the international building code shall be deemed references to 14.7.2 NMAC, the 2006 New Mexico commercial building code (NMCBC). All references to the international residential code shall be deemed references to 14.7.3 NMAC, the 2006 New Mexico residential building code (NMRBC). All references to the international plumbing code shall be deemed references to 14.8.2 2006 NMAC, the 2006 NMPC. All references to the international mechanical code shall be deemed references to 14.9.2, 2006 NMAC, the 2006 NMMC. All references to the international electrical code shall be deemed references to 14.10.4 NMAC the 2005 NMEC. All references to the international energy conservation code shall be deemed references to 14.7.6 NMAC, the 2006 New Mexico energy con-

servation code (NMECC). All references to the international fuel gas code are deemed references to the NMMC or the LP gas standards.

(5) **Section 102.5 Partial invalidity.** Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

C. Section 103 - Department of building safety. Delete this section of the IEBC and see 14.5.1 NMAC.

D. Section 104 - Duties and powers of the code official. Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

E. Section 105 - Permits. Delete this section of the IEBC and see 14.5.2 NMAC, Permits.

F. Section 106 - Construction documents. Delete this section of the IEBC and see 14.5.2 NMAC, Permits.

G. Section 107 - Temporary structures and uses. Delete this section of the IEBC and see 14.5.2 NMAC, Permits.

H. Section 108 - Fees. Delete this section of the IEBC and see 14.5.5 NMAC, Fees.

I. Section 109 - Inspections. Delete this section of the IEBC and see 14.5.3 NMAC, Inspections.

J. Section 110 - Certificate of occupancy. Delete this section of the IEBC and see 14.5.3.13 NMAC, Inspections.

K. Section 111 - Service utilities. Delete this section of the IEBC and see 14.5.2 NMAC, Permits; 14.5.1, General Provisions and NMSA 1978, section 60-13-42.

L. Section 112 - Board of appeals. Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

M. Section 113 - Violations. Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

N. Section 114 - Stop work order. Delete this section of the IEBC and see 14.5.3 NMAC, Inspections.

O. Section 115 - Unsafe buildings and equipment. Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

P. Section 116 - Emergency measures. Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

Q. Section 117 - Demolition. Delete this section of the IEBC and see 14.5.1 NMAC, General Provisions.

[14.7.7.9 NMAC - Rp, 14.7.7.9, NMAC, 1-1-08]

14.7.7.10 CHAPTER 2 DEFINITIONS: See this chapter of the IEBC

except as provided below.

A. Section 201.1 Scope. See this section of the IEBC and add the following: if the same term is defined in the New Mexico construction codes and in the IEBC, the term shall have the meaning given it in the New Mexico construction codes.

B. Section 201.3 Terms defined in other codes. Delete this section of the IEBC and substitute: if a term is not defined in this code but is defined in a New Mexico construction code, the term shall have the meaning given it in the New Mexico construction code.

C. Section 202. General definitions. See this section of the IEBC except as follows.

(1) Add the following definition: CODE OFFICIAL means the CID general construction bureau chief.

(2) Delete the definition for CHANGE OF OCCUPANCY and substitute: means a change in the use of an existing building such that the occupancy classification applicable to the new use is different from the occupancy classification of the former use.

[14.7.7.10 NMAC - Rp, 14.7.7.10, NMAC, 1-1-08]

14.7.7.11 CHAPTER 3 PRESCRIPTIVE COMPLIANCE METHOD:

See this chapter of the IEBC. [14.7.7.11 NMAC - Rp, 14.7.7.11, NMAC, 1-1-08]

14.7.7.12 CHAPTER 4 CLASSIFICATION OF WORK:

See this chapter of the IEBC. [14.7.7.12 NMAC - Rp, 14.7.7.12, NMAC, 1-1-08]

14.7.7.13 CHAPTER 5 REPAIRS

See this chapter of the IEBC. [14.7.7.13 NMAC - Rp, 14.7.7.13, NMAC, 1-1-08]

14.7.7.14 CHAPTER 6 ALTERATIONS - LEVEL 1:

A. Section 601. General. See this section of the IEBC.

B. Section 602. Building elements and materials. See this section of the IEBC except make the following change to **Section 602.3 Materials and methods.** Delete the text of this section of the IEBC and substitute: all new work shall comply with materials and methods requirements in the New Mexico construction codes (See NMAC 14.5.1.7.L).

C. Sections 603 and 604. See these sections of the IEBC.

D. Section 605. Accessibility. See this section of the IEBC except make the following change to **Section 1.5 Dining areas.** Delete this sec-

tion of the IEBC and substitute: check-out aisles. Where check-out aisles are altered, at least one of each check-out aisle serving each function shall be made accessible until the number of accessible check-out aisles complies with Subsection I of 14.7.2.19 NMAC, which refers to section 1109.12.2 of the international building code.
[14.7.7.14 NMAC - Rp, 14.7.7.14, NMAC, 1-1-08]

14.7.7.15 CHAPTER 7 ALTERATIONS - LEVEL 2: See this chapter of the IEBC.
[14.7.7.15 NMAC - RP, 14.7.7.15, NMAC, 1-1-08]

14.7.7.16 CHAPTER 8 ALTERATIONS - LEVEL 3: See this chapter of the IEBC.
[14.7.7.16 NMAC - Rp, 14.7.7.16, NMAC, 1-1-08]

14.7.7.17 CHAPTER 9 CHANGE OF OCCUPANCY: See this chapter of the IEBC.
[14.7.7.17 NMAC - Rp, 14.7.7.17, NMAC, 1-1-08]

14.7.7.18 CHAPTER 10 ADDITIONS: See this chapter of the IEBC.
[14.7.7.18 NMAC - Rp, 14.7.7.18, NMAC, 1-1-08]

14.7.7.19 CHAPTER 11 HISTORIC BUILDINGS: See this chapter of the IEBC.
[14.7.7.19 NMAC - Rp, 14.7.7.19, NMAC, 1-1-08]

14.7.7.20 CHAPTER 12 RELOCATED OR MOVED BUILDINGS: See this chapter of the IEBC except make the following change in **Section 1201.2 Conformance:** delete the words "as determined by the *international fire code and the international property maintenance code.*"
[14.7.7.20 NMAC - Rp, 14.7.7.20, NMAC, 1-1-08]

14.7.7.21 CHAPTER 13 PERFORMANCE COMPLIANCE METHODS: See this chapter of the IEBC except as follows:

(A) Section 1301.2 Applicability See this section of the IEBC except delete the words: "existing prior to [DATE TO BE INSERTED BY THE JURISDICTION]. [Note: it is recommended that this date coincide with the effective date of building codes within the jurisdiction]"

(B) Section 1301.3.2 Compliance with other codes. Delete the text of this section and substitute: buildings

that are evaluated in accordance with this section shall comply with the New Mexico construction codes (See Subsection L of 14.5.1.7 NMAC).
[14.7.7.21 NMAC - Rp, 14.7.7.21, NMAC, 1-1-08]

14.7.7.22 CHAPTER 14 CONSTRUCTION SAFEGUARDS: See this chapter of the IEBC.
[14.7.7.22 NMAC - Rp, 14.7.7.22, NMAC, 1-1-08]

14.7.7.23 CHAPTER 15 REFERENCED STANDARDS: See this chapter of the IEBC.
[14.7.7.22 NMAC - Rp, 14.7.7.22, NMAC, 1-1-08]

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 7 BUILDING CODES
GENERAL
PART 8 2006 NEW MEXICO
HISTORIC EARTHEN BUILDINGS**

14.7.8.1 ISSUING AGENCY: Construction Industries Division of the Regulation and Licensing Department.
[14.7.8.1 NMAC - Rp, 14.7.8.1 NMAC, 1-1-08]

14.7.8.2 SCOPE: This rule applies to all historic earthen buildings contracting work performed in New Mexico on or after January 1, 2008, 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.
[14.7.8.2 NMAC - Rp, 14.7.8.2 NMAC, 1-1-08]

14.7.8.3 STATUTORY AUTHORITY: NMSA 1978 Section 60-13-9 and 60-13-44.
[14.7.8.3 NMAC - Rp, 14.7.8.3 NMAC, 1-1-08]

14.7.8.4 DURATION: Permanent.
[14.7.8.4 NMAC - Rp, 14.7.8.4 NMAC, 1-1-08]

14.7.8.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.
[14.7.8.5 NMAC - Rp, 14.7.8.5 NMAC, 1-1-08]

14.7.8.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for historic earthen buildings in New Mexico.
[14.7.8.6 NMAC - Rp, 14.7.8.6 NMAC, 1-1-08]

14.7.8.7 DEFINITIONS:
A. Alteration. As used in this chapter, alteration applies to those changes necessary to return a historic earthen building to a documented or physically evidenced historic condition. Alterations that are not necessary to return a building to a documented historic condition or that involve more than 50 percent of the aggregate area of the building shall comply with the applicable provisions of the New Mexico Existing Building Code.

B. Dangerous. Any building or structure or any individual member with any of the structural conditions or defects described below shall be deemed dangerous.

(1) The stress in a member or portion thereof due to all factored dead and live loads is more than one and one third the nominal strength allowed in the applicable New Mexico building code for new buildings of similar structure purpose, or location.

(2) Any portion, member, or appurtenance likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons.

(3) Any portion of a building, or any member, appurtenance, or ornamentation on the exterior, is not of sufficient strength or stability, or is not anchored, attached, or fastened in place, so as to be capable of resisting a wind pressure of two thirds of that specified in the applicable New Mexico building code for new buildings of similar structure, purpose, or location without exceeding the nominal strength permitted in the applicable New Mexico building code for such buildings.

(4) The building, or any portion of the building, is likely to collapse partially or completely because of dilapidation, deterioration, or decay; the removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such building; the deterioration, decay, or inadequacy of its foundation; damage due to fire, earthquake, wind, or flood; or any other similar cause.

(5) The exterior wall or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

C. Qualified Historic Earthen Building. Any earthen building or structure that is (1) listed in the *national register of historic places* or the *state regis-*

ter of cultural properties; (2) designated as a historic building or structure by a state or local register, inventory, or survey; (3) certified as a contributing resource within a national or state register listed, or locally designated historic district; or (4) a building or structure that is certified, in writing by the state historic preservation office, as being eligible for listing in the *national register of historic places* or the *state register of cultural properties* either individually or as a contributing building to a historic district.

D. Registered Design Professional. An architect or an engineer registered or licensed in the state of New Mexico.

E. Repair. Renewal, renovation, or rehabilitation of an existing building or structure for the purpose of its continued use.

[14.7.8.7 NMAC - Rp, 14.7.8.7 NMAC, 1-1-08]

14.7.8.8 ENERGY CONSERVATION: General. Historic earthen buildings undergoing repairs, alterations, or change of occupancy are not required to comply with the New Mexico Energy Conservation Code.

[14.7.8.8 NMAC - Rp, 14.7.8.8 NMAC, 1-1-08]

14.7.8.9 ROOF DRAINAGE AND MOISTURE CONTENT OF WALLS:

A. General. Historic earthen buildings undergoing repairs, alterations, or change of occupancy shall comply with this section.

B. Report. The roof drainage and the moisture content of the walls of a historic earthen building undergoing repair, alteration, or change of occupancy shall be investigated and evaluated in a written report that shall be filed with the code official. The report shall identify where the roof drainage system is deficient and what actions are necessary to correct those deficiencies. When deemed necessary by the code official, such report shall be prepared by a registered design professional.

[14.7.8.9 NMAC - Rp, 14.7.8.9 NMAC, 1-1-08]

14.7.8.10 REPAIRS:

A. General. Repairs to any portion of a historic earthen building shall be permitted with original or like materials and original methods of construction, subject to the provisions of this chapter.

B. Dangerous buildings. When a historic earthen building is determined to be dangerous, as defined herein, no work shall be required except as neces-

sary to correct the identified unsafe condition(s).

C. Replacement. Replacement of existing or missing features using original materials shall be permitted. Partial replacement for repairs that match the original in configuration, height, and size shall be permitted. Such replacements shall not be required to meet the materials and methods requirements for new construction.

D. Replacement glazing. Replacement glazing in hazardous locations shall comply with the safety glazing requirements of Chapter 24 of the New Mexico Commercial Building Code or Section R308 of the New Mexico Residential Building Code.

E. Exterior and interior finishes. The use of historic exterior or interior finishes may be continued provided that the materials and their methods of application are specified in a report or plan and presented to the code official. When deemed necessary by the code official, such report or plan shall be prepared by a registered design professional.

[14.7.8.10 NMAC - Rp, 14.7.8.10 NMAC, 1-1-08]

14.7.8.11 ALTERATIONS: General. In addition to the provisions of this chapter, alterations to a historic earthen building shall comply with Sections 1103 and 1104 of the New Mexico Existing Building Code.

[14.7.8.11 NMAC - Rp, 14.7.8.11 NMAC, 1-1-08]

14.7.8.12 CHANGE OF OCCUPANCY: General. In addition to the provisions of this chapter, historic earthen buildings undergoing a change of occupancy shall comply with Sections 1101.2, 1103, and 1105 of the New Mexico Existing Building Code.

[14.7.8.12 NMAC - Rp, 14.7.8.12 NMAC, 1-1-08]

14.7.8.13 STRUCTURAL:

A. General. Historic earthen buildings undergoing repairs, alterations, or a change of occupancy shall comply with the applicable provisions of this section.

B. Intent. It is the intent of this section to preserve the integrity of qualified historic earthen buildings while providing a reasonable level of safety for the building users.

C. Report. The structural condition of a historic earthen building undergoing repairs, alterations, or change of occupancy shall be investigated and evaluated in a written report that shall be filed with the code official. When deemed necessary by the code official, the report shall

be prepared by a registered design professional.

D. Unsafe structural elements. Where it is determined that a component or a portion of a building or structure is dangerous, as defined herein, and is in need of repair, strengthening, or replacement, only that specific component or portion shall be required to be repaired, strengthened, or replaced.

E. Reduction of strength. Alterations shall not reduce the structural strength or stability of the building, structure, or any member thereof.

F. Repairs and alterations. Where the report finds that the majority of the existing building is in sound structural condition and capable of supporting the use for which it is intended, structural repairs and alterations shall be permitted with original or like materials and original methods of construction, subject to the provisions of this section.

G. Roofs. Earthen roofs may be repaired and their use continued where the structural report indicates that the supporting structure will adequately support the earthen material load and any additional materials introduced for repair to the earthen roof. A plan specifying materials used to repair an earthen roof and the method of application of such materials shall be prepared by a registered design professional and presented to the code official. **Exception.** Subject to the approval of the code official, the requirement for a plan prepared by a registered design professional may be waived for minor repairs where the structural report indicates adequate support and where the repairs continue the use of the existing historic material and construction details, and where any drainage deficiencies have been corrected.

H. Bond beams.
(1) When a wall is being replaced or is in need of substantial repair, and the existing building has no bond beam, provisions shall be made for adequately distributing any concentrated loads from the roof structure into the wall. When deemed necessary by the code official, such provisions shall be detailed by a registered design professional.

(2) Where the original roof structure is removed from more than 50 percent of the aggregate area of the building, a continuous bond beam shall be provided in accordance with the requirements of this code for new construction.

I. Walls. Walls that are being reconstructed or replaced shall be constructed in accordance with the maximum height-to-thickness ratios specified in Table A1-g of the 2006 New Mexico Existing Building Code. Minor repairs and infills may be constructed in a manner similar to the original walls without conforming

to the requirements of Table A1-G.

J. Foundations.

Foundations constructed of historic materials may be repaired and their use continued when a design prepared by a registered design professional is provided to the code official and any deficiencies in the roof drainage system have been corrected. **Exception.** Subject to the approval of the code official, the requirement for a design prepared by a registered design professional may be waived for minor repairs to otherwise sound foundations.

K. Change of occupancy.

A change of occupancy to a historic earthen building shall be allowed to comply with the provisions of this section for repairs and alterations subject to the conditions listed below. A change of occupancy not meeting these conditions shall comply with the New Mexico Existing Building Code.

(1) The calculated occupant load of the new use does not exceed 299.

(2) The change of occupancy does not result in the building being placed in a higher seismic, wind, or occupancy category based upon Table 1604.5 of the 2006 New Mexico Commercial Building Code.

(3) The change of occupancy does not result in an increase of more than 5 percent in uniform or concentrated loads based on Tables 1607.1 of the 2006 New Mexico Commercial Building Code. **Exception.** The code official is authorized to accept existing floors and approve operational controls that limit the live loads on such floors. [14.7.8.13 NMAC - Rp, 14.7.8.13 NMAC, 1-1-08]

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 8 PLUMBING CODES
PART 2 2006 NEW MEXICO
PLUMBING CODE**

14.8.2.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.8.2.1 NMAC - Rp, 14.8.2.1 NMAC, 1-1-08]

14.8.2.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after January 1, 2008, 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. [14.8.2.2 NMAC - Rp, 14.8.2.2 NMAC, 1-

1-08]

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

[14.8.2.3 NMAC - Rp, 14.8.2.3 NMAC, 1-1-08]

14.8.2.4 DURATION: Permanent.

[14.8.2.4 NMAC - Rp, 14.8.2.4 NMAC, 1-1-08]

14.8.2.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section.

[14.8.2.5 NMAC - Rp, 14.8.2.5 NMAC, 1-1-08]

14.8.2.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for all plumbing, as defined in CILA Section 60-12-32, in New Mexico.

[14.8.2.6 NMAC - Rp, 14.8.2.6 NMAC, 1-1-08]

14.8.2.7 DEFINITIONS: [See 14.5.1 NMAC, General Provisions and chapter 2 of the 2006 uniform plumbing code (UPC) as amended in 14.8.2.10 NMAC.]

[14.8.2.7 NMAC - Rp, 14.8.2.7 NMAC, 1-1-08]

14.8.2.8 ADOPTION OF THE 2006 UNIFORM PLUMBING CODE:

A. This rule adopts by reference the 2006 uniform plumbing code and all appendices, as amended by this rule.

B. In this rule, the internal numbering of each provision corresponds with the numbering of the 2006 uniform plumbing code.

[14.8.2.8 NMAC - Rp, 14.8.2.8 NMAC, 1-1-08]

14.8.2.9 CHAPTER 1 ADMINISTRATION:

A. 101.0 - Title, Scope and General.

(1) **101.1 Title.** Delete this section of the UPC and substitute: This code shall be known as the 2006 New Mexico plumbing code (NMPC).

(2) **101.2 Purpose.** Delete this section of the UPC and see 14.8.2.6 NMAC.

(3) **101.3 Plans Required.** Delete this section of the UPC except as provided in 14.5.2 NMAC, Permits.

(4) **101.4 Scope.**

(a) **101.4.1** Delete this section of the UPC and see 14.8.2.2 NMAC.

(i) **101.4.1.1 Repairs and Alterations.** See this section of the UPC.

(ii) **101.4.1.2**

Maintenance. Delete this section of the UPC.

(iii) **101.4.1.3 Existing Construction.** Delete this section of the UPC.

(iv) **101.4.1.4 Conflicts between Codes.** Delete this section of the UPC and see 14.5.1 General Provisions.

(b) **101.4.2** See this section of the UPC.

(c) **101.4.3 Appendices.** Delete this section of the UPC except as provided in 14.8.2.27 NMAC, below.

(5) **101.5 Application to Existing Plumbing System.** See this section of the UPC.

B. 102.0 - Organization and Enforcement.

(1) **102.1 Authority Having Jurisdiction.** Delete this section of the UPC.

(2) **102.2 Duties and Powers of the Authority Having Jurisdiction.**

(a) **102.2.1 Appointments.** Delete this section of the UPC and see CILA Section 60-13-8 through 60-13-41 and NMSA 1978 Section 9-16-7.

(b) **102.2.2 Right of Entry.** Delete this section of the UPC and see CILA Section 60-13-42.

(c) **102.2.3 Stop Orders.** Delete this section of the UPC and see 14.5.2 NMAC, Permits.

(d) **102.2.4 Authority to Disconnect Utilities in Emergencies.** Delete this section of the UPC and see CILA Section 60-13-42.

(e) **102.2.5 Authority to Condemn.** Delete this section of the UPC and see 14.5.1 NMAC, General Provisions.

(f) **102.2.6 Liability.** Delete this section of the UPC and see CILA Section 60-13-26.

(3) **102.3 Violations and Penalties.** Delete this section of the UPC and see CILA Section 60-13-1 et seq., and 14.5.3, Inspections.

C. 103.0 - Permits and Inspections.

(1) **103.1 Permits** Delete this section of the UPC except as provided in 14.5.2 NMAC, Permits.

(2) **103.2 Application for Permit.** Delete this section of the UPC except as provided in 14.5.2 NMAC, Permits.

(3) **103.3 Permit Issuance.** Delete this section of the UPC except as provided in 14.5.2 NMAC, Permits

(4) **103.4 Fees.** Delete this section of the UPC and see 14.5.5 NMAC, Fees.

(5) **103.5 Inspections.** Delete this section except as provided in 14.5.3 NMAC, Inspections.

(6) 103.6 Connection Approval. Delete this section of the UPC and see 14.5.3 NMAC, Inspections.

(7) 103.7 Unconstitutionality. Delete this section of the UPC and see 14.5.1 NMAC, General Provisions.

(8) 103.8 Validity. Delete this section of the UPC and see 14.5.1 NMAC, General Provisions.

(9) Table 1.1 Plumbing Permit Fees. Delete plumbing permit fees, table 1-1, from the UPC.

[14.8.2.9 NMAC - Rp, 14.8.2.9 NMAC, 1-1-08]

14.8.2.10 CHAPTER 2 DEFINITIONS: See this chapter of the UPC, except as provided below.

A. 203.0 Authority having jurisdiction. Delete the text of this definition and substitute: The authority having jurisdiction is the construction industries division (CID) and the bureau chief of the mechanical and plumbing bureau of CID.

B. 214.0 Listing agency. See this definition in the UPC and section 60-13-44.B. of the CILA.

[14.8.2.10 NMAC - Rp, 14.8.2.10 NMAC, 1-1-08]

14.8.2.11 CHAPTER 3 GENERAL REGULATIONS: See this chapter of the UPC.

[14.8.2.11 NMAC - Rp, 14.8.2.11 NMAC, 1-1-08]

14.8.2.12 CHAPTER 4 PLUMBING FIXTURES AND FIXTURE FITTINGS: See this chapter of the UPC except as provided below.

A. 412.0 Minimum number of required fixtures. See this section of the UPC except as provided below

(1) Section 412.1 Fixture count. See this section of the UPC except delete the reference to "Table 4.1" and substitute: the 2006 New Mexico building code, Subsection B of 14.7.2.37 NMAC: Minimum Plumbing Facilities.

(2) Section 412.2 Access to fixtures. Delete this section of the UPC.

(3) Section 412.3 Separate facilities. Delete this section of the UPC.

(4) Section 412.4. Fixture requirements for special occupancies. See this section of the UPC except delete section 412.4.3.

(5) Section 412.5 Facilities in mercantile and business occupancies serving customers. Delete this section of the UPC.

(6) Section 412.6 Food service establishments. Delete this section of the UPC.

(7) Section 412.7 Toilet facilities for workers. Delete this section of the UPC.

B. Section 413.0 Fixtures and fixture fittings for persons with disabilities. Delete this section of the UPC.

(C.) Table A Occupant load factor. Delete this table of the UPC.

[14.8.2.12 NMAC - Rp, 14.8.2.12 NMAC, 1-1-08]

14.8.2.13 CHAPTER 5 WATER HEATERS PART I: See this chapter of the UPC except as provided below.

A. Section 501.0 General. See this section of the UPC except delete the following sentence: "The minimum capacity for water heaters shall be in accordance with the first hour rating listed in Table 5-1."

B. Section 508.14 Installation in residential garages. See this section of the UPC except delete the words "unless listed as flammable vapor ignition resistant" at the end of the section.

C. Section 509.3 Access to equipment on roofs.

(1) 509.3.1 See this section of the UPC.

(2) 509.3.2 See this section of the UPC except after the words "in height" add the following: except those designated as R-3 occupancies.

(3) 509.3.3 See this section of the UPC.

[14.8.2.13 NMAC - Rp, 14.8.2.13 NMAC, 1-1-08]

14.8.2.14 CHAPTER 5 WATER HEATERS PART II - SIZING OF VENTING SYSTEMS SERVING APPLIANCES EQUIPPED WITH DRAFT HOODS, CATEGORY I APPLIANCES, AND APPLIANCES LISTED FOR USE WITH TYPE B VENTS: See this chapter of the UPC.

[14.8.2.14 NMAC - Rp, 14.8.2.14 NMAC, 1-1-08]

14.8.2.15 CHAPTER 6 WATER SUPPLY AND DISTRIBUTION: See this chapter of the UPC.

[14.8.2.15 NMAC - Rp, 14.8.2.15 NMAC, 1-1-08]

14.8.2.16 CHAPTER 7 SANITARY DRAINAGE PART I - DRAINAGE SYSTEMS: See this chapter of the UPC except delete the text of section 704.3 and substitute the following: Pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware washing machines, and other similar fixtures shall not be connected directly to the drainage system. Such equipment or fixtures shall be drained by means of indirect waste pipes, as defined in chapter 2 of the UPC, and all wastes drained by them shall discharge through an

airgap into an open floor sink or other approved type receptor that is properly connected to the drainage system. Food waste disposal units shall be connected directly to the drainage system. A floor drain shall be provided adjacent to the disposal unit, and the disposal unit shall be connected on the sewer side of the floor drain trap, provided that no other drainage line is connected between the floor drain waste connection and the disposal unit drain. The floor drain shall be trapped and vented as required in this code.

[14.8.2.16 NMAC - Rp, 14.8.2.16 NMAC, 1-1-08]

14.8.2.17 CHAPTER 7 SANITARY DRAINAGE PART II - BUILDING SEWERS: See this chapter of the UPC.

[14.8.2.17 NMAC - Rp, 14.8.2.17 NMAC, 1-1-08]

14.8.2.18 CHAPTER 8 INDIRECT WASTES: See this chapter of the UPC.

[14.8.2.18 NMAC - Rp, 14.8.2.18 NMAC, 1-1-08]

14.8.2.19 CHAPTER 9 VENTS: See this chapter of the UPC.

[14.8.2.19 NMAC - Rp, 14.8.2.19 NMAC, 1-1-08]

14.8.2.20 CHAPTER 10 TRAPS AND INTERCEPTORS: See this chapter of the UPC.

[14.8.2.20 NMAC - Rp, 14.8.2.20 NMAC, 1-1-08]

14.8.2.21 CHAPTER 11 STORM DRAINAGE: See this chapter of the UPC except after the words "Subsoil drains shall be provided" add the following: as required by the NMCBC, 14.7.2 NMAC.

[14.8.2.21 NMAC - Rp, 14.8.2.21 NMAC, 1-1-08]

14.8.2.22 CHAPTER 12 FUEL PIPING: See this chapter of the UPC except as provided below.

A. 1209.5.2.3 Delete this section of the UPC and substitute: Copper and brass pipe shall not be used. Threaded aluminum alloy pipe shall not be used with gases corrosive to such material.

B. 1209.5.3.2 Delete this section of the UPC and substitute: Copper and brass pipe shall not be used.

C. 1211.1.2 Protection against damage. Delete Subsection A of this section of the UPC and substitute the following: Underground piping systems shall be installed with a minimum of 18 inches (460 mm) of cover. Where a minimum of 18 inches (460 mm) of cover cannot be provided, the pipe shall be installed

in conduit or bridged (shielded).

D. 1211.9.3 Emergency shutoff valves. See this section of the UPC except delete the following: "The emergency shutoff valves shall be plainly marked as such and their locations posted as required by the authority having jurisdiction."

E. 1212.7 Sediment trap. See this section of the UPC except delete the first sentence and substitute: If a sediment trap, which is not incorporated as a part of the gas utilization equipment, is installed, it shall be installed at the time the equipment is installed and as close to the inlet of the equipment as is practical.

F. 1213.0 Liquefied petroleum gas facilities and piping. Delete this section of the UPC and substitute the following: Liquefied petroleum gas facilities shall comply with 19.15.40 NMAC, Liquefied Petroleum Gas Standards, and NMSA 1978 70-5-1 et seq., liquefied and compressed gasses. [14.8.2.22 NMAC - Rp, 14.8.2.22 NMAC, 1-1-08]

14.8.2.23 CHAPTER 13 HEALTH CARE FACILITIES AND MEDICAL GAS AND VACUUM SYSTEMS PART I - SPECIAL REQUIREMENTS FOR HEALTH CARE FACILITIES: [Reserved] [14.8.2.23 NMAC - Rp, 14.8.2.23 NMAC, 1-1-08]

14.8.2.24 CHAPTER 13 HEALTH CARE FACILITIES AND MEDICAL GAS AND VACUUM SYSTEMS PART II - MEDICAL GAS AND VACUUM SYSTEMS: See this chapter of the UPC. [14.8.2.24 NMAC - Rp, 14.8.2.24 NMAC, 1-1-08]

14.8.2.25 CHAPTER 14 MANDATORY REFERENCED STANDARDS: See this chapter of the UPC. [14.8.2.25 NMAC - Rp, 14.8.2.25 NMAC, 1-1-08]

14.8.2.26 CHAPTER 15 FIRESTOP PROTECTION: See this chapter of the UPC. [14.8.2.26 NMAC - Rp, 14.8.2.26 NMAC, 1-1-08]

14.8.2.27 CHAPTER 16 GRAY WATER SYSTEMS. See this chapter of the UPC. [14.8.2.27 NMAC - N, 1-1-08]

14.8.2.28 APPENDICIES. See this chapter of the UPC and add the following to appendix L.1.3: All alternate plumbing systems must be pre-approved in writ-

ing by the authority having jurisdiction. [14.8.2.28 NMAC - Rp, 14.8.2.27 NMAC, 1-1-08]

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

**TITLE 14 HOUSING AND
CONSTRUCTION
CHAPTER 9 MECHANICAL
CODES
PART 2 2006 NEW MEXICO
MECHANICAL CODE**

14.9.2.1 ISSUING AGENCY: Construction Industries Division (CID) of the Regulation and Licensing Department. [14.9.2.1 NMAC - Rp, 14.9.2.1 NMAC, 1-1-08]

14.9.2.2 SCOPE: This rule applies to all contracting work performed in New Mexico on or after January 1, 2008, 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. [14.9.2.2 NMAC - Rp, 14.9.2.2 NMAC, 1-1-08]

14.9.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 60-13-9 and 60-13-44. [14.9.2.3 NMAC - Rp, 14.9.2.3 NMAC, 1-1-08]

14.9.2.4 DURATION: Permanent. [14.9.2.4 NMAC - Rp, 14.9.2.4 NMAC, 1-1-08]

14.9.2.5 EFFECTIVE DATE: January 1, 2008, unless a later date is cited at the end of a section. [14.9.2.5 NMAC - Rp, 14.9.2.5 NMAC, 1-1-08]

14.9.2.6 OBJECTIVE: The purpose of this rule is to establish minimum standards for the installation, repair, and replacement of mechanical systems including equipment, appliances, fixtures, fittings and/or appurtenances including ventilating, heating, cooling, air conditioning, and refrigeration systems, incinerators, and other energy related systems in New Mexico. [14.9.2.6 NMAC - Rp, 14.9.2.6 NMAC, 1-1-08]

14.9.2.7 DEFINITIONS: [See 14.5.1 NMAC, General Provisions and

chapter 2 of the 2003 uniform plumbing code (UPC) as amended in 14.9.2.10 NMAC.] [14.9.2.7 NMAC - Rp, 14.9.2.7 NMAC, 1-1-08]

14.9.2.8 ADOPTION OF THE 2006 UNIFORM MECHANICAL CODE:

A. This rule adopts by reference the 2006 uniform mechanical code, as amended by this rule.

B. In this rule, each provision is numbered to correspond with the numbering of the 2006 uniform mechanical code. [14.9.2.8 NMAC - Rp, 14.9.2.8 NMAC, 1-1-08]

14.9.2.9 CHAPTER 1 ADMINISTRATION.

A. Part 1 - General.

(1) 101.0 Title. Delete this section of the UMC and substitute: This code shall be known as the 2003 New Mexico mechanical code (NMMC).

(2) 102.0 Purpose. Delete this section of the UMC and see 14.9.2.6 NMAC.

(3) 103.0 Scope. Delete this section of the UMC and see 14.9.2.2 NMAC.

(4) 104.0 Application to Existing Mechanical Systems. See this section of the UMC.

(5) 105.0 Alternate Materials and Methods of Construction. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(6) 106.0 Modifications. Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(7) 107.0 Tests. See this section of the UMC.

B. Part II - Organization and Enforcement.

(1) 108.0 Powers and Duties of the Authority Having Jurisdiction.

(a) 108.1 General. Delete this section of the UMC and see CILA.

(b) 108.2 Deputies. Delete this section of the UMC and see CILA Sections 60-13-8 and 60-13-41 and NMSA 1978 Section 9-16-7.

(c) 108.3 Right of Entry. Delete this section of the UMC and see CILA Section 60-13-42.

(d) 108.4 Stop Orders. Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(e) 108.5 Authority to Disconnect Utilities in Emergencies. Delete this section of the UMC and see CILA Section 60-13-42.

(f) 108.6 Authority to Condemn Equipment. Delete this section of the UMC and see 14.5.1 NMAC, General

Provisions.

(g) **108.7 Connection After Order to Disconnect.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(h) **108.8 Liability.** Delete this section of the UMC and see CILA Section 60-13-26.

(i) **108.9 Cooperation of Other Officials and Officers.** Delete this section of the UMC.

(2) **109.0 Unsafe Equipment.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(3) **110.0 Board of Appeals.** Delete this section of the UMC and see 14.5.1 NMAC, General Provisions.

(4) **111.0 Violations.** Delete this section of the UMC and see CILA Section 60-13-1 et seq., and 14.5.3 NMAC, Inspections.

C. Part III - Permits and Inspections.

(1) **112.0 Permits.** See 14.5.2 NMAC, Permits.

(2) **113.0 Application for Permit.** Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(3) **114.0 Permit Issuance.** Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(4) **115.0 Fees.** Delete this section of the UMC and see 14.5.5 NMAC, Fees.

(5) **116.0 Inspections.** Delete this section of the UMC and see 14.5.3 NMAC, Inspections.

(6) **117.0 Connection approval.** Delete this section of the UMC and see 14.5.2 NMAC, Permits.

(7) **Table 1.1 Mechanical Permit Fees.** Delete this table from the UMC and see 14.5.5 NMAC, Fees.

D. 116.6 Reinspection. Delete this section of the UMC and see 14.5.5.14 (G) NMAC.

[14.9.2.9 NMAC - Rp, 14.9.2.9, NMAC, 1-1-08]

14.9.2.10 CHAPTER 2 DEFINITIONS: See this chapter of the UMC except as provided below.

A. 203.0 Authority having jurisdiction. Delete the text of this definition and substitute: The authority having jurisdiction is the construction industries division (CID) and the bureau chief of the mechanical and plumbing bureau of CID.

B. 214.0 Listed and listing. See this definition in the UPC and add the following provision at the end of the definition: A manufacturer may select the independent certification organization of its choice to certify its products, provided that the certification organization has been accredited by the American national standards institute (ANSI), or another certifica-

tion organization that CID has approved in writing.

[14.9.2.10 NMAC - Rp, 14.9.2.10 NMAC, 1-1-08]

14.9.2.11 CHAPTER 3 GENERAL REQUIREMENTS: See this chapter of the UMC except delete the text of section 305.1, Accessibility for service, and substitute: All gas utilization equipment shall be located with respect to building construction and other equipment so as to permit access to the gas utilization equipment. Sufficient clearance shall be maintained to permit cleaning of heating surfaces; the replacement of filters, blowers, motors, burners, controls and vent connections; the lubrication of moving parts where necessary; the adjustment and cleaning of burners and pilots; and the proper functioning of explosion vents, if provided. Access openings and passageways to equipment located in attics and under-floor spaces shall be provided so the largest piece of equipment can be removed, but in no case less than 22 inches by 30 inches (599 mm by 762 mm). For attic installation, the passageway and servicing area adjacent to the equipment shall be floored. The distance from the passageway access to the equipment shall not exceed 20 feet (6.096 m). A permanent electric outlet and lighting fixture shall be provided at or near the equipment. The light shall be controlled by a switch located at the required passageway opening. Equipment located in under-floor spaces shall have a clearance of at least 6 inches (152 mm) from the ground. Excavation necessary to install such equipment shall extend to a depth of 6 inches (152 mm) below, and 12 inches (305 mm) on all sides of the equipment, except the control side, which shall have 30 inches (762 mm).

[14.9.2.11 NMAC - Rp, 14.9.2.11 NMAC, 1-1-08]

14.9.2.12 CHAPTER 4 VENTILATION AIR SUPPLY: See this chapter of the UMC.

[14.9.2.12 NMAC - Rp, 14.9.2.12 NMAC, 1-1-08]

14.9.2.13 CHAPTER 5 EXHAUST SYSTEMS: See this chapter of the UMC except as provided below.

A. 504.3.2.2 Length limitation. See this section of the UMC except delete everything after the words "total combined horizontal and vertical length" and substitute: of 23 feet (7m) with two ninety-degree (90°) elbows and a full 4 inch (102 mm) vent cap opening, or 33 feet (10 m) with one ninety-degree (90°) elbow and a full 4 inch (102 mm) vent cap opening. Ten feet (3.05 m) shall be deducted for each additional ninety-degree (90°) elbow in

excess of the number allowed.

B. 507.6 Hoods required.

Add this new section: hoods shall be installed at or above all commercial-type deep fat fryers, broilers, fry grills, steam-jacketed kettles, hot-top ranges, ovens, barbecues, rotisseries, dishwashing machines and similar equipment that produce comparable amounts of steam, smoke, grease, or heat in a food-processing establishment. For the purposes of this section, a food-processing establishment includes any building or portion thereof used for the processing of food, but does not include a dwelling unit.

C. 511.3 Replacement air.

See this section of the UMC except add the following: windows and doors shall not be used for the purpose of providing replacement air. The exhaust and replacement air systems shall be connected by an electrical interlocking switch.

[14.9.2.13 NMAC - Rp, 14.9.2.13 NMAC, 1-1-08]

14.9.2.14 CHAPTER 6 DUCT SYSTEMS: See this chapter of the UMC except as follows.

A. Section 604.2. Metal ducts. See this section of the UMC and add the following to the last sentence of the second paragraph, "and be installed so as to support the weight of the concrete during encasement."

B. Section 609.0 Automatic shutoffs: (6) Automatic shutoffs are not required on evaporative coolers that derive all of their air from outside the building.

[14.9.2.14 NMAC - Rp, 14.9.2.14 NMAC, 1-1-08]

14.9.2.15 CHAPTER 7 COMBUSTION AIR: See this chapter of the UMC.

[14.9.2.15 NMAC - Rp, 14.9.2.15 NMAC, 1-1-08]

14.9.2.16 CHAPTER 8 CHIMNEYS AND VENTS: See this chapter of the UMC.

[14.9.2.16 NMAC - Rp, 14.9.2.16 NMAC, 1-1-08]

14.9.2.17 CHAPTER 9 INSTALLATION OF SPECIFIC EQUIPMENT: See this chapter of the UMC except as provided below.

A. Section 904.7 Furnace plenums and air ducts. See this section of the UMC and add the following new section: "Section 904.7 (E) Prohibited sources. Outside or return air for a heating system shall not be taken from the following locations.

(1) Closer than 10 feet (3048 mm) from an appliance vent outlet, a vent opening of a plumbing drainage system or the

discharge outlet of an exhaust fan, unless the outlet is three (3) feet (914 mm) above the outside air inlet.

(2) Where it will pick up objectionable odors, fumes or flammable vapors; or where it is less than ten (10) feet (3048 mm) above the surface of any abutting public way or driveway; or where it is in a horizontal position in a sidewalk, street, alley or driveway.

(3) A hazardous or unsanitary location or a refrigeration machinery room as defined in this code.

(4) From an area, the volume of which is less than twenty five percent (25%) of the entire volume served by such system, unless there is a permanent opening to an area the volume of which is equal to twenty five percent (25%) of the entire volume served. Exception: Such opening when used for a warm air furnace in a dwelling unit may be reduced to no less than fifty percent (50%) of the required area; provided the balance of the required return air is taken from a room or hall having at least three (3) doors leading to other rooms served by the furnace.

(5) From a room or space having any fuel burning appliances therein. Exception: This shall not apply to:

(a) a gravity type or listed vented wall furnace;

(b) a blower type system complying with the following requirements:

(i) where the return air is taken from a room or space having a volume exceeding one (1) cubic foot (0.0028 cubic meters) for each 10 Btu/hr (2.93 w) fuel input rate of all fuel burning appliances therein;

(ii) at least seventy five percent (75%) of the supply air is discharged back into the same room or space; or

(iii) return air inlet shall not be located within ten (10) feet (3048 mm) of any appliance firebox or draft diverter in the same enclosed room or confined space.

(6) A closet, bathroom toilet room or kitchen.

(7) Return air from one dwelling unit shall not be discharged into another dwelling unit through the heating system.

B. Section 904.10.3 Access to equipment on roofs.

(1) **904.10.3.1** See this section of the UMC.

(2) **904.10.3.2** See this section of the UMC except after the words "in height" add the following: except those designated as R-3 occupancies.

C. 907.2 See this section of the UMC except add the following: Installation of gas logs in solid fuel burning fireplaces. Approved gas logs may be

installed in solid fuel burning fireplaces, provided.

(1) The gas log is installed in accordance with the manufacturer's installation instructions

(2) If the fireplace is equipped with a damper, it shall be permanently blocked open by welding or cutting a hole of sufficient size to prevent spillage of combustion products into the room. On eight (8) inch and smaller flues, the damper shall be removed.

(3) The minimum flue passage-way shall not be less than 1 square inch per 2000 Btu/h input.

(4) Gas logs shall be equipped with a pilot and listed safety shutoff valve.

(5) The use of flexible gas connections shall not be permitted within a firebox, unless it is part of the listed gas log assembly.

(6) Factory built fireplaces shall be approved for installation of gas logs and provided with a means of installing the gas piping.

(7) All gas outlets located in a barbecue or fireplace shall be controlled by an approved separating valve located in the same room and outside the hearth, but not less than six (6) feet from such outlets.

D. Section 928.1 Installation. See this section of the UMC except add this new subsection: (F) Vented wall furnaces designed to be installed in a nominal 4 inch (102 mm) will shall be not less than 6 inches (152 mm) from an inside room corner unless listed for lesser clearances. Vented wall furnaces shall be located so that a door cannot swing within 12 inches (305 mm) of an air inlet or air out let of such furnace measured at right angles to the opening. Doorstops or door closers shall not be installed to obtain this clearance. Except when specifically approved vented wall furnaces shall be installed at least 18 inches (457 mm) below any structural projection. This requirement includes doors and windows which could project over the furnace.

[14.9.2.17 NMAC - Rp, 14.9.2.17 NMAC, 1-1-08]

14.9.2.18 CHAPTER 10 STEAM AND HOT WATER BOILERS: See this chapter of the UMC.

[14.9.2.18 NMAC - Rp, 14.9.2.18 NMAC, 1-1-08]

14.9.2.19 CHAPTER 11 REFRIGERATION: See this chapter of the UMC.

[14.9.2.19 NMAC - Rp, 14.9.2.19 NMAC, 1-1-08]

14.9.2.20 CHAPTER 12 HYDRONICS: See this chapter of the

UMC except as provided below.

A. 1201.2.8.3 Pressure test. Except delete the first sentence and substitute: piping shall be tested with a hydrostatic pressure or an air test of not less than 1.5 times operating pressure.

B. 1201.3.6.3 Pressure test. Except delete the first sentence and substitute: piping shall be tested with a hydrostatic pressure or an air test of not less than 1.5 times operating pressure.

C. 1201.4.1.1. PEX tubing. See this section of the UMC except add the following: tubing shall be manufactured with an approved oxygen diffusion barrier.

[14.9.2.20 NMAC - Rp, 14.9.2.20 NMAC, 1-1-08]

14.9.2.21 CHAPTER 13 FUEL PIPING: See this chapter of the UMC except as provided below.

A. 1309.5.2.3 Copper and brass pipe shall not be used. Aluminum alloy pipe shall not be used with gases corrosive to such material.

B. 1311.1.2. Protection against damage. Delete the text of subsection (A) of this section of the UMC, cover requirements, and substitute: Underground piping systems shall be installed with a minimum of 18 inches (460 mm) of cover. Where 18 inches (460 mm) of cover cannot be provided, the pipe shall be installed in conduit or bridged (shielded).

C. 1311.9.3 Emergency shutoff valves. See this section of the UMC except delete the following: the emergency shutoff valves shall be plainly marked as such and their locations posted as required by the authority having jurisdiction.

D. 1312.7 Sediment trap. See this section of the UPC except delete the first sentence and substitute: If a sediment trap, which is not incorporated as a part of the gas utilization equipment, is installed, it shall be installed at the time the equipment is installed and as close to the inlet of the equipment as is practical.

E. 1313.0 Liquefied petroleum gas facilities and piping. Delete this section of the UPC and substitute the following: Liquefied petroleum gas facilities shall comply with 19.15.40 NMSA, liquefied petroleum gas standards, and NMSA 1978 70-5-1 et seq., liquefied and compressed gasses.

[14.9.2.21 NMAC - Rp, 14.9.2.21 NMAC, 1-1-08]

14.9.2.22 CHAPTER 14 PROCESS PIPING: See this chapter of the UMC.

[14.9.2.22 NMAC - Rp, 14.9.2.22 NMAC, 1-1-08]

14.9.2.23 CHAPTER 15
SOLAR SYSTEMS: See this chapter of the UMC.
 [14.9.2.23 NMAC - Rp, 14.9.2.23 NMAC, 1-1-08]

14.9.2.24 CHAPTER 16 STA-
TIONARY FUEL CELL POWER
PLANTS: See this chapter of the UMC.
 [14.9.2.24 NMAC - Rp, 14.9.2.24 NMAC, 1-1-08]

14.9.2.25 CHAPTER 17 STAN-
DARDS: See this chapter of the UMC.
 [14.9.2.25 NMAC - Rp, 14.9.2.25 NMAC, 1-1-08]

14.9.2.26 APPENDICIES: See
 this section of the UMC.
 [14.9.2.26 NMAC - Rp, 14.9.2.26 NMAC, 1-1-08]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

This is an amendment to 18.19.5 NMAC, Section 12, effective 10/1/07.

18.19.5.12 PROOF OF IDENTI- FICATION NUMBER, IDENTITY AND RESIDENCY:

A. Applicants for a New Mexico permit, provisional or driver's license, other than a commercial driver's license, must provide documentary proof of their identification number, identity and residency.

B. Applicants must produce documentary proof of a social security number, individual tax identification number (ITIN), or an acceptable substitute for a social security number or ITIN:

(1) The applicant's social security card, or any of the following documents containing the applicant's social security number, will provide sufficient documentary proof of the applicant's social security number: a driver's license; a government-issued photo identification card; a military identification card; an identification card from an educational institution; an original employment payroll receipt; tax forms such as a W-2, W-4, W-8, W-9 or other IRS official documents; a medical card; or a statement from a financial institution.

(2) The applicant's letter from the IRS issuing the ITIN, or tax forms or other IRS official documents using the applicant's ITIN, will provide sufficient documentary proof of the applicant's ITIN.

(3) The following may be accepted as a substitute for a social security number or ITIN:

(a) a valid passport issued by country of citizenship;

(b) valid documentation issued by the INS such as an I-551 "resident alien" card, I-151 "alien registration receipt" card, I-688 "temporary resident" card, or an I-797 "notice of action"; or

(c) a matricula consular issued by the Mexican consulate in Albuquerque.

C. Applicants must produce one of the following documents as proof of identity: original birth certificate; certified copy of birth certificate; valid passport issued by country of citizenship; Indian census card; matricula consular issued by the Mexican consulate in Albuquerque; current driver's license from another state or country.

D. Applicants must provide two of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico: a rental agreement or purchase agreement; any original government issued document; a utility bill; an insurance bill; a bank statement; a check book; an employment pay stub; a local property tax statement; proof of a minor child enrolled in a public or private school; a voter registration card; a library card; original documents from a New Mexico community service organization; original documents from a city, county, state or federal government service organization attesting to the fact that the applicant is a New Mexico resident; a matricula consular issued by the Mexican consulate in Albuquerque.

E. The motor vehicle division may require foreign nationals applying for a driver's license to provide a certified copy of their driving record with an English language translation of the certified copy from the jurisdiction where the foreign national is currently or was previously licensed.]

A. Applicants for a New Mexico identification card, driving permit, provisional driver's license or driver's license, other than a commercial driver's license, must provide documentary proof of their identification number, identity and residency.

B. A person applying for a driver's license or identification card that was lost can use a New Mexico enhanced driver's license photo from the motor vehicle division (MVD) database as proof of identity and identification number, subject to MVD's ability to verify the applicant's social security number or other identification number used to obtain the driver's license or identification card, as sufficient proof to issue a replacement driver's license or identification card.

C. Any applicant eligible for a social security number must produce their social security card in order to provide

evidence of the identification number. An applicant who cannot provide the social security card must provide two of the following documents:

(1) a United States, state, or local government-issued medical card through which the social security number can be verified;

(2) a statement from a federally regulated financial institution through which the social security number can be verified; or

(3) any document in Subsection F of this section, as long as the document can be used to verify the social security number and is not used for proof of both identification number and identity.

D. In order to prove identification number, a foreign national who is unable to obtain a social security number must produce documentary proof of a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso or an individual tax identification number (ITIN). The applicant's ITIN card or the applicant's letter from the IRS issuing the ITIN is sufficient proof of the ITIN. Foreign nationals ineligible for a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso or an ITIN must present as proof of identification number, a valid passport issued by their country of citizenship.

E. Applicants must produce one of the following documents as proof of identity:

(1) original birth certificate issued by a state or territory of the United States;

(2) certified copy of birth certificate issued by a state or territory of the United States;

(3) an original or certified copy of a foreign birth certificate with a notarized English translation;

(4) original official copy of an FS545 or FS1350 form certifying birth abroad and translated into English;

(5) affidavit of Indian birth;

(6) N560 certificate of citizenship;

(7) N550 certificate of naturalization;

(8) a valid permanent resident card issued by the United States government;

(9) a valid I-551 resident alien card issued since 1997;

(10) a court order for name change, gender change, adoption or divorce, as long as it includes the legal name, date of birth and court seal;

(11) a marriage certificate issued by a state or a territory of the United States; or

(12) any document contained in Subsection F of this section, as long as the

document is not used for proof of both identification number and identity.

F. Applicants can use the following documents to provide documentary proof of their identification number or documentary proof of their identity but the document cannot be used for proof of both their identification number and identity:

(1) a state issued driver's license, a driver's license issued by a territory of the United States, or by jurisdiction of Canada, as long as it has a photograph and has not been expired more than one month;

(2) a state government-issued photo identification card, or a photo identification card issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one month; however, the MVD photo identification document card issued by MVD pursuant to Subsection J of this section may not be used to satisfy this proof of identification number requirement;

(3) a state government-issued photo learner's permit, or a photo learner's permit issued by a territory of the United States, or by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one month;

(4) a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso;

(5) a valid passport issued by country of citizenship;

(6) an American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(7) a photo identification card issued by the United States military, United States coast guard or New Mexico national guard;

(8) an identification document issued by the United States veterans administration, so long as it is accompanied by a United States veterans administration medical center ID card;

(9) a valid United States active duty/retiree/reservist military identification card (DOD ID DD-2); or

(10) a United States, state, or local government-issued photo ID, issued based on name, social security number and date of birth.

G. Applicants fifteen years of age or older must provide two of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:

(1) a real property rental agreement or purchase agreement;

(2) a utility bill, such as water, gas, electric, waste, telephone, cable or satellite bill, but not a bill for a cell phone;

(3) an insurance bill;

(4) a bank statement;

(5) an employment pay stub that contains the applicant's name and address;

(6) a local property tax statement or mortgage documents;

(7) proof of a minor child enrolled in a New Mexico public, private, or tribal school;

(8) a current, valid motor vehicle registration;

(9) original documents from a New Mexico community organization attesting to the fact that the applicant is a New Mexico resident;

(10) original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant; is a New Mexico resident;

(11) a New Mexico medical assistance card; or

(12) a New Mexico public assistance card.

H. Applicants less than fifteen years of age applying for an identification card must provide one of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:

(1) proof that the child is enrolled in a New Mexico public, private, or tribal school;

(2) a bank statement;

(3) an affidavit from the applicant's parent or guardian stating that the applicant lives with that person, as long as the affidavit is accompanied by the parent/guardian's New Mexico driver's license, New Mexico identification card, or two proofs of New Mexico residency;

(4) original documents from a New Mexico community organization attesting to the fact that the applicant is a New Mexico resident;

(5) original documents from a city, county, state, tribal or federal government organization attesting to the fact that the applicant is a New Mexico resident;

(6) documents from membership in a New Mexico religious organization; or

(7) documents from membership in a New Mexico sports organization.

I. MVD may require foreign nationals or first-time applicants from another state, to provide a certified copy of their driving record with an English language translation, if applicable, from the jurisdiction where the applicant is currently or was previously licensed.

J. Applicants who are unable to meet the requirements for a New Mexico identification card, driving permit, provisional driver's license, or driver's license, may apply for an MVD photo identification document card. The MVD photo identification document card issued by

MVD does not necessarily meet federal identification requirements. This card will be clearly identified on the card as a restricted card that cannot be used for certain purposes. The identification document cannot be used to apply for a New Mexico identification card, driving permit, provisional driver's license or driver's license. An applicant for the MVD photo identification document card must provide two documentary proofs of their identity and one documentary proof of residency.

(1) Applicants must produce two forms of documentation with their name and date of birth or with their name and social security number. Two documents with name and date of birth or two documents with name and social security number are acceptable. Any two of the following documents containing the name and date of birth or name and social security number are acceptable to prove identity:

(a) a state issued driver's license, a driver's license issued by a territory of the United States, or a license issued by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(b) a state issued identification card, an identification card issued by a territory of the United States, or an identification card issued by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(c) a state issued photo learner's permit, a photo learner's permit issued by a territory of the United States, or a photo learner's permit issued by a jurisdiction of Canada, as long as it has a photograph and has not been expired more than one year;

(d) an original or certified copy of the birth certificate issued by a United States state or territory of the United States;

(e) an affidavit of Indian birth;

(f) a current passport issued by the United States;

(g) a valid passport issued by country of citizenship;

(h) an I-94 form presented without a passport if it contains the applicant's photo;

(i) American Indian or Alaskan proof of Indian blood, certificate of degree of Indian blood, federal Indian census card or tribal membership card;

(j) N550 United States certificate of naturalization;

(k) a certificate of citizenship (N560);

(l) a resident alien card (I-551, AR-3, AR3A, AR-103) that contains the applicant's photo;

(m) FS545 or FS1350 United States certificate of birth abroad;

(n) a military identification card that includes the applicant's photo;

(o) a United States veterans administration card that includes the applicant's photo, so long as it is accompanied by a United States veterans administration medical center identification card;

(p) a medical card that includes the applicant's photo;

(q) a military dependent identification card that includes the applicant's photo;

(r) a government-issued photo identification card;

(s) a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso;

(t) a New Mexico corrections department photo identification card with name, date of birth and documentation that the card has not expired within the past year;

(u) an infant baptismal certificate;

(v) a social security card;

(w) a bank card, debit card, or credit card that contains the applicant's photo;

(x) a high school, GED, college, trade school, or university transcript, certificate, or diploma;

(y) an employee identification badge that contains the applicant's photo;

(z) a medical insurance card or documentation of medical insurance coverage or eligibility that contains an identification number;

(aa) military discharge/separation papers (DD-214);

(bb) selective service card;

(cc) proof of eligibility for and receipt of welfare benefits;

(dd) medical records;

(ee) documentation from a federal, state, or local correctional facility; or

(ff) a social security administration benefits award letter containing the social security number.

(2) Applicants must provide one or more of the following documents, showing a New Mexico address for the applicant, as proof that the applicant lives in New Mexico:

(a) a real property rental agreement or purchase agreement;

(b) a utility bill, such as a gas, electric, waste, water, cable, satellite bill, or telephone bill but not a bill for a cell phone;

(c) an insurance bill, such as automobile, home or health;

(d) a federally regulated financial institution document, such as a bank statement, excluding checks;

(e) an employment pay stub with name and address;

(f) a local property tax statement with name and address;

(g) proof of a minor child enrolled in a New Mexico public, private, or tribal

school;

(h) a current, valid motor vehicle registration;

(i) original documents from a New Mexico community organization attesting to the fact that the applicant is a New Mexico resident;

(j) original documents from a city, county, state, tribal, or federal government or social service organization attesting to the fact that the applicant is a New Mexico resident;

(k) a matricula consular card issued after February 1, 2005, by the Mexican consulate in Albuquerque or El Paso;

(l) documentation of eligibility and proof that the applicant is currently receiving services from a 501(c)(3) organization, as defined by the Internal Revenue Code; or

(m) other documents as approved by the MVD director.

K. This version of 18.19.5.12 NMAC is effective on October 1, 2007.

[18.19.5.12 NMAC - N, 6/29/01; A, 6/14/02; A, 6/30/03; A, 10/1/07]

End of Adopted Rules Section

Other Material Related to Administrative Law

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS****HISTORICAL RECORDS
ADVISORY BOARD**

Commission of Public Records
New Mexico State Records Center &
Archives
1205 Camino Carlos Rey
Santa Fe, New Mexico 87507

NOTICE OF REGULAR MEETING

A regular meeting of the New Mexico Historical Records Advisory Board has been scheduled for Friday, September 21, 2007 from 9:00 A.M to 12:00 Noon. The meeting will be held at the Bruce King Farm & Ranch Heritage Museum, Las Cruces, NM in the Conference Room of the Main Building's Administrative Offices. The address is 4100 Dripping Springs Road, Las Cruces, NM. 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 aid or service to attend or participate in the meeting, please contact Randy Forrester at 505-476-7936 of the State Records Center and Archives at least one week prior to the meeting. Public documents, including the agenda and minutes will be available 24 hours before the meeting.

**End of Other Related
Material Section**

SUBMITTAL DEADLINES AND PUBLICATION DATES

2007

Volume XVIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 16
Issue Number 2	January 17	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 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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