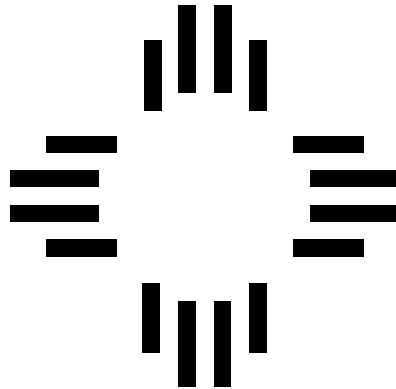


New Mexico Register

Volume XII, Issue Number 21
November 15, 2001



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

The Commission of Public Records
Administrative Law Division
2001

COPYRIGHT © 2001
BY
THE STATE OF NEW MEXICO

ALL RIGHTS RESERVED

New Mexico Register

Volume XII, Number 21

November 15, 2001

Table of Contents

Notices of Rulemaking and Proposed Rules

Education, Board of	
Notice of Proposed Rulemaking	1301
Finance and Administration, Department of	
Board of Finance	
Notice of Board of Finance Rule	1301
Finance and Administration, Department of	
Local Government Division	
Notice of Public Hearing	1301
Health, NM Department of	
Health Improvement Division	
Notice of Public Hearing	1302
Human Services Department	
Medical Assistance Division	
Notice	1302
Public Records, Commission of	
Notice of Regular Meeting - Notice of Rulemaking	1302
Racing Commission	
Notice of Rulemaking and Public Hearing	1303

Adopted Rules and Regulations

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." 14-4-5 NMSA 1978

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

Acupuncture & Oriental Medicine, NM Board of

* 16.2.5 NMAC	R	Temporary Licensing	1305
* 16.2.6 NMAC	R	Reciprocal Licensing	1305
* 16.2.9 NMAC	R	Continuing Education	1305
* 16.2.11 NMAC	R	Licensee Business Offices and Administrative Requirements	1305
* 16.2.5 NMAC	N	Temporary Licensing	1305
* 16.2.6 NMAC	N	Reciprocal Licensing	1307
* 16.2.9 NMAC	N	Continuing Education	1307
* 16.2.11 NMAC	N	Licensee Business Offices and Administrative Requirements	1308
* 16.2.2 NMAC	A	Scope Of Practice	1309
* 16.2.8 NMAC	A	License Renewal	1311
* 16.2.13 NMAC	A	Complaint and Disciplinary Procedures	1311

Children, Youth and Families Department

* 8.15.2 NMAC	A & E	Requirements for Child Care Assistance Programs for Clients and Child Care Providers	1313
---------------	-------	--	------

Energy, Minerals and Natural Resources Department

Forestry Division

* 19.20.4 NMAC N Commercial Timber Harvesting Requirements1314

Energy, Minerals and Natural Resources Department

Oil Conservation Division

* 19.15.3 NMAC Rn Drilling1321

Finance and Administration, Department of

Board of Finance

* 2.60.4 NMAC Rn & A Depository Bank Requirements, Collateral Level Requirements, and Custodial Bank Requirements1321

General Services Department

Purchasing Division

GSD 84-610 R Automotive Body Repairs - New Mexico State Owned Vehicles1325
GSD 84-612 R Payment Vouchers for Procurement of Materials and Services1325
GSD 84-613 R Purchasing Complaint Report1325
1 NMAC 5.4 R Resident Contractor Preference1325
* 1.4.3 NMAC N Resident Contractor Preference1325
* 1.4.1 NMAC Rn & A Procurement Code Regulations1326

Higher Education, Commission of

* 5.7.13 NMAC N Teacher Loan for Service Act1329
* 5.7.30 NMAC A Procedures, Standards and Eligibility Requirements for Participation in the New Mexico Education Trust1331

Racing Commission

* 15.2.3 NMAC A Flat Racing Officials1335
* 15.2.5 NMAC A Horse Race-Rules Of The Race1339
* 16.47.1 NMAC A General Provisions1340

Regulation and Licensing Department

Construction Industries Division

* 14.11.11 NMAC N Standard for Rammed Earth Construction1344

Taxation and Revenue Department

Multiple Rules Rn Notice for New Mexico Register1348

Please note that the (*) entries obey the reformatting rules set forth in 1.24.10 NMAC, effective 2/29/00

The New Mexico Register
Published by
The Commission of Public Records
Administrative Law Division
1205 Camino Carlos Rey
Santa Fe, NM 87507

The New Mexico Register is published twice each month by the Commission of Public Records, Administrative Law Division. The cost of an annual subscription is \$270.00, except the first subscription from each New Mexico state agency may be ordered at \$85.00. Individual copies of any Register issue may be purchased for \$12.00. Subscription inquiries should be directed to: The Commission of Public Records, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507. Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail rules@rain.state.nm.us.

The New Mexico Register has a new web address

The New Mexico Register is available free at
<http://www.nmcpr.state.nm.us/nmregister>

Notices of Rulemaking and Proposed Rules

**NEW MEXICO STATE BOARD OF EDUCATION
NOTICE OF PROPOSED RULEMAKING**

The New Mexico State Board of Education ("Board") will convene on Monday, November 26, 2001. Committee Meetings will be held on Monday, November 26, 2001 and Tuesday, November 27, 2001. The Regular Meeting of the Board will convene on Wednesday, November 28, 2001 at 8:00 a.m. Committee meetings and the Regular Meeting will be held in the State Capitol Building, Room 317, Santa Fe, New Mexico. Notice of the meeting is given in accordance with the Board's Open Meetings Policy. The agenda will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The New Mexico State Department of Public Education will recommend that the Board adopt the following new regulations:

PROPOSED NEW REGULATIONS

PROPOSED NMAC NUMBER	NAME
6.30.6 NMAC	Review of Local Curriculum
6.60.10 NMAC	Beginning Teacher Mentoring Programs
6.80.4 NMAC	Procedures for Application and Renewal as a Charter School

A public hearing for the purpose of affording members of the public the opportunity to offer comments on proposed new regulation 6.80.4 NMAC (Procedures for Application and Renewal as a Charter School) has been held in accordance with a previously published Notice of Proposed Rulemaking. A public hearing for the purpose of affording members of the public the opportunity to offer comments on proposed new regulation 6.30.6 NMAC (Review of Local Curriculum) was held on Friday, November 2nd from 10:00-noon at TVI at Smith Brasher Hall in Albuquerque, New Mexico. Notice was provided to the public through mailings and publication on the State Department of Public Education's website. Information regarding the public hearing for proposed new rule 6.60.10 NMAC (Beginning Teacher Mentoring Programs) has been posted on the State Department of Public Education's website at www.sde.state.nm.us. Copies of proposed new regulations may be obtained from Mary Jo Bradley at (505) 827-6571. Written comments regarding the proposed rulemaking should be directed to Mary Jo Bradley at the State Department of Public Education, State Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or faxed to Ms. Bradley at (505) 827-5066 before 5 p.m. on November 21, 2001. However, the submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the State Board of Education Office at 827-6571 by November 20, 2001.

The Board attempts to follow the order and date of items as listed on the Agenda; however, the order and date of specific items are tentative and may vary from the printed Agenda.

Comments, questions, or requests for copies of the Agenda should be directed to Mary Jo Bradley, State Department of Education, Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 or (505) 827-6571.

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION
STATE BOARD OF FINANCE**

**NOTICE OF BOARD OF FINANCE
RULE**

The state Board of Finance is in the process

of incorporating a new rule: Bond Project Disbursement Guidelines. Copies of the proposed rule are available in room 181, Bataan Memorial Building, Santa Fe, NM 87501. The Board will consider adopting the proposed rule at its January 8, 2002 meeting. Please mail or deliver written comments on the proposed new rule to Scott Stovall, 181 Bataan Memorial Building, Santa Fe, NM 87501 by December 18, 2001.

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION
LOCAL GOVERNMENT
DIVISION**

NOTICE OF PUBLIC HEARING

Department of Finance and Administration, Local Government Division, Suite 203, Bataan Memorial Building, Santa Fe, New Mexico 87501.

Date: November 1, 2001

Release Date: For Immediate Release

Contact: David Hanna, Chief, Special Programs Bureau (827-4957)

Reference: Public Hearing on New Mexico Civil Legal Services Commission and Fund Rules

The New Mexico Department of Finance and Administration, Local Government Division, and the Civil Legal Services Commission will hold a Public Hearing on Friday, December 21, 2001 at 1:30 P.M. at the Supreme Court Room, New Mexico Supreme Court, 237 Don Gaspar Avenue, Santa Fe, New Mexico.

The purpose of the Public Hearing is to receive public comment on the proposed rules for the newly established Civil Legal Services Commission and the Civil Legal Services Fund. The rules establish guidelines for the allocation and disbursement of revenue from the Civil Legal Services Fund. Copies of the proposed rules can be obtained at the Department of Finance and Administration, Local Government Division, Room 203, Bataan Memorial Building, Santa Fe, New Mexico. Interested individuals may testify at the Public Hearing, or may submit written comments no later than 5:00 P.M. MST on Friday, December 14, 2001 to the Local Government Division at the above address. All written and oral testimony will be considered prior to issuance of the final rules.

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 services to attend or

participate in the hearing, please contact Paula Timmerman, Local Government Division at 505-827-4787. The Department of Finance and Administration requests at least 10 days advance notice to provide requested alternative formats and/or special accommodations.

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

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.1.11 NMAC "Health Facility Receivership Requirements". The hearing will be held at 9:00 am. on December 18, 2001 in the auditorium of the Runnels Building at 1190 St. Frances Drive, Santa Fe, New Mexico.

The proposed new regulation complies with legislative changes resulting from the enactment of Laws 2001, Chapter 225. It specifies conditions for the petitioning of health facility receiverships, including conditions for imposition of financial conditions on the facility in receivership, and the qualifications for deputy receivers.

A draft of the proposed "Health Facility Receivership Requirements" can be obtained from:

Cecilia Griffin
Department of Health
Office of General Counsel
P.O. Box 26110
Santa Fe, New Mexico 87504-6110
(505) 827-2725

Please submit any written comments regarding the proposed 7.1.11 NMAC "Health Facility Receivership Requirements" to the attention of:

Cecilia Griffin
Department of Health
Office of General Counsel
P.O. Box 26110
Santa Fe, New Mexico 87504-6110

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 aide or service to attend or participate in the hearing, please contact Cecilia Griffin at the address or telephone number listed above. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
MEDICAL ASSISTANCE
DIVISION**

NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on December 17, 2001, in the Board Room, at the Educational Services Center, Santa Fe Public Schools Administration Building, (610 Alta Vista), Santa Fe, New Mexico. The subject of the hearing will be Developmental Disabilities Medicaid Waiver.

Individuals served through the Developmental Disabilities (DD) Home and Community-Based Waiver programs receive a variety of services, which may include Case Management, Habilitation, Personal Care, Respite Care, Private Duty Nursing, Therapies, Living Supports, Nutritional Counseling, and Outlier Services as described in the Individual Service Plan (ISP).

The Human Services Department is issuing the following proposed additions to services and definitions to implement self-determination into the waiver.

1. Environmental accessibility adaptations
2. Adaptation Consultant
3. Children's Support Services to include Family Counseling, Peer Mentoring, and Specialized Training
4. Annual Resource Allotment (ARA) which replace the previous annual unit cap system

Interested persons may testify or submit written comments no later than 5:00 p.m., December 17, 2001, to Robin Dozier Otten, Deputy Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in any HSD public hearing, program or services, please contact the NM Human Services Department toll-free at 1-888-997-2583, in Santa Fe at 827-3156, or through the department TDD system, 1-800-609-4833, in Santa Fe call 827-3184. The Department requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

Copies of the Human Services Register are available for review at the local Income Support Division offices or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

**NEW MEXICO
COMMISSION OF PUBLIC
RECORDS**

NOTICE OF REGULAR MEETING

The New Mexico Commission of Public Records has re-scheduled its regular meeting of November 6, 2001 meeting for Tuesday, December 4, at 9:00 A.M. The meeting will be held at the New Mexico Library, Archives and Records Center Building Commission Room, an accessible facility, located at 1209 Camino Carlos Rey, Santa Fe, 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 hearing, please contact Kathy Mattison at 476-7902 by November 30, 2001. Public documents including the agenda and minutes of the meeting can be provided in various accessible formats. A final copy of the agenda will be available 24 hours before the hearing.

NOTICE OF RULEMAKING

The following record retention and disposition schedules will be presented to the Commission of Public Records for consideration and adoption:

Repeal

SRC Rule 70-1, Manuals of Procedure, Style and Format

Repeal and Replace

1.18.446 NMAC Board of Medical Examiners

Modifications

- 1.15.2 NMAC, General Administrative Records
- 1.15.3 NMAC, General (Interpretive) Administrative Records
- 1.18.469 NMAC, State Racing Commission
- 1.18.632 NMAC, Workers' Compensation Administration
- 1.18.369 NMAC, Commission of Public Records
- 1.18.665 NMAC, Department of Health

Reformats (adoption of new structure,

style, and format):

<u>New NMAC</u>	<u>Old NMAC</u>	<u>Part Name</u>
1.13.10 NMAC	1 NMAC 3.2.10.1	Records Custody and Access
1.13.11 NMAC	1 NMAC 3.2.10.2	Research in the New Mexico Archives
1.13.20 NMAC	1 NMAC 3.2.20.3	Storage of Electronic Media at the State Records Center and Archives
1.13.30 NMAC	1 NMAC 3.2.50.1	Destruction of Public Records
1.13.40 NMAC	1 NMAC 3.2.40.5	Private Collection Development Policy
1.13.70 NMAC	1 NMAC 3.2.70.1	Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems
1.14.3 NMAC	1 NMAC 3.2.60.3	Microphotography Equipment: Inventory and Transfer
1.17.205 NMAC	1 NMAC 3.2.92.205	JRRDS Supreme Court Law Library
1.17.210 NMAC	1 NMAC 3.2.92.210	JRRDS Judicial Standards Commission
1.17.215 NMAC	1 NMAC 3.2.92.215	JRRDS Court of Appeals
1.17.216 NMAC	1 NMAC 3.2.92.216	JRRDS Supreme Court
1.17.218 NMAC	1 NMAC 3.2.92.218.03	JRRDS NM Magistrate Courts
1.17.264 NMAC	1 NMAC 3.2.92.264	JRRDS Attorneys and the District Offices
1.18.606 NMAC	1 NMAC 3.2.93.606	ERRDS Commission for the Blind
1.18.644 NMAC	1 NMAC 3.2.93.644	ERRDS Division of Vocational Rehabilitation
1.19.2 NMAC	1 NMAC 3.2.94.100	LGRRDS Office of County Assessor
1.19.3 NMAC	1 NMAC 3.2.94.200	LGRRDS Office of the County Clerk
1.19.4 NMAC	1 NMAC 3.2.94.300	LGRRDS Board of County Commissioners/County Manager
1.19.5 NMAC	1 NMAC 3.2.94.400	LGRRDS Office of the County Sheriff
1.19.6 NMAC	1 NMAC 3.2.94.500	LGRRDS Office of the County Treasurer
1.19.7 NMAC	1 NMAC 3.2.94.700	LGRRDS Southern Sandoval County Arroyo Flood Control Authority

NEW MEXICO RACING COMMISSION

NOTICE OF RULEMAKING AND PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a rulemaking and public hearing will be held in the Commission Conference Room, 300 San Mateo N.E., Albuquerque, New Mexico, commencing in executive session at 3:00 o'clock p.m. on Tuesday, November 27, 2001. The public session will begin at 8:30 o'clock a.m. on Wednesday, November 28, 2001. The Commission will consider adoption of proposed new/amended rules for incorporation into the Rules Governing Horse Racing in New Mexico Nos. Subsection C of 15.2.5.8 NMAC, Subsections A, B & K of 16.47.1.8 NMAC, Subsection P of 15.2.1.7 NMAC, New Subsection of 16.47.1.9 NMAC, Subsection A of 16.47.1.17 NMAC, and other matters of general business.

Copies of these proposed rules may be obtained from Julian Luna, Agency Director, New Mexico Racing Commission, P.O. Box 8576, 300 San Mateo N.E., Suite 110, Albuquerque, New Mexico 87198, (505) 841-6400. Interested persons may submit their views on the proposed rules to the Commission at the above address and/or may appear at the scheduled meeting and make a brief verbal presentation of their view.

Anyone who requires special accommodations is requested to notify the Commission of such needs at least five days prior to the meeting.

Kim Ahlbom
Deputy Agency Director

Dated: _____

End of Notices and Proposed Rules Section

This page intentionally left blank

Adopted Rules and Regulations

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This part 16.2.5 NMAC, Temporary Licensing, filed on 9/22/01 is hereby repealed and replaced by 16.2.5 NMAC, effective 11/22/01.

This part 16.2.6 NMAC, Reciprocal Licensing, filed on 4/16/99 is hereby repealed and replaced by 16.2.6 NMAC, effective 12/1/01.

This part 16.2.9 NMAC, Continuing Education, filed on 6/14/96 is hereby repealed and replaced by 16.2.9 NMAC, effective 12/1/01.

This part 16.2.11 NMAC, Licensee Business Offices and Administrative Requirements, filed on 6/14/96 is hereby repealed and replaced by 16.2.11 NMAC, effective 12/1/01.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**TITLE 16 OCCUPATIONAL
AND PROFESSIONAL LICENSING
CHAPTER 2 ACUPUNCTURE
AND ORIENTAL MEDICINE
PART 5 TEMPORARY
LICENSING**

16.2.5.1 ISSUING AGENCY:
New Mexico Board of Acupuncture and Oriental Medicine.
[16.2.5.1 NMAC – Rp 16.2.5.1 NMAC, 11-25-01]

16.2.5.2 SCOPE: All Licensees, Applicants, Temporary Licensees, Applicants for Temporary Licensure, Externs, Educational Programs and applicants for approval of Educational Programs.
[16.2.5.2 NMAC – Rp 16.2.5.2 NMAC, 11-25-01]

16.2.5.3 S T A T U T O R Y
AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 12, NMSA 1978.
[16.2.5.3 NMAC – Rp 16.2.5.3 NMAC, 11-25-01]

16.2.5.4 D U R A T I O N :
Permanent.
[16.2.5.4 NMAC – Rp 16.2.5.4 NMAC, 11-

25-01]
16.2.5.5 EFFECTIVE DATE:
November 25, 2001, unless a later date is cited at the end of a section.
[16.2.5.5 NMAC – Rp 16.2.5.5 NMAC, 11-25-01]

16.2.5.6 OBJECTIVE: This Part establishes requirements for temporary licensure, prior disciplinary action relating to other licenses, prior litigation and prior felonies, the educational requirements for temporary licensure, the renewal period for temporary licensure and the requirements for renewal of temporary licenses.
[16.2.5.6 NMAC – Rp 16.2.5.6 NMAC, 11-25-01]

16.2.5.7 D E F I N I T I O N S :
“Limited Temporary License” is a temporary license valid for a period of ten (10) days or less or for the duration of a single course for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. Such a Limited Temporary License shall be required for any person who demonstrates, practices or performs diagnostic or treatment techniques on another person if they are not a Licensee or Temporary Licensee. A person who has been issued a Limited Temporary License shall be considered a Temporary Licensee.
[16.2.5.7 NMAC – Rp 16.2.5.7 NMAC, 11-25-01]

16.2.5.8 GENERAL REQUIREMENTS

A. Every Applicant for Temporary Licensure must provide an affidavit as to whether he or she:

(1) Has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the Applicant for Temporary Licensure is licensed, certified, registered or legally recognized to practice;

(2) Has been a party to litigation in any jurisdiction related to his or her practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the Applicant for Temporary Licensure is licensed, certified, registered or legally recognized to practice;

(3) Has been convicted of a

felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred.

B. Any Applicant for Temporary Licensure who is licensed, certified, registered or legally recognized to practice any other profession including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act, shall provide a certificate from each such jurisdiction stating the disciplinary record of the Applicant for Temporary Licensure.

C. Any Applicant for Temporary Licensure who has been subject to any action or proceeding comprehended by 16.2.3.8.A. NMAC (Subsection 8.A of Part 5 of the Rules), may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.

D. Any Applicant for Temporary Licensure who provides the Board with false information or makes a false statement to the Board with regard to any action or proceeding comprehended by [Paragraph A of] 16.2.3.8.A. NMAC (Subsection 8.A of Part 5 of the Rules), may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

E. All documents submitted in a foreign language must be accompanied by an accurate translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Each translated document shall also bear the affidavit of the Applicant for Temporary Licensure certifying that the translation is a true and complete translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an application shall be at the expense of the Applicant for Temporary Licensure.

[16.2.5.8 NMAC – Rp 16.2.5.8 NMAC, 11-

25-01]

16.2.5.9 EDUCATIONAL REQUIREMENTS:

A. An Applicant for Temporary Licensure shall provide satisfactory proof that he or she has completed an approved Educational Program. An Applicant for Temporary Licensure who is legally recognized in any state or foreign country to practice another health care profession and who possesses knowledge and skills that are included in the scope of practice of doctors of oriental medicine shall provide satisfactory proof that he or she has completed the education required for legal recognition in that state or foreign country.

B. The Board, by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, may determine not to require the Applicant for Temporary Licensure to complete the requirements of 16.2.5.9.A. NMAC (Subsection 9.A. of Part 5 of the Rules), if the Board determines that there is good cause and the health and safety of the citizens of New Mexico will not be jeopardized.

[16.2.5.9 NMAC – Rp 16.2.5.9 NMAC, 11-25-01]

16.2.5.10 ISSUANCE OF TEMPORARY LICENSE: Upon approval of an application for temporary licensure that fulfills the requirements provided by the Act, NMSA 1978, Section 61-14A-12 and 16.2.5.8 NMAC and 16.2.5.9 NMAC (Sections 8 and 9 of Part 5 of the Rules), and payment of the fee for application for temporary licensure specified in 16.2.10 NMAC (Part 10 of the Rules), the Board shall issue a temporary license that will be valid for six months from the date of issuance.

[16.2.5.10 NMAC – Rp 16.2.5.10 NMAC, 11-25-01]

16.2.5.11 RENEWAL OF TEMPORARY LICENSE: A temporary license issued by the Board may be renewed a maximum of two times only, for a period of six (6) months for each renewal. Renewals shall run sequentially so that a renewal shall begin immediately when the previous temporary license period expires. The Board shall issue a renewal of a temporary license upon receipt of the following:

A. A completed Board approved renewal form; and

B. A current affidavit from the sponsoring and associating New Mexico licensed Doctor of Oriental Medicine or New Mexico Educational Program attesting to the activities the applicant for renewal of temporary licensure will perform; and

C. Payment of the fee for temporary license renewal specified in 16.2.10 NMAC (Part 10 of the Rules).

[16.2.5.11 NMAC – Rp 16.2.5.11 NMAC, 11-25-01]

16.2.5.12 ISSUANCE OF LIMITED TEMPORARY LICENSE: Upon approval of an application for a Limited Temporary License that fulfills the requirements listed below, the Board shall issue a Limited Temporary License that will be valid for the dates specified on the license but shall not exceed ten (10) consecutive days and shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. The Limited Temporary License shall include the name of the Limited Temporary License holder, the effective dates of the license, the name of the sponsoring New Mexico Doctor of Oriental Medicine or New Mexico Educational Program, and a statement that the license shall be for the exclusive purpose of teaching acupuncture and oriental medicine, and assisting in the implementation of new techniques in acupuncture and oriental medicine including the study of such techniques by licensed, certified or legally recognized health care practitioners from jurisdictions other than New Mexico. The requirements for a Limited Temporary License shall be submission of:

A. A completed application for Limited Temporary License form provided by the Board that shall list the name of the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program; and

B. An affidavit from the sponsoring and associating New Mexico Doctor of Oriental Medicine or New Mexico Educational Program attesting to the qualifications of the applicant and the activities the applicant will perform; and

C. A copy of the applicant's license, certification or registration or other document proving that the applicant is legally recognized in another state or country to practice acupuncture and oriental medicine or another health care profession and who possesses knowledge and skills that are included in the scope of practice of doctors of oriental medicine. The copy shall include on it an affidavit by the Applicant for Temporary Licensure certifying that it is a true copy of the original. For Applicants for Temporary Licensure in the United States who practice in a state in which there

is no legal recognition, a copy of the certification document in acupuncture, Chinese herbology or Asian body work, whichever is appropriate for the type of material they will be teaching or studying, by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) shall be sufficient. The copy shall include on it an affidavit by the Applicant for Temporary Licensure certifying that it is a true copy of the original. For Applicants for Temporary Licensure outside the United States who practice in a country in which there is no specific legal recognition document but where graduation from an appropriate educational program is the legal requirement for practice, the above provisions in this paragraph shall not apply; and

D. A copy of the applicant's diploma for graduation from the educational program that is required to be licensed, certified, registered or legally recognized to practice in the state or country where they practice. This copy shall include on it an affidavit by the Applicant for Temporary Licensure certifying that it is a true copy of the original; and

E. An affidavit as to whether the Applicant for Temporary Licensure has been subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant for Limited Temporary License is licensed, certified, registered or legally recognized to practice; and

F. An affidavit as to whether the applicant has been a party to litigation in any jurisdiction related to his or her practice of acupuncture and oriental medicine, or related to any other profession including other health care professions for which the applicant for Limited Temporary License is licensed, certified, registered or legally recognized to practice; and

G. An affidavit as to whether the applicant has been convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of nolo contendere or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred; and

H. Submission of the required fee for application for a Limited Temporary License that shall be one quarter of the fee for application for temporary licensure listed in 16.2.10 NMAC (Part 10 of the Rules).

[16.2.5.12 NMAC – Rp 16.2.5.12 NMAC, 11-25-01]

16.2.5.13 DOCUMENTS IN A FOREIGN LANGUAGE: All documents submitted in a foreign language must be accompanied by an accurate translation in English. Each translated document shall bear the affidavit of the translator certifying that he or she is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Each translated document shall also bear the affidavit of the Applicant for Temporary Licensure certifying that the translation is a true and complete translation of the original. Each affidavit shall be signed before a notary public. The translation of any document relevant to an application shall be at the expense of the Applicant for Temporary Licensure.
[16.2.5.13 NMAC – Rp 16.2.5.13 NMAC, 11-25-01]

16.2.5.14 DISCIPLINARY ACTION RELATIVE TO LIMITED TEMPORARY LICENSE: Any Applicant for Limited Temporary License who has been subject to any action or proceeding comprehended by 16.2.5.12.E, F, or G. NMAC (Subsections 12.E, 12.F, or 12G of Part 5 of the Rules), may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17; and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.
[16.2.5.14 NMAC – Rp 16.2.5.14 NMAC, 11-25-01]

16.2.5.15 FALSE INFORMATION RELATIVE TO LIMITED TEMPORARY LICENSE: Any Applicant for Limited Temporary License who provides the Board with false information or makes a false statement to the Board with regard to any action or proceeding comprehended by 16.2.5.12.E., F., or G. NMAC (Subsections 12.E, 12.F, or 12G of Part 5 of the Rules), may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of the Act, NMSA 1978, Section 61-14A-17, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.
[16.2.5.15 NMAC – Rp 16.2.5.15 NMAC, 11-25-01]

16.2.5.16 RENEWAL OF LIMITED TEMPORARY LICENSE: A Limited Temporary License issued by the Board may be renewed a maximum of four (4) times only in any twelve (12) month period for a period of ten (10) consecutive days or

less for each renewal. Renewals shall be for the period of time requested on the renewal form but shall not exceed ten (10) days. The Board shall issue a renewal of a Limited Temporary License upon receipt of the following:

A. A completed Board approved renewal form; and

B. Payment of the fee for Limited Temporary License renewal that shall be one quarter of the fee for temporary license renewal specified in 16.2.10 NMAC (Part 10 of the Rules).

[16.2.5.16 NMAC – Rp 16.2.5.16 NMAC, 11-25-01]

HISTORY OF 16.2.5 NMAC:

Pre-NMAC History: None

HISTORY OF REPEALED MATERIAL:

16.2.5 NMAC Temporary Licensing – Repealed 11-25-01

Other History:

Material in this part was derived from the previously filed with the commission of public records-state records center and archives as: 16 NMAC 2.5, Acupuncture and Oriental Medicine- Temporary Licensing, filed 06-14-96- renumbered, reformatted and amended to 16.2.5 NMAC. Effective 10-15-00.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**TITLE 16: OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 2: ACUPUNCTURE AND ORIENTAL MEDICINE
PART 6: RECIPROCAL LICENSING**

16.2.6.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.6.1 NMAC – Rp 16 NMAC 2.6.1, 12-1-01]

16.2.6.2 SCOPE: All Licensees and Applicants.

[16.2.6.2 NMAC – Rp 16 NMAC 2.6.2, 12-1-01]

16.2.6.3 S T A T U T A R Y AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9 and 13, NMSA 1978.

[16.2.6.3 NMAC – Rp 16 NMAC 2.6.3, 12-1-01]

16.2.6.4 D U R A T I O N :

Permanent
[16.2.6.4 NMAC – Rp 16 NMAC 2.6.4, 12-1-01]

16.2.6.5 EFFECTIVE DATE: December 1, 2001 unless a later date is cited at the end of a section.

[16.2.6.5 NMAC – Rp 16 NMAC 2.5.1, 12-1-01]

16.2.6.6 OBJECTIVE: This Part establishes that there are currently no reciprocal licensing agreements between the Board and other states or countries.

[16.2.6.6 NMAC – Rp 16 NMAC 2.6.6, 12-1-01]

16.2.6.7 DEFINITIONS : (Reserved)

[16.2.6.7 NMAC – Rp 16 NMAC 2.7.1, 12-1-01]

16.2.6.8 RECIPROCAL LICENSING: Currently there are no states or countries with which the Board has reciprocal licensing agreements.

[16.2.6.8 NMAC – Rp 16 NMAC 2.8.1, 12-1-01]

HISTORY OF 16.2.6 NMAC:

Pre-NMAC History:

None

HISTORY OF REPEALED MATERIAL:

16 NMAC 2.6, Reciprocal Licensing, Filed 4-16-99, Repealed Effective 12-1-01

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING
CHAPTER 2 ACUPUNCTURE AND ORIENTAL MEDICINE
PART 9: CONTINUING EDUCATION**

16.2.9.1 ISSUING AGENCY: New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.9.1 NMAC – Rp 16 NMAC 2.9.1, 12-1-01]

16.2.9.2 SCOPE: All licensed Doctors of Oriental Medicine.

[16.2.9.2 NMAC – Rp 16 NMAC 2.9.2, 12-1-01]

16.2.9.3 S T A T U T O R Y AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8, 9, and 15, NMSA 1978.

[16.2.9.3 NMAC – Rp 16 NMAC 2.9.3, 12-1-01]

16.2.9.4 D U R A T I O N :
Permanent.

[16.2.9.4 NMAC – Rp 16 NMAC 2.9.4, 12-1-01]

16.2.9.5 EFFECTIVE DATE:
December 1, 2001, unless a later date is cited at the end of a section.

[16.2.9.5 NMAC – Rp 16 NMAC 2.9.5, 12-1-01]

16.2.9.6 OBJECTIVE: This Part establishes that there are currently no continuing education requirements for Doctors of Oriental Medicine.

[16.2.9.6 NMAC – Rp 16 NMAC 2.9.6, 12-1-01]

16.2.9.7 D E F I N I T I O N S :
[Reserved]

[16.2.9.7 NMAC – Rp 16 NMAC 2.9.7, 12-1-01]

16.2.9.8 CONTINUING EDUCATION: Currently there are no continuing education requirements for Doctors of Oriental Medicine.

[16.2.9.8 NMAC – Rp 16 NMAC 2.9.8, 12-1-01]

HISTORY OF 16.2.9 NMAC:

Pre-NMAC History:
None

HISTORY OF REPEALED MATERIAL:

16 NMAC 2.9, Continuing Education, Filed 6-14-96, Repealed Effective 12-1-01

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

TITLE 16: OCCUPATIONAL AND PROFESSIONAL LICENSING

CHAPTER 2: A C U P U N C T U R E AND ORIENTAL MEDICINE

PART 11: LICENSEE BUSI- NESS OFFICES AND ADMINISTRA- TIVE REQUIREMENTS

16.2.11.1 ISSUING AGENCY:
New Mexico Board of Acupuncture and Oriental Medicine.

[16.2.11.1 NMAC – Rp 16 NMAC 2.11.1, 12-1-01]

16.2.11.2 SCOPE: All Licensees, Applicants, Temporary Licensees, Applicants for Temporary Licensure,

Externs, Educational Programs and applicants for approval of Educational Programs.
[16.2.11.2 NMAC – Rp 16 NMAC 2.11.2, 12-1-01]

16.2.11.3 S T A T U T O R Y
AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-8 and 9, NMSA 1978.

[16.2.11.3 NMAC – Rp 16 NMAC 2.11.3, 12-1-01]

16.2.11.4 D U R A T I O N :
Permanent.

[16.2.11.4 NMAC – Rp 16 NMAC 2.11.4, 12-1-01]

16.2.11.5 EFFECTIVE DATE:
December 1, 2001, unless a later date is cited at the end of a section.

[16.2.11.5 NMAC – Rp 16 NMAC 2.11.5, 12-1-01]

16.2.11.6 OBJECTIVE: This Part establishes the requirements for registration of all Licensee Offices, the requirement that an Office in a residence be set apart and have toilet facilities available, the inspection of Offices, the keeping of records, the use of a trade name, the display of the license and the requirement for notifying the Board of changes to, relocation or closing of the Office.

[16.2.11.6 NMAC – Rp 16 NMAC 2.11.6, 12-1-01]

16.2.11.7 D E F I N I T I O N S :
[Reserved]

[16.2.11.7 NMAC – Rp 16 NMAC 2.11.7, 12-1-01]

16.2.11.8 OFFICE: All Offices shall be registered with the Board. When the practice of acupuncture and oriental medicine is conducted in a building used for residential purposes, a room or rooms shall be set apart as an Office for the practice and shall be used solely for this purpose. It shall be equipped with a washroom and toilet facilities readily available in the same premises. An Office may be inspected at any time during normal business hours by the Board or its agents.

[16.2.11.8 NMAC – Rp 16 NMAC 2.11.8, 12-1-01]

16.2.11.9 RECORDS: A Doctor of Oriental Medicine, Temporary Licensee, Extern or Educational Program shall keep accurate records of each patient including the diagnosis and nature of treatment given and any other relevant data deemed necessary by the provider. Records shall be retained for a minimum of five (5) years and

shall be open to inspection at any time during normal business hours by the Board.

[16.2.11.9 NMAC – Rp 16 NMAC 2.11.9, 12-1-01]

16.2.11.10 USE OF BUSINESS NAME OR TRADE NAME: The use of a trade or business name or “DBA” by a Doctor of Oriental Medicine shall be registered with the Board. The Board shall be notified, in writing, of any change of business or trade name within ten (10) days of the change.

[16.2.11.10 NMAC – Rp 16 NMAC 2.11.10, 12-1-01]

16.2.11.11 DISPLAY OF LICENSE: The current license shall be conspicuously displayed in all Offices of the Doctor of Oriental Medicine or Temporary Licensee that are registered with the Board. For the fee specified in Part 10, the Board shall provide a copy of the license for each additional Office location registered with the Board.

[16.2.11.11 NMAC – Rp 16 NMAC 2.11.11, 12-1-01]

16.2.11.12 CHANGES, RELOCATION, CLOSING: A Doctor of Oriental Medicine or Temporary Licensee shall inform the Board, in writing, of any changes to his or her practice, including relocation, abandonment and closing for over 90 days. Notice to the Board shall include at a minimum the name of the Licensee, Office location, mailing address, telephone number, business name and the names of all Licensees practicing at that location.

[16.2.11.12 NMAC – Rp 16 NMAC 2.11.12, 12-1-01]

HISTORY OF 16.2.6 NMAC:

Pre-NMAC History:

The material in this Part was derived from that previously filed with State Records Center and Archives as:

ACU Rule 91-3, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes – Administrative Requirements, Filed 2-18-91.

Rule 3, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes – Administrative Requirements, Filed, 8-28-92.

Rule 3, Regulations Governing Acupuncture Practitioners, Tutors, and Institutes – Administrative Requirements, Filed, 1-26-93.

ACU Rule 91-10, Regulations Governing Acupuncture Practitioners, Tutors, And Institutes – Advertisement, Filed, 2-18-91.

Rule 10, Regulations Governing Acupuncture Practitioners, Tutors, And Institutes – Titles, Filed, 1-27-93.

HISTORY OF REPEALED MATERIAL:

16 NMAC 2.11, Licensee Business Offices and Administrative Requirements Filed 6-14-96, Repealed Effective 12-1-01.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.2.2, 16.2.2.3, 16.2.2.6, 16.2.2.8, 16.2.2.10 and 16.2.2.11 of the NMAC.

16.2.2.2 SCOPE: All licensed Doctors of Oriental Medicine, Temporary Licensees engaging in only those activities authorized on the temporary license, Externs engaging in only those activities authorized by the Externship and students enrolled in an ~~for~~ Educational ~~for~~ Program in acupuncture and oriental medicine approved by the Board working under the direct supervision of a teacher ~~at an institute or with a Private Tutor~~ the approved Educational Program as part of the ~~for~~ Educational ~~for~~ Program in which they are enrolled.

16.2.2.3 S T A T U T O R Y AUTHORITY: This Part is promulgated pursuant to the Acupuncture and Oriental Medicine Practice Act, Sections 61-14A-3, 4, 6, ~~and 7~~ and 8.1 NMSA 1978.

16.2.2.6 OBJECTIVE: This Part clarifies the scope of practice of Doctors of Oriental Medicine, Temporary Licensees, Externs and students.

16.2.2.8 SCOPE OF PRACTICE: Pursuant to ~~NMSA 1978,~~ Section 61-14A-3 NMSA 1978, the practice of oriental medicine in New Mexico is a distinct system of primary health care with the goal of prevention, cure, or correction of any disease, illness, injury, pain or other physical or mental condition by controlling and regulating the flow and balance of energy and functioning of the person to restore and maintain health. Oriental medicine includes all traditional and modern diagnostic, prescriptive and therapeutic methods utilized by practitioners of acupuncture and oriental medicine worldwide. The scope of practice of Doctors of Oriental medicine shall include but is not limited to:

A. Evaluation, ~~and~~ management and treatment services;

B. Diagnostic ~~for~~ examination, ~~and diagnostic~~ testing and procedures;

C. The ordering of ~~radio-~~

~~logical,~~ diagnostic imaging procedures, and laboratory or other diagnostic tests;

D. The surgical procedures of acupuncture, ~~injection therapy~~ and other related procedures, as well as injection therapy; injection therapy may only be performed by a Doctor of Oriental Medicine who is certified for the Extended or Expanded Prescriptive Authority pursuant to 16.2.2.10 NMSA (Section 10 of Part 2 of the Rules) or a Temporary Licensee for the purposes specified in Section 61-14A-12 of the Act and 16.2.5 NMAC (Part 5 of the Rules);

E. The stimulation of points or areas of the body using needles, heat, cold, light, lasers, sound, vibration, magnetism, electricity, bleeding, suction, pressure, or other devices or means;

F. Physical medicine modalities and procedures; spray and stretch techniques using prescription vapocoolants may only be performed by a Doctor of Oriental Medicine who is certified for the Extended or Expanded Prescriptive Authority pursuant to 16.2.2.10 NMSA (Section 10 of Part 2 of the Rules) or a Temporary Licensee for the purposes specified in Section 61-14A-12 of the Act and 16.2.5 NMAC (Part 5 of the Rules);

G. Therapeutic exercises, breathing techniques, meditation, and the use of biofeedback and other devices that utilize color, light, sound, electromagnetic energy and other means therapeutically;

H. Dietary and nutritional counseling and the prescription or administration of food, beverages and dietary supplements therapeutically;

I. Counseling and education regarding physical, emotional and spiritual balance in lifestyle; ~~and~~

J. The prescription or administration of any herbal medicine, homeopathic medicine, vitamins, minerals, enzymes, glandular products, natural substances, protomorphogens, live cell products, gerovital, amino acids and dietary and nutritional supplements. The injection of any of the above substances may only be performed by a Doctor of Oriental Medicine who is certified for the Extended or Expanded Prescriptive Authority pursuant to 16.2.2.10 NMSA (Section 10 of Part 2 of the Rules) or a Temporary Licensee for the purposes specified in Section 61-14A-12 of the Act and 16.2.5 NMAC (Part 5 of the Rules).

K. The prescription or administration of cosmetics, biological products including therapeutic serum and over the counter drugs other than those enumerated in Section 61-14A-3.G.(2) of the Act by a Doctor of Oriental Medicine who

is certified for the Extended or Expanded Prescriptive Authority pursuant to 16.2.2.10 NMSA (Section 10 of Part 2 of the Rules) or a Temporary Licensee for the purposes specified in Section 61-14A-12 of the Act and 16.2.5 NMAC (Part 5 of the Rules).

L. The prescription or administration of sterile water, sterile saline, sarapin or its generic, vapocoolants and transdermal bioidentical hormones by a Doctor of Oriental Medicine who is certified for the Extended or Expanded Prescriptive Authority pursuant to 16.2.2.10 NMSA (Section 10 of Part 2 of the Rules) or a Temporary Licensee for the purposes specified in Section 61-14A-12 of the Act and 16.2.5 NMAC (Part 5 of the Rules).

M. The prescription or administration of caffeine, procaine, oxygen, epinephrine and all bioidentical hormones by a Doctor of Oriental Medicine who is certified for the Expanded Prescriptive Authority pursuant to 16.2.2.10 NMSA (Section 10 of Part 2 of the Rules) or a Temporary Licensee for the purposes specified in Section 61-14A-12 of the Act and 16.2.5 NMAC (Part 5 of the Rules).

N. The prescription or administration of devices, restricted devices and prescription devices as defined in the New Mexico Drug, Device and Cosmetic Act (Section 26-1-1 NMSA 1978) by a Doctor of Oriental Medicine who meets the requirements of 16.2.2.9 NMSA (Section 9 of Part 2 of the Rules).

~~16.2.2.10~~ ~~EXTENDED PRESCRIPTIVE AUTHORITY:~~ The Board shall certify a Doctor of Oriental Medicine in good standing for Extended Prescriptive Authority as provided herein.

A. The Doctor of Oriental Medicine shall file a completed and signed application form provided by the Board and shall pay the Administrative Fee for Extended Prescriptive Authority Application specified in 16.2.10 NMAC.

B. The Doctor of Oriental Medicine shall submit proof of completion of the following education, satisfactory to the Board, in the pharmacology and general use of the drugs authorized for use under the Extended Prescriptive Authority Provisions of Section 61-14A-3.H.(4) and (5) of the Act. Such education shall have been earned in classes pre approved by the Board and shall be taught by qualified teachers as approved by the board. All pharmacology shall be taught by a licensed pharmacist, PharmD or a Ph.D. in pharmacology. The use of Sarapin, shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience in trigger point and neural injection therapy and who is knowledgeable about

Sarapin pharmacology. The use of vapocoolants shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience in vapocoolant therapy and who is knowledgeable about vapocoolant pharmacology. The use of topical natural hormones shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience in topical natural hormone therapy and who is knowledgeable about topical natural hormone pharmacology. The Board shall have final authority for approval of classes and teachers. All classes that do not require hands on training may be video recorded and transcribed for future presentation. Testing shall be administered to insure that the material presented in the classes has been learned. The entire educational program shall be completed in two (2) years. Doctors of oriental medicine who wish to be certified in the extended prescriptive authority shall be educated to such a level of knowledge, understanding and expertise that they shall be able to evaluate the material, have a deep grasp of the application of it in various settings, and be able to generate new thinking about the subject matter. They shall be required to demonstrate their skill in performing the necessary tasks and documenting the outcomes in writing. The above education shall be in addition to the education required to meet the minimum educational program requirements for licensure as a Doctor of Oriental Medicine. The education shall include a minimum of:

(1) 28 hours in the theory and practice of trigger point injection therapy, neural injection therapy including the injection of therapeutic serum, sterile water, sterile saline, Sarapin and all injectable forms of substances included in Section 61-14A-3.G. (2) of the Act with the exclusion of procaine, caffeine and epinephrine. The course shall include, but not be limited to: Anatomy, physiology, pathology, pharmacology, diagnostic methodology, clinical strategies, contraindications and safeguards as well as vapocoolants spray and stretch techniques.

(2) 21 hours in the theory and practice of transdermal bioidentical hormone replacement therapy. The course shall include, but not be limited to: Anatomy, physiology, endocrinology, pathology, pharmacology, the diagnostic use of blood and saliva testing, imaging diagnostics, clinical strategies, contraindications and safeguards as well as specialist referral.

(3) five hours in the pharmacology, application and clinical use of cosmetics and over-the-counter drugs.

C. The Board shall notify

the applicant in writing by mail postmarked no more than 30 days after the receipt of the complete application whether the application is accepted or rejected. If the application is rejected, the notice of rejection shall state the reason the application was rejected.

D. The Extended prescriptive Authority certification shall automatically terminate with the Doctor of Oriental Medicine should the license lapse, be suspended, revoked or terminated for any reason.

E. A Doctor of Oriental Medicine certified with Extended Prescriptive Authority shall be designated as such by the addition of "EX" after his or her license number. The board shall issue a wallet size license card to each Doctor of Oriental Medicine that shall contain the licensee's name, and license number followed by "EX" if applicable. The board shall maintain a list of each Doctor of Oriental Medicine who is certified for Extended prescriptive Authority and shall notify the New Mexico Board of Pharmacy of all licensees with Extended prescriptive authority.]

16.2.2.10 EXPANDED PRESCRIPTIVE AUTHORITY: The Board shall certify a Doctor of Oriental Medicine in good standing for Expanded Prescriptive Authority as provided herein.

A. The Doctor of Oriental Medicine shall file a completed and signed application form provided by the Board and shall pay the Administrative Fee for Expanded Prescriptive Authority Application specified in 16.2.10 NMAC (Part 10 of the Rules).

B. The Doctor of Oriental Medicine shall submit proof of completion of the following education, satisfactory to the Board, in the pharmacology and general use of the drugs authorized for use under the Expanded Prescriptive Authority Provisions of Section 61-14A-3.G.(4) and (5) and Section 61-14A-8.1 of the Act. Such education shall have been earned in classes pre-approved by the Board and shall be taught by qualified teachers as approved by the Board. All pharmacology shall be taught by a licensed pharmacist, PharmD or a Ph.D. in pharmacology. The education in the therapeutic use of the drugs shall be taught by a licensed health care practitioner with appropriate training and a minimum of five years experience using the drugs. The Board shall have final authority for approval of classes and teachers. All classes may be video recorded and transcribed for future presentation of the class. Testing shall be administered to insure that the material presented in the classes has been learned. The entire edu-

ational program shall be completed within two (2) years. Doctors of Oriental Medicine who wish to be certified in the Expanded Prescriptive Authority shall be educated to such a level of knowledge, understanding, skill and expertise that they shall be able to evaluate the material, have a deep grasp of the application of it in various settings, and be able to generate new thinking about the subject matter. They shall be required to demonstrate their skill in performing the necessary tasks and documenting the outcomes in writing. The above education shall be in addition to the education required to meet the minimum Educational Program requirements for licensure as a Doctor of Oriental Medicine. The education shall include a minimum of one hundred forty-four (144) hours in the following areas:

(1) Forty (40) hours in the theory and practice of injection therapy such as trigger point injection therapy, neural injection therapy, prolo therapy, nerve blocks, and intravenous therapy, including the injection of therapeutic biological products, therapeutic serum, sterile water, sterile saline, Sarapin or its generic, caffeine, procaine, epinephrine, and all injectable forms of any herbal medicine, homeopathic medicine, vitamins, minerals, enzymes, glandular products, natural substances, protomorphogens, live cell products, gerovital, amino acids, dietary and nutritional supplements. The course shall include classes in: anatomy, physiology, pathology, pharmacology, diagnostic methodology, clinical strategies, contraindications and safeguards as well as vapocoolant spray and stretch techniques.

(2) Fourteen (14) hours in orthopedic and neurological evaluation.

(3) Fourteen (14) hours in the use of oxygen therapeutically

(4) Fourteen (14) hours in chelation therapy using vitamins, natural substances and amino acids.

(5) Thirty (30) hours in the theory and practice of bioidentical hormone therapy. The course shall include classes in: anatomy, physiology, endocrinology, pathology, pharmacology, diagnostic imaging, clinical strategies, contraindications, safeguards, and specialist referral.

(6) Twelve (12) hours in blood, urine and saliva hormone diagnostic testing and evaluation.

(7) Fourteen (14) hours in biomedical differential diagnosis relative to the prescription or administration of the authorized drugs.

(8) Five (5) hours in the pharmacology, application and clinical use of cosmetics and over-the-counter drugs.

(9) One (1) hour of pharmaceutical law as provided by the New Mexico

Board of Pharmacy.

C. The education and training completed by a doctor of oriental medicine who is certified for Extended Prescriptive Authority may be credited towards the education required for Expanded Prescriptive Authority Certification.

D. Certification for Extended Prescriptive Authority will not be available after February 28, 2002. However, those Doctors of Oriental Medicine who have been certified for Extended Prescriptive Authority may continue to prescribe or administer the drugs authorized by the Extended Prescriptive Authority until December 31, 2011, but they may not prescribe or administer caffeine, procaine, oxygen, epinephrine or ingested bioidentical hormones. All Extended Prescriptive Authority certifications will expire on December 31, 2011.

E. The Board shall notify the applicant in writing by mail postmarked no more than thirty (30) days after the receipt of the complete application whether the application is accepted or rejected. If the application is rejected, the notice of rejection shall state the reason the application was rejected.

F. The Extended or Expanded Prescriptive Authority certification shall automatically terminate when the license lapses, is suspended, revoked or terminated for any reason.

G. A Doctor of Oriental Medicine certified for Expanded Prescriptive Authority shall be designated as such by the addition of "Rx" after his or her license number. The board shall issue a wallet size license card to each Doctor of Oriental Medicine that shall contain the licensee's name, and license number followed by "Rx" if applicable. The board shall maintain a list of each Doctor of Oriental Medicine who is certified for Expanded Prescriptive Authority and shall notify the New Mexico Board of Pharmacy of all licensees certified for Expanded Prescriptive authority.

H. A Doctor of Oriental Medicine certified with the Extended or Expanded Prescriptive Authority shall register with the Federal DEA (Drug Enforcement Agency) to authorize the use of testosterone, a controlled substance, and any other drug that is currently, or in the future, classified as a controlled substance and that is within the prescriptive authority of a doctor of oriental medicine as defined in the Act and this Rule.

16.2.2.11 PRESCRIPTION PADS. A Doctor of Oriental Medicine, when prescribing, shall use prescription pads

imprinted with his/her name, address, telephone number and license number. If a Doctor of oriental Medicine is ~~registered~~ certified for the Extended or Expanded Prescriptive Authority, the "E[~~X~~]" or "Rx" designation shall be included after the license number. If a Doctor of Oriental Medicine is using a prescription pad printed with the names of more than one Doctor of Oriental Medicine, each Doctor of Oriental Medicine shall have a separate signature line indicating the name and license number followed by "E[~~X~~]" or "Rx" designation if applicable. Each specific prescription shall indicate the name of the Doctor of ~~o~~ Oriental Medicine for that prescription.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to Section 16.2.8.8 of the NMAC.

16.2.8.8 GENERAL REQUIREMENTS:

A. Every applicant for license renewal must provide an ~~[state-~~ ~~ment]~~ affidavit as to whether he or she, since applying for licensure or since last applying for licensure renewal, whichever occurred most recently, has been:

(1) Subject to any disciplinary action in any jurisdiction related to the practice of acupuncture and oriental medicine, or related to any other profession, including other health care professions, for which the applicant for license renewal is licensed, certified, registered or legally recognized to practice;

(2) A party to litigation in any jurisdiction related to his or her practice of acupuncture and oriental medicine, or related to any other profession, including other health care professions, for which the applicant for license renewal is licensed, certified, registered or legally recognized to practice;

(3) Convicted of a felony in any jurisdiction, including any finding of guilt by a court or jury, or any plea of guilty, or any plea of *nolo contendere* or no contest, or plea or disposition of conditional discharge, and including any such proceeding in which a sentence was imposed, suspended or deferred.

B. Any applicant for license renewal who is licensed, certified, registered or legally recognized to practice any other profession, including other health care professions, in any jurisdiction, pursuant to any authority other than the New Mexico Acupuncture and Oriental Medicine Practice Act, shall provide ~~[a certificate from each such jurisdiction]~~ an affidavit

regarding the disciplinary record of the applicant.

C. Any applicant for license renewal who has been subject to any action or proceeding comprehended by (Paragraphs (1), (2) or (3) of Subsection A of 16.2.8.8 NMAC of Part 8 of the Rules), may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and subject to the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq., and subject to the Criminal Offender Employment Act, NMSA 1978, Section 28-2-1, et seq.

D. Any applicant for license renewal who provides the Board with false information or makes a false statement to the board with regard to any action or proceeding comprehended by (Paragraphs (1), (2) or (3) of Subsection A of 16.2.8.8 NMAC of Part 8 of the Rules), may be subject to disciplinary action, including denial, suspension or revocation of licensure, pursuant to the provisions of Section 61-14A-17 NMSA 1978, and the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

NEW MEXICO BOARD OF ACUPUNCTURE AND ORIENTAL MEDICINE

This is an amendment to 16.2.13.2, 16.2.13.7, 16.2.13.8, 16.2.13.9, 16.2.13.10, 16.2.13.11 and 16.2.13.12 of the NMAC.

16.2.13.2 SCOPE: All ~~[licensed Doctors of Oriental Medicine, temporary licensed Doctors of Oriental Medicine, externs, extern applicants, limited temporary licensees, applicants for limited temporary license, and applicants for approved educational programs in acupuncture and oriental medicine at Institutes and Private Tutorships]~~ Licensees, Applicants, Temporary Licensees, Applicants for Temporary Licensure, Externs, Educational Programs and applicants for approval of Educational Programs.

16.2.13.7 DEFINITIONS:

A. "Chief Officer" is the Board's chairperson or his or her designee serving to administer the pre-hearing procedural matters of disciplinary proceedings.

B. "Complainant" is the complaining party.

C. "Complaint Committee" is a Board committee composed of the Complaint Committee Chairperson and the Complaint Manager.

D. "Complaint Committee

Chairperson" is a ~~[professional]~~ member of the Board appointed by the Board's chairperson.

E. "Complaint Manager" is the Board's administrator or any member of the Board appointed by the Board's chairperson.

F. "NCA" is a notice of contemplated action.

G. "Respondent" is the subject of the complaint.

16.2.13.8 ~~[COMPLAINT AND DISCIPLINARY PROCEDURES]~~ INITIATING A COMPLAINT

A. A complaint may be initiated by any person by a telephone call, a written complaint, or ~~[a walk-in]~~ an in person complaint presented to any Board member or the Board's administrator. The Board's administrator or complainant shall prepare a complaint form. This form shall be available at the office of the Board's administrator.

B. The provisions of Subsection A above notwithstanding, no formal disciplinary proceeding against any person may be instituted without a written, signed complaint.

C. The Board's administrator shall maintain a written log of all complaints received that records the following: the date of the complaint; the name, address and telephone number of the complaining party (Complainant); the name of the subject of the complaint (Respondent); the method by which the complaint was made (e.g., telephone, letter, etc.); and other pertinent data as the Board may direct.

16.2.13.9 ~~[PROCEDURES FOR RECEIPT OF A COMPLAINT AT THE BOARD'S OFFICE]~~ PROCEDURES FOR PROCESSING A COMPLAINT

A. The Board's administrator, or any member of the Board who may be appointed by the Board's chairperson, will act as the Complaint Manager for the procedures outlined below.

B. ~~[Upon receipt of a written, signed complaint, or upon the Board's own action as initiated by a vote of the majority of the members of the Board acting at a duly convened meeting of the Board, and as then reduced to a sworn written statement signed by an authorized agent of the Board, if the Board has reasonable cause to believe that the Act or the Rules promulgated pursuant thereto have been or are being violated, the Complaint Manager shall:]~~ Upon receipt of a written signed complaint, or upon the Board's action initiated by a majority vote

of the Board which is reduced to a written statement based on reasonable ground to believe that the Act or Rules may have been or are being violated, the complaint manager shall:

(1) Log in the date of receipt of the initial complaint.

(2) Determine whether the Respondent is a Licensee, Applicant, Temporary Licensee, Applicant for Temporary Licensure, Extern, Extern Applicant, ~~[Applicant for Temporary Licensure, Applicant for a Limited Temporary License, approved e]Educational [p]Program, or [A]applicant for [an approved] approval of an [e]Educational [p]Program.~~

(3) Assign a complaint number and create an individual file. Complaint numbering shall begin with the last two digits of the year in which the complaint is filed, and shall then continue sequentially (e.g., 95-001).

(4) Forward the complaint to the Complaint Committee Chairperson.

(5) Within seven (7) working days ~~[of the date]~~ of receipt of the written complaint, send written acknowledgment of receipt of the complaint to the Complainant.

16.2.13.10 REVIEW BY THE COMPLAINT COMMITTEE

A. The Complaint Committee Chairperson and Complaint Manager will comprise the Complaint Committee, and will review all written, signed complaints filed against a Respondent. The Complaint Committee shall provide the Respondent with a copy of the complaint within thirty (30) days of receipt of the complaint, unless the Complaint Committee reasonably determines that disclosure of the complaint at that time will substantially and materially impair the integrity or efficacy of the investigation. Nondisclosure at the initial stage of the complaint process shall be the exception, rather than the rule.

B. The Respondent shall file a written response to the complaint that shall be received in the Board's office within thirty days of the postmarked date on which complaint notice was mailed to the Respondent, and shall be advised that he or she is required to provide all documents and exhibits in support of his or her position, unless it has been determined that disclosure of the complaint will substantially and materially impair the integrity or efficacy of the investigation, pursuant to Subsection A of 16.2.13.10 NMAC (Subsection 10.A. of Part 13 of the Rules), ~~[above]~~ in which case the investigation shall proceed without notice to the

Respondent at the initial stage.

C. If the Complaint Committee has determined that it is in the best interest of the investigation to withhold disclosure of the complaint during the initial stage of the investigation, pursuant to Subsection A of 16.2.13.10 NMAC ~~[above]~~, (Subsection 10.A. of Part 13 of the Rules), a copy of the complaint shall be provided to the Respondent no later than at the time of the issuance of an NCA, if any.

D. If the Complaint Committee determines that further information is needed, it may issue investigative subpoenas, or employ an investigator, ~~[or]~~ expert[s], or other person[s] whose services are determined to be necessary in order to assist in the processing and investigation of the complaint.

E. Upon completion of the investigation, the Complaint Committee will present a summary of the case to the Board, and will make recommendations for action. The summary shall not identify any of the parties by name.

16.2.13.11 REVIEW BY THE BOARD

A. The Complaint Committee shall present its report and recommendation(s) to the Board. The matter shall be referred to only by the assigned case number, and the identities of the parties shall not be disclosed to the Board until and unless an NCA is issued. The Complaint Committee's report shall address issues regarding the statute of limitations and the Board's subject matter jurisdiction.

B. After the Complaint Committee's report has been considered by the Board, if the Board determines there is not sufficient evidence or cause to issue an NCA, the case will be closed. A letter from the Board will be sent, postmarked within thirty (30) days of the date of the Board's decision, to both the Complainant and Respondent. The letter will state the Board's action and the reasons for its decision.

C. After the Complaint Committee's report has been considered by the Board, the Board may vote to issue an NCA if it determines there is sufficient evidence ~~[or cause to believe that the Respondent has violated the Act, or the Rules.]~~ that, if not rebutted or explained, will justify the Board taking disciplinary action.

D. If the Board votes to issue an NCA, a complete copy of the Complaint Committee's file, including exhibits, shall be forwarded to the Attorney General's Office for assignment of a prose-

cuting attorney and the Attorney General's decision as to whether there is a sufficient basis to prosecute.

E. At any time the Board may enter into a settlement agreement with the Respondent as a means of resolving a complaint. Any proposed settlement agreement must be approved by the Board and by the Respondent upon a knowing and intentional waiver by the Respondent of his or her right to a hearing as provided by the Uniform Licensing Act, NMSA 1978, Section 61-1-1, et seq.

16.2.13.12 DISCIPLINARY PROCEEDINGS

A. The chairperson of the Board, or his or her designee, shall serve as Chief Officer for the disciplinary proceedings for the purpose of administering pre-hearing procedural matters. The Chief Officer shall be fully authorized to rule on non-dispositive matters on behalf of the full Board, including, but not limited to matters related to discovery, continuances, time extensions, amendments, pre-hearing conferences, issuance of subpoenas, uncontested motions to change venue, motions to excuse a member filed pursuant to Section 61-1-7(C)NMSA 1978, and discovery and briefing schedules.

B. No party shall engage in ex-parte communications with the Chief Officer or any member of the Board in any pending matter under investigation or in which an NCA has been issued.

C. All disciplinary proceedings shall be conducted in accordance with the Uniform Licensing Act.

~~D. Reserved.~~
~~E. Reserved.~~

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

This is an emergency amendment to 8.15.2.11 NMAC

8.15.2.11 ELIGIBILITY REQUIREMENTS: Clients are eligible for child care assistance benefits upon meeting the requirements for eligibility as determined by the Department and federal regulation.

A. The Household: The household includes biological parents, step-parents, and legal guardians living in the household, thereby constituting an economic unit, and any dependents of the aforementioned who are under 18 years of age. Grandparents will be considered household members only if they are legal guardians of the children, are providing for the physical and emotional needs of the children, and/or

are applying for child care benefits on behalf of the children.

B. Allowed Exclusions from the Household: Excluded from the household for co-pay calculation purposes are grandparents or legal guardians who have taken custody/guardianship of children due to circumstances such as death of biological parents or other documented circumstances such as mental or physical incapacity of biological parents to care for the child or children. Grandparents and/or legal guardians in this situation are required to qualify for child care assistance as per Subsection D below and, upon qualification, have the required co-pay waived.

C. Adult Dependent Children: Eighteen (18) year old dependent children must be full-time students to be counted in the household. Incidental money earned by dependent children is not to be counted as household income.

D. Household Income: Income eligibility for benefits is determined by the number of members in the household and the total countable income.

E. Countable Earned and Unearned Income: The following sources of income are counted when computing a family's eligibility for assistance and for determining the co-payment (if applicable). These include, but are not limited to: Income from employment by working for others or from self-employment; child support payments; alimony payments; Veterans Administration (VA) payments except VA payments for educational purposes; union payments; unemployment or workman's compensation; Social Security benefits for dependent children; railroad retirement benefits; pensions; work study income; TANF benefits, including diversionary payments; royalties; cash gifts, and income from rental property.

F. Exempt Income: The types of income not counted when computing eligibility or co-payments include but are not limited to: earnings of a dependent child who is under 18 and in school; food stamps, military food and housing allowances **increase in military salary or allowances due to "temporary national emergency status beginning September 11, 2001;"** third party payments; energy assistance benefits; foster care payments; Supplemental Security Income (SSI); loans; child or adult nutrition programs; income tax refunds; payments for educational purposes; compensation under the Domestic Volunteer Services Act and the VISTA program; Job Training Partnership Act (JTPA) payments made to dependent children; relocation payments; Department of Vocational Rehabilitation (DVR) training payments; in-kind gifts; payments from special funds

such as the Agent Orange Settlement Fund or Radiation Exposure Compensation Settlement Fund; lump sum payments such as those resulting from insurance settlements and court judgments; or other resources such as savings, Individual Retirement Accounts (IRAs), vehicles, Certificates of Deposits (CDs) or checking accounts.

G. Verification of Income: Clients applying for child care assistance benefits are required to verify income by providing proof of income for all members of the household who receive income. Self-employed clients must show proof of business expenses in order for the countable self-employment income to be determined.

H. Residency requirement: A recipient of child care assistance or a child care provider must be a resident of the State of New Mexico. Proof of residency is required.

I. Citizenship: A recipient of child care assistance must be a citizen of the United States; or a qualified alien as determined by applicable federal laws. If a child is determined to be a citizen of the United States or a qualified alien, the child will be eligible provided all other eligibility requirements are met regardless of the citizenship and/or alien status of the child's parent or parents.

J. Age requirement: Child care benefits are paid for children between the ages of six (6) weeks up to the month in which the child turns 13 years old.

K. Teen Parent: A teen parent who is attending a High School or a GED program or attending any other job skills training and/or educational programs directly related to enhancing employment opportunities is prioritized relative to slot allocation.

L. Failure to use authorized child care: If authorized child care has not been used for 10 consecutive scheduled days without a reason such as illness, sudden death, or family medical emergency, the child(ren) may lose the slot. The Department notifies the client and requests contact within ten (10) working days of the mailing date of the notification. If there is no contact by the final day of the expiration of the ten (10) day notice, the case and/or placement is closed effective that day. The provider will be issued a ten (10) working day notice of the date of the closure on the date of the closure and payment will be made through the final day of the expiration of the provider's ten (10) working days notice. Clients in cyclical employment are exempted.

M. Need for Care: Child care benefits are not paid on behalf of children if there is an unemployed parent, step-

parent or guardian (except teen parents) living with the child who is physically, mentally and emotionally able to provide such care.

N. Work/Education Requirement: Child care benefits are paid for clients who are working, attending school or participating in a training program and who demonstrate a need for care. Clients who are receiving TANF are required to participate in a TANF-approved activity. Child care will not be paid during the hours in which a parent or guardian is attending graduate or post-graduate courses.

O. Special Supervision: Child care benefits may be provided to children between the ages of thirteen and eighteen who are under the supervision of a court of law, or who are determined by a medical professional to require supervision because of a diagnosis of a physical, emotional, or neurobiological impairment, or who are physically or mentally incapable of caring for themselves. Children with special needs are prioritized relative to slot allocation.

P. Children enrolled in Head Start, Kindergarten, School or other programs: Child care benefits are not paid during the hours that children are attending Head Start, Kindergarten, school or other programs.

[8.15.2.11 NMAC – Rp 8.15.2.11 NMAC, 08-01-01; A, 10/19/01]

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT FORESTRY DIVISION

TITLE 19 NATURAL RESOURCES AND WILDLIFE CHAPTER 20 FOREST MANAGE- MENT PART 4 COMMERCIAL TIMBER HARVESTING REQUIRE- MENTS

19.20.4.1 ISSUING AGENCY: Energy, Minerals and Natural Resources Department, Forestry Division.

[19.20.4.1 NMAC – N, 1/1/2002]

19.20.4.2 SCOPE: This part applies to persons, partnerships, associations, corporations, and other entities engaged in harvests of commercial forest species on non-municipal or non-federal lands after the effective date except for those harvests permitted in accordance with 19.20.2 NMAC.

[19.20.4.2 NMAC – N, 1/1/2002]

19.20.4.3 STATUTORY AUTHORITY:

This part is adopted pursuant to the authority granted the Energy, Minerals and Natural Resources Department in NMSA 1978, Section 9-1-5 and in the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25.

[19.20.4.3 NMAC – N, 1/1/2002]

19.20.4.4 DURATION: Permanent.

[19.20.4.4 NMAC – N, 1/1/2002]

19.20.4.5 EFFECTIVE DATE: January 1, 2002, unless a different date is cited at the end of a section.

[19.20.4.5 NMAC – N, 1/1/2002]

19.20.4.6 OBJECTIVE: The objective of this part is to require appropriate harvesting practices of commercial forest species to assist in forest fire prevention and suppression and the control of forest pests, and to maintain and enhance the economic benefits of forests and forest resources to New Mexico.

[19.20.4.6 NMAC – N, 1/1/2002]

19.20.4.7 DEFINITIONS:

A. “Act” means the Forest Conservation Act, NMSA 1978, Sections 68-2-1 to 68-2-25.

B. “Alternate practice” means a forest practice standard used in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC. A request to use an alternate practice may be made in the harvest permit application or requested later by the permittee and is not effective until approved by the division in writing.

C. “Applicant” is the owner.

D. “Cessation of harvest activities” means absence of any harvesting within a cutting unit for six consecutive days.

E. “Closed road” means a road constructed for the harvest that will be closed upon the harvest’s completion.

F. “Commercial forest species” means:

SCIENTIFIC NAME COMMON NAME

Abies concolor	white fir
Abies lasiocarpa	corkbark fir/ subalpine fir
Picea engelmannii	Englemann spruce
Picea pungens	Colorado blue spruce
Pinus aristata	bristlecone pine
Pinus ponderosa	ponderosa pine
Pinus flexilis	limber pine
Pinus strobiformis	southwestern white pine
Populus tremuloides	quaking aspen
Pseudotsuga menziesii	Douglas-fir

G. “Construction project”

includes clearing of right of ways for utilities, pipelines, fences, or roads except for roads facilitating harvesting of commercial forest species; clearing for construction of residences or businesses with an approved building permit; or clearing related to the development of other regulated industries such as mining or landfills.

H. “Continuing violation” means that a permittee or responsible person or entity has received a notice of deficient condition and has failed to take corrective action.

I. “Contract harvester” means any person or entity, other than the owner or his direct employees, harvesting commercial forest species.

J. “Contractor” means a person or entity that the applicant or permittee has reached an agreement with to harvest or purchase commercial forest species.

K. “Cutting unit” means an area within the forest harvest practice plan not exceeding 300 forested acres. The designation of each unit is based on the topography of the area to be harvested, the number of persons to be engaged in the harvest, transportation, climate, and other relevant factors. Any area larger than 300 forested acres should be divided into two or more cutting units, unless the division determines that a larger area is appropriate because of the topography, equipment, or objectives of the harvest and number of persons to be participating in harvest activities.

L. “Damaged trees” means trees over three feet in height not intended for harvest that, as a result of the harvest, are damaged or knocked down to the extent that mortality or serious deterioration is likely to occur or partially pushed over so as to result in permanent lean or visible damage to the root system.

M. “Deficient condition” means any harvest activity not in conformance with the act, this part, or a harvest permit. It also means the failure to have statements of understanding for each person or entity conducting major harvest activities.

N. “District forester” is the supervisory forester of one of the six district offices located in Bernalillo, Capitan, Chama, Cimarron, Las Vegas, and Socorro.

O. “Division” means the forestry division of the New Mexico energy, minerals and natural resources department or forestry division personnel.

P. “Erosion control measure” is a method of reducing soil erosion including seeding, using mulch or slash for ground cover, reducing slope of roads and skid trails, installing water bars, crowning roads, outsloping roads, dipping roads with lateral relief ditches, culverts, and avoid-

ance of excessive slopes.

Q. "Evidence of ownership" means a deed or other document containing a description of the property included in the harvest permit application evidencing ownership of the surface of the land or the right to control the land including harvesting commercial forest species, or a timber deed including the commercial forest species subject to the harvest permit application. All documents must be recorded with the county clerk in the county where the commercial forest species are located. Evidence of ownership does not include commercial forest species purchased through a contract, purchase agreement, or similar document that indicates that ownership of the commercial forest species will transfer after the trees are harvested.

R. "Excessive slope" means a slope of more than 40 percent over a ground distance of 80 yards or more.

S. "Gully erosion" means erosion caused by water accumulating in narrow channels and removing the soil from the channel to depths of one foot or more and that carries sediment downstream.

T. "Harvest or harvesting" means any and all activities related to removing a commercial forest species from its natural state, including, but not limited to: constructing haul roads and skid trails; cutting and severing or pushing over standing trees; skidding or removal of trees to landings; transporting harvest products from the cutting site or landing; installing erosion control measures; or supervising or directing such activities.

U. "Harvest permit" means the harvest permit application, the forest harvest practice plan, and the harvest permit approval letter.

V. "Intermittent watercourse" means a stream or reach of stream, as shown on a United States geological survey 1:24000 scale topographic map, that has a defined stream channel, that flows only at certain times of the year, such as when it receives flow from springs, melting snow, or localized precipitation.

W. "Lake" means an inland body of freshwater, but does not include stock ponds or windmills.

X. "Landowner" means any person or entity, or his agent, owning or having a right to control the surface of the land where the commercial forest species to be harvested are located.

Y. "Lateral yarding distance" means the maximum distance perpendicular to each side of a cable within which a log can be attached for yarding.

Z. "Leave trees" means those trees to be left in the cutting unit after the harvest is completed.

AA. "Long butting" means the cutting of a portion of the main stem that does not meet the utilization standards provided in subsection H of 19.20.4.9 NMAC.

BB. "Major harvest activity" means felling trees; skidding or yarding; and construction of roads, skid trails, and landings.

CC. "Multiple cutting unit permit" means a harvest permit for an area with two or more designated cutting units.

DD. "Non-forest type area" means an area of at least one acre with less than 10 percent tree crown cover.

EE. "Owner" means the landowner, unless there is a timber deed owner who owns the commercial forest species that are the subject of the harvest permit application. Then the timber deed owner is the owner.

FF. "Perennial watercourse" means a stream or river, or reach of a stream or river, as shown on a United States geological survey 1:24000 scale topographic map, that has a defined stream channel or river bed, that flows continuously throughout the years in all years; its upper surface, generally, is lower than the water table of the region adjoining the stream or river.

GG. "Permittee" means any owner issued a harvest permit by the division.

HH. "Personal delivery" means delivery to the individual personally; or if the individual is absent, delivery to a person residing at the individual's usual residence who is over the age of 15 years.

II. "Public road" means a highway or road open for public motor vehicle access including federal highways, state highways, state roads, county roads, and United States forest service roads.

JJ. "Pre-commercial thinning" means thinning that is made as an investment in the future growth of a stand of trees where the felled trees are not sold.

KK. "Responsible person or entity" is any person, partnership, corporation, association, or other entity, other than the owner, required to sign a statement of understanding.

LL. "Rill erosion" means erosion that cuts a number of small channels less than one foot in depth into the soil by water moving over and concentrating in low places in the soil surface.

MM. "Rub tree" means a tree used as a pivot in cable yarding to protect the remaining trees during extraction.

NN. "Silviculture" is the theory and practice of controlling forest establishment, composition, growth, or harvesting.

OO. "Skid trail" means a

path built for log skidding or caused by the use of skidding equipment.

PP. "Slash" means all branches, boughs, or pieces of a tree's main stem severed, chipped, or damaged as a result of the harvest.

QQ. "State forester" is the director of the forestry division of the energy, minerals and natural resources department or his designee.

RR. "Statement of understanding" means the statement that all persons, partnerships, corporations, associations, or other entities that have an active role in major harvest activities or a management role that may impact the harvest must sign verifying that they are aware that they must comply with the act, this part, and the harvest permit. A supervisor of a business entity conducting harvest activities may sign a statement of understanding accepting responsibility for the employees of the entity performing major harvest activities.

SS. "Streamside management area" means the area near a lake, perennial or intermittent watercourse, or wetland designated for special protection in the forest harvest practice plan.

TT. "Timber deed owner" means the owner of a timber deed recorded with the county clerk in the county where the commercial forest species are located. It does not include a person, corporation, partnership, or other entity that has agreed to purchase commercial forest species through a contract, purchase agreement, or similar document with title to be transferred after the trees are harvested.

UU. "Utilization" means the removal of trees, tree stems, or portions of trees from areas within the harvest permit boundaries.

VV. "Water bar" means a drainage structure such as a ditch, mounded earth, or staked log installed on a road or skid trail at an approximate 30-degree downslope angle that diverts water runoff into adjacent undisturbed areas.

WW. "Wetland" means an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions in New Mexico.

XX. "Working days" means Monday through Friday, excluding state holidays.

[19.20.4.7 NMAC – N, 1/1/2002]

19.20.4.8 HARVEST PERMITS:

A. A C T I V I T I E S
REQUIRING HARVEST PERMITS: An owner must obtain a harvest permit before

any harvest activities are conducted in the following circumstances:

(1) harvests by an owner in an area of 25 acres or more, or a combination of areas totaling 25 acres or more in any calendar year if the harvest sites are on the same or adjacent property; or

(2) harvests by an owner in an area of less than 25 acres in one calendar year if:

(a) the owner has been convicted of a criminal violation associated with harvest activities within the previous three years; or

(b) the owner is contracting with or employing a person or entity on the harvest that has been convicted of a criminal violation associated with harvest activities within the previous three years.

B. ACTIVITIES NOT REQUIRING HARVEST PERMITS: Harvest permits are not required for cutting firewood; cutting Christmas trees; pre-commercial thinning; harvest activities related to construction projects such as pipeline or powerline installation or maintenance, construction when a building permit is issued, fence building, or construction of roads unrelated to harvest activities; or clearing for defensible space within one hundred feet of a building.

C. APPLICATION FOR HARVEST PERMIT:

(1) An owner must file an application for a harvest permit in the district office in the district where the harvest will take place for approval at least 30 days before the proposed harvest is to start. Harvest activities may begin when the division issues the harvest permit and the appropriate notification is given.

(2) The harvest permit application must include the following, if applicable:

(a) the owner's name;

(b) a legal description of the land where the harvest will occur;

(c) name of the sale;

(d) evidence of ownership;

(e) the owner's mailing address.

If the commercial forest species to be harvested are owned under a timber deed, the harvest permit application must include names and mailing addresses of both the timber deed owner and the landowner;

(f) the names and mailing addresses of persons or entities that will directly manage the harvest;

(g) the time schedule for harvesting (i.e. beginning and ending dates);

(h) if the commercial forest species to be harvested are owned under a timber deed, the timber deed owner must consult with the landowner about the land management goals and objectives included in the forest harvest practice plan. The

landowner must approve any roads constructed for the harvest that will not be closed at the end of the harvest;

(i) statements of understanding;

(j) a forest harvest practice plan; and

(k) the owner's signature and the date of application.

D. FOREST HARVEST PRACTICE PLAN: The forest harvest practice plan must include the following information:

(1) Harvest Description: The harvest description shall include the following:

(a) a description of the current stand condition including types of tree species, any insect and disease occurrence, and an estimate of trees per acre and average diameter of the trees;

(b) the owner's land management goals and objectives for the harvest such as forest management, forest production, elk habitat, dwarf mistletoe control, improved forage for wildlife or livestock, or type conversion. The division will consider a forest harvest practice plan inadequate unless it contains a silviculturally sound method of achieving the described land management goals and objectives that complies with the act and this part;

(c) the harvest permit boundaries and cutting units to be established as shown on a United States geological survey topographic map of no smaller scale than 1:24000 (e.g., 7.5 minute quadrangle);

(d) the access route to and from the harvest permit area to a public road;

(e) identification of any excessive slopes located within the cutting unit;

(f) identification of any lakes, perennial or intermittent watercourses, or wetlands located within the cutting unit on a United States geological survey topographic map of no smaller scale than 1:24000;

(g) a description of the proposed harvest method such as seed tree, shelterwood, single tree or group selection, or patchcut;

(h) a description of the equipment to be used during the harvest such as chain-saw, feller-buncher, skidder, or delimeter;

(i) the residual stand condition including types of tree species and an estimate of trees per acre and average diameter of the trees. If the harvest method is a patchcut a description of the size of the area to be harvested, by length and width, and the height of the adjacent stand must be included; and

(j) a description of the regeneration method such as natural regeneration, natural seeding or vegetative reproduction, or artificial regeneration, planting, reasonably calculated to ensure adequate forest regeneration if this is the land management

objective. If artificial regeneration is to be used the description shall include: when the planting will occur, the tree species to be planted, the seed source of the seedlings, the number of seedlings to be planted per acre, the method of seedling protection, and site preparation.

(2) Erosion Management: Description of the erosion management measures that will be taken to comply with subsection D of 19.20.4.9 NMAC.

(3) Skid Trails: Description of how skid trails and landings will be treated to control erosion and comply with subsection E of 19.20.4.9 NMAC.

(4) Roads: Description of road location, road erosion control measures, and post-harvest maintenance or closure. The description shall contain sufficient detail to indicate compliance with subsection F of 19.20.4.9 NMAC. If a road will be closed after harvest, the description must identify the closure method and erosion control measures.

(5) Streamside Management Area: Description of the streamside management area designating the area to be included and describing the measures that will be taken to comply with subsection G of 19.20.4.9 NMAC. If an existing road is located within a streamside management area, a description of the road's location shall be included.

(6) Slash Treatment: Description of the means of treating slash, such as chipping, lop and scattering, or pile burning, to comply with subsection I of 19.20.4.9 NMAC.

(7) Fire: Description of the precautions that will be taken and the modifications to harvesting operations to be taken during periods of high, very high, and extreme fire danger. Description of how the permittee or responsible person or entity will react to any fire caused by harvest activities including notice to local fire departments and the division. Additionally, if slash will be burned a description of whether the slash will be broadcast or pile burned and the precautions that will be taken when the burning occurs. Precautions shall include obtaining any necessary permits for burning and notifying the local governments and fire departments prior to burning.

(8) Excessive Slopes: Description of how the forest harvest practices standards will be met on any excessive slopes.

E. HARVEST PERMIT ISSUANCE OR DENIAL:

(1) Within 30 days after receipt of the harvest permit application, the division shall either:

(a) Issue a harvest permit

approval letter including such conditions or recommendations as the division may deem necessary provided the harvest permit application contains the information required by subsections C and D of 19.20.4.8 NMAC, the statements of understanding have been submitted, and the planned harvest is expected to comply with the act and this part.

(b) Deny the harvest permit application in writing for any of the following reasons:

(i) the harvest permit application does not contain the information required by subsections C and D of 19.20.4.8 NMAC.

(ii) the applicant is not the owner, or the holder of a power of attorney or other authority sufficient to make decisions affecting the commercial forest species subject to the harvest permit application;

(iii) a material misrepresentation or false statement is included in the harvest permit application;

(iv) the proposed harvest would not comply with the act or this part; or

(v) the applicant or contractor currently has a continuing violation.

(2) If the division denies the harvest permit application, the applicant may provide additional information to complete the harvest permit application or revise the permit application to comply with the forest harvest practices standards. The applicant shall submit the additional information or revisions for reconsideration. If the division finds that the additional information or revisions correct the defects in the harvest permit application it shall issue the harvest permit. The division shall either issue the harvest permit or uphold the denial of the harvest permit application within 30 days after receiving the additional information or revisions.

(3) When a harvest permit is issued to a timber deed owner, the division shall provide a copy of the harvest permit to the landowner by first class mail or personal delivery.

F. STATEMENTS OF UNDERSTANDING:

(1) Any person, partnership, corporation, association, or other entity that has an active role in major harvest activities or a management role that may impact the harvest must sign a statement of understanding in a form provided and developed by the division. This includes the owner, direct employees of the owner, consultants, contract harvesters, and any other contractors or subcontractors.

(2) Anyone who must sign the harvest permit application or a statement of

understanding shall comply with the act, this part, and the harvest permit. A supervisor of a business entity may sign a statement of understanding for the employees of the business entity if the supervisor accepts responsibility for the actions of the employees. Failure to keep statements of understanding current with the participation of new personnel or entities may result in violations or permit revocation.

(3) The statement of understanding will be a form provided by the division that includes:

(a) information identifying the person signing the statement such as name, social security or driver's license number, address and telephone number and, if applicable, his authority to sign for a partnership, corporation, association, or other entity; his own employees; or the partnership, corporation, association, or other entity's employees;

(b) the signature of the person signing the statement and date; and

(c) a statement that the person is aware that he must comply with the act, 19.20.4 NMAC, and the harvest permit and will be accountable as provided for in 19.20.4 NMAC for such compliance; and acknowledges that he has read and understands the requirements of 19.20.4 NMAC and the harvest permit. If a person is signing on behalf of partnership, corporation, association or other entity, a statement that the entity is aware that it must comply with the act, 19.20.4 NMAC, and the harvest permit and will be accountable as provided for in 19.20.4 NMAC for such compliance. If a person is signing on behalf of his employees or a partnership, corporation, association, or other entity's employees, a statement that the person is aware that he is accepting responsibility for his own employees or the entity's employees and will be accountable for the employees' compliance with 19.20.4 NMAC and the harvest permit.

G. PERMIT REVISIONS:

(1) The division may order revision of a harvest permit if it appears, after inspection, that the land management goals and objectives are not being met, if deficient conditions are occurring, or if there are mistakes in the harvest permit.

(2) The owner may request revision of the harvest permit if there are mistakes in the harvest permit, ownership will change, or other conditions make changes appropriate. The owner shall revise the permit during the harvest as needed to keep it current with operations.

(3) The owner may request the harvest permit be revised to include additional acreage if the acreage is located in an area that is adjacent to or in close proximity

to the area included in the current harvest permit, the land management goals and objectives and the proposed harvest operation are similar to those in the current harvest permit, the cover type is the same as the cover type in the current harvest permit, and the same roads will be used to access the harvest area.

(4) The division shall approve or deny the owner's request for revision of the harvest permit within 30 days after receipt of the request.

H. HARVEST PERMIT EXTENSIONS: When unforeseen circumstances beyond the permittee's control prevent completion of the harvest or a portion of the harvest activities as required by this part within the time limits provided in the harvest permit, the division may, upon the permittee's written request, grant in writing additional time for completion of the harvest not to exceed one year. No more than two such extensions may be granted.

I. NOTIFICATIONS: A permittee or responsible person or entity shall inform the division prior to or, in no case later than 48 hours following the event, either by telephone, in person, or in writing of the following actions taken under the harvest permit:

(1) commencement or completion of major harvest activities in any cutting unit;

(2) when a unit is complete and the permittee is requesting the unit be closed.

[19.20.4.8 NMAC - N, 1/1/2002]

19.20.4.9 FOREST HARVEST PRACTICES STANDARDS:

A. APPLICABILITY: The forest harvest practices standards apply to all harvests of commercial forest species, regardless of the acreage, except for activities that do not require a harvest permit as provided by subsection B of 19.20.4.8 NMAC.

B. MULTIPLE CUTTING UNITS: Unless approved by the division in writing, no harvesting under a multiple cutting unit harvest permit shall commence in a third cutting unit unless all forest harvest practices standards, except for burning of slash piles, have been completed on at least one of the previous two active units.

C. MARKING:

(1) The division may require the cutting unit boundary to be marked with flagging or tree marking paint if needed to meet the requirements of the forest harvest practice plan.

(2) The division may require the permittee to mark leave trees or the trees to be cut with tree marking paint if needed to meet the land management goals and objec-

tives in the forest harvest practice plan, particularly if the harvest method is group or single tree selection.

D. EROSION MANAGEMENT:

(1) Erosion control measures shall be implemented to minimize channelized flow erosion such as rill and gully erosion.

(2) Erosion Control Measures:

(a) Time Limit: Erosion control measures shall be installed as soon as practical but no later than 30 days after the cessation of major harvest activities within the cutting unit.

(b) Placement: Water bars or other erosion control measures shall be placed on closed roads and skid trails with mineral soil exposed by harvest activities. Water bars shall be placed at the locations or intervals and at the height and width necessary to minimize erosion considering grade, sidehill drainage, soil texture and structure, vegetation, and other pertinent factors.

PERCENT GRADE MINIMUM INTERVALS FOR WATER BARS

<u>PERCENT GRADE</u>	<u>MINIMUM INTERVAL</u>
0.0 — 4.99	150 feet
5.0 — 9.99	130 feet
10.0 — 14.99	75 feet
15.0 — 40.00	50 feet

The division may require additional water bars if the minimum intervals will not sufficiently minimize erosion. The division may require fewer water bars if a combination of soil properties, depth of duff layer, or amount of slash or other cover will minimize erosion.

(3) Seeding:

(a) Time Limit: After cessation of major harvest activities within any cutting unit and at the time best calculated to produce maximum germination, but in no event later than 180 calendar days following the cessation of major harvest activities within any cutting unit, all closed roads, skid trails, landings, and any areas of mineral soil exposed by harvest activities within the cutting unit shall be seeded, unless the division has approved other erosion control measures. Appropriate site preparation shall take place prior to seeding. For example, soil preparation would be needed prior to seeding a hard packed road that is to be closed upon completion of harvesting.

(b) Seed Mix: The division must approve any seed mix to be used. The seed mix shall be suitable for the land management goals and objectives specified in the forest harvest practice plan and shall avoid introducing noxious weeds. The permittee shall provide proof of the purchase date, the seed mix viability, and germination rate. The certification tag from the bag may be

used.

E. SKID TRAILS AND LANDINGS:

(1) Skid Trails:

(a) Skid trails shall not be located on excessive slopes unless the permittee shows that it is technically or economically infeasible to remove the felled trees by other means.

(b) Skidding shall not destroy a stream channel or bank or reduce the capacity of the stream channel to carry water.

(c) Skidding is not allowed within watercourses. Skidding may not take place across perennial watercourses unless the permittee shows that it is technically and economically infeasible to remove felled trees by other means. When the division approves skidding across a perennial watercourse, the skidding shall be limited to designated crossings. Crossings shall be at a right angle to the main channel and the approach to the crossing shall be at a minimal grade. Drainage shall be diverted at a distance from the stream that provides filtering of sediment.

(d) Skid trails should be planned in advance to minimize damage to the residual stand, soil compaction, and erosion.

(e) Skid trails should be flagged so skidder operators can easily follow them.

(f) Skid trails should be kept as narrow as possible.

(2) Landings:

(a) Adequate drainage shall be provided for the landing and runoff shall not discharge directly into a watercourse.

(b) Landings should be planned in advance.

F. ROADS:

(1) Roads that will be used or constructed for a harvest of commercial forest species shall be designed, constructed, and maintained to minimize erosion.

(2) Roads shall be constructed to drain properly so that the road does not cause gully erosion. The division may require the permittee or responsible person or entity to take action if rill erosion is frequent and the depth exceeds three inches.

(3) Roads shall be outsloped or ditched on the uphill side and appropriate surface drainage shall be provided by using adequate cross drains, ditches, drivable dips, culverts, water bars, diversion ditches, or other structures demonstrated to be equally effective.

(4) Roads shall be constructed and maintained so the stream channel or bank is not destroyed and the capacity of the stream channel to carry water is not diminished.

(5) Road widths excluding any portion not used for travel should be designed to sufficiently carry the anticipat-

ed traffic load with reasonable safety, but shall not exceed 24 feet.

(6) Road location, design, and construction shall address:

(a) building the fewest roads necessary;

(b) locating the road to fit the topography to minimize alteration of natural features;

(c) avoiding road construction along or within narrow canyons;

(d) building roads on locations away from streams such as benches, ridge tops, and the tops of slopes unless there is no feasible alternative;

(e) the stability of slopes where roads are cut;

(f) avoiding slopes of 60 percent or greater; and

(g) keeping the road grade to a minimum, usually less than 10 percent.

(7) Road construction:

(a) Organic debris shall not be used as a fill material.

(b) Debris in stream channels that is added during construction shall be removed, but natural materials may be used as part of a sediment control structure.

(c) Organic debris and surplus soil and rock shall be deposited where runoff will not be carried into a lake or watercourse.

(d) If culverts are used they shall be sized to handle a minimum 25-year flood event. In determining the appropriate size, debris potential and the potential for increased runoff from a reduction in vegetation resulting from the harvest shall be considered. Culverts shall be installed to prevent blockage and erosion of fill materials at the outlet.

(e) Bridges are required where drainage structures cannot carry the water flow.

(f) Road drainage shall be diverted at a distance from the stream that provides filtering of sediment such as through the use of cross drains.

(8) Roads to be closed shall be closed when the cutting unit closes unless needed for other cutting units. Upon closure, the road shall be treated to control erosion and stream-crossing structures shall be removed.

G. REQUIREMENTS FOR STREAMSIDE MANAGEMENT AREAS:

(1) Streamside management areas shall include the area within 50 feet of the ordinary high water mark of any lake, perennial or intermittent watercourse, or wetland. When a preexisting road is within 50 feet of the ordinary high water mark the streamside management area will end at the road's edge nearest to the watercourse.

Disturbance in the streamside management area shall be minimized.

(2) The following apply within the streamside management area:

(a) No landings shall be located within the streamside management area.

(b) Skid trails within the streamside management area must be designed in advance to minimize disturbance.

(c) No new roads shall be constructed within a streamside management area unless the permittee shows that it is technically or economically infeasible to construct the road elsewhere or that the damage to the environment would be greater if the road was constructed elsewhere. When the division approves construction of a new road within a streamside management area, in addition to other requirements in subsection F of 19.20.4.9 NMAC, stream crossings shall be limited to those that are essential, crossings shall be at a right angle to the main channel, and the approach to the crossing shall be at a minimal grade.

(d) Directional felling should be used.

(e) Sufficient shading of lakes and watercourses should be maintained to avoid adverse temperature changes in the lake or watercourse.

H. TREE UTILIZATION: Unless contract or market conditions require different utilization standards that are included in the harvest permit,

(1) All commercial forest species shall be utilized to a minimum six-inch top diameter (inside bark) except that harvesting for other than lumber production shall utilize trees to a minimum four-inch top diameter (outside bark).

(2) The tree's main stem shall be utilized as stated above in subsection H(1) of 19.20.4.9 NMAC when the net scale of the severed log or section of the main stem is more than 50 percent of the total gross volume using the Scribner Decimal C log scale table.

(3) Long Butting: Long butting is prohibited except when resulting from removal of defects up to the limit of subsection H(2) of 19.20.4.9 NMAC.

(4) Stump Height: Stump height shall not exceed 12 inches on the uphill side except when immovable objects such as rocks or other trees prevent operation of felling equipment.

I. SLASH:

(1) Slash and damaged trees in any cutting unit, unless piled, shall be treated to stand no higher than three feet above ground level.

(2) Slash piles may stand more than three feet above ground level. Piles shall be constructed for safety and efficien-

cy during burning. Piles shall be located to avoid damage to the residual stand.

(3) Time Limit: Slash, unless piled, shall be treated no later than thirty calendar days from the movement of harvest operations out of the subject cutting unit into another cutting unit under a multiple cutting unit permit, or no later than thirty calendar days following the cessation of major harvest activities within the cutting unit, whichever occurs first. In any event, the time shall not exceed 365 days from the start of harvesting within the cutting unit. Piled slash may be allowed to cure, but shall be burned no later than the end of the next winter burning season following the cessation of major harvest activities within that cutting unit. If weather conditions prevent piled slash from being burned by the end of the next winter burning season, the permittee may request an extension of time.

(4) For the purpose of creating a fuel break along public roads, slash greater than 24 inches in length or larger than one inch in diameter at the large end and within 50 feet of either side of the center line of a public road shall be eliminated by chipping, burning, removal, or equivalent means within 365 calendar days of cessation of major harvest activities within the cutting unit.

(5) Unless incorporated into a sediment control structure, slash is not allowed within the ordinary high-water mark of an intermittent or perennial watercourse, lake, or wetland.

J. LOG DECKS: Log decks must be removed no later than 365 days from the start of harvesting within the cutting unit.

K. CABLE YARDING: The following requirements apply to cable yarding:

(1) The yarding system shall have lateral yarding capabilities, using a carriage that can maintain a fixed position on the skyline during lateral pulls and shall keep one end of the log suspended above the ground during in-haul.

(2) Uphill yarding should be used unless the yarder cannot be located on a ridge top, bench, or on top of a slope. If downhill yarding must be used the leading end of the log shall be suspended above the ground.

(3) Corridor design shall be included in the harvest permit and actual corridors shall be marked on the ground prior to clearing and felling. Cable corridors shall not be closer than an average of 75 feet, center to center, at a point one-half way to the end of the corridor where radial corridors are required; and an average of 140 feet where parallel corridors are used. No more than four cable corridors shall

radiate from a single yarder position.

(4) Cable corridors shall be cut initially to a maximum 12-foot width, prior to felling in the cutting unit, to allow passage of the carriage and turn of logs. Corridors shall not exceed 20 feet in width after yarding is completed and rub trees have been removed.

(5) Harvested trees except corridor trees shall be felled along the contour or diagonally to the slope to facilitate yarding and reduce damage to the residual trees.

(6) When topography and ground conditions permit logs shall be pulled endwise from where they are felled. Lateral yarding distance shall be limited to no more than 75 feet.

L. DAMAGE: Trees damaged by harvest activities must be removed or treated as slash. If the damaged trees were intended to be leave trees then the harvest is not in compliance with the permit. If a leave tree is damaged the division may require that additional trees be left as leave trees or require other means of regeneration. [19.20.4.9 NMAC – N, 1/1/2002]

19.20.4.10 ALTERNATE PRACTICES: An applicant or permittee may request to use an alternate practice in place of a specific requirement in the forest harvest practices standards, 19.20.4.9 NMAC so long as equivalent or better protection regarding fire, insect and disease control, and erosion control measures is provided. The request to use an alternate practice shall describe the mitigation measures that will be taken so that the division can determine that the proposal offers equivalent or better protection. The division shall make the decision to grant or deny the use of an alternate practice within 30 days after receipt of the request. The division's written approval or disapproval shall state the reasons why the request was granted or denied. The division shall not allow use of an alternate practice if it is known to result in violation of other applicable state laws. The denial of a request to use an alternate practice may be appealed to the state forester pursuant to subsection A of 19.20.4.13 NMAC. [19.20.4.10 NMAC – N, 1/1/2002]

19.20.4.11 WEATHER CLOSURES: The division may temporarily close roads built for harvest activities, close streamside management areas, or suspend harvesting when adverse weather conditions exist such as flooding, heavy rain, or snowmelt. [19.20.4.11 NMAC – N, 1/1/2002]

19.20.4.12 VIOLATIONS:
A. NOTICE OF DEFICIENT CONDITION: The division may

issue a notice of deficient condition for violation of the act, this part, or a harvest permit. The division may issue a notice of deficient condition for violations that harm the forest or forest resources and will require the permittee or responsible person or entity to cease the violation and take corrective action to repair the deficient condition.

(1) The division shall have the authority to serve upon the permittee or responsible person or entity a notice of deficient condition if:

(a) there is a violation of the act, this part, or a harvest permit; or

(b) the violation or activity creates harm or the potential for harm to the forest or forest resource.

(2) The notice of deficient condition shall set forth:

(a) the specific nature of the violation charged or harm to the forest or forest resources;

(b) the specific course of action needed to correct such violation;

(c) the date such correction shall be completed; and

(d) the recipient's right to a hearing to review the notice of deficient condition.

(3) Service of the notice of deficient condition shall be made upon the permittee or responsible person or entity by personal delivery or certified mail return receipt requested. If the notice is not served upon the permittee the division will provide a copy to the permittee by first class mail or personal service.

B. REVOCATION OF A HARVEST PERMIT:

(1) The state forester may revoke a harvest permit for any of the following:

(a) refusal to allow the division to enter and inspect a permitted area;

(b) failure to timely complete corrective action after receiving a notice of deficient condition;

(c) discovery that any of the reasons for harvest permit application denial exists; or

(d) failure to keep statements of understanding current.

(2) To proceed with revocation of a harvest permit the division shall schedule a revocation hearing and provide written notice of intent to revoke to the permittee by personal delivery or certified mail return receipt requested at least 10 working days before the date set for the hearing. The written notice of the intent to revoke shall include the date, time, and location of the hearing.

(a) The hearing shall be held before the state forester.

(b) The division shall provide evi-

dence as to the reasons to revoke the harvest permit and the permittee may provide evidence as to the reasons not to revoke the harvest permit.

(c) Oral testimony at the hearing shall be made under oath. A tape or stenographic record shall be made of the hearing.

(d) If the state forester finds that a preponderance of the evidence supports revocation, the harvest permit shall be revoked.

(e) The state forester shall issue a written final decision within 10 working days of the close of the hearing or any deadline for the submission of additional materials following the hearing.

[19.20.4.12 NMAC – N, 1/1/2002]

19.20.4.13 ADMINISTRATIVE REVIEW:

A. DENIAL OF PERMITS, REQUEST TO USE ALTERNATE PRACTICES, OR PERMIT REVISIONS:

(1) To request review of the denial of a harvest permit application, use of alternate practices, or a harvest permit revision, an applicant or permittee must submit a written request for review to the state forester within 15 days of the issuance and provide written notice to the district office that denied the harvest permit application, use of alternate practices, or harvest permit revision. If the applicant submitted additional information or revisions to the harvest permit application pursuant to subsection E(2) of 19.20.4.8 NMAC the time period starts with the last denial. A request must include the reasons for requesting the review.

(2) The applicant or permittee and the district office shall submit written statements to the state forester within 10 working days of the submission of the request for review.

(3) The state forester shall base his decision on the written statements unless the applicant or permittee or the district office requests the opportunity to call witnesses or make oral arguments within 10 working days of the submission of the request for review. A request for a hearing shall explain the need for any witness testimony or oral argument. If the applicant or permittee or the district office asks to make oral arguments or call witnesses, the state forester may set a hearing to be held within 10 working days of receiving that request and provide notice of the hearing date, time, and location to the applicant or permittee and the district office. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony.

(4) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10

working days after the date for submission of written statements, or a hearing, if any, and send copies to the applicant or permittee and the district office.

B. NOTICE OF DEFICIENT CONDITION:

(1) To request review of the issuance of a notice of deficient condition the permittee or responsible person or entity must make a written request for a hearing to the district forester within 10 working days of receipt of the notice. The request must specifically state the reasons for the review. If the district forester issued the notice of deficient condition, then the district forester from another district shall conduct the hearing.

(a) The district forester shall consult with the permittee or responsible person or entity to set a hearing to be held within three working days of receipt of the request.

(b) The district forester shall issue a written decision within five working days of the hearing.

(c) The permittee or responsible person or entity may appeal the district forester's decision to the state forester by submitting a written request for review to the state forester within 10 days of the decision and providing written notice to the district forester.

(2) The permittee or responsible person or entity and the district forester shall submit written statements to the state forester within 10 working days of the submission of the request for review.

(a) The state forester shall base his decision on the written statements unless the permittee or responsible person or entity or the district forester requests the opportunity to call witnesses or make oral arguments within 10 working days of the submission of the request for review. A request for a hearing shall explain the need for any witness testimony or oral argument.

(b) If the permittee or responsible person or entity or the district forester asks to make oral arguments or call witnesses, the state forester may set a hearing to be held within 10 working days of receiving that request and provide notice of the hearing date, time, and location to the permittee, responsible person or entity, and the district forester. Oral testimony shall be made under oath. A tape or stenographic record shall be made of any oral argument or witness testimony.

(c) The state forester shall issue a written final decision, including findings of fact and conclusions of law, within 10 working days after the date for submission of written statements, or a hearing, if any, and send copies to the permittee, responsible person or entity, and the district forester. [19.20.4.13 NMAC – N, 1/1/2002]

19.20.4.14 FIRE RESTRICTIONS: Whenever the state forester declares restrictions on use of lands or use of fire within an area permitted under 19.20.4 NMAC, the restrictions shall apply to harvesting. If these restrictions require that harvesting stop, it will not be considered a cessation of harvesting pursuant to this part.
[19.20.4.14 NMAC - N, 1/1/2002]

19.20.4.15 CRIMINAL PENALTIES:

A. Following the procedures in 19.20.4.12 NMAC does not limit the division in its ability or authority to issue citations or otherwise enforce the possible criminal penalties for violating the act, this part, or a harvest permit.

B. Violation of the act, this part, or a harvest permit is a misdemeanor punishable by a fine of not more than one thousand dollars (\$1000.00) or by imprisonment in the county jail not to exceed one year or both for each violation, NMSA 1978, Section 68-2-17.
[19.20.4.15 NMAC - N, 1/1/2002]

HISTORY OF 19.20.4 NMAC: [RESERVED]

**NEW MEXICO ENERGY,
MINERALS AND NATURAL
RESOURCES
DEPARTMENT
OIL CONSERVATION DIVISION**

19 NMAC 15.C has been reformatted and renumbered to 19.15.3 NMAC to comply with the current NMAC requirements, effective 11-15-01.

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION
BOARD OF FINANCE**

This is an amendment to 2.60.4 NMAC, Sections 3, and 5 through 15. This rule was also reformatted and renumbered from 2 NMAC 60.4 to comply with the current NMAC requirements.

**TITLE 2 PUBLIC FINANCE
CHAPTER 60 INVESTMENT AND
DEPOSITS OF PUBLIC FUNDS
PART 4 DEPOSITORY
BANK REQUIREMENTS, COLLATERAL
LEVEL REQUIREMENTS, AND
CUSTODIAL BANK REQUIREMENTS.**

2.60.4.1 ISSUING AGENCY: State Board of Finance, 181 Bataan Memorial Building, Santa Fe, NM 87503.
[4-30-97; 2.60.4.1 NMAC - Rn, 2 NMAC 60.4.1, 11-15-2001]

2.60.4.2 SCOPE: State treasurer and financial institutions holding deposits of public money under the state Board of Finance authority.
[4-30-97; 2.60.4.2 NMAC - Rn, 2 NMAC 60.4.2, 11-15-2001]

2.60.4.3 STATUTORY AUTHORITY: [~~Sections 6-1-1(E), 6-10-10, 6-10-17.1, 6-10-18, 6-10-20 and 6-10-26, et seq., NMSA 1987]~~

A. Section 6-1-1 Part E NMSA 1978 states that the state Board of Finance has general supervision of the fiscal affairs of the state and of the safekeeping and depositing of all money and securities belonging to or in custody of the state.

B. Section 6-10-10 Part C NMSA 1978 provides that the state treasurer may deposit money in one or more accounts with any bank, savings and loan association, or credit union whose deposits are insured by an agency of the United States to receive public money or deposits.

C. Section 6-10-16 and Section 6-10-16.1 NMSA 1978 provide for the type of securities of the United States and New Mexico, including surety bonds as provided in Section 6-10-15, to be used as collateral for deposits of public funds.

D. Section 6-10-17 NMSA 1978 provides that any financial institution designated as a depository of public money shall deliver securities to a custodial bank and shall deliver a joint safekeeping receipt issued by the custodial bank to the public official from whom the public money is received for deposit.

E. Section 6-10-17.1 NMSA 1978 provides that when a depository bank has not maintained qualifying securities as collateral for deposits of public money, the treasurer or Board shall request the depository to provide additional qualifying securities to meet those requirements within ten calendar days. If the financial institution does not comply, the board or treasurer shall withdraw all deposits of public money within the next ten calendar days.

F. Section 6-10-20 NMSA 1978 provides that the Board may at any time within its discretion require any depository financial institution to furnish additional security for deposit of the kind specified in Section 6-10-16 NMSA.
[4-30-97; 2.60.4.3 NMAC - Rn & A, 2 NMAC 60.4.3, 11-15-2001]

2.60.4.4 DURATION: Permanent.
[4-30-97; 2.60.4.4 NMAC - Rn, 2 NMAC 60.4.4, 11-15-2001]

2.60.4.5 EFFECTIVE DATE: April 30, 1998, unless a later date is cited at the end of a section.
[4-30-97, 4-30-98; 2.60.4.5 NMAC - Rn & A, 2 NMAC 60.4.5, 11-15-2001]

2.60.4.6 OBJECTIVE: [~~The objective of Part 4 of Chapter 60 is to establish guidelines] This rule provides general guidance regarding the financial and legal requirements to be followed by the state treasurer to minimize risks to existing and future deposits of public money under the authority of the state Board of Finance.~~
[4-30-97; 2.60.4.6 NMAC - Rn & A, 2 NMAC 60.4.6, 11-15-2001]

2.60.4.7 DEFINITIONS:
A. "Board" means state board of finance.

B. "Custodian Bank" means a federal reserve bank or branch or any bank designated by the Board.

C. "Financial Institution" means any certified or designated bank, savings and loan association or credit union whose deposits are insured by an agency for the United States to receive public money.

D. "Securities" means those securities eligible as collateral for public funds under Section 6-10-16 NMSA 1978.
[2.60.4.7 NMAC - N, 11-15-2001]

~~**2.60.4.8 RISK ASSESSMENT:** The board directs the State Treasurer to conduct a risk assessment of financial institutions holding deposits of public money under the board's authority.~~

~~**A.** The risk assessment will include a determination of each financial institution's primary capital to asset ratio, its net operating income/total average assets and its non-performing loans/primary capital. Net operating income shall be calculated after taxes for the past four quarters.~~

~~**B.** If a financial institution's primary capital to asset ratio is greater than 6% , its net operating income/total average asset ratio is .61% or greater, and its non-performing loans/primary capital ratio is 34.9% or less, the financial institution shall be required to maintain collateral at the level set forth in Section 6-10-17 NMSA 1978.~~

~~**C.** If a financial institution does not meet these three qualifications for a minimum level of collateral under Section 6-10-17, the State Treasurer is directed to~~

cease making any additional deposits of public money into the financial institution and to withdraw deposits as provided herein, unless the financial institution provides increased levels of collateral in accordance with the schedule set forth below.

~~D. The State Treasurer shall request increased collateral from any financial institution which holds a deposit of public money within the board's authority and does not meet the qualifications set forth above for a minimum level of collateral under Section 6-10-17 in accordance with the following schedule:~~

~~(1) If a financial institution primary capital to asset ratio (as defined by the FDIC) is:~~

~~(a) 5% to 6% the financial institution shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75% of the amount of the deposit.~~

~~(b) less than 5% the financial institution shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100% of the amount of the deposit.~~

~~(2) If the ratio of a financial institution's net operating income after taxes for the past four quarters to its total average assets is:~~

~~(a) .51% to .60% the financial institution shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75% of the amount of the deposit.~~

~~(b) less than .51% the financial institution shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100% of the amount of the deposit.~~

~~(3) If a newly chartered financial institution is exempt from the requirements of this subsection for the first year of its operations, in its second year of operations, the financial institution shall annualize its net operating income beginning with the first quarter of the second year for the purpose of calculating the ratio pursuant to this subsection. Provided also that financial institutions shall report to the State Treasurer the ratio of annualized net operating income total assets. If this ratio is less than .61%, the State Treasurer shall review the financial institutions financial condition and may request additional collateral.~~

~~(4) If the ratio of a financial institutions non-performing loans (defined as loans which are at least 90 days past due and accruing or non accruing) to the financial institutions primary capital is:~~

~~(a) 35% to 49.9% the financial institution shall be required to maintain collateral in the form of securities with an aggregate market value equal to 75% of the~~

~~amount of the deposit.~~

~~(b) above 49.9% the financial institution shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100% of the amount of the deposit.~~

~~E. Should the risk assessment ratios under subparagraphs (a), (b) and (d) result in different levels of collateral for a financial institution, i.e., 50%, 75% and 100%, the State Treasurer shall request the highest collateral level required under the three subparagraphs.~~

~~F. For the purpose of this rule, securities shall be defined as those securities eligible as collateral for public funds under Section 6-10-16.~~

~~G. If a financial institution is unable to meet the increased collateral levels required in subparagraphs (a), (b) and (d), the State Treasurer shall cease to make deposits and shall make withdrawals of deposits in the order in which they would otherwise mature down to an amount which can be collateralized at an appropriate level as specified above.~~

~~H. The collateral levels required in subparagraphs (a), (b) and (d) above shall be required until the ratios of the financial institution determined by the risk assessment return to a level which allows collateral to be kept at a lower level under subparagraphs (a), (b) and (d) or at the statutory minimum level as appropriate.~~

~~I. The withdrawal of state deposits shall not be subject to the assessment of a penalty for early withdrawal except to the extent required to be imposed by federal law and in that event, only the minimum penalty required to be imposed shall be imposed by the financial institution.~~

~~J. The figures to be used by the State Treasurer in the risk assessment shall be calculated by each financial institution from the quarterly call statements and shall be furnished to the State Treasurer no later than on the tenth day of the second month following that quarter. However, if the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.~~

~~K. The figures provided to the State Treasurer by the financial institution shall be certified in writing by:~~

~~(1) the president of the financial institution;~~

~~(2) an executive officer of the financial institution;~~

~~(3) or a person authorized by corporate resolution of the financial institution to certify the information.~~

~~L. The State Treasurer shall, at any time between quarterly reporting periods, request any additional certified information from the financial institution as~~

~~needed to assess the risk level of any financial institution.~~

~~M. If a financial institution fails to provide the requested information, it shall be required to maintain collateral in the form of securities with an aggregate market value equal to 100% of the amount of the deposit.~~

~~N. The State Treasurer is also directed to require each financial institution which has had a final administrative enforcement action imposed upon it to advise the State Treasurer of such action.~~

~~O. If the State Treasurer believes such action indicates a high level of risk in maintaining public deposits in that financial institution, he shall report to the board and the board shall decide whether additional collateral shall be required.~~

~~P. Notwithstanding the above provisions, the State Treasurer may make an emergency withdrawal of state deposits prior to maturity when such action is necessary in his judgement in the exercise of reasonable care to protect state funds.~~

~~Q. If the financial institution believes that exceptional circumstances exist which indicate that it is not appropriate for the State Treasurer to take any of the actions listed above, the financial institution shall:~~

~~(1) appear at the next meeting of the board and present its position;~~

~~(2) the board shall at that time vote on whether an exception to this policy will be allowed.~~

~~R. The State Treasurer is further directed to incorporate the terms of this policy into future depository and collateral agreements and to take immediate and prudent steps to initiate this policy.~~

~~S. Nothing herein shall restrict the State Treasurer or the State Board of Finance from the lawful exercise of rights and duties conferred upon them by law.]~~

2.60.4.8 REQUIREMENTS TO BECOME A DEPOSITORY BANK:

A. Financial institutions requesting to become a depository bank must submit the following information to the state treasurer:

(1) A letter from the financial institution requesting to become a depository bank.

(2) Copy of Federal Deposit Insurance Corporation (FDIC) certification.

(3) Financial reports for the preceding four quarters. Newly chartered financial institutions must provide their most recent financial report.

B. Initial and continued appointment of financial institutions to serve as depository banks for the state of

New Mexico is determined by the institution's risk assessment ratios and required collateral levels as specified in Section 2.60.4.9 below.

[4-30-97, 4-30-98; 2.60.4.8 NMAC - Rn & A, 2NMAC 60.4.8, 11-15-2001]

2.60.4.9 COLLATERAL REQUIREMENTS FOR DEPOSITORY BANK SERVICES AS DETERMINED BY RISK ASSESSMENT RATIOS:

A. The Board directs the state treasurer to conduct risk assessment analysis of financial institutions holding deposits of public money under the Board's authority. The risk assessment will include a determination of each financial institution's primary capital-to-asset ratio, net operating income to total average asset ratio and non-performing loans to primary capital ratio for the past four consecutive quarters. These risk assessment ratios will determine collateral level requirements for financial institutions holding deposits of public money as listed below:

(1) If a financial institution's primary capital-to-asset ratio (as defined by the Federal Deposit Insurance Corporation (FDIC)) is:

(a) 6.1 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit.

(b) 5.0 percent to 6.0 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit.

(c) Less than 5.0 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

(2) If the financial institution's net operating income after taxes to its total average asset ratio is:

(a) .61 percent or greater, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit.

(b) .51 percent to .60 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit.

(c) Less than .51 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

(d) A newly chartered financial institution is exempt from this ratio requirement for the first year of its operation. For

the second year of operations, the financial institution shall annualize its net operating income beginning with the first quarter of the second year. If this ratio is less than .61 percent, the state treasurer shall review the financial institution's financial condition and may request additional collateral.

(3) If the financial institution's non-performing loans (defined as loans which are at least 90 days past due and accruing or non-accruing) to the financial institution's primary capital ratio is:

(a) 34.9 percent or less, the financial institution shall be required to maintain collateral with an aggregate market value equal to 50 percent of the amount of the deposit.

(b) 35.0 percent to 49.9 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 75 percent of the amount of the deposit.

(c) Greater than 49.9 percent, the financial institution shall be required to maintain collateral with an aggregate market value equal to 100 percent of the amount of the deposit.

B. Should the risk assessment ratios result in different levels of collateral for a financial institution, the State Treasurer shall request the highest collateral level required.

C. Collateral levels shall be required until the risk assessment ratios of the financial institution return to a level which allows collateral to be kept at a lower level or at statutory minimum level as appropriate.

[4-30-97, 4-30-98; 2.60.4.9 NMAC - Rn & A, 2NMAC 60.4.8, 11-15-2001]

2.60.4.10 REQUIRED TYPES OF COLLATERAL:

A. Deposits of public money shall be secured by the following:

(1) Securities of the United States, its agencies or instrumentalities. These shall be accepted as security at market value.

(2) Securities of the state of New Mexico, its agencies, instrumentalities, counties, municipalities or other subdivisions. These shall be accepted at par value.

(3) Securities, including student loans, that are guaranteed by the United States or the State of New Mexico. These shall be accepted as security at market value.

(4) Revenue bonds that are underwritten by a member of the national association of securities dealers, known as "N.A.S.D.", and are rated "BAA" or above by a nationally recognized bond rating service. These shall be accepted as security at

market value.

(5) Bonds of the New Mexico mortgage finance authority, a state instrumentality.

(6) Farmers' home administration loans, which are fully guaranteed by the federal government.

(7) Letters of credit issued by a federal home loan bank.

(8) Surety bonds, as provided for in Section 6-10-15 NMSA 1978, from a surety company that is continually rated in the highest category by at least one nationally recognized rating agency and is licensed to do business in New Mexico. Should the surety company fall below the highest rating category, the surety bond issued by the company shall not be valid for use as collateral.

B. Mutual funds may not be pledged as collateral for deposits of public funds.
[2.60.4.10 NMAC - N, 11-15-2001]

2.60.4.11 DEPOSITORY BANK REPORTING OF RISK ASSESSMENT RATIOS AND COLLATERAL LEVELS TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for the depository bank shall be calculated from the quarterly call statements of the financial institution and from the state treasurer's generated report "New Mexico Financial Institution Quarterly Report". Both reports shall be furnished by the financial institution to the state treasurer no later than on the tenth day of the second month following the end of each calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. Depository banks shall submit a monthly collateral level report to the state treasurer on the state treasurer's generated report "State Treasurer Collateral Compliance Monthly Report".

C. The figures provided to the state treasurer by the financial institution shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the financial institution.

D. The state treasurer may, at any time between quarterly reporting periods, request any additional certified information from the financial institution as needed to assess the risk level of that financial institution.

[2.60.4.11 NMAC - N, 11-15-2001]

2.60.4.12 COLLATERAL LEVEL NON-COMPLIANCE:

A. If a financial institution is unable to meet the risk assessment qualifications for a minimum level of collateral required, the state treasurer is directed to cease making any additional deposits of public money into the financial institution and to withdraw deposits in the order they would otherwise mature to an amount which can be collateralized at an appropriate level of collateral in accordance with the risk assessment ratios.

B. If a financial institution that has been designated as a depository of public money has not maintained qualifying securities as collateral, the state treasurer shall request the financial institution to substitute or provide additional qualifying securities to meet those requirements within ten days. If the financial institution does not comply with the request within ten calendar days, the state treasurer shall withdraw from that financial institution within the next ten calendar days all deposits of public money under the state treasurer's control without penalty.

C. The state treasurer is directed to require each financial institution that has had a final administrative enforcement action imposed upon it to advise the state treasurer of such action.

(1) If the state treasurer believes such action indicates a high level of risk in maintaining public deposits in that financial institution, the state treasurer shall report to the Board and the Board shall decide whether additional collateral shall be required.

(2) The state treasurer may make an emergency withdrawal of state deposits prior to maturity when such action is necessary in his judgment in the exercise of reasonable care to protect state funds.

(3) If the financial institution believes that exceptional circumstances exist which indicate that it is not appropriate for the state treasurer to take any action listed above:

(a) The financial institution shall appear at the next Board meeting and present its position.

(b) The Board shall at the time vote on whether an exception to this policy will be allowed.

D. The withdrawal of state deposits shall not be subject to the assessment of a penalty for early withdrawal except to the extent required to be imposed by federal law and in that event, only the minimum penalty required to be imposed shall be imposed by the financial institution.

E. Nothing herein shall restrict the state treasurer or the Board from the lawful exercise of rights and duties conferred upon them by law.

[2.60.4.12 NMAC - N, 11-15-2001]

2.60.4.13 REQUIREMENTS TO PROVIDE CUSTODIAL BANK SERVICES:

A. Financial institutions requesting to become a custodial bank must submit the following information to the state treasurer:

(1) A letter from the financial institution requesting to become a custodial bank;

(2) Copy of Federal Deposit Insurance Corporation (FDIC) certification; and

(3) Financial reports for the preceding four quarters. Newly chartered financial institutions must provide their most recent financial report.

B. Initial and continued appointment for a custodian to serve as agent for the state of New Mexico is determined by the risk assessment ratios of the financial institution. Financial institutions requesting initial and continued appointment as a custodial bank must certify that the institution has maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher and non performing loans-to-primary capital ratio of 34.9 percent or lower continuously for the preceding four quarters. A newly chartered financial institution, at the time of appointment, must certify that the institution has maintained a primary capital-to-asset ratio of greater than 6.0 percent, a net operating income-to-total average asset ratio of .61 percent or higher and non performing loans-to-primary capital ratio of 34.9 percent or lower for the current quarter.

C. No custodian designated by the state treasurer shall be a member of the same holding company as the financial institution whose securities the custodian is holding as the state's agent. In addition, any financial institution that owns 5 percent or more of another financial institution may not hold collateral for that financial institution.

[2.60.4.13 NMAC - N, 11-15-2001]

2.60.4.14 CUSTODIAL BANK REPORTING OF RISK ASSESSMENT RATIOS TO THE STATE TREASURER:

A. The figures to be used by the state treasurer in completing the risk assessment analysis for the custodial bank shall be calculated from the quarterly call statements of the financial institution and from the Treasurer's generated report "New Mexico Financial Institution Quarterly Report". Both reports shall be furnished by the financial institution to the state treasurer no later than on the tenth day of the second

month following the end of the calendar quarter. If the tenth day falls on a weekend or a legal holiday, the figures shall be submitted on the next business day.

B. Custodial banks shall report monthly to the state treasurer the collateral amounts held for each depository bank for which it holds collateral.

C. The figures provided to the state treasurer by the financial institution shall be certified in writing by the president, an executive officer, or a person authorized by a corporate resolution certifying the information of the financial institution.

D. The state treasurer may, at any time between quarterly reporting periods, request any additional certified information from the financial institution as needed to assess the risk level of that financial institution.

[2.60.4.14 NMAC - N, 11-15-2001]

2.60.4.15 CUSTODIAL BANK NON-COMPLIANCE:

A. A financial institution will be disqualified from serving as custodian for state deposits when any of the following conditions occur:

(1) When any one of the following risk assessment ratio conditions occur for three consecutive quarters: primary capital-to-asset ratio falls below 6.1 percent, net operating income-to-total average asset ratio falls below .61 percent or the non-performing loans-to-primary capital ratio is higher than 34.9 percent.

(2) When any two of the following risk assessment ratio conditions occur for two consecutive quarters: primary capital-to-asset ratio falls below 6.1 percent, net operating income-to-total average assets ratio falls below .61 percent or the non-performing loan-to-primary capital ratio is higher than 34.9 percent.

(3) When any one of the risk assessment ratio conditions occur for more than one quarter: primary capital-to-asset ratio falls below 5.0 percent, net operating income-to-total average asset ratio falls below .51 percent or the non-performing loans-to-primary capital ratio is higher than 49.9 percent.

B. The State Treasurer shall notify the custodian in writing of revocation of its designation as custodian stating the reason for revocation. The custodian shall notify depository institutions of termination of the custodial agreement within three business days and shall cooperate in the expeditious and orderly transfer of collateral.

[2.60.4.15 NMAC - N, 11-15-2001]

HISTORY OF 2.60.4NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records and Archives Center under:

Directive 86-6, State Board of Finance Collateral Policy-Savings and Loans, filed 9-17-86,

Directive 86-7, State Board of Finance Collateral Policy-Banks, filed 9-17-86.

History of Repealed Material: [RESERVED]

**NEW MEXICO
GENERAL SERVICES
DEPARTMENT
PURCHASING DIVISION**

The following rules of NMAC are repealed:

GSD 84-610 compiled as 1 NMAC 5.13 recompiled as 1.5.13 NMAC, Title 1 General Government Administration, Chapter 5 Public Property Management, Part 13 Automotive Body Repairs - New Mexico State Owned Vehicles [Part 13 that includes 5.13.1 through 5.13.10 NMAC - Repealed, 11/15/01]

GSD 84-612 compiled as 1 NMAC 5.14 recompiled as 1.4.5. NMAC, Title 1 General Government Administration, Chapter 4 State Procurement, Part 13 Payment Vouchers for Procurement of Materials and Services [Part 5 that includes 5.14.1 through 5.14.10 NMAC - Repealed, 11/15/01]

GSD 84-613 compiled as 1 NMAC 5.15 recompiled as 1.4.6. NMAC, Title 1 General Government Administration, Chapter 4 State Procurement, Part 6 Purchasing Complaint Report [Part 6 that includes 5.15.1 through 5.15.13 NMAC - Repealed, 11/15/01]

1 NMAC 5.4, Resident Contractor Preference, filed 01-02-98, repealed and replaced by 1.4.3 NMAC effective 11-15-01.

**NEW MEXICO
GENERAL SERVICES
DEPARTMENT
PURCHASING DIVISION**

**TITLE 1 GENERAL GOV-
ERNMENT ADMINISTRATION
CHAPTER 4 STATE PROCURE-
MENT
PART 3 RESIDENT CON-
TRACTOR PREFERENCE**

1.4.3.1 **ISSUING AGENCY:**

General Services Department - State Purchasing Division.
[1.4.3.1 NMAC - Rp, 1 NMAC 5.4.1, 11-15-01]

1.4.3.2 **SCOPE:** All executive Branch State Agencies.

A. General applicability. This rule applies to all public works construction procurements by state agencies and local public bodies.

B. Federal funds. This rule does not apply to federal aid construction projects or when federal funds designated for a specific contract are expended.
[1.4.3.2 NMAC - Rp, 1 NMAC 5.4.2, 11-15-01]

1.4.3.3 **S T A T U T O R Y
AUTHORITY:** 1978 Comp., Section 13-4-2, enacted by Laws 1984, Chapter 66, Section 2, amended by Laws 1988, Chapter 84, Section 3; Laws 1989, Chapter 310, Section 2; Laws 1997, Chapter 2, Section 3; Laws 2001, Chapter 174, Section 1.

[1.4.3.3 NMAC - Rp, 1 NMAC 5.4.3, 11-15-01]

1.4.3.4 **D U R A T I O N :**
Permanent.

[1.4.3.4 NMAC - Rp, 1 NMAC 5.4.4, 11-15-01]

1.4.3.5 **EFFECTIVE DATE:**
11-15-01 unless a later date is cited at the end of a Section.

[1.4.3.5 NMAC - Rp, 1 NMAC 5.4.5, 11-15-01]

1.4.3.6 **OBJECTIVE:** Section 13-4-1 NMSA 1978 is titled "Public Works Contracts" and states in relevant part that, "it is the duty of every office department, institution, board, commission or other governing body or officer thereof of this state or of any political subdivision thereof to award all contracts for the construction of public works or for the repair, reconstruction, including highway reconstruction, demolition or alteration thereof, to a resident contractor whenever practicable. The objective of this rule is to establish a process for a contractor to attain certification as a "resident contractor".

[1.4.3.6 NMAC - Rp, 1 NMAC 5.4.6, 11-15-01]

1.4.3.7 **DEFINITIONS:**

A. "Affiliate" means an entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with a telecommunications company through ownership of voting securities representing a majority of the total voting power of that

entity.

B. "Individual citizen" means a citizen of New Mexico who is an actual human person, as opposed to a corporate person or other legal entity.

C. "Principal office" means the headquarters of a business or the place where the principal affairs of a business are transacted. A business can have only one principal office.

D. "Principal place of business" means the place in which a business:

(1) earns the largest percentage of its revenues;

(2) owns the largest percentage of its capital assets; and

(3) employs the largest percentage of its full-time equivalent employees. A business can have only one principal place of business.

E. "Resident Contractor" means a New Mexico resident contractor or a New York state business enterprise.

F. "New Mexico resident contractor" means a construction contractor which, at the time a public works construction contract is advertised for bids and at the time bids are opened, has all required licenses and meets the following requirements:

(1) if the contractor is a corporation, it shall be incorporated in new Mexico, and maintain its principal office and place of business in New Mexico.

(2) if the contractor is a partnership, general or limited, or other legal entity, it shall maintain its principal office and place of business in New Mexico.

(3) if the contractor is an individual, he shall maintain his principal office and place of business in New Mexico; or

(4) if the contractor is a public telecommunications company as defined by Section 63-9A-3 (M) NMSA 1978 or an affiliate of a telecommunications company and has paid unemployment compensation to the Employment Security Division of the Labor Department at the applicable experience rate for that employer pursuant to the New Mexico Unemployment Compensation Law on no fewer than ten employees who have performed services subject to contributions for the two-year period prior to issuance of notice to bid, the contractor will be considered to have fulfilled the requirements of paragraphs (1), (2), or (3) of this subsection. A successor to a previously qualified New Mexico contractor or resident contractor, where the creation of the successor resulted from a court order, is entitled to credit for qualifying contributions paid by the previously qualified new Mexico contractor or resident contractor.

G. "New York state busi-

ness enterprise" means a business enterprise, including a sole proprietorship, partnership or corporation, that offers for sale or lease or other form of exchange, goods or commodities that are substantially manufactured, produced or assembled in New York state, or services, other than construction services, that are substantially performed within New York state. For purposes of construction services, a New York state business enterprise, including sole proprietorship, partnership or corporation, that has its principal place of business in New York state.

[1.4.3.7 NMAC - Rp, 1 NMAC 5.4.7 NMAC, 11-15-01]

1.4.3.8 APPLICATION OF PREFERENCES:

A. Bids from nonresident contractors and resident contractors. When bids are received only from nonresident contractors and resident contractors and the lowest responsible bid is from a nonresident contractor, the contract shall be awarded to the resident contractor whose bid is nearest to the bid price of the otherwise low nonresident contractor if the bid price of the resident contractor is made lower than the bid price of the nonresident contractor when multiplied by a factor of 0.95. Any contract executed in violation of this subsection shall be void and of no effect.

B. Resident business and resident manufacturer preferences inapplicable. The resident contractor preference is the only bidding preference that applies to the awarding of public works construction contracts. The resident business preference and the resident manufacturer preference shall not be considered in the awarding of such contracts under any circumstances.

[1.4.3.8 NMAC - Rp, 1 NMAC 5.4.8, 11-15-01]

1.4.3.9 PREQUALIFICATION:

A. Prequalification required. No contractor shall be treated as a resident contractor in the awarding of public works by a state agency or local public body unless the contractor has prequalified as a resident contractor by making application to the state purchasing agent and receiving from him a certification number.

B. Procedure. The prequalification procedure shall be as follows:

(1) the state purchasing agent shall prepare an application form for certification as a resident contractor requiring such information and proof as he deems necessary to prequalify the applicant under the terms of this rule;

(2) a prospective resident contractor shall complete the application form and

submit it to the state purchasing agent prior to the submission of a bid on which the contractor desires to be given a preference;

(3) the state purchasing agent shall examine the application and if necessary may seek additional information or proof so as to be assured that the applicant is indeed entitled to certification as a resident contractor. If the state purchasing agent is so assured, he shall issue the applicant a distinctive certification number which is valid until revoked and which, when used on bids and other purchasing documents for state agencies or local public bodies, entitles the holder of the number to treatment as a resident contractor under Section 1.4.3.8 of this rule.

[1.4.3.9 NMAC - Rp, 1 NMAC 5.4.9, 11-15-01]

1.4.3.10 REVOCATION OF CERTIFICATION NUMBERS:

A. General. All certification numbers are subject to revocation in accordance with this rule. A certification number does not establish conclusively that the holder of the number is a resident contractor. Rather, a certification number merely establishes that the state purchasing agent believed, as of the date of issuance, the holder was entitled to treatment as a resident contractor by state agencies and local public bodies. Whenever a certification number is challenged, the holder of the number has the burden of persuasion on the issue of whether the holder is actually a resident contractor.

B. Revocation. A certification number shall be revoked by the state purchasing agent upon making a determination that the holder of the number no longer qualifies as a resident contractor.

(1) a revocation shall be effective immediately and shall apply to all subsequent contract awards. A revocation shall not affect any previously-awarded contracts, through, in the absence of fraud or bad faith.

(2) at any time, the state purchasing agent may request information or proof from the holder of a certification number as to whether the holder continues to qualify as a resident contractor. If the holder fails to provide any requested information or proof, his certification number may be revoked.

[1.4.3.10 NMAC - Rp, 1 NMAC 5.4.10, 11-15-01]

1.4.3.11 PROTESTS:

A. Right to protest. A bidder who is aggrieved in the award of a contract to another bidder, who is relying on the resident contractor preference, may protest to the central purchasing office responsible for the procurement in accordance with

Section 13-1-172 NMSA 1978.

B. Resident businesses and resident contractors. If a protest presents the issue of whether the holder of a certification number is actually a resident contractor, the central purchasing office responsible for the procurement shall refer the issue to the state purchasing agent for resolution in accordance with Procurement Code Rule 1.4.1 NMAC or succeeding rules.

C. If a protest governed by Subsection B of this section presents additional issues, the central purchasing office responsible for the procurement shall remain responsible for resolution of the additional issues.

[1.4.3.11 NMAC - Rp, 1 NMAC 5.4.11, 11-15-01]

History of 1.4.3 NMAC:

Pre-NMAC History:

Material in this part was derived from that previously filed with the commission of public records - state records center and archives as GSD Rule 89-604, Resident Contractor Preference, filed 08-18-89 was replaced in its entirety by 1 NMAC 5.4, Resident Contractor Preference, filed 01-02-98.

History of Repealed Material: 1 NMAC 5.4, Resident Contractor Preference, filed 01-02-98 repealed effective 11-15-01.

NEW MEXICO GENERAL SERVICES DEPARTMENT PURCHASING DIVISION

Explanatory Paragraph: 2001 Laws of New Mexico, Chapter 292 amended certain sections of the New Mexico Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978. The changes reflected in the legislation prompts the need to also amend the General Services Department Procurement Code Rule 1 NMAC 5.2 (renumbered to 1.4.1 NMAC effective 11-15-01). The principal change addressed in this amendment is to raise the small purchase limit for issuing a Direct Purchase Order from five hundred dollars (\$500) to fifteen hundred dollars (\$1,500). Those sections specifically amended were 1.4.1.2 NMAC, 1.4.1.5 NMAC, 1.4.1.8 NMAC, 1.4.1.19 NMAC, 1.4.1.20 NMAC, 1.4.1.29 NMAC, 1.4.1.50 NMAC, 1.4.1.51 NMAC, 1.4.1.68 NMAC, 1.4.1.71 NMAC, and 1.4.1.82 NMAC.

1.4.1.2 SCOPE: All executive branch state agencies

A. Except as otherwise provided in the Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, the Code applies to every expenditure by state agencies and local public bodies for the procurement of items of tangible personal property, services and construction.

B. General. Except as otherwise provided in this section, this rule applies to every agency and to every transaction to which the Procurement Code applies except the following:

(1) procurement of highway construction or reconstruction by the state highway and transportation department;

(2) procurement by the judicial branch of state government;

(3) procurement by the legislative branch of state government;

(4) procurement by the boards of regents of state educational institutions named in Article 12 Section 11 of the constitution of New Mexico;

(5) procurement by the state fair commission of tangible personal property, services and construction under five thousand dollars (\$5,000);

(6) purchases from the instructional material fund;

(7) procurement by all local public bodies;

(8) procurement by regional education cooperatives;

(9) procurement by charter schools; and

(10) procurement by each state health care institution that provides direct patient care and that is, or a part of which is, Medicaid certified and participating in the New Mexico Medicaid program

C. Procurement of professional services. This rule applies to every procurement of professional services to which the Procurement Code applies except the following:

(1) procurement of professional services by the judicial branch of state government;

(2) procurement of professional services by the legislative branch of state government;

(3) procurement of professional services by the boards of regents of state educational institutions named in Article 12, Section 11 of the constitution of New Mexico; and

(4) procurement of professional services by all local public bodies.

1.4.1.5 EFFECTIVE DATE: January 15, 1998 unless a later date is cited at the end of a section ~~[or paragraph]~~.

1.4.1.8 CENTRALIZATION OF PROCUREMENT ACTIVITY

(SECTIONS 1.4.1.8 - 1.4.1.13 NMAC):

A. State purchasing agent. All procurement for state agencies shall be performed by the state purchasing agent except the following:

(1) professional services that are not related to information systems resources;

(2) small purchases having a value not exceeding ~~[five hundred dollars (\$500)]~~ fifteen hundred dollars (\$1,500);

(3) emergency procurements; and

(4) the types of procurement specified in Subsection B of 1.4.1.2 NMAC.

B. Central purchasing offices. All procurement for state agencies excluded from the requirement of procurement through the state purchasing agent shall be performed by a central purchasing office designated by statute, the governing authority of that state agency or as otherwise provided in the Procurement Code.

C. Cooperative procurement. Nothing in this section should be interpreted as limiting the ability of state agencies to make procurements under existing contracts or enter into cooperative procurement agreements.

1.4.1.19 AMENDMENTS TO THE INVITATION FOR BIDS:

A. Form. An amendment to the IFB shall be identified as such and shall require that bidders acknowledge its receipt. The amendment shall refer to the portions of the IFB it amends.

B. Distribution. Amendments shall be sent to all prospective bidders known to have received the IFB.

C. Timeliness. Amendments shall be distributed within a reasonable time to allow prospective bidders to consider them in preparing their bids. If the time and date set for receipt of bids will not permit such preparation, the time shall be increased to the extent possible in the amendment or, if necessary, by telegram or telephone or by other electronic means and confirmed in the amendment.

D. Use of amendments. Amendments should be used to:

(1) make any changes in the IFB such as changes in quantity, purchase descriptions, delivery schedules, and opening dates;

(2) correct defects or ambiguities;

or

(3) furnish to other bidders information given to one bidder if such information will assist the other bidders in submitting bids or if the lack of such information would prejudice the other bidders.

1.4.1.20 PRE-OPENING MODIFICATION OR WITHDRAWAL

OF BIDS:

A. Procedure. A bid may be modified or withdrawn by a bidder prior to the time set for bid opening by delivering written or telegraphic notice to the location designated in the IFB as the place where bids are to be received.

B. ~~[Deposition]~~ Disposition of bid security. If a bid is withdrawn in accordance with this section, the bid security, if any, shall be returned to the bidder.

C. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

1.4.1.29 APPLICATION (COMPETITIVE SEALED PROPOSALS; SECTIONS 1.4.1.29-1.4.1.47 NMAC):

A. General. Except as provided in Subsections B and C of this section, the provisions of Sections 1.4.1.29 through 1.4.1.47 of this rule apply to every procurement made by competitive sealed proposals.

B. Architects, engineers, landscape architects and surveyors. The provisions of Sections 1.4.1.29 through 1.4.1.47 of this rule do not apply to the procurement of professional services of architects, engineers, landscape architects and surveyors for state public works projects or local public works projects. Except that when procuring such professional services for state public works projects or local public works projects state agencies and local public bodies shall comply with Sections 13-1-120 through 13-1-124 NMSA 1978.

C. Procurement of professional services by state agencies with rule-making authority. A state agency with rule making authority may adopt its own regulations for the procurement of professional services by competitive sealed proposals under the following conditions:

(1) the state agency must receive prior written authorization from the GSD secretary;

(2) the state agency's proposed regulations must provide that RFPs or notices thereof having a value exceeding twenty thousand dollars (\$20,000) will be provided to the state purchasing agent for distribution to prospective offerors who have registered with the state purchasing agent's office in accordance with the terms of Subsection B of 1.4.1.17 and Subsection A of Section 1.4.1.32 of this rule;

(3) the procurements of professional services are not for information system resources.

D. "Professional services" are defined in Section 13-1-76 NMSA 1978.

The section of statute acknowledges the difficulty of any attempt made to recognize and list each and every service that could conceivably fall within the definition of "professional services". Instead, the statute provides in relevant part that "...other persons or businesses providing similar professional services to those listed may be designated as such by a determination issued by the state purchasing agent or a central purchasing office." In instances where "...other persons or businesses providing similar professional services...", as cited in Section 13-1-76, NMSA 1978 [Subsection 29.4 of Section 29], is not clearly defined, state agencies shall submit a written request to the state purchasing agent for issuance of a determination and a finding that the service is to be designated as a professional service. State agencies shall not make such a determination independent of the state purchasing agent.

1.4.1.50 SMALL PURCHASES OF ~~(\$500)~~ \$1,500 OR LESS:

A state agency may procure services, construction or items of tangible personal property having a value not exceeding ~~[five hundred dollars (\$500)]~~ fifteen hundred dollars (\$1,500) by issuing a direct purchase order to a contractor based upon the best obtainable price.

1.4.1.51 SMALL PURCHASES OF ITEMS OF TANGIBLE PERSONAL PROPERTY, CONSTRUCTION AND NONPROFESSIONAL SERVICES:

A. Quotation to be obtained. Insofar as it is practical for small purchases of nonprofessional services, construction or items of tangible personal property having a value exceeding ~~[five hundred dollars (\$500)]~~ fifteen hundred dollars (\$1,500) but not exceeding five thousand dollars (\$5,000), no fewer than three businesses shall be solicited to submit written or oral quotations that are recorded and placed in the procurement file.

B. Disclosure. Prior to award, the contents of any response to a quotation shall not be disclosed to any other business from which ~~[a quotation is solicited]~~ the same request for quotation is also being solicited.

C. Quotations may be obtained by using agency. For small purchase of items of tangible personal property, construction or nonprofessional services having a value exceeding ~~[five hundred dollars (\$500)]~~ fifteen hundred dollars (\$1,500) but not exceeding five thousand dollars (\$5,000) quotations from local businesses may be obtained by using agencies and attached to the purchase request submitted

to the state purchasing agent. The state purchasing agent shall disregard all quotations submitted by using agencies whenever there is any indication that Subsection B of this section has been violated.

(1) using agencies are advised that unless the submitted purchase request referenced in Subsection C of this section is accompanied by three valid quotations from no less than three businesses the state purchasing agent may direct his staff to obtain three valid quotations in writing. Such notations as "does not carry" or "did not return my phone call" do not qualify as a valid quotation.

(2) the state purchasing agent may grant an exception to paragraph (1) of this subsection if a using agency submits a letter setting forth the reason or reasons why the agency was unable to obtain three valid quotations from three businesses.

D. Bidders list. Although not required to be published in a newspaper or newspapers of general circulation in this state, the state purchasing agent and all central purchasing offices shall send copies of the notice or request for quotes/informal invitation for bids involving the expenditure of more than five thousand dollars (\$5,000) but not exceeding ten thousand dollars (\$10,000) to those businesses who have signified in writing an interest in submitting bids for particular categories of items of tangible personal property, construction or services and which have paid any required fees. The state purchasing agent may grant an exception to the requirements of this subsection if the using agency provides a compelling reason and includes three valid quotations with its purchase document submitted to the state purchasing agent.

E. Award. Award shall be made to the business offering the lowest acceptable quotation.

F. Records. The names of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

1.4.1.68 APPLICATION (CANCELLATION OF SOLICITATIONS OR REJECTION OF BIDS OR PROPOSALS; SECTIONS 1.4.1.68 - 1.4.1.72 NMAC): The provisions of Sections 1.4.1.68 through 1.4.1.72 of this rule shall govern the cancellation of any solicitations whether issued by the state purchasing agent under competitive sealed bids, competitive sealed proposals, small purchases, or any other source selection method, and rejection of bids or proposals in whole or in part.

1.4.1.71 REJECTION OF

INDIVIDUAL BIDS OR PROPOSALS:

A. Reasons for rejection.

(1) Bids. As used in this section, "bid" includes both competitive sealed bids and small purchase quotations. Reasons for rejecting a bid shall include but are not limited to:

(a) the business that submitted the bid is nonresponsible as determined under Section 1.4.1.73 of this rule;

(b) the bid is not responsive; or

(c) the service, construction, or item of tangible personal property offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications, or permissible alternates, or other acceptability criteria set forth in the IFB.

(2) Proposals. As used in this section, "proposal" includes both competitive sealed proposals and small purchase offers. Unless the solicitation states otherwise, proposals need not be unconditionally accepted without alteration or correction and a using agency's stated requirements may be revised or clarified after proposals are submitted. This flexibility must be considered in determining whether reasons exist for rejecting all or any part of a proposal. Reasons for rejecting proposals include but are not limited to:

(a) the business that submitted the proposal is nonresponsible as determined under Sections 1.4.1.75 through 1.4.1.79 of this rule;

(b) the proposal is not responsive; or

(c) the proposed price is clearly unreasonable; or

(d) the proposal failed to adequately address one or more material mandatory requirements as set forth in the request for proposals.

B. Written determination required. A written determination which contains the reasons for the rejection of an individual bid or proposal shall be prepared by the state purchasing agent or central purchasing office and made a part of the procurement file. In the case of procurements for information system resources, a written determination which contains the reasons for the rejection of an individual proposal shall be prepared by the procurement manager and shall be included as an attachment to the evaluation committee report as a part of the procurement file. Further, a copy of the determination shall also be sent to the nonresponsive offeror.

1.4.1.82 FILING OF PROTEST:

A. Protest must be written. Protests must be in writing and addressed to the state purchasing agent or central purchasing office, whichever has control and

administration over the ~~contract~~ procurement.

B. Contents. The protest shall:

(1) include the name and address of the protestant;

(2) include the solicitation number;

(3) contain a statement of the grounds for protest;

(4) include supporting exhibits, evidence or documents to substantiate any claim unless not available within the filing time in which case the expected availability date shall be indicated; and

(5) specify the ruling requested from the state purchasing agent or central purchasing office.

C. Pleadings. No formal pleading is required to initiate a protest, but protests should be concise, logically arranged, and direct.

D. Time limit. Protests shall be submitted within fifteen calendar days after knowledge of the facts or occurrences giving rise to the protest. Any person or business that has been sent written notice of any fact or occurrence is presumed to have knowledge of the fact or occurrence.

**NEW MEXICO
COMMISSION ON HIGHER
EDUCATION**

**TITLE 5 POST-SECONDARY
EDUCATION
CHAPTER 7 TUITION AND
FINANCIAL AID
PART 13 TEACHER LOAN-
FOR-SERVICE ACT**

5.7.13.1 ISSUING AGENCY: State of New Mexico Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, New Mexico, 87505-4295 [5.7.13.1 NMAC – N, 11/15/2001]

5.7.13.2 SCOPE: Provisions of 5.7.13 NMAC apply to New Mexico residents that are selected to participate in the loan-for-service program described in this rule. Participants must be enrolled in or accepted by an undergraduate or graduate teacher preparation program at a regionally accredited post-secondary educational institution in New Mexico. [5.7.13.2 NMAC – N, 11/15/2001]

5.7.13.3 STATUTORY AUTHORITY: Section 21-22E-1 through 21-22E-10, NMSA 1978 [5.7.13.3 NMAC – N, 11/15/2001]

5.7.13.4 DURATION:

Permanent
[5.7.13.4 NMAC – N, 11/15/2001]

5.7.13.5 EFFECTIVE DATE: November 15, 2001. [5.7.13.5 NMAC – N, 11/15/2001]

5.7.13.6 OBJECTIVE AND PURPOSE: The objective and purpose of the New Mexico Teacher Loan-for-Service Act is to proactively address New Mexico’s looming teacher shortage by providing students with the financial means to complete or enhance their post-secondary teacher preparation education. [5.7.13.6 NMAC – N, 11/15/2001]

5.7.13.7 DEFINITIONS:
A. **“Commission”** means the New Mexico Commission on Higher Education.

B. **“Committee”** means the Teaching Professions Advisory Committee of the Commission.

C. **“loan”** means a grant of funds to defray the costs incidental to an eligible teacher preparation education, under a contract between the Commission and a student, requiring repayment with services or repayment of principal and interest and any fees.

D. **“student”** means a United States citizen 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.

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).

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]

5.7.13.8 TEACHING PROFESSION ADVISORY COMMITTEE. The Teaching Profession Advisory

Committee is created to advise the Commission on matters relating to the administration of the Teaching Loan-For-Service Act.

A. The Committee shall be appointed by the Commission pursuant to policies and procedures of the Commission 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.

B. The responsibilities of the Committee shall include:

(1) designate teaching shortage areas of the state;

(2) make recommendations to the Commission on applicants for the teacher loan-for-service program; and,

(3) give advice or other assistance to the Commission as requested. [5.7.13.8 NMAC – N, 11/15/2001]

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, a resident of New Mexico; and,

D. declare his/her 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]

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]

5.7.13.11 RESPONSIBILITIES OF THE COMMISSION:

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]

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 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 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. 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 and signed by the student (for additional contract details see 5.7.13.14 NMAC).

[5.7.13.12 NMAC – N, 11/15/2001]

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 for a period of at least one year, the Commission shall assess a penalty of up to three (3) times the principal due, plus eighteen percent (18%) interest, unless the Commission 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 prorata 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 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 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, in consultation with the student, shall establish terms of repayment, alternative service, or cancellation terms.

C. The contract shall further provide that immediately upon completion or termination of the student's teaching program, all interest then accrued due shall be capitalized.

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.

F. Subject to applicable statutory limitations, the Commission may extend or modify the foregoing repayment periods for good cause.

G. In the event it becomes necessary, the Commission 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.

(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:

(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 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 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 ter-

mination 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 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]

5.7.13.14 CONTRACTS. A contract shall be drawn between each student receiving a loan and the Commission on behalf of the state of New Mexico. The contract shall:

A. provide for the payment by the Commission 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. state the conditions of repayment or forgiveness as detailed in 5.7.13.13 NMAC;

E. 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;

F. state the legal responsibilities of the borrower and that delinquent loans shall be referred to the Commission for appropriate action, which may include referral to the office of the Attorney General, if deemed necessary;

G. state that the borrower's obligations of the contract with the Commission shall be binding on borrower's estate;

H. state that the Commission may cancel any contract on thirty (30) days written notice for any reasonable and sufficient cause;

I. 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, become immediately due and payable; and

J. 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]

5.7.13.15 REPORTS. The Commission 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]

NEW MEXICO COMMISSION ON HIGHER EDUCATION

This is amendment to 5.7.30 NMAC, Sections 1, 7, 8.

5.7.30.1 ISSUING AGENCY: EDUCATION TRUST BOARD, State of New Mexico, C/O Commission on Higher Education [~~1068 Cerrillos Road, Santa Fe, New Mexico 87501-4295, Attention: Dr. Bruce D. Hamlett~~].

[5.7.30.1 NMAC - N, 6/29/2001; A, 11/15/2001]

5.7.30.7 DEFINITIONS: The following terms shall have the following meanings in this rule

A. "Account" means the formal record of transactions relating to a particular designated Beneficiary established for purposes of the Plan.

B. "Account Owner" means any person who has entered into a Customer Agreement pursuant to this rule.

C. "Act" means N. M. Stat. Ann. Section 21-21K-3 et seq.

D. "Beneficiary" means any person who: (i) is designated by a Customer Agreement to benefit from payments for Qualified Higher Education Expenses at an Eligible Higher Educational Institution or else is eligible to receive benefits pursuant to such Customer Agreement in accordance with Plan Procedures and Guidelines; and (ii) constitutes a designated Beneficiary for purposes of the Federal Requirements.

E. "Benefits" means the payment of Qualified Higher Education Expenses on behalf of a Beneficiary by the Board during the Beneficiary's attendance at an Eligible Higher Educational Institution.

F. "Board" means the Education Trust Board of the State of New Mexico.

G. "Chair" means the chair of the Board or any person acting under the delegated authority and supervision of the Chair.

H. "Contributions" means amounts deposited by an Account Owner to an Account within the Plan.

I. "Customer Agreement"

means an agreement between an Account Owner and the Board providing for the establishment by the Account Owner of one or more accounts within the Plan fund and for the administration of those accounts for the benefit of the Account Owner and of one or more Beneficiaries.

J. ~~["Early Termination Event" means any of the following, if documented in compliance with Plan Procedures and Guidelines~~

~~(1) the death of a Beneficiary;~~
~~(2) the permanent disability of mental incapacity of the Beneficiary, as determined by certification of a physician;~~
~~(3) a Rollover Distribution; or~~
~~(4) an award of an Eligible Scholarship, to the extent of the amount thereof.] [Reserved]~~

K. "Eligible Higher Educational Institution" or "Institution" means an institution which is described in section 481 of the Higher Education Act, and which is eligible to participate in a program under Title IV of such Act. Such institutions generally are accredited post-secondary educational institutions offering credit toward the attainment of associate, baccalaureate, graduate level or professional degrees or another recognized post-secondary credential. The institution must be eligible to participate in United States Department of Education student aid programs.

L. "Eligible Scholarship" means any allowance or payment described in section 135(d) (1) (B) or (C) of the Internal Revenue Code or any scholarship.

M. "Federal Requirements" means the provisions of the Internal Revenue Code, as amended from time to time, addressing qualified State tuition ~~[plans]~~ programs, any regulations promulgated or, if so determined by the Chair, proposed thereunder and any rulings thereunder addressed, or in the opinion of counsel, applicable to the Board.

N. "Financial Institution" means a credit union or financial institution that meets standards established by the Board.

O. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended

P. "Higher Education Act" means the Higher Education Act of 1965, as amended.

Q. "Members" means the members of the Education Trust Board of the State of New Mexico.

R. "Plan" means programs as described in and governed by the Act, ~~[the Declaration of Trust referenced in Section 2 of this rule]~~ and this rule.

S. "Plan Procedures and

Guidelines" means such operating procedures and guidelines for Plan administration, consistent with the Act, this rule and Federal Requirements, as may be established by the Board.

T. "Qualified Higher Education Expenses" means:

(1) The certified costs of tuition, fees, books, supplies and equipment required for the enrollment or attendance of a Beneficiary at an Eligible Higher Educational Institution; and

(2) To the extent allowable in accordance with Plan Procedures and Guidelines, the reasonable costs of room and board of a Beneficiary incurred while attending an Eligible Higher Educational Institution and enrolled at least half-time, provided that the costs of room and board shall not exceed the maximum room and board allowance set forth in Federal Requirements.

U. ~~["Rollover Distribution" means a distribution or transfer from an Account which (i) is transferred to or deposited in another Plan Account or is otherwise applied in accordance with Plan Procedures and Guidelines; and (ii) which constitutes a Rollover Distribution pursuant to Federal Requirements.] [Reserved.]~~

V. "Tuition" means the charges imposed to attend an Eligible Higher Educational Institution and required as a condition of enrollment.

[5.7.30.7 NMAC - N, 6/29/2001; A, 11/15/2001]

5.7.30.8 ACTION

A. Trust. The Board shall establish a trust. The purpose of the trust is to create a vehicle for the Board to carry out the provisions of the Act and this Rule, to protect the financial integrity of the "Education Trust Fund" as defined in the Act, to preserve the Plans integrity and to assure the appropriate use of tax benefits. The Board shall be the trustee of the trust so created.

B. Plan Implementation. The administration of the Plan is delegated to the Chair.

C. Opening an Account

(1) Each applicant shall submit an application to the Chair or any agent or contractor designated by the Chair on such forms and with such attachments as the Chair may require.

(2) The application shall contain the following:

(a) The name of the proposed Beneficiary. Beneficiaries may be changed to any eligible individual as permitted by the Plan Procedures and Guidelines then in effect, upon the receipt of a request of the Account Owner in the form designated in

the Plan Procedures and Guidelines;

(b) Any minimum investment required by the Chair to open an Account;

(c) The birth date of the Beneficiary;

(d) The social security number of the Beneficiary. Distributions from Accounts that lack a valid social security number may be subject to penalties or the withholding of taxes at the time of distribution;

(e) The estimated matriculation date of the Beneficiary;

(f) The name, social security number, address, phone number and, if available, the e-mail address of the Account Owner; and

(g) Such other information as the Board may require including such factual representations as the Board may reasonably require to evidence compliance with the Plan Procedures and Guidelines.

D. Customer Agreements

(1) The Board will enter into a Customer Agreement with ~~[all Account Owners]~~ each Account Owner

(2) The Customer Agreement may include the following:

(a) The name and address of the Account Owner and the Beneficiary;

(b) The tax identification numbers of the Beneficiary and the Account Owner;

(c) The maximum amount of funds which may be contributed by the Account Owner annually or as a lump sum;

(d) Any obligations of the Board, the Account Owner and the Beneficiary;

(e) A summary of the fees and penalties which may be assessed against the Account, the Account Owner or the Beneficiary;

(f) The manner in which funds may be withdrawn and by which the ownership rights of the Account may be transferred;

(g) Provisions for periodic reporting of the status of Accounts;

(h) Provisions of this Rule; and

(i) Such other information as the Board may determine to be necessary or appropriate, including such factual representations as the Board may reasonably require to evidence compliance with the Plan Procedures and Guidelines.

(3) Customer Agreements may be amended in order to enable Account Owners to increase or decrease the amount contributed, change the Beneficiary and carry out similar matters. Changes that affect the ownership and registration (e.g., mailing address, name of Beneficiary) of the Account must be submitted by the Account Owner in the form set forth in the Plan Procedures and Guidelines.

(4) Applications and Customer

Agreements may be submitted, accepted and become binding contracts by electronic means (including over the Internet) as may be set forth in the Plan Procedures and Guidelines.

E. Limitations on Contributions

(1) No Account Owner or Beneficiary may directly or indirectly direct the investment of any contributions or of any other amounts held by the Plan. Members of the Board will not be deemed to be directly or indirectly directing the investment of any Account on which they are the Account Owner. At the time an Account Owner opens an Account, an Account Owner may choose among any investment options offered by the Board.

(2) An Account Owner may contribute to an Account by making cash contributions in the form of:

- (a) Lump sum payment;
- (b) Installments;

(c) Electronic funds transfer from an existing account of the Account Owner; and

(d) Employer payroll deduction, if provided by the employer.

(3) Contributions may be made at any time subject to any minimum deposit requirements.

(4) Total contributions to an Account may not exceed the amount projected to be necessary to pay Qualified Higher Education Expenses of the beneficiary ~~[to attend five years of undergraduate enrollment]~~ as determined by the Board in accordance with Plan Procedures and Guidelines and Federal Requirements. For the calendar year 2000 the amount projected to be necessary to pay Qualified Higher Education Expenses is \$160,539. In subsequent years such amount will be based on the highest cost private college in the United States of America, as published by the College Board or, if the College Board discontinues publication of such data, by any other similar organization selected by the Chair. The Board will prohibit additional contributions to an Account when the balance in the Account reaches an amount to be specified annually. The Board may establish contribution limits which vary based upon factors, which may include: the ages of the Beneficiaries, their expected year of enrollment, and the investment allocation of the Plan.

F. Ownership of Contributions and Earnings

(1) The Account Owner shall retain ownership of all contributions made under any Customer Agreement and earnings on those contributions up to the date of utilization for payment of Qualified Higher Education Expenses for the Beneficiary.

(2) In the event the Customer Agreement is terminated by the Account Owner prior to payment of Qualified Higher Education Expenses for the Beneficiary, the Account Owner shall retain ownership of all contributions made under the Customer Agreement and, if provided for under the Customer Agreement, a right to receive earnings (less any applicable taxes and/or penalties, administrative fees and investment losses) on all contributions to the Account.

(3) The Eligible Higher Educational Institution shall own payments made to it for Qualified Higher Education Expenses at the time each is made to the Institution.

G. Withdrawals for the Payment of Qualified Higher Education Expenses

(1) To withdraw funds from an Account for the payment of Qualified Higher Education Expenses, the Board must first be advised in accordance with Plan Procedures and Guidelines of the Institution the Beneficiary will attend and the date of anticipated enrollment. The Board requires evidence confirming the Beneficiary's enrollment at the Eligible Higher Educational Institution.

(2) Upon receipt of documentation required in accordance with Plan Procedures and Guidelines (including copies of invoices and/or proof of disbursement), the Board will make distributions to the specified Institution for the benefit of the Beneficiary, will make distributions to the specified Institution and the Beneficiary on a copayment basis or, if consistent with Plan Procedures and Guidelines, to another party as expressly authorized in writing. Distribution of benefits will begin within thirty (30) days after receipt by the Board from the Account Owner of a notice to use Account assets and shall continue, as authorized pursuant to documentation satisfactory to the Board, throughout the Beneficiary's period of enrollment at an Eligible Higher Educational Institution or until the Account balance has been exhausted, whichever comes first.

(3) To make withdrawals from an Account for the payment of off campus room and board, and other allowed Qualified Higher Education Expenses, the Board requires satisfactory documentation reflecting the expenses being submitted for payment in a form acceptable to the Board. If a Beneficiary resides off campus, the Board will pay, consistent with Plan Procedures and Guidelines, whomever is designated by the Account Owner, in addition to the amounts paid to the Institution, an amount, not in excess of that permitted by Federal Requirements with respect to the

cost of lodging and meals for an academic period.

(4) The Board may make distributions to a Beneficiary prior to the expenditure if the Beneficiary certifies prior to the distribution that the distribution will be expended for Qualified Higher Education Expenses of the Beneficiary within a reasonable time after the distribution and within 30 days of the distribution the Beneficiary provides substantiation satisfactory to the Board that the amounts disbursed were used for the payment of Qualified Higher Education Expenses. Distributions made pursuant to this section may be made only to the extent the Board retains a sufficient amount in the Beneficiary's account to pay any State or Federal taxes or penalty which may accrue if the Beneficiary fails to provide timely valid substantiation of the Qualified Higher Education Expense.

(5) All distributions made during a tax year may be treated as one distribution when necessary to comply with Federal Requirements.

H. Participating Financial Institutions

(1) The Board may enter into agreements with Financial Institutions which agree to:

(a) Permit deposits to be made into Accounts by payroll deposit or other electronic funds transfer on a periodic or lump sum basis;

(b) Participate in such marketing and public awareness programs as requested by the Chair; or

(c) Such other terms and conditions as the Chair deems appropriate.

(2) Any Financial Institution is eligible to participate in the Plan.

I. Administration Agreements. The Board may enter agreements for assistance with the implementation and administration of the Plan, including terms and conditions the Chair determines to be necessary or appropriate.

J. Fees and Penalties

(1) Each Customer Agreement may provide for an annual administrative fee based on amounts in the Plan fund accrued daily at an annualized rate not to exceed 1.5%. Such fees may be used only for the cost of administration of the Plan. In determining such fees, the Board shall at least consider: (1) the amount and estimated rate of increase of tuition and fees at institutions of higher education; (2) estimated investment returns; (3) estimated administrative costs; and (4) the period between the date the contract is entered into and the date the beneficiary is projected to graduate from high school;

(2) Customary and usual invest-

ment costs (including fees and expenses of any fund in which Plan assets are invested) and distribution costs may be deducted from the Plan fund in connection with the investment thereof and are not included in the administrative fees. Customary and usual account maintenance fees may be deducted from individual accounts opened and held by Account Owners who are not New Mexico residents, unless it is opened and held on behalf of a Beneficiary who is a New Mexico resident.

(3) ~~[Except upon the occurrence of an Early Termination Event or the overfunding of an account, if the Account Owner terminates the Customer Agreement prior to the use of all funds for an eligible purpose, the Account Owner must pay an early termination penalty not to exceed 10% of the portion of the distribution attributable to investment earnings on amounts contributed to the Account.] [Reserved.]~~

(4) If the Board determines that the Account Owner or the Beneficiary have made any material misrepresentations on the application form, in requests for disbursements or in any other communications with the Board or any Plan manager, acting pursuant to an agreement with the Board, the Account may be involuntarily liquidated by the Board. If the Board liquidates any account pursuant to this provision, the Account Owner will be entitled to a refund subject to ~~[a penalty of 10% of the portion of the refund attributable to investment earnings on amounts contributed to the Account]~~ any penalty as the Board may determine in accordance with the Plan Procedures and Guidelines and Federal Requirements.

(5) All amounts attributable to refund penalties remain the property of the Board, and may be used for purposes of the Plan.

(6) When a penalty is assessed, the Chair may (i) require that the amount of the penalty be set off from any funds remaining in the Account or (ii) will collect penalties by retaining a sufficient balance in an Account to pay the amount of the penalty.

(7) All penalties are in addition to all State and Federal taxes which may be due on the distribution. The Board may withhold an amount equal to any such taxes from a distribution.

K. Withdrawals For Purposes Other Than Qualified Higher Education Expenses

(1) An Account Owner may withdraw funds from an Account, subject ~~[the penalties identified in Section 10]~~ to any penalties assessed by the Plan. Any investment losses will be deducted from the principal amount of contributions. In addition, a

fee may be levied by the Board to reasonably compensate the Board its costs incident to the Account Owner's account.

(2) Except as otherwise specifically provided herein, only the Account Owner for each Account may close an Account or receive a refund of amounts contributed (and earnings) .

(3) Refunds will not be made to anyone other than the Account Owner for each Account, unless the Account Owner directs the Board in writing in accordance with Plan Procedures and Guidelines to provide the refund to another person.

(4) When the Beneficiary receives an Eligible Scholarship, as determined pursuant to the Internal Revenue Code, refund payments in an amount equal to the Eligible Scholarship may be issued to the Account Owner each academic term as long as the Eligible Scholarship is effective or the benefits may be transferred to another Beneficiary. Proof of the Eligible Scholarship must be submitted in a form acceptable to the Board in accordance with Plan Procedures and Guidelines. Refund payments may be subject to a processing fee.

(5) If the Beneficiary dies or becomes disabled, the amount of savings remaining available in the Account may be refunded or the benefits may be transferred to another Beneficiary. If a change of Beneficiary is not requested, a lump sum refund will be made to the Account Owner, provided proof of death or disability is submitted in a form acceptable to the Board consistent with Plan Procedures and Guidelines. Refund payments may be subject to a processing fee.

(6) The Board may notify the Account Owner of any Account in which a balance remains: (i) upon graduation of the Beneficiary from an Eligible Higher Educational Institution; (ii) upon the lack of any withdrawals for any ten-year period, subsequent to the expected initial withdrawal, during which period no withdrawal has been made; (iii) upon the completion of the last period of Beneficiary usage projected upon Account establishment; (iv) upon determination by the Board that no eligible Beneficiary exists; or (v) if the Account balance has fallen below \$250; of the amount of such balance and may request directions from the Account Owner as to the application of such balance, consistent with Plan Procedures and Guidelines. If the Account Owner fails to provide such direction with respect to all or part of such balance within 90 days, the Board may conclusively deem the Account to be overfunded in an amount equivalent to the portions of such balance for which no direction has been received and issue a refund for such amounts less

penalties, fees and State and Federal taxes.

L. Transfer of Ownership. The Account Owner may transfer ownership rights of an account to another eligible Account Owner, provided the transfer is accomplished without consideration in accordance with Plan Procedures and Guidelines. All requests for substitution of an Account Owner must include:

(1) The Account number;

(2) The name, address, social security number and telephone of the successor Account Owner;

(3) The reason for the transfer of ownership;

(4) Such evidence of verification, including without limitation the guaranteed signature of the Account Owner, as may be required or allowed by the Plan Procedures and Guidelines; and

(5) Such other information as the Board may require.

(6) If an individual becomes ineligible to be a Beneficiary, the Account Owner may designate another Beneficiary in accordance with Plan Procedures and Guideline.

(7) Neither the Account Owner nor the Beneficiary may use any rights to or interest in the account as security for a loan, including as security for a loan to purchase such interest in the Plan.

M. Prepaid Tuition Contracts. Prepaid tuition contracts, once paid, will cover all tuition and required fees of State public institution of higher education.

N. Gifts and Bequests. Gifts or bequests may be made to the Education Trust Fund as defined in the Act either on behalf of a Beneficiary or to the fund generally.

O. Benefits Excluded. Benefits under prepaid tuition contracts and college investment agreements are excluded from any calculation of a ~~[Beneficiary's]~~ Beneficiary's eligibility for financial aid from the State.

P. Waiver of Rule. The Chair may waive any requirement of this rule, except to the extent that the requirement is mandated by the Act, in cases where the deviation from the rule is insubstantial and is not contrary to the purposes of the Plan.

Q. Conflict of Interest. No member of the Board may vote on any matter in which the member or any organization the member works for has a conflict of interest or which may be perceived as a conflict of interest.

[5.7.30.8 NMAC - N, 6/29/2001; A, 11/15/2001]

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection A of 15.2.3.8 requiring associations to submit to the Commission their list of racing officials for approval sixty (60) days prior to the first day of the race meet.

15.2.3.8 FLAT RACING OFFICIALS GENERAL PROVISIONS:

A. Racing Officials:

Officials at a race meeting include the following: 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, absent video replay equipment; placing judge, if duty not performed by stewards; racing secretary; racing veterinarian; stable superintendent; starter; stewards; timer; track superintendent; any other person designated by the Commission.

(1) **Eligibility:** To qualify as a racing official, the applicant shall: be of good character and reputation; demonstrate experience in flat racing; be familiar with the duties of the position and with the Commission's rules of flat racing and show an ability to fulfill the requirements of the position.

(2) **Approval and Licensing:** The Commission, in its sole discretion, may determine the eligibility of a racing official and, in its sole discretion, may approve or disapprove any such official for licensing. An association shall submit to the Commission its request for approval of racing officials sixty (60) days prior to the first day of the race meet.

(3) **Prohibited Practices:** While serving in an official capacity, racing officials and their assistants shall not: participate in the sale or purchase, or ownership of any horse racing at the meeting; sell or solicit horse insurance on any horse racing at the meeting; be licensed in any other capacity without permission of the Commission, or in case of an emergency, the permission of the stewards; wager on the outcome of any race under the jurisdiction of the Commission; consume or be under the influence of alcohol or any prohibited substances while performing official duties.

(4) **Report of Violations:** Racing officials and their assistants shall report immediately to the stewards every observed violation of these rules and of the laws of this state governing racing.

(5) **Complaints Against Officials:** Complaints against any steward shall be made in writing to the Commission and signed by the complainant.

(a) Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the Commission by the stewards, together with a report of the action taken or the recommendation of the stewards.

(b) A racing official may be held responsible by the stewards or the Commission for their actions, and the actions of their assistants and/or employees.

(6) Appointment:

(a) A person shall not be appointed to more than one racing official position at a meeting unless specifically approved by the Commission.

(b) The Commission shall appoint or approve the stewards at each race meeting.

(7) Appointment of Substitute

Officials: Where an emergency vacancy exists among racing officials (except for stewards), the stewards or the association, with the stewards' approval, shall fill the vacancy immediately. Such appointment shall be reported to the Commission and shall be effective until the vacancy is filled in accordance with these rules.

(8) **Appointment of Substitute Steward:** Should any steward be absent at race time, and no approved alternate steward be available, the remaining stewards shall appoint a substitute for the absent steward. If a substitute steward is appointed, the Commission and the association shall be notified by the stewards. The following are prohibited from serving as a substitute steward: director, deputy director, or racing Commissioner.

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; 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 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.

C. Racing Secretary:

(1) General Authority: The racing secretary shall be responsible for the programming of races during the race meeting, compiling and publishing condition books, assigning weights for handicap races, and shall receive all entries, subscriptions, declarations and scratches.

(2) Foal, Health and Other Eligibility Certificates: The racing secretary shall be responsible for receiving, inspecting and safeguarding the foal and health certificates and other documents of eligibility for all horses competing at the track or stabled on the grounds.

(3) Allocation of Stalls:

(a) The racing secretary shall assign stall applicants such stabling as is deemed proper and maintain a record of arrivals and departures of all horses stabled on association grounds.

(b) Stall approvals shall be determined by: each track's screening rule as approved by the New Mexico Racing Commission; consideration given to stables with a balanced application; and, New

Mexico Breds on each application shall have preference over horses of comparable quality.

(4) Conditions:

(a) The racing secretary shall establish the conditions and eligibility for entering races and cause them to be published to owners, trainers and the Commission and be posted in the racing secretary's office.

(b) For the purpose of establishing conditions, winnings shall be considered to include all monies won up to the time of the start of a race.

(c) Winnings during the year shall be calculated by the racing secretary from the preceding January 1.

(d) A minimum of two (2) races, one for Quarter Horses and one for Thoroughbreds restricted to registered New Mexico bred horses, shall be offered daily in the condition book excluding trials.

(5) Listing of Horses: The racing secretary shall: examine all entry blanks and declarations to verify information as set forth therein; select the horses to start and the also eligible horses from the declarations in accordance with these rules.

(6) Posting of Entries: Upon completion of the draw each day, the racing secretary shall post a list of entries in a conspicuous location in his/her office and make the list available to the media. If the racing secretary declares a race off, the names of entrants in that race shall be posted on the official bulletin board that day, identifying the race by number as it appears in the condition book.

(7) Daily Program: The racing secretary shall publish the official daily program, ensuring the accuracy therein of the following information: sequence of races to be run and post time for the first race; purse, conditions and distance for each race, and current track record for such distance; the name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried; the name of the trainer and the name of the jockey named for each horse together with the weight to be carried; the post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation; identification of each horse by name, color, sex, age, sire and dam; such other information as may be requested by the association or the Commission.

(8) Nominations and Declarations: The racing secretary shall examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication.

(9) Stakes and Entrance Money Records: The racing secretary shall be caretaker of the permanent records of all stakes and shall verify that all entrance monies due are paid prior to entry for races conducted at the meeting.

D. Horsemen's Bookkeeper:

(1) General Authority: The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the association and Commission may prescribe.

(2) Records:

(a) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(b) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements and registrations of authorized agents.

(c) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the association.

(d) All records of the horsemen's bookkeeper including records of accounts and monies and funds kept on deposit are subject to inspection by the Commission at any time.

(e) The association licensee is subject to disciplinary action by the Commission for any violations of or non-compliance with the provisions of this rule.

(3) Monies and Funds on Account:

(a) All monies and funds on account with the horsemen's bookkeeper shall be maintained: separate and apart from monies and funds of the association; in a trust account designed as "Horsemen's Trust Account"; in an account insured by the Federal Deposit and Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The horsemen's bookkeeper shall be bonded in accordance with Commission stipulations.

(4) Payment of Purses:

(a) The horsemen's bookkeeper shall receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other monies that properly come into his/her possession in accordance with the provision of Commission rules.

(b) The horsemen's bookkeeper may accept monies due belonging to other

organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(c) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within 48 hours of the completion of the race with respect to all horses not tested and when no timely appeal has been filed, and where a horse been tested within forty-eight (48) hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards or the Commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory(ies).

(d) Absent a prior request, the horsemen's bookkeeper shall disburse monies to the persons entitled to receive same within fifteen (15) days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the Commission.

(e) In the event a protest or appeal has been filed with the stewards or the Commission, the horsemen's bookkeeper shall disburse the purse within forty-eight (48) hours of receipt of dismissal or a final non-appealable order disposing of such protest or appeal.

E. Paddock Judge:

(1) General Authority: The paddock judge shall: supervise the assembly of horses in the paddock before the scheduled post time for each race; maintain a written record of all equipment, inspect all equipment of each saddled and report any change thereof to the stewards; prohibit any change of equipment without the approval of the stewards; ensure that the saddling of all horses is orderly, open to public view, free from public interference, and that horses are mounted at the same time, and leave the paddock for the post in proper sequence; supervise paddock schooling of all horses approved for such by the stewards; report to the stewards any observed cruelty to a horse; ensure that only properly authorized persons are permitted in the paddock; report to the stewards any unusual or illegal activities.

(2) Paddock Judge's List:

(a) The paddock judge shall maintain a list of horses which shall not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing.

(b) At the end of each race day, the paddock judge shall provide a copy of the list to the stewards.

(c) To be removed from the paddock judge's list, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock.

F. Horse Identifier:

(1) General Authority: The horse identifier shall: when required, ensure the safekeeping of registration certificates and racing permits for horses stabled and/or racing on association grounds; inspect documents of ownership, eligibility, registration or breeding necessary to ensure the proper identification of each horse scheduled to compete at a race meeting; examine every starter in the paddock for sex, color, markings and lip tattoo or other approved method of positive identification, for comparison with its registration certificate to verify the horse's identity; supervise the tattooing, branding or other approved method of positive identification, for identification of any horse located on association grounds/

(2) Report Violations: The horse identifier shall report to the stewards any horse not properly identified or whose registration certificate is not in conformity with these rules.

G. Clerk of Scales: The clerk of scales shall: verify the presence of all jockeys in the jockeys' room at the appointed time; verify that all such jockeys have a current jockey's license issued by the Commission; verify the correct weight of each jockey at the time of weighing out and weighing in and report any discrepancies to the stewards immediately; oversee the security of the jockeys' room including the conduct of the jockeys and their attendants; promptly report to the stewards any infraction of the rules with respect to weight, weighing, riding equipment or conduct; record all required data on the scale sheet and submit that data to the horsemen's bookkeeper at the end of each race day; maintain the record of applicable winning races on all apprentice certificates at the meeting; release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet; assume the duties of the jockey room custodian in the absence of such employee.

H. Jockey Room Custodian: The jockey room custodian shall: supervise the conduct of the jockeys and their attendants while they are in the jockey room; keep the jockey room clean and safe for all jockeys; ensure all jockeys are in the correct colors before leaving the jockey room to prepare for mounting their

horses; keep a daily film list as displayed in plain view for all jockeys; keep a daily program displayed in plain view for the jockeys so they may have ready access to mounts that may become available; allow only authorized or licensed persons access to the jockey room; for the purposes of this subsection, authorized persons are jockeys, jockey attendants, jockey room employees, starting gate personnel, track physician, stewards, Commissioners and their duly authorized representatives, and such other persons who in the determination of the stewards have a legitimate purpose or need related to the conduct of racing that requires that they have access to the jockey room; report to the stewards any unusual occurrences in the jockey room; and, ensure all jockey's whips are in compliance with Paragraph (1) of Subsection A of 15.2.5.13 NMAC.

I. Starter:

(1) General Authority: The starter shall: have complete jurisdiction over the starting gate, the starting of horses and the authority to give orders not in conflict with the rules as may be required to ensure all participants an equal opportunity to a fair start; appoint and supervise assistant starters who have demonstrated they are adequately trained to safely handle horses in the starting gate; in emergency situations, the starter may appoint qualified individuals to act as substitute assistant starters; assign the starting gate stall positions to assistant starters by lot and notify the assistant starters prior to post time for the first race of their respective stall positions which will remain that assistant starter's position throughout the day; there shall be no changes except with permission of the stewards; assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and shall make said assessment known to the stewards; load horses into the gate in any order deemed necessary to ensure a safe and fair start.

(2) Assistant Starters: With respect to an official race, the assistant starters shall not: handle or take charge of any horse in the starting gate without the expressed permission of the starter; impede the start of a race; apply any device, without the approval of the stewards to assist in loading a horse into the starting gate; slap, boot or otherwise dispatch a horse from the starting gate; strike or use abusive language to a jockey; accept or solicit any gratuity or payment other than his/her regular salary, directly or indirectly, for services in starting a race.

(3) Starter's List: No horse shall be permitted to start in a race unless approval is given by the starter. The starter shall maintain a starter's list of all horses

which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse shall be refused entry until it has been satisfactorily schooled in the gate and can be removed from the starter's list. Schooling shall be under the supervision of the starter.

(4) Report Violations: The starter and assistant starter shall report all unauthorized activities to the stewards.

J. Timer/Clocker:

(1) General Authority (Timer):

(a) The timer shall accurately record the time elapsed between the start and finish of each race.

(b) The time shall be recorded from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line.

(c) At the end of a race, the timer shall post the official running time on the infield totalisator board on instruction by the stewards.

(d) At a racetrack equipped with an appropriate infield totalisator board, the timer shall post the quarter times (splits) for thoroughbred races in fractions as a race is being run. For quarter horse races, the timer shall post the official times in hundredths of a second.

(e) For back-up purposes, the timer shall also use a stopwatch to time all races. In time trials, the timer shall ensure that three stopwatches are used by the stewards or their designees.

(f) The timer shall maintain a written record of fractional and finish times of each race and have same available for inspection by the stewards or the Commission on request.

(2) General Authority (Clocker):

(a) The clocker shall be present during training hours at each track on association grounds, which is open for training, to identify each horse working out and to accurately record the distances and times of each horse's workout.

(b) Each day, the clocker shall prepare a list of workouts that describes the name of each horse which worked along with the distance and time of each horse's workout.

(c) At the conclusion of training hours, the clocker shall deliver a copy of the list of workouts to the stewards and the racing secretary.

K. Patrol Judge: The patrol judge, when utilized, is responsible for observing the race and reporting information concerning the race to the stewards. If the track's video replay system is deemed adequate, use of patrol judges is optional.

L. Gate Judge:

The Commission may require each track to employ a gate judge whose duties shall include being present at the starting gate just prior to the running of each race to observe and report any violations of the rules to the stewards, and to otherwise assist the stewards as they may so order.

M. Placing Judge:

(1) General Authority: The placing judges shall determine the order of finish in a race as the horses pass the finish line, and with the approval of the stewards, may display the results of the totalisator board.

(2) Photo Finish:

(a) In the event the placing judges or the stewards request a photo of the finish, the photo finish shall be posted on the totalisator board.

(b) Following their review of the photo finish film strip, the placing judges shall, with the approval of the stewards, determine the exact order of finish for all horses participating in the race, and shall immediately post the numbers of the first four finishers on the totalisator board.

(c) In the event a photo was requested, the placing judges shall cause a photographic print of said finish to be produced. The finish photograph shall, when needed, be used by the placing judges as an aid in determining the correct order of finish.

(d) Upon determination of the correct order of finish of a race in which the placing judges have utilized a photographic print to determine the first four finishers, the stewards shall cause prints of said photograph to be displayed publicly in the grandstand and clubhouse areas of the racetrack.

(3) Dead Heats:

(a) In the event the placing judges determine that two or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat shall, with the approval of the stewards, be declared.

(b) In the event one or more of the first four finishers of a race are involved in a dead heat, the placing judges shall post the dead heat sign on the totalisator board and cause the numbers of the horse or horses involved to blink on the totalisator board.

N. Official Veterinarian:

The official veterinarian shall:

(1) be employed by the Commission;

(2) be a graduate veterinarian and be licensed to practice in the state;

(3) recommend to the stewards any horse deemed unsafe to be raced, or a horse that it would be inhumane to allow to race;

(4) supervise the taking of all

specimens for testing according to procedures approved by the Commission;

(5) provide proper safeguards in the handling of all laboratory specimens to prevent tampering, confusion or contamination;

(6) have the authority and jurisdiction to supervise the practicing licensed veterinarians within the enclosure;

(7) report to the Commission the names of all horses humanely destroyed or which otherwise expire at the meeting and the reasons therefore;

(8) refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the Commission;

(9) place horses on the Bleeder List and remove horses from the Bleeder List; and

(10) be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of racing the horse to so act.

O. Racing Veterinarian:

(1) **General Authority:** At the discretion of the Commission, the racing veterinarian may be an employee of the Commission. At the discretion of the Commission, the duties of the racing veterinarian may be assumed by the official veterinarian.

(2) The association may employ an additional racing veterinarian in order to further ensure the safety of racing.

(3) The racing veterinarian shall:

(a) be directly responsible to the official veterinarian;

(b) be a graduate veterinarian and be licensed to practice in the state;

(c) be available to the racing secretary and/or the stewards prior to scratch time each racing day, at a time designated by the stewards, to inspect any horses and report on their condition as may be requested by the stewards;

(d) be present in the paddock during saddling, on the racetrack during the post parade and at the starting gate until the horses are dispatched from the gate for the race;

(e) inspect any horse when there is a question as to the physical condition of such horse;

(f) recommend scratching a horse to the stewards if, in the opinion of the racing veterinarian, the horse is physically incapable of exerting its best effort to win;

(g) inspect any horse which appears in physical distress during the race or at the finish of the race; and shall report such horse together with his/her opinion as to the cause of the distress to the stewards and to the official veterinarian;

(h) refuse employment or payment, directly or indirectly, from any horse owner or trainer of a horse racing or intending to race in this jurisdiction while employed as the official veterinarian for the Commission;

(i) refrain from directly treating or prescribing for any horse scheduled to participate during his/her term of appointment at any recognized meeting except in cases of emergency, accident or injury;

(j) be authorized to humanely destroy any horse deemed to be so seriously injured that it is in the best interests of racing to so act;

(k) conduct soundness inspections on horses participating in races at the meeting; and

(l) with approval of the official veterinarian, place horses on the Bleeders List.

(4) The racing veterinarian shall place horses on the veterinarian's list, when necessary, and may remove from the list those horses which are, in the racing veterinarian's opinion, able to satisfactorily compete in a race.

(5) The racing veterinarian shall be present at the office of the racing secretary and/or stewards prior to scratch time each racing day at a time designated by the stewards, to inspect any horses and report on their condition as may be requested by the stewards.

(6) Veterinarian's List:

(a) The racing veterinarian shall maintain a list of all horses which are determined to be unfit to compete in a race due to physical distress, unsoundness, infirmity or medical condition.

(b) A horse may be removed from the veterinarian's list when, in the opinion of the racing veterinarian, the horse has satisfactorily recovered the capability of performing in a race.

P. Any Other Person Designated by The Commission:

The Commission may create additional racing official positions, as needed. Persons selected for these positions shall be considered racing officials and shall be subject to the general eligibility requirements outlined in Subsection A of 15.2.3 NMAC.

[15.2.3.8 NMAC – Rp, 15 NMAC 2.3.8, 04/13/2001; A, 11/15/2001]

NEW MEXICO RACING COMMISSION

This is an amendment to Paragraph (7) of Subsection B of 15.2.5.8 NMAC which requires a trainer of a horse to declare at the time of draw which race a horse will run in if the horse is entered to run in more than one stakes race to be run on the same day.

15.2.5.8 ENTRIES AND NOMINATIONS:

A. ENTERING: No horse shall be qualified to start unless it has been and continues to be entered.

B. PROCEDURE:

(1) Entries and nominations shall be made with the racing secretary and shall not be considered until received by the racing secretary, who shall maintain a record of time of receipt of them for a period of one year.

(2) An entry shall be in the name of the horse's licensed owner and made by the owner, trainer or a licensed designee of the owner or trainer. Any horse which is in a race or on the also-eligible list may not be sold or transferred until that obligation is completed, except with permission of the stewards.

(3) Numbered races printed in the condition book shall have preference over extra races. Should any race fail to draw seven (7) separate wagering interests, it may be called off.

(4) An entry must be in writing, by telephone, electronically or facsimile machine to the racing secretary. The entry must be confirmed in writing should the stewards or the racing secretary so request.

(5) The person making an entry shall clearly designate the horse so entered.

(6) No alteration may be made in any entry after the closing of entries, but an error may be corrected with permission of the stewards.

(7) No horse may be entered in more than one race (with the exception of stakes races) to be run on the same day at the same track on which pari-mutuel wagering is conducted. **If a horse is entered in more than one stakes race to be run on the same day, at the time of draw, the trainer must declare which race the horse will run in.**

(8) Any permitted medication or approved change of equipment must be declared at time of entry. Any changes after that time must be approved by the stewards.

C. COUPLED ENTRIES:

(1) Two or more horses which are entered in a race shall be joined as a mutual entry and single betting interest if they are owned or leased in whole or in part by the same owner or are trained by a trainer who owns or leases any interest in any of the other horses in the race.

(2) No more than two horses having common ties through ownership or training may be entered in any overnight race. When making a coupled or uncoupled entry in an overnight race, the horse with the better date will be preferred. If both horses have the same date, the trainer must

make a first and second choice. Under no circumstances may both horses of a coupled, or uncoupled, entry start to the exclusion of a single preferred entry unless the race conditions specifically state otherwise. No two preferred horses entered by the same trainer or owned by the same owner shall start to the exclusion of a single preferred entry in overnight races.

D. NOMINATIONS:

(1) Any nominator to a stakes race may transfer or declare such nomination prior to closing.

(2) Joint nominations and entries may be made by any one of joint owners of a horse, and each such owner shall be jointly and severally liable for all payments due.

(3) Death of a horse, or a mistake in its entry when such horse is eligible, does not release the nominator or transferee from liability for all stakes fees due. No fees paid in connection with a nomination to a stakes race that is run shall be refunded except as otherwise stated in the conditions of a stakes race.

(4) Death of a nominator to a stakes race shall not render void any subscription, entry or right of entry. All rights, privileges and obligations shall be attached to the legal heirs of the decedent or the successor owner of the horse.

(5) When a horse is sold privately or at public auction or claimed, stakes engagements shall be transferred automatically to its new owner; except when the horse is transferred to a person whose license is suspended or who is otherwise unqualified to race or enter the horse, then such nomination shall be void as of the date of such transfer.

(6) All stakes fees paid toward a stakes race shall be allocated as provided by the conditions for the race. If a stakes race is not run for any reason, all such nomination fees paid shall be refunded.

E. CLOSINGS:

(1) Entries for purse races and nominations to stakes races shall close at the time designated by the association in previously published conditions for such races. No entry, nomination or declaration shall be accepted after such closing time; except in the event of an emergency or if an overnight race fails to fill, the racing secretary may, with the approval of a steward, extend such closing time.

(2) Except as otherwise provided in the conditions for a stakes race, the deadline for accepting nominations and declarations is midnight of the day of closing, provided they are received in time for compliance with every other condition of the race.

F. NUMBER OF STARTERS IN A RACE: The maximum number of starters in any race shall be lim-

ited to the number of starting positions afforded by the association starting gate and its extensions. The number of starters may be further limited by the number of horses, which, in the opinion of the stewards, can be afforded a safe, fair and equal start.

G. SPLIT OR DIVIDED RACES:

(1) In the event a race is cancelled or declared off, the association may split any overnight race for which postpositions have not been drawn.

(2) Where an overnight race is split, forming two or more separate races, the racing secretary shall give notice of not less than 15 minutes before such races are closed to grant time for making additional entries to such split races.

H. POST POSITIONS: Post positions for all races shall be determined by lot and shall be publicly drawn in the presence of a steward or steward designee.

I. ALSO-ELIGIBLE LIST:

(1) If the number of entries for a race exceeds the number of horses permitted to start, the racing secretary may create and post an also-eligible list.

(2) If any horse is scratched from a race for which an also-eligible list was created, a replacement horse shall be drawn from the also-eligible list into the race in order of preference. If none is preferred, a horse shall be drawn into the race from the also-eligible list by public lot. Horses which gain a position in a race from the also-eligible list take the outside post position in the order drawn from the also-eligible list.

(3) Any owner or trainer of a horse on the also-eligible list who does not wish to start the horse in such race shall so notify the racing secretary prior to scratch time for the race, thereby forfeiting any preference to which the horse may have been entitled in that race.

(4) If a scratch card is deposited for a horse listed as also-eligible, and if that horse is offered an opportunity to run by being drawn at scratch time, the horse shall lose its position on the preferred list.

J. PREFERRED LIST:

The racing secretary shall maintain a list of each horse's registration date, entry date, and racing date. Preference will be given to the best date. No date will be kept longer than sixty (60) days. A registration date can only be established when the foal certificate is on file with a racing secretary. An entry date is any time a horse passes the entry box, whether or not the race is in the condition book, or an extra, is used or eliminated. When the earliest entry date reaches sixty (60) days and expires, the next best entry

date for that horse becomes its preferred date. Entry dates have preference over race or registration dates of the same date. Any horse, which is scratched, will lose its date and must re-establish a date. All horses placed on the steward's, veterinarian's, starter's or identifier's list will be posted on the bulletin board and will lose their dates. (An exception may be made, when in the opinion of the board of stewards, a horse would be unduly penalized.)

[15.2.5.8 NMAC - Rp, 15 NMAC 2.5.8, 03/15/2001; A, 05/15/2001; A, 11/15/2001]

NEW MEXICO RACING COMMISSION

This is an amendment to Subsection O of 16.47.1.8 NMAC changing the thirty (30) day temporary license grace period to a twenty one (21) day for owners and lessors at the request of the trainer and payment of the license fees and an amendment to Subsection C of Section 16.47.1.10 NMAC to correct a technical error in the numbering.

16.47.1.8 GENERAL PROVISIONS

A. LICENSES REQUIRED: A person as defined by Subsection P, Paragraph (7) of 15.2.1.7 NMAC shall not participate in pari mutuel racing under the jurisdiction of the Commission, or be employed by an Association who is a gaming operator, without a valid license issued by the Commission.

(1) License categories shall include the following and others as may be established by the Commission: **GROUP A** - racing participants eligible for an optional annual or triennial year license to include owners, trainers, veterinarians, jockeys, and stable name registrations. **GROUP B** - associations, racing professionals, concession operators, contractors, and managerial racing officials. **GROUP C** - supervisory racing officials. **GROUP D** - persons employed by the association, or employed by a person or concern contracting with the association to provide a service or commodity, which requires their presence in a restricted area, or anywhere on association grounds while pari mutuel wagering is being conducted. **GROUP E** - racetrack or casino participant employees.

(2) Persons required to be licensed shall submit a completed application on forms furnished by the Commission and accompanied by the required fee. The following fees are assessed for the issuance of the specified licenses. In addition to license fees listed herein, \$20.00 is assessed for each identification picture and badge.

Announcer	\$55.00
Assistant General Manager	\$80.00
Assistant Racing Secretary	\$15.00
Association	\$80.00
Auditor, Official	\$55.00
Casino Employee	\$ 5.00
Clerk of Scales	\$15.00
Clocker	\$15.00
Club, Racetrack	\$80.00
Concession Employee	\$ 5.00
Concession Operator	\$80.00
Custodian of Jockey Room	\$15.00
Director or Corporate Officer	\$80.00
Director of Operations	\$55.00
Director of Racing	\$55.00
Electrician	\$ 5.00
Exercise Person	\$15.00
Film Employee	\$ 5.00
Gateman (Admissions)	\$ 5.00
General Manager	\$80.00
Groom	\$ 5.00
Horseman's Bookkeeper	\$15.00
Identifier (Horse)	\$15.00
Janitor	\$ 5.00
Jockey (3 year)	\$100.00
Jockey (1 year)	\$80.00
Jockey (Apprentice) (3 year)	\$100.00
Jockey (Apprentice) (1 year)	\$80.00
Jockey Agent	\$55.00
Jockey Valet	\$ 5.00
Laborer	\$ 5.00
Official Personnel (specify position)	\$ 5.00
Official Veterinarian (3 year)	\$100.00
Official Veterinarian (1 year)	\$80.00
Outrider	\$15.00
Owner (3 year)	\$100.00
Owner (1 year)	\$80.00
Paddock Judge	\$15.00
Pari Mutuel Employee	\$ 5.00
Pari Mutuel Manager	\$55.00
Placing Judge	\$15.00
Photo Operator	\$80.00
Photo Employee	\$ 5.00
Plater	\$80.00
Pony Person	\$ 5.00
Racing Secretary-Handicapper	\$55.00
Security Chief	\$55.00
Security Staff	\$ 5.00
Simulcast Company Employee	\$ 5.00
Simulcast Coordinator	\$55.00
Simulcast Operator	\$80.00
Special Event, 1 or 2 day	\$100.00
Stable Name (3 year)	\$100.00
Stable Name (1 year)	\$80.00
Stable Superintendent	\$55.00
Starter	\$55.00
Starter Assistant	\$15.00
Ticket Seller (Admissions)	\$ 5.00
Timer	\$15.00
Totalisator Employee	\$ 5.00
Totalisator Operator	\$80.00
Track Maintenance, Employee	\$ 5.00
Track Physician	\$80.00
Track Superintendent	\$55.00
Trainer (3 year)	\$100.00
Trainer (1 year)	\$80.00
Trainer Assistant	\$55.00
Veterinarian Assistant	\$15.00
Veterinarian, Practicing (3 year)	\$100.00
Veterinarian, Practicing (1 year)	\$80.00
Veterinarian, Racing (3 year)	\$100.00
Veterinarian, Racing (1 year)	\$80.00
Watchman	\$ 5.00

(3) License applicants may be required to furnish to the Commission a set(s) of fingerprints and a recent photo-

graph and may be required to be re-finger-printed or rephotographed periodically as determined by the Commission. The requirements for fingerprints may be fulfilled by submission of prints or verification of such, accepted by a member jurisdiction of the Racing Commissioners' International, and obtained within two years for annual licenses and four years for three-year licenses. License applicants for owner, trainer or jockey will only need to be fingerprinted upon first application, or if there is a break of three years or more in license continuity. If the Commission determines it is necessary, reprinting will be undertaken on the basis of alleged criminal activity on the part of the owner, trainer or jockey.

B. MULTI-STATE LICENSING INFORMATION:

Applicants shall be permitted to submit an Association of Racing Commissioners International, Inc. (RCI) Multi-State License Information Form and RCI fingerprint card and thereby obtain a criminal records check that can be used in other jurisdictions.

C. AGE REQUIREMENT:

(1) Applicants for licensing, except owners, must be a minimum of 14 years of age, but no one under the age of 16 may be licensed as a pony person or exercise person.

(2) A licensee must be a minimum of 14 years of age to handle a horse in the paddock.

D. CONSENT TO INVESTIGATION:

The filing of an application for license shall authorize the Commission to investigate criminal and employment records, to engage in interviews to determine applicant's character and qualifications, and to verify information provided by the applicant.

E. CONSENT TO SEARCH AND SEIZURE:

By acceptance of a license, a licensee consents to search and inspection by the Commission or its agents and to the seizure of any prohibited medication, drugs, paraphernalia or devices in accordance with state and federal law.

F. APPROVAL OR RECOMMENDATIONS BY STEWARDS:

The Commission may designate categories of licenses, which shall require stewards' prior approval or recommendation. Prior approval will include Exercise Riders, Pony Riders, and Apprentice Jockeys.

G. EMPLOYER RESPONSIBILITY:

(1) The employment of any unlicensed person under the jurisdiction of the Commission is prohibited.

(2) Every employer shall report

the discharge of any licensed employee in writing to the stewards, including the person's name and occupation.

H. EMPLOYER ENDORSEMENT OF LICENSE APPLICATIONS: The license application of an employee must be signed by the employer.

I. FINANCIAL RESPONSIBILITY:

(1) All persons engaged in racing shall maintain financial responsibility in matters pertaining to racing and the Parental Responsibility Act.

(2) Any person licensed by the Commission may file a financial responsibility complaint against another licensee. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due in connection with his/her operations as a licensee. A judgment from a civil court, which has been issued within one year of the date of the complaint, may be honored by the Stewards as long as at least the defendant is a licensee.

J. LICENSE REFUSAL:

The Commission may refuse to issue a license and give the applicant the option of withdrawal of an application without prejudice. If an applicant is refused, the applicant may reapply for a license.

K. LICENSE DENIAL:

(1) The Commission may formally deny an application in accordance with these rules.

(2) An application denied, if requested by the applicant, shall be reported in writing to the applicant denied stating the reasons for denial, and the date when a reapplication may be submitted.

(3) An application denied shall be reported to the Association of Racing Commissioners International, Inc., whereby other racing jurisdictions shall be advised.

L. GROUNDS FOR REFUSAL, DENIAL, SUSPENSION, OR REVOCATION OF LICENSE:

(1) The Commission may refuse to issue a license to an applicant, or may suspend or revoke a license issued, or order disciplinary measures, if the applicant:

(a) has been convicted of a felony;

(b) has been convicted of violating any law regarding gambling or a controlled dangerous substance;

(c) who is unqualified, by experience or otherwise, to perform the activities for which a license is required, or who fails to pass an examination prescribed by the Commission;

(d) has failed to disclose or falsely states any information required in the

application;

(e) has been found in violation of rules governing racing in this state or other jurisdictions;

(f) has been or is currently excluded from association grounds by a recognized racing jurisdiction;

(g) has had a license denied, suspended, or revoked by any racing jurisdiction;

(h) is a person whose conduct or reputation may adversely reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of a race meeting. Interfering with the orderly conduct of a race meeting shall include, but is not limited to, disruptive or intemperate behavior or behavior which exposes others to danger anywhere on the racetrack grounds. The fact that the race meet was not actually interrupted is not a defense to the imposition of discipline under this rule;

(i) demonstrates a lack of financial responsibility by accumulating unpaid obligations, defaulting on obligations or issuing drafts or checks that are dishonored, or payment refused. For the purpose of this sub-section, non-compliance with the Parental Responsibility Act shall be considered grounds for refusal, denial, suspension, or revocation of a license; the application, or license as applicable, shall be reinstated if within thirty (30) days of the date of the notice, the applicant provides the Commission with a certified statement from the department that he/she is in compliance with a judgement and order for support;

(j) is ineligible for employment pursuant to federal or state law concerning age or citizenship.

(2) A license suspension or revocation shall be reported in writing to the applicant and the Association of Racing Commissioners International, Inc., whereby other racing jurisdictions shall be advised.

(3) Any license denied, suspended or revoked by the Commission pursuant to these rules shall state the time period for the effect of its ruling. When the action is taken for a misdemeanor or felony conviction, the time period shall be the period of the licensee's or applicant's imprisonment; or if not imprisoned, the period of probation, deferral, unless the person can satisfy the Commission of sufficient rehabilitation. This rule shall also apply to licensees who voluntarily turn in their license because of, or in anticipation of, a conviction.

M. DURATION OF LICENSE:

(1) All annual licenses issued by the Commission expire December 31 of the calendar year issued. All triennial licenses expire December 31st of the third calendar year issued.

(2) A license is valid only under the condition that the licensee remains eligible to hold such license.

N. CHANGES IN APPLICATION INFORMATION:

(1) During the period for which a license has been issued, the licensee shall report to the Commission changes in information provided on the license applications as to current legal name, marital status, permanent address, criminal convictions, license suspension of 10 days or more and license revocations in other jurisdictions.

(2) A child or spouse pass, a change in current legal name, or badge replacement, requires a completed application and payment of a photo badge fee.

O. TEMPORARY LICENSES:

(1) The Commission may establish provisions for temporary licenses, or may permit applicants to participate in racing pending action on an application. No person may engage in horse racing or be employed on the licensee's premises unless he has been licensed by the Commission, except at the request of a licensed trainer, and upon payment of fees by the licensed trainer, owners and lessors may be allowed a grace period of ~~thirty (30)~~ twenty one (21) days upon approval of the board of stewards.

(2) The Commission may grant an Association, who is not conducting a live horse race meeting, a grace period of thirty (30) days to obtain the required licenses for its casino and simulcast employees. An Association shall provide to the Commission each month, an employment roster for all casino and simulcast employees.

P. MORE THAN ONE LICENSE: More than one license to participate in horse racing may be granted except when prohibited by these rules due to a potential conflict of interest.

Q. CONFLICT OF INTEREST:

(1) The Commission may refuse, deny, suspend or revoke the license of a person whose spouse holds a license and which the Commission or stewards find to be a conflict of interest.

(2) A racing official who is an owner of either the sire or dam of a horse entered to race shall not act as an official with respect to that race.

(3) A person who is licensed as an owner or trainer in a horse registered for racing at a race meeting in this jurisdiction shall not be employed or licensed as a jockey, apprentice jockey; jockey agent; racing official; assistant starter; track maintenance supervisor; jockey room custodian; valet; outrider; racing chemist, testing laboratory

employee, or security personnel.

R. LICENSE PRESENTATION:

(1) A person must present an appropriate license or other authorization issued by the Commission to enter a restricted area. The Commission may issue authorization to the spouse or child of a licensed owner, trainer or jockey to enter a restricted area.

(2) The stewards may require visible display of a license while the licensee is engaged in the duty for which he/she is licensed and on the association grounds unless the licensee is mounted on a horse.

(3) A license may only be used by the person to whom it is issued.

S. TEMPORARY ACCESS AUTHORITY: Track security may authorize unlicensed persons temporary access to restricted areas. Such person shall be identified and their purpose and credentials verified and approved in writing by track security. Such authorization or credential may only be used by the person to whom it is issued.

T. KNOWLEDGE OF RULES: A licensee shall be knowledgeable of the rules of the Commission; and by acceptance of the license, agrees to abide by the rules.

U. PROTECTION OF HORSES:

(1) Each person licensed by the Commission shall do all that is reasonable and within his/her power and scope of duty to guard against and prevent the administration of any drug, medication or other substance, including permissible medication in excess of the maximum allowable level, to any horse entered or to be entered in an official workout or race, as prohibited by these rules.

(2) No licensee or other person under the jurisdiction of the Commission shall subject or permit any animal under his/her control, custody or supervision to be subjected to or to incur any form of cruelty, mistreatment, neglect or abuse or abandon, injure, maim or kill or administer any noxious substance to or deprive any animal of necessary care or sustenance, shelter or veterinary care.

V. RESTRICTIONS: Beginning one hour before post time, the use of cellular telephones will be prohibited in the paddock, on the racetrack surface and winner's circle until the last race is official. Cellular telephone use will also be prohibited behind the starting gate during training and racing hours. The Association shall be responsible for posting notices of the prohibition in these restricted areas.

[16.47.1.8 NMAC – Rp, 16 NMAC 47.1.8, 03/15/2001; A, 08/30/2001; A, 11/15/2001]

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.

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) 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;

(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;

(19) horses entered as to eligibility and weight or other allowances claimed;

[(19)](20) ensuring the fitness of a horse to perform creditably at the distance entered;

[(20)](21) ensuring that his/her horses are properly shod, bandaged, and equipped;

[(21)](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;

[(22)](23) personally attending to his/her horses in the paddock and supervising the saddling thereof, unless excused by the stewards;

[(23)](24) instructing the jockey to give his/her best effort during a race and that each horse shall be ridden to win;

[(24)](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;

[(25)](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 responsible 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 pre-

vented 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]

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

**TITLE: 14 HOUSING AND
CONSTRUCTION
CHAPTER: 11 OTHER BUILDING
CODES AND STANDARDS
PART: 11 STANDARD FOR
RAMMED EARTH CONSTRUCTION**

14.11.11.1 ISSUING AGENCY:
The Construction Industries Division of the Regulation and Licensing Department.
[14.11.11.1 NMAC – N, 12/15/01]

14.11.11.2 SCOPE: This rule applies to construction within the State of New Mexico involving loadbearing rammed earth construction. This rule is to be read in conjunction with all other statutes, codes, and standards of the Construction Industries Division and the State of New Mexico, except those it expressly amends for the purposes of addressing rammed earth construction.
[14.11.11.2 NMAC – N, 12/15/01]

14.11.11.3 STATUTORY AUTHORITY: Pursuant to Section 60-13-9 (F) of the Construction Industries Licensing Act (1978), the Construction Industries Division of the Regulation and Licensing Department has adopted 14.11.11 NMAC. This section provides as follows: "The Division shall adopt all building codes and minimum standards as recommended by the trade bureaus and approved by the commission so that the public welfare is protected, uniformity is promoted, and conflicting provisions are avoided;"
[14.11.11.3 NMAC – N, 12/15/01]

14.11.11.4 DURATION :
Permanent; until later amended, repealed or replaced.
[14.11.11.4 NMAC – N, 12/15/01]

14.11.11.5 EFFECTIVE DATE:
December 15, 2001, unless a later date is cited at the end of a Section. [14.11.11.5 NMAC – N, 12/15/01]

14.11.11.6 OBJECTIVE: The objective of 14.11.11 NMAC is to promote the general welfare of the people of New Mexico by providing for the protection of life and property through standards that, when complied with, will result in a safer structure installation, etc.
[14.11.11.6 NMAC – N, 12/15/01]

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

B. Amendments: 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: a projecting structure providing lateral support to a wall. The buttress shall be incorporated into the foundation and wall system. Refer to Appendix Figure 1.

D. Channel: a groove, slot or cavity on the vertical rammed earth wall surface; generally formed prior to ramming or curing. Refer to Appendix Figure 2.

E. Keyway: a groove on the vertical rammed earth wall surface for interlocking purposes. Refer to Appendix Figure 3.

F. Nailer: any material incorporated into the wall prior to ramming that serves as an attachment device. Refer to Appendix Figure 4.

G. Optimum Moisture: sufficient water (generally no more than 10%) mixed into the soil to attain sufficient compaction.

H. Qualified Soil: any soil, or mixture of soil, that attains 300 p.s.i. compression strength and attains 50 p.s.i. modulus of rupture.

I. Rammed Earth: qualified soil that is mechanically or manually consolidated to full compaction.

J. Stabilization, Stabilized: qualified soils that pass the wet strength compression test or contain a minimum of 6% Portland cement by weight. Stabilization is achieved through the use of amendments.

K. Wet Strength

Compression Test: an approved testing laboratory process in which a fully cured rammed earth sample is completely submerged in water a minimum of four hours prior to testing.
[14.11.11.7 NMAC – N, 12/15/01]

**14.11.11.8 STANDARDS FOR
RAMMED EARTH CONSTRUCTION**

A. General

(1) These Standards apply to Seismic Zones 0, 1 and 2B.

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

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

(4) Unstabilized rammed earth walls must be covered to prevent infiltration of moisture from the top and sides of the wall at the end of each workday and prior to wet weather conditions, whether in-form or out.

(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 Appendix Figure 4.

(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) Unless otherwise provided for in this Standard, the following codes are the minimum requirements: Uniform Building Code (ICBO); State of New Mexico Building Code; Uniform Mechanical Code (IAPMO); Uniform Plumbing Code (IAPMO); New Mexico Plumbing and Mechanical Code; National Electrical Code (NFPA); State of New Mexico Electrical Code; LP Gas Codes; NFPA 54; ANSI; Energy Conservation Code; Any additional codes and standards as may be adopted by the Construction Industries Division. **NOTE:** The current edition of the above codes adopted in the State of New Mexico with applicable New Mexico changes shall apply. Copies of these codes are on file at the Construction Industries Division

(9) The general construction of the building shall comply with all provisions of the Uniform Building Code (UBC) unless otherwise provided for in this

Standard.

B. Rammed Earth Construction Standards

(1) Rammed Earth Wall Height To Thickness Ratio. Rammed earth walls heights shall be determined as follows: Refer to Table 8.B.1 to determine wall height to wall width ratios. Wall heights shall be measured from the top of the supporting stem wall to the top of the bond beam. Wall heights and thickness ratios other than that provided in Table 8.B.1 require sealed calculations and/or drawings by a structural or civil engineer registered in the State of New Mexico.

Table 8.B.1 - Rammed Earth Wall Height To Thickness Ratio

Rammed Earth Wall Thickness in Inches	Maximum Wall Height
12 ¹	6' - 0" (without bond beam)
12 ¹	8' - 0" (with bond beam)
18	10' - 8"
20	11' - 4"
22	12' - 0"
24	12' - 8"

¹12-inch thick rammed earth walls are limited to interior partition walls.

²Rammed earth walls ≤ 6' - 0" in height do not require a bond beam on top of wall

³Rammed earth walls > 6' - 0" in height require a bond beam on top of wall

(2) Rammed Earth Wall Lateral Support.

(a) Lateral support shall occur at intervals not to exceed 24 feet. Rammed earth walls 18 to less than 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 60 degrees of support (Refer to Appendix Figure 5); An adobe wall of bond beam height and at least 14 inches in width that intersects with and attaches to the running wall with at least 60 degrees of support (Refer to Appendix Figure 5); A minimum 20 gauge steel frame or wood frame wall of full height that intersects with and attaches to the running wall with 90 degrees of support that is properly cross braced or sheathed (Refer to Appendix Figure 6); A buttress configuration that intersects the running wall at 90 degrees of adobe or rammed earth. The buttress base must project a minimum of 3 feet (or 33% of the wall height) from the running wall and support at least 75 percent of the total wall height (refer to Appendix Figure 7). The thickness of a rammed earth buttress shall be at least 18 inches. The thickness of an adobe buttress shall be a minimum 14 inches.

(b) Rammed earth walls greater than 24 inch in thickness are self-buttressing and do not require lateral support.

(3) Openings.

(a) 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: In rammed earth walls 18 to 24 inch thick, openings shall not be located within 3 feet of any corner of the structure (Refer to Appendix Figure 8). **Exception:** openings may be located within 3 feet of any corner provided a buttress extending at least 3 feet from the structure supports the corner. A continuous footing below and a continuous bond beam above shall be provided across such openings.

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

(c) Rammed Earth Piers supporting openings shall measure no less than 3 square feet in area. No dimension shall measure less than 18 inches (Refer to Appendix Figures 9-A and 9-B).

(4) Foundations.

(a) Foundation construction shall comply with adopted code provisions and the following: A minimum of three continuous #4 steel rebar are required in footings supporting rammed earth walls. Stem walls will be the full width of the wall supported above or wider to receive forming systems. Footings shall be a minimum of 10 inches in thickness.

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

(c) A keyway 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 2 inches deep by 6 inches wide formed at the time of the pour, and shall run continuously around the structure to include any intersecting rammed earth wall section. The rammed earth wall shall be fully rammed into this keyway. Refer to Appendix Figure 2. **Exception:** Placement of vertical steel extending a minimum of 12 inches into the rammed earth wall. Vertical steel shall be minimum #4 steel imbedded into the concrete spaced 48 inches on center maximum.

(d) Rubble-filled foundation trench designs with a concrete grade beam above the

rubble are allowed to support rammed earth wall construction. A architect or engineer registered in the State of New Mexico shall certify the rubble-filled foundation design portion.

(5) Rammed Earth Soil Specifications.

(a) **Soil Preparation:** Soil shall not contain rock more than 1 ½ inch diameter. Soil shall not contain clay lumps more than ½-inch diameter. Soil shall be free of all organic matter. Soil shall not contain more than 2 percent (2%) soluble salts.

(b) **Soil Compressive Strength:** Prior to the start of construction, the rammed earth soil shall be tested at an approved testing laboratory for compressive strength. Sample tested shall be representative of soil to be used for construction. The compressive strength report shall be submitted with the permit application. Ultimate compressive strength of all rammed earth soil shall be a minimum of 300 p.s.i. Laboratory testing shall indicate rammed earth samples attained a minimum of 200 p.s.i. after 7 days. Rammed earth soil samples shall be rammed and fully cured prior to submission for testing at an approved testing laboratory. If a different soil is provided at any time during construction, it must meet minimum compressive strength requirements outlined above prior to use in the structure.

(c) **Amended Soil:** The following guidelines shall apply when amending soils to attain a qualified soil: Soil shall not contain rock greater than 1 ½ inch in diameter. Soil shall not contain clay lumps greater than ½ inch diameter. Soil shall be free of organic matter. Soil shall not contain more than 2 percent (2%) soluble salts. Soils to be mixed shall be sufficiently dry to blend completely to one uniform color. The amended soil shall be tested and approved by the building official prior to use. Refer to Section 5(b) for soil compressive strength testing requirements.

(6) **Rammed Earth Soil Stabilization.** The following shall apply to stabilization of rammed earth soil: Asphalt emulsion may not be used for stabilization of rammed earth soil. Thorough mixing of additives to the soil may be achieved by any method that assures a complete blending to a uniform color and texture. Stabilized soil is suitable soil that contains 6 percent or more Portland cement by weight or stabilized soil that passes the wet strength compression test. Rammed earth soil containing less than 6 percent Portland cement by weight, or rammed earth soil not passing the wet strength compression test, shall be protected with approved stucco systems or other method approved by the building official. Refer to Section 14 for weather resis-

tive barrier requirements.

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

(8) Placement Of Material, Compaction And Curing.

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

(b) Lifts of prepared soil shall be placed in the forms in relatively even layers not to exceed 8 inches in depth. Each lift shall be rammed to full compaction as required in Section 5(b).

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

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

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

(f) Portland stabilized walls not in forms shall be lightly sprayed with water at least five (5) spaced times during daylight hours. This procedure shall continue for at least three (3) days from the time the wall is exposed to the elements. **Exception:** rammed earth walls left in forms three (3) or more days shall not require water spraying.

(9) Placement Of Attachment Materials

(a) Nailers. Nailers incorporated into the rammed earth wall shall be installed as follows (Refer to Appendix Figure 4): The rammed earth wall shall not be reduced in thickness with back-to-back nailers. To avoid an hourglass configuration in 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 Appendix Figure 11). The nailer shall be no more than 2 inches by 4 inches in dimension.

(b) Channels. Channels may be incorporated into the rammed earth wall as follows (Refer to Appendix Figure 2): To

avoid an hourglass configuration in wall section, channels on either side of a running wall shall not be opposite each other (Refer to Appendix Figure 4). Channels shall be no more than 2 inches by 4 inches in dimension. Vertical channels shall not be placed closer than twelve (12) inches to a rammed earth wall finished edge or corner.

(10) Nichos Or Other Shaped Voids.

(a) General. The depth of the void shall not exceed 1/3 the depth of the rammed earth wall. The width of the void shall be as defined in Section 3. Where lintels are required over voids, they shall be installed prior to ramming subsequent lifts.

(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 full radius arched opening. Refer to Section 13 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 full radius arched opening of stabilized rammed earth material. Refer to Section 13 for lintel requirements.

(11) Attachments And Connections.

(a) General: Attachments and connections 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 with no consideration for attachment or connection.

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

(c) Attachment of an 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 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 in the adjoining adobe coursing, every four courses minimum (Refer to Appendix Figure 12). Or, a keyway, not to exceed the depth of the adobe wall, nor 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 Appendix Figure 13)

(d) Attachment of a wood or loadbearing steel frame wall to a rammed earth wall: A 1/2 inch minimum diameter anchor bolt with 4 inch hook, set in a linear vertical pattern a maximum of 24 inches on center. The anchor bolt shall be embedded at least 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. Or, and 18 gauge by 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. The remainder of the vertical stud shall be attached to the rammed earth with 30d nails or screws embedded a minimum of 3 inches into the adjacent wall at 8 inches on center vertically. Refer to Appendix Figure 14.

(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 3-inch penetration into the rammed earth wall. Heavier units may utilize stronger attachments such as anchor bolts and T-bolts, steel pins, etc. embedded into the rammed earth wall.

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

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

(h) Attachment of concrete bond beam to the rammed earth wall: Number 4 reinforcing bar shall be driven into the uncurved wall. The reinforcing bar shall be set a maximum 20-degree angle along both edges of the wall, staggered no more than 24 inches on center and no closer than 4 inches from the exterior faces of the

wall. The reinforcing bar shall extend a minimum of 12 inches into the rammed earth wall and 4 inches into the concrete bond beam. Refer to Appendix Figure 16.

(i) Attachment of wood bond beam to the rammed earth wall: One-half inch diameter anchor bolt with 4 inch hook shall be set into the uncured rammed earth wall. The bolts shall be staggered a maximum of 24 inches on center along both edges of the wall, staggered no closer than 6 inches from the exterior faces of the wall. The bolt shall extend a minimum of 18 inches into the rammed earth wall.

(12) Bond Beams.

(a) General: The bond beam shall be secured to the rammed earth wall. Refer to Sections 11(h) and 11(i). Bond beams may be of wood or concrete construction. Bond beams shall measure 6 inches nominal depth and extend the full width of the wall. **Exception:** the bond beam width may be reduced as follows: 2 inches maximum in an 18 to 24 inch thick rammed earth wall; 3 inches maximum in a rammed earth wall 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 pour.

Varying height bond beams shall extend into the adjoining rammed earth wall one half 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 above, wood bond beams shall be constructed as approved by the Building Official. Light Wood Bond Beam construction maybe utilized as detailed in Appendix Figure 10.

(c) Concrete bond beam construction: In addition to the general requirements above, concrete bond beams shall be constructed of minimum 2500 p.s.i. concrete and shall contain steel reinforcement as follows: For 18 to 24 inch thick rammed earth wall construction, a minimum of two continuous #4 steel reinforcing bars shall be used. For walls equal to or greater than 24 inches in thickness, a minimum of two continuous #5 steel reinforcement shall be used. Provide 2-inch minimum reinforcement concrete cover over all horizontal steel reinforcement. 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 or perpendicular intersections with other structural full-height walls. Cold joints shall be tied into the adjoining bond beam with three (3) #4 steel reinforcement rods. The reinforcement shall extend a minimum of 24 inches into both portions of the concrete bond beam.

(13) Lintels Over Openings.

(a) General: All openings require a lintel or full radius arch over the opening. All lintels, whether of wood or concrete, shall bear a minimum of 12 inches into the length of the wall and 50% across the depth of the wall. **Exception:** nichos and other shaped voids as defined in Section 10.

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

(c) Lintels over openings in stabilized rammed earth walls: Openings less than 24 inches in width shall not require a lintel or full radius arched opening. Openings greater than 24 inches in width require lintels as defined in Table B.

Table B – Concrete Lintels Over Openings in Rammed Earth Walls¹

Table B – Concrete Lintels Over Openings in Rammed Earth Walls¹

Wall Width-inches	Lintel Span-inches	Lintel Depth-inches	Reinforcement ²	Reinforcement Concrete Cover ³	Uniform Load
18	24	6	3 –no. 4 at 4” oc	3” minimum concrete cover on all sides	1000PLF
	36	6	3 –no. 4 at 4” oc		
	48	6	3 –no. 4 at 4” oc		
	60	6	3 –no. 4 at 4” oc		
	72	8	3 –no. 5 at 4” oc		
	84	8	3 –no. 5 at 4” oc		
	96	8	3 –no. 5 at 4” oc		
20	24	6	3 –no. 4 at 4” oc	4” minimum concrete cover on all sides	1350 PLF
	36	6	3 –no. 4 at 4” oc		
	48	6	3 –no. 4 at 4” oc		
	60	6	3 –no. 4 at 4” oc		
	72	8	3 –no. 5 at 4” oc		
	84	8	3 –no. 5 at 4” oc		
	96	10	3 –no. 5 at 4” oc		
22	24	6	3 –no. 4 at 5” oc	3 ½” minimum concrete cover on all sides	1700PLF
	36	6	3 –no. 4 at 5” oc		
	48	6	3 –no. 4 at 5” oc		
	60	6	3 –no. 4 at 5” oc		
	72	8	3 –no. 5 at 5” oc		
	84	10	3 –no. 5 at 5” oc		
	96	10	3 –no. 5 at 5” oc		
24	24	6	3 –no. 4 at 6” oc	3” minimum concrete cover on all sides	2000 PLF
	36	6	3 –no. 4 at 6” oc		
	48	6	3 –no. 4 at 6” oc		
	60	6	3 –no. 4 at 6” oc		
	72	8	3 –no. 5 at 6” oc		
	84	10	3 –no. 5 at 6” oc		
	96	12	3 –no. 5 at 6” oc		

¹ 3000 PSI minimum concrete at approximately 28 days

² Grade 40 steel reinforcement minimum

³ Steel reinforcement at mid-depth of lintel

(14) Weather-Resistive Barriers.

(a) General: Stabilized rammed earth walls do not require a weather-resistive barrier or an approved exterior finish. Unstabilized rammed earth wall require a weather-resistive barrier and approved exterior finish. When a weather-resistive 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 sided 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 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 inches down both sides of the parapet top.

(15) 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 plaster. Rammed earth walls must cure to a depth of 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 minimum of 7/8 inch minimum finished thickness, unless an elastometric "color coat" is used, then it shall have a minimum base coat thickness of 5/8 inch. Applications shall follow the material manufacturer' specifications.

(16) Plumbing.

(a) General: All plumbing installations shall meet all provisions of the Uniform Plumbing Code, Uniform Mechanical Code, and New Mexico Plumbing and Mechanical Code currently in effect within the State of New Mexico, and any other applicable State codes or standards.

(b) Plumbing system installation: Code compliant plumbing systems may be rammed into the wall system, either vertically or horizontally, provided that such plumbing material is of sufficient strength to withstand the ramming pressures without any rupture or collapse. Installations shall not reduce the rammed earth wall depth by more than 1/3 the depth of the wall. Prior to ramming, a minimum 5-inch earth cover is provided over any hor-

izontal pipe.

(17) Electrical.

(a) General: All electrical installations shall meet all provisions of the National Electrical Code and the State of New Mexico Electrical Code currently in effect within the State of New Mexico, and any other applicable State codes or standards.

(b) 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 1 ¼ inches. Prior to ramming, a minimum 5-inch earth cover is provided over any horizontal pipe.

(c) 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 1¼ inches with plaster, adobe or similar finish.

(d) Electrical box installation: Plastic electrical boxes shall not be rammed within the rammed earth wall. **Exception:** plastic electrical boxes installed in a channel installation ramming, a minimum 5-inch earth cover is provided over any horizontal pipe.

(18) Appendix Figures.

[14.11.11.8 NMAC – N, 12/15/01]

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

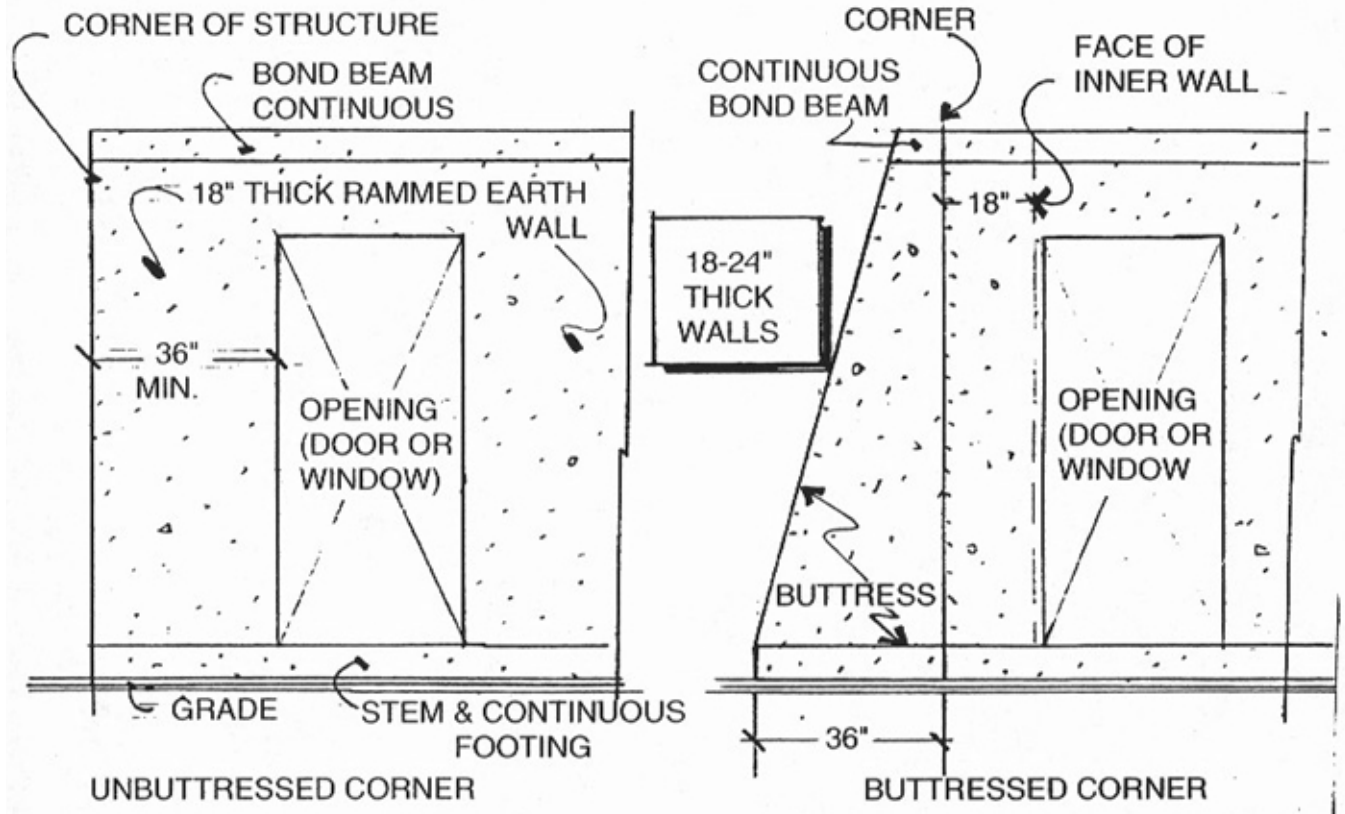
Notice for New Mexico Register

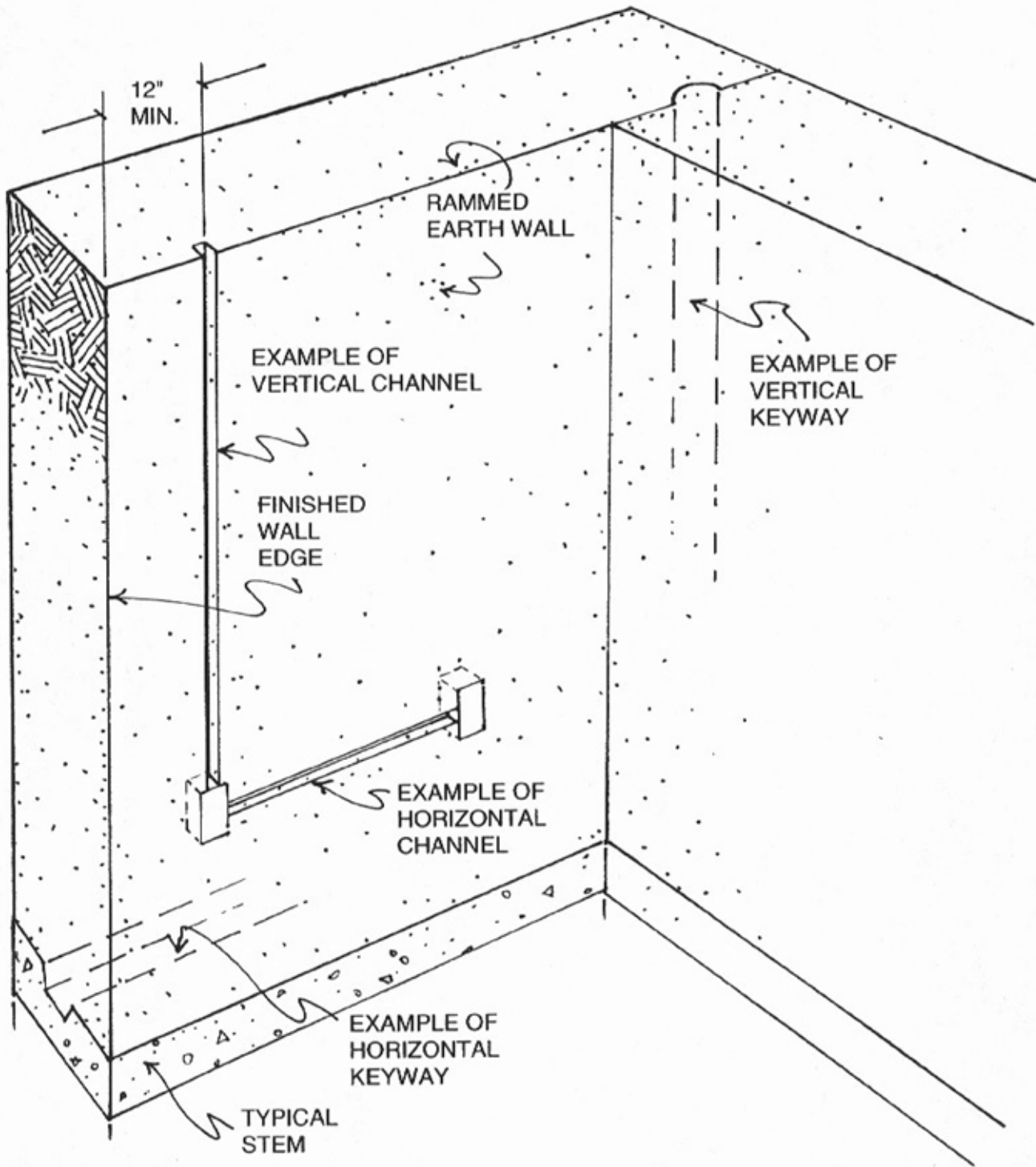
The Taxation and Revenue Department has filed at the State Records Center and Archives the regulations listed below in the new NMAC format. All sections are renumbered and re-formatted. The material filed includes changes in internal citations to statute or NMAC, corrections of typographical errors, outdated references and spelling and other stylistic emendations.

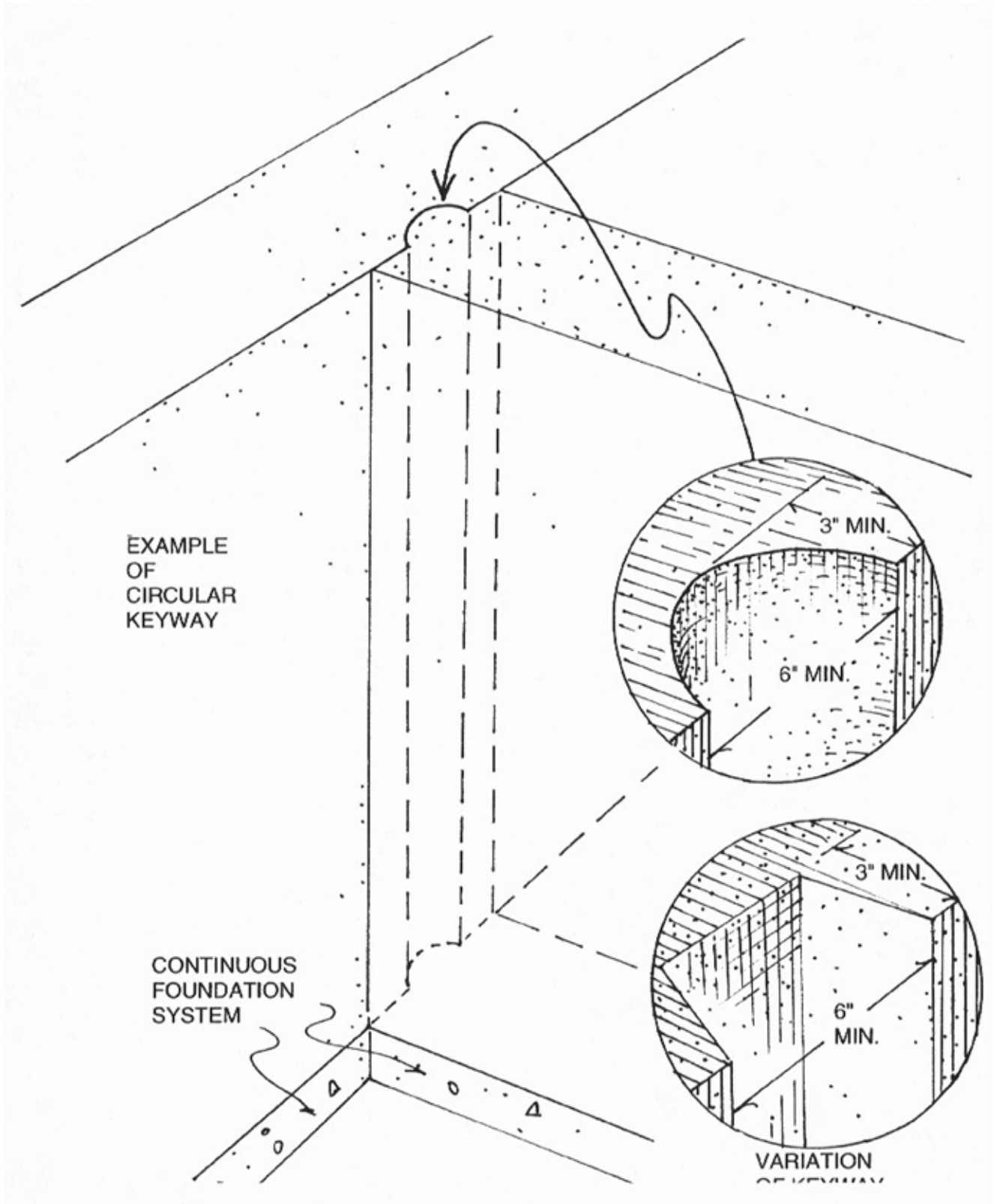
Part 18.1.1 NMAC, Part 3.12.1 NMAC, Part 3.12.5 NMAC, Part 3.12.6 NMAC, Part 3.12.9 NMAC, Part 3.12.10 NMAC, Part 3.12.11 NMAC, Part 3.12.100 NMAC, Part 3.12.101 NMAC, Part 3.2.200 NMAC, Part 3.25.2 NMAC, Part 3.25.3 NMAC and Part 3.29.13 NMAC.

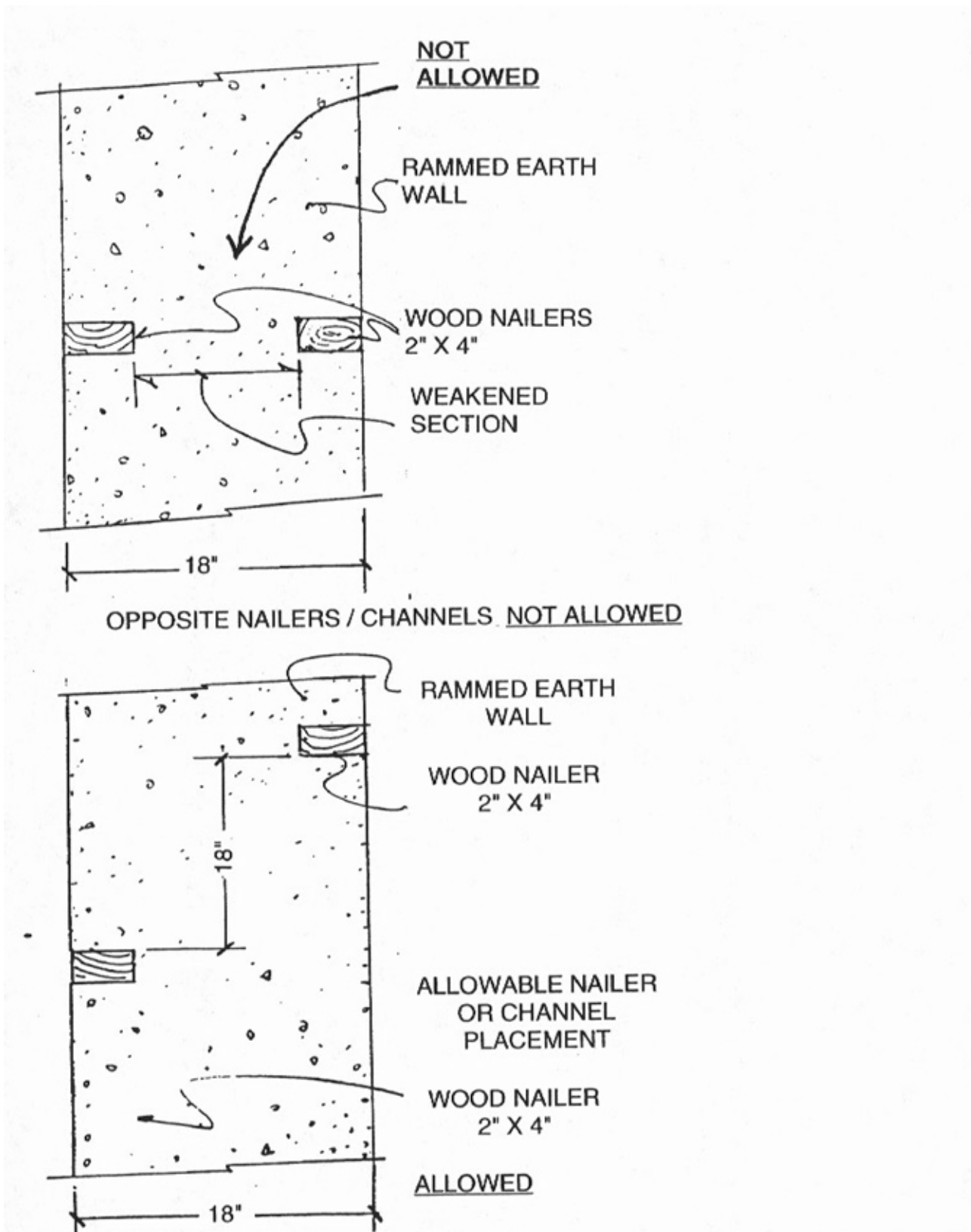
[Editor's note: The appendix figures appear on the following pages

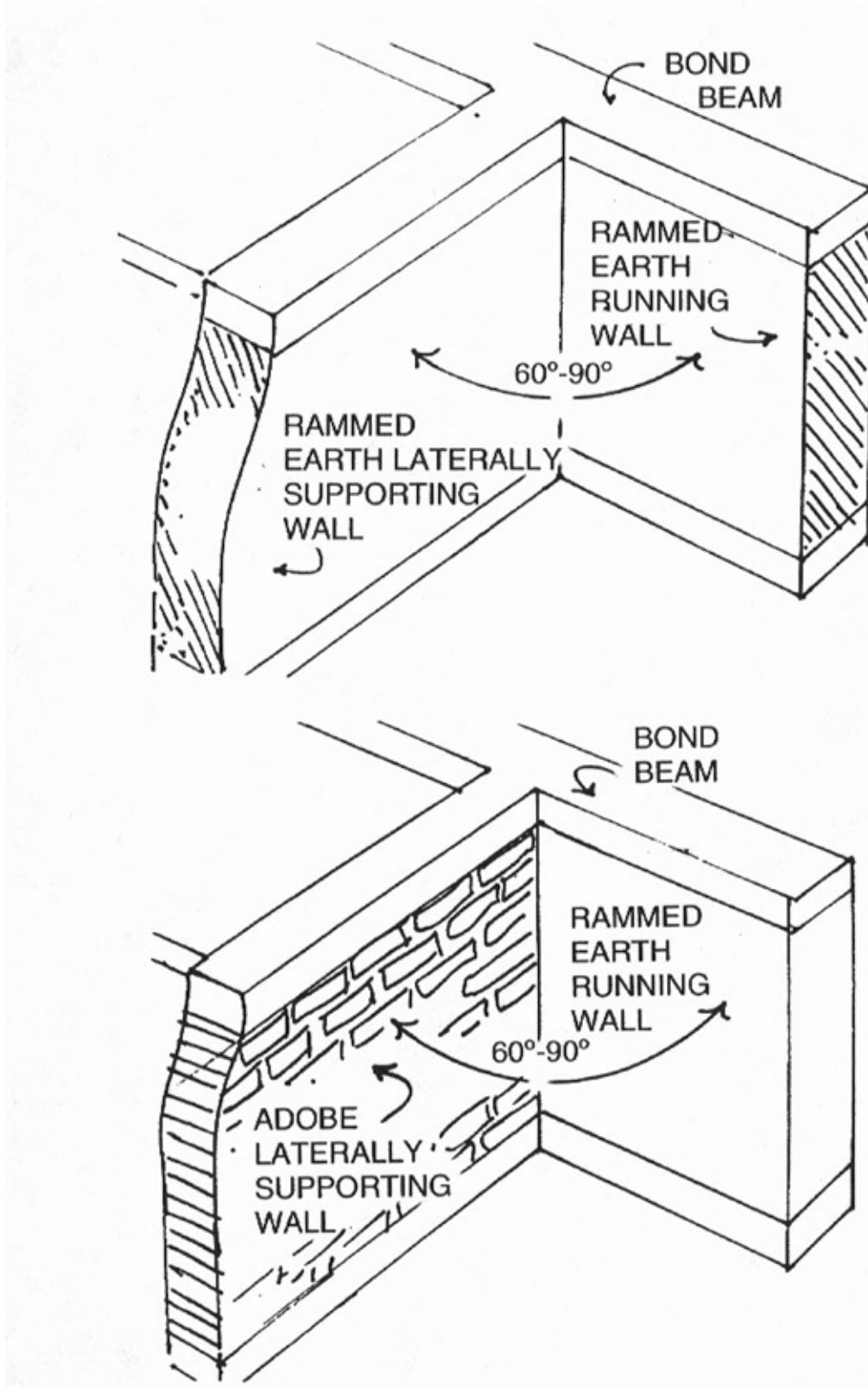
Figure 1	page 1349
Figure 2	page 1350
Figure 3	page 1351
Figure 4	page 1352
Figure 5	page 1353
Figure 6	page 1354
Figure 7	page 1355
Figure 8	page 1356
Figure 9-A	page 1357
Figure 9-B	page 1358
Figure 10	page 1359
Figure 11	page 1360
Figure 12	page 1361
Figures 13-14	page 1362
Figure 15	page 1363
Figure 16	page 1364]

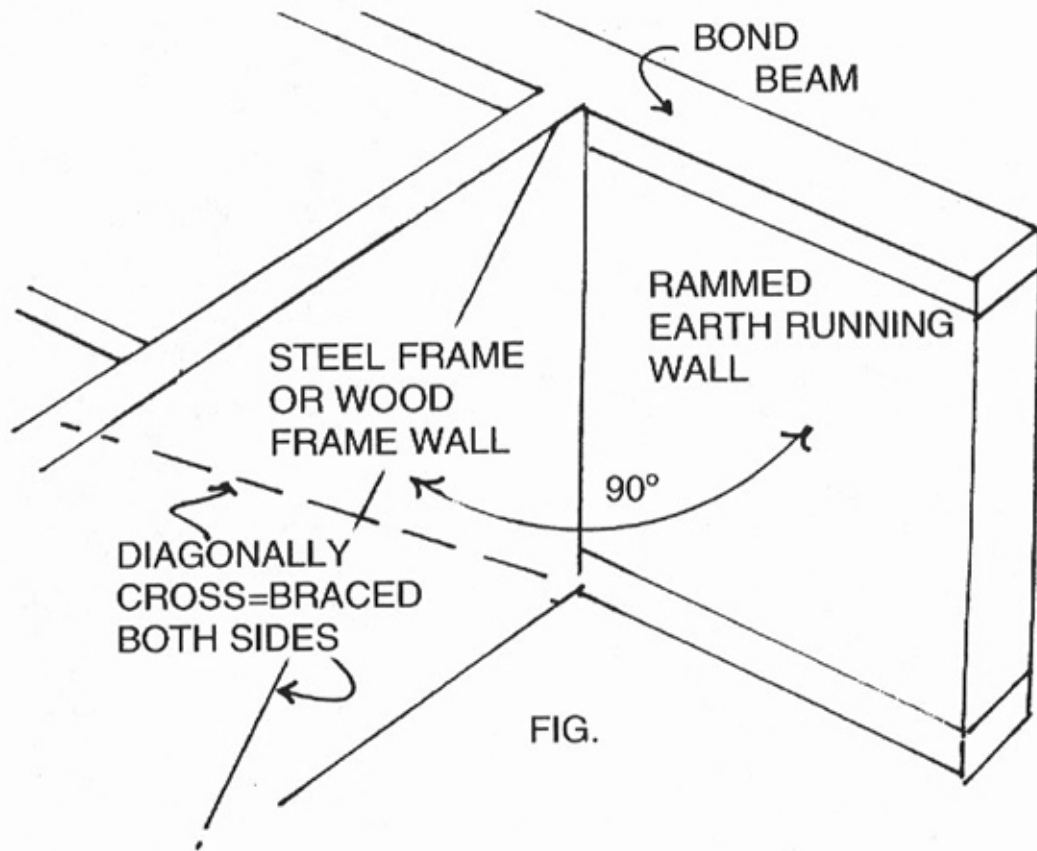


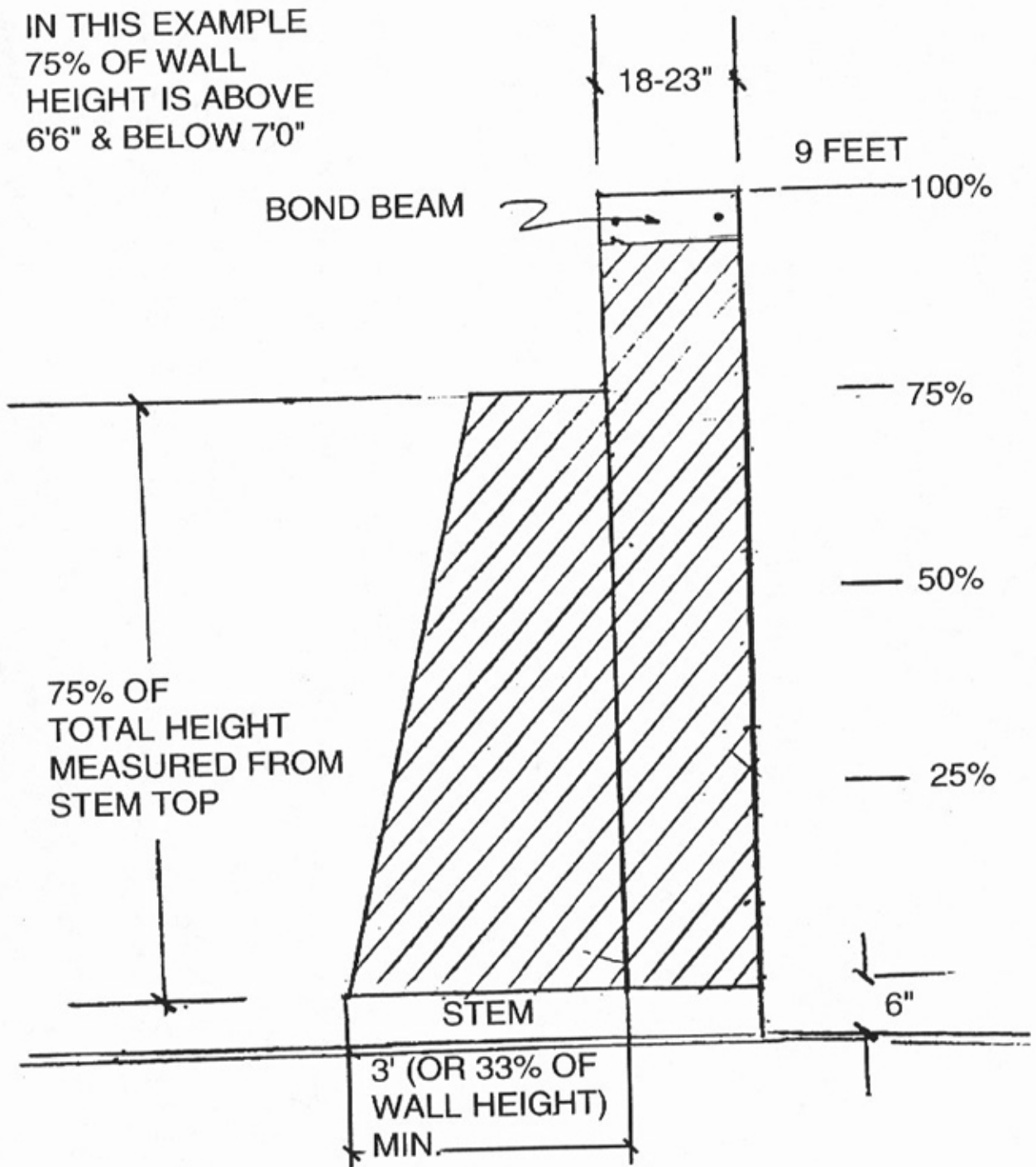


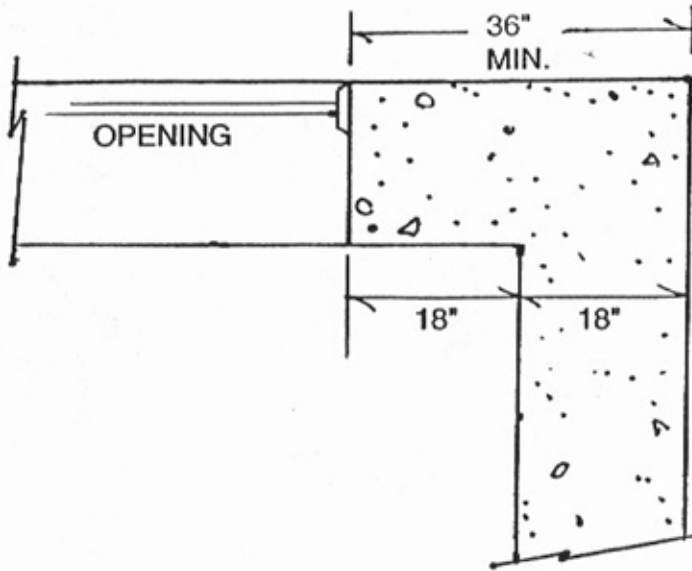




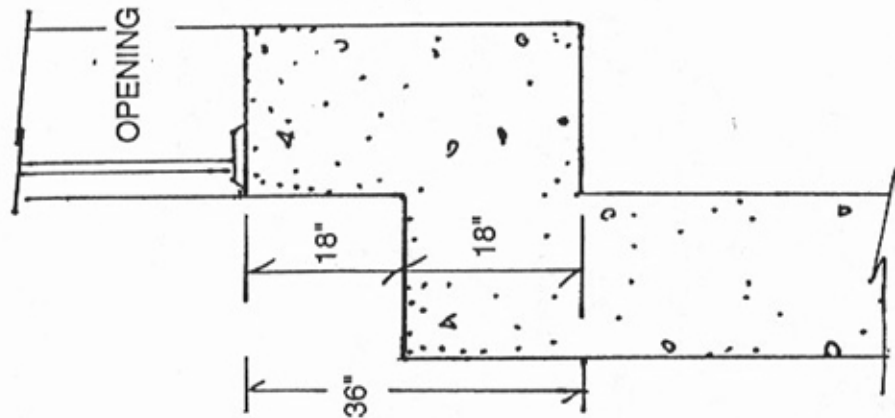


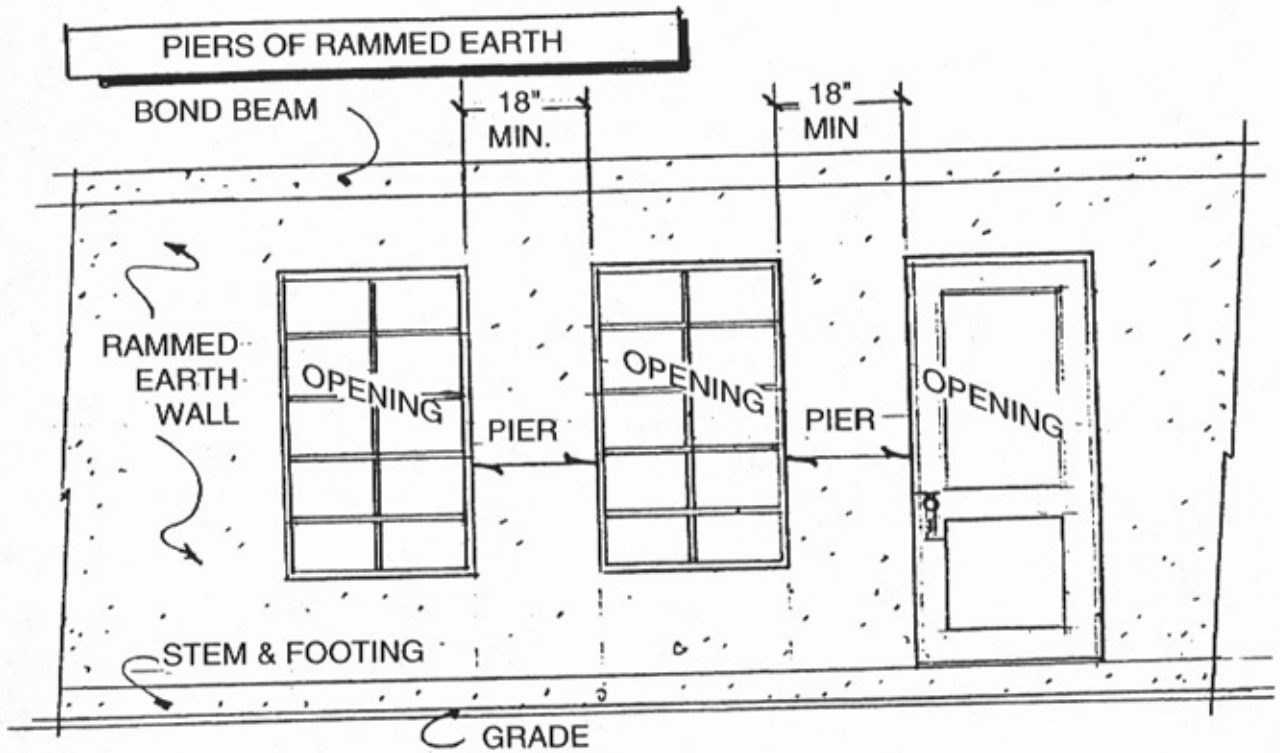




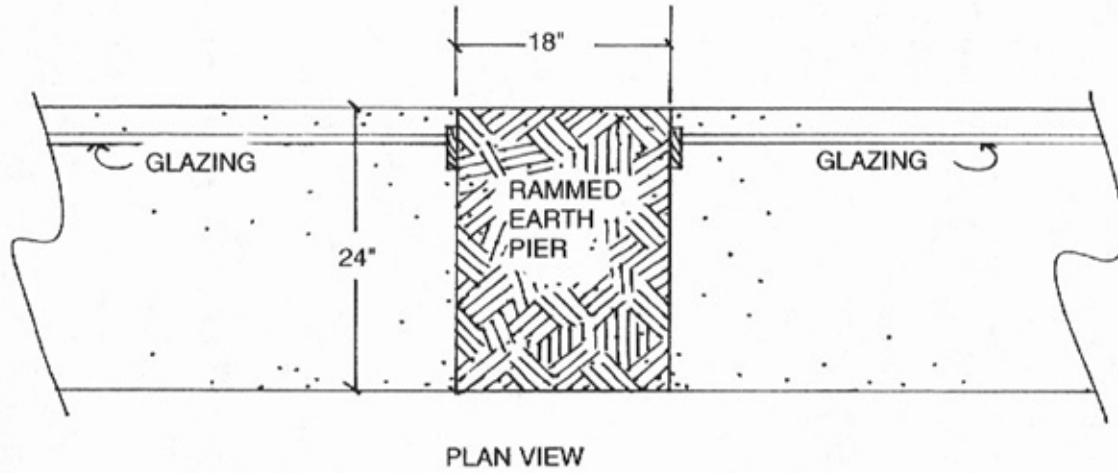


THE MINIMUM DISTANCE MEASURED FROM THE EDGE OF ANY OPENING TO THE NEAREST CORNER, PLUS THE ADJOINING WALL THICKNESS SHALL NOT BE LESS THAN 36 INCHES





EXAMPLE OF
RECTANGULAR TYPE PIER



EXAMPLE
SHOWN:

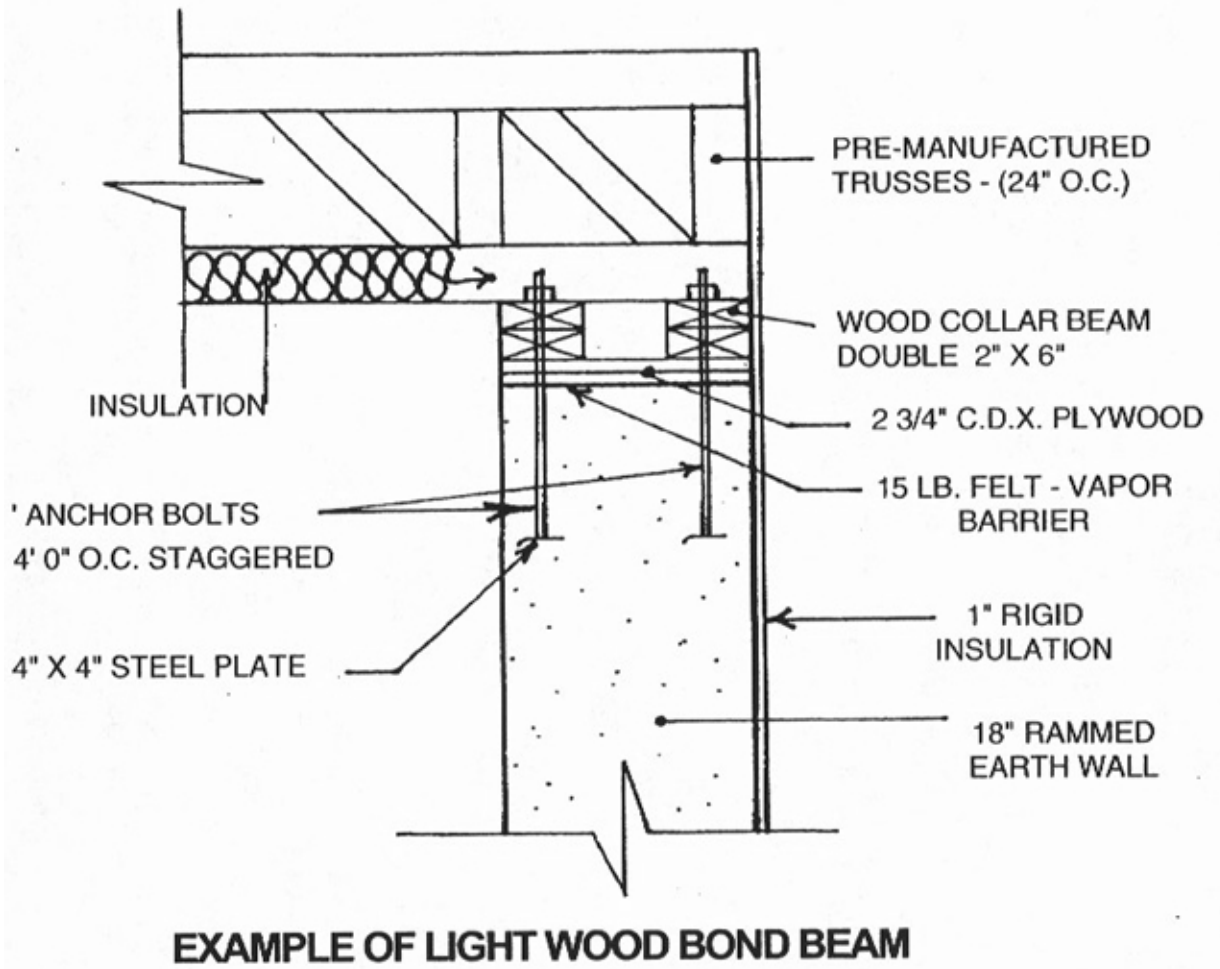
18" = 1.5'
24" = 2.0'

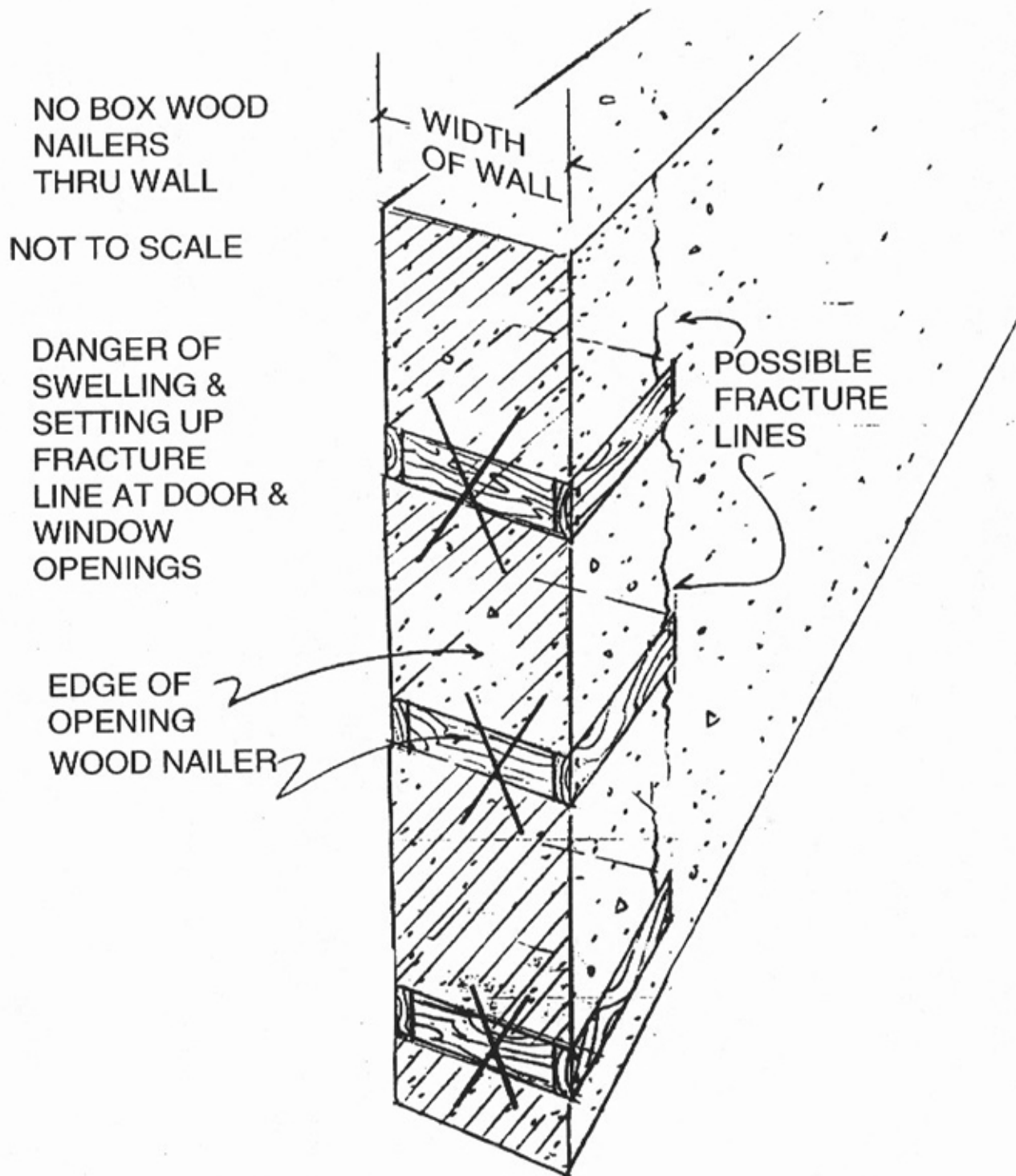
THUS, 1.5 X 2.0 = 3.0 SQUARE FEET MIN.

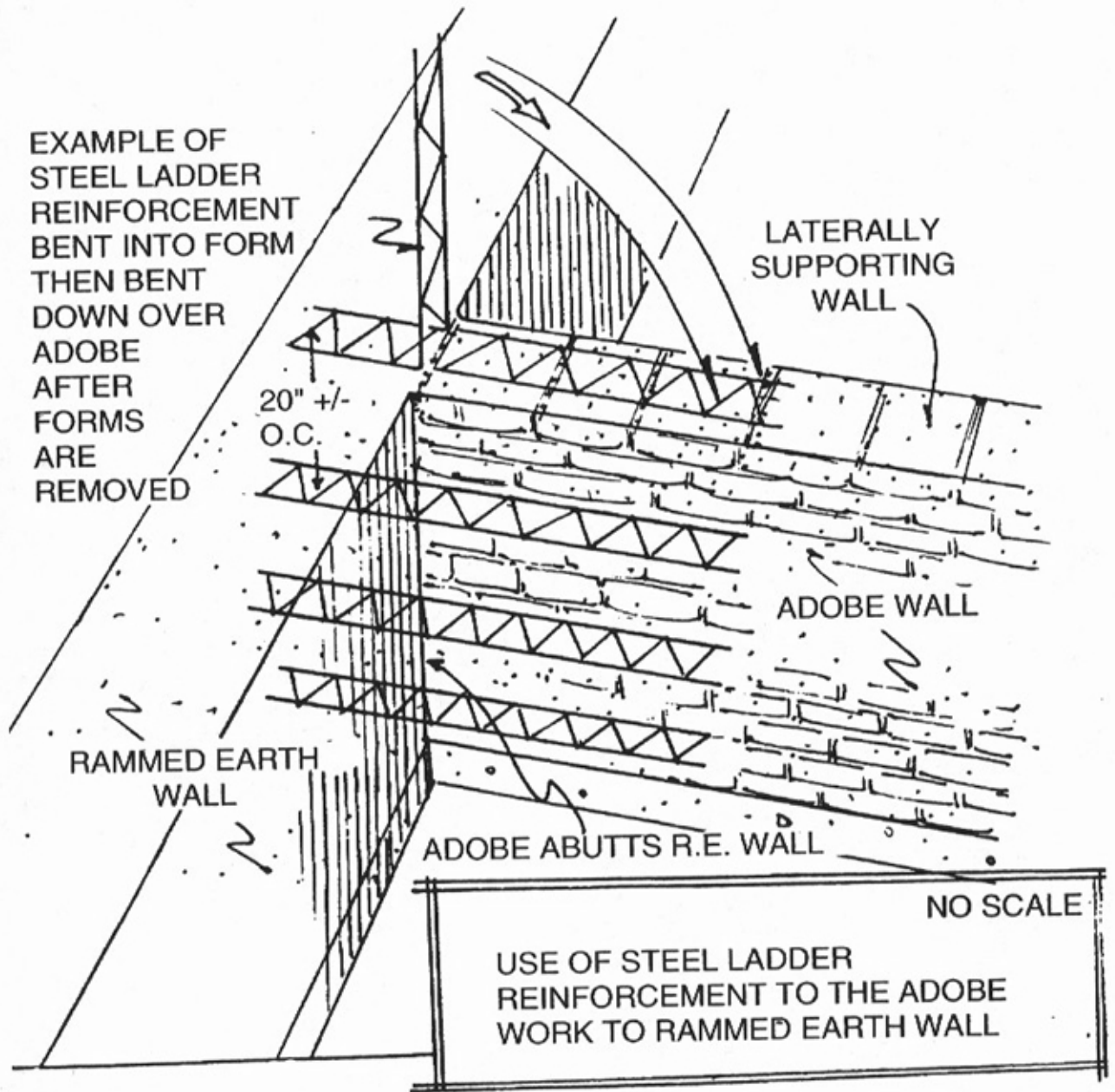
EXAMPLE OF
ROUND TYPE PIER

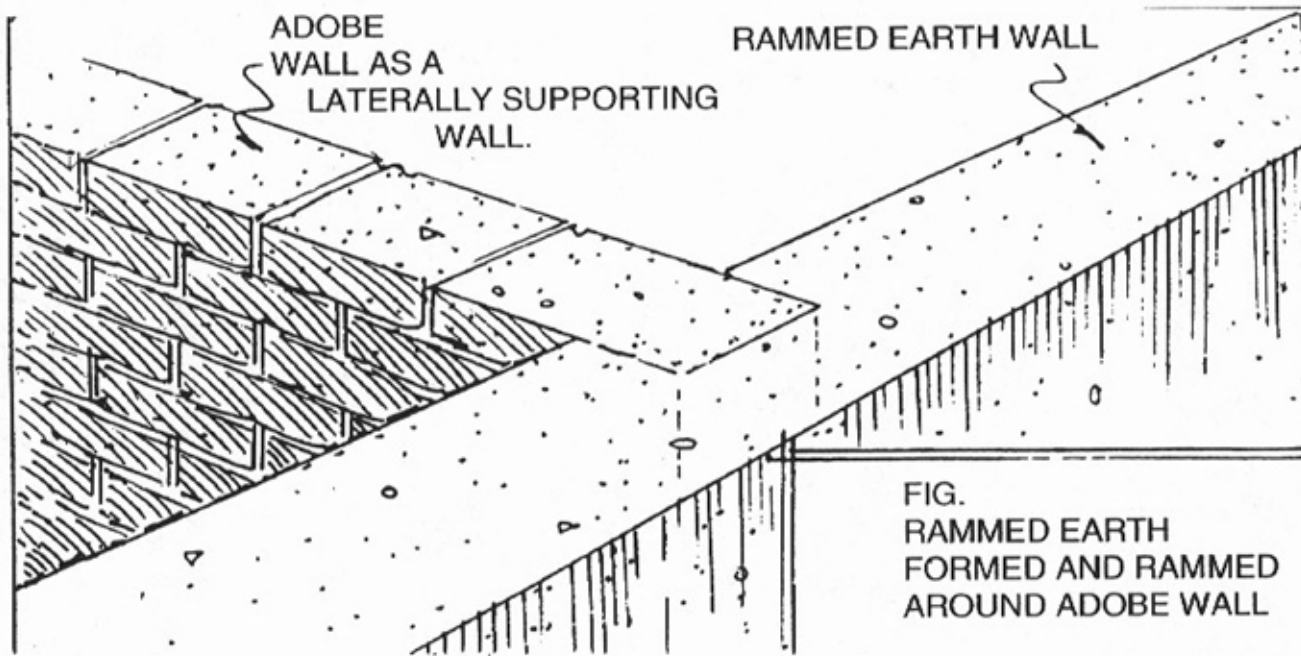


EXAMPLE
SHOWN: AREA = πR^2 OR,
3.14 X 12 OR 3.14 X 144
452 SQ. INCHES = OK
(432 SQ. IN. = 3.0 SQ. FEET)



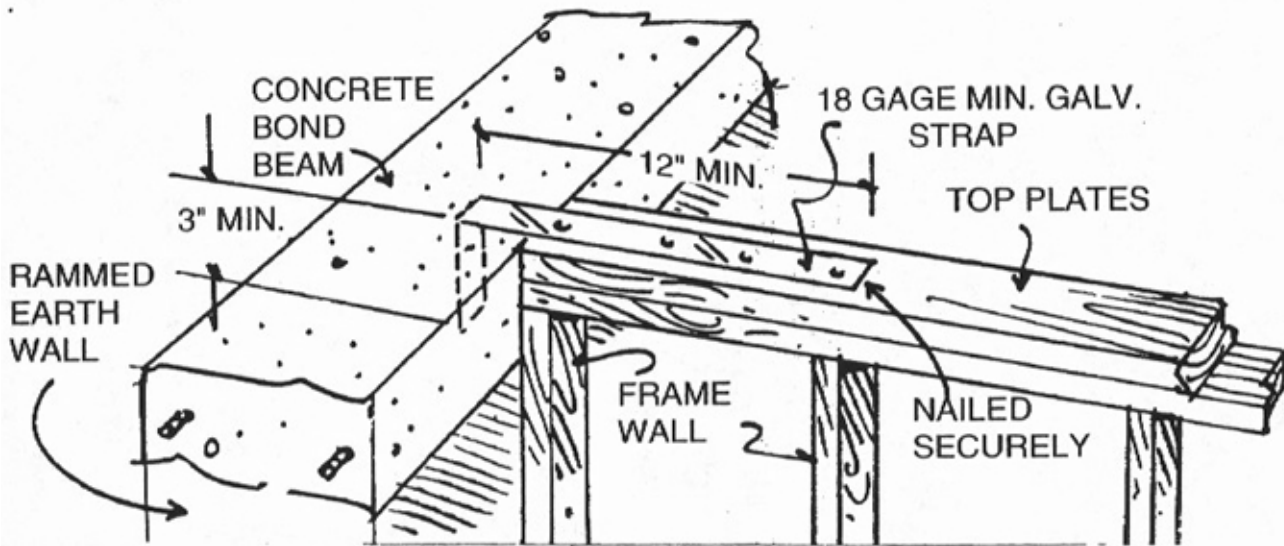






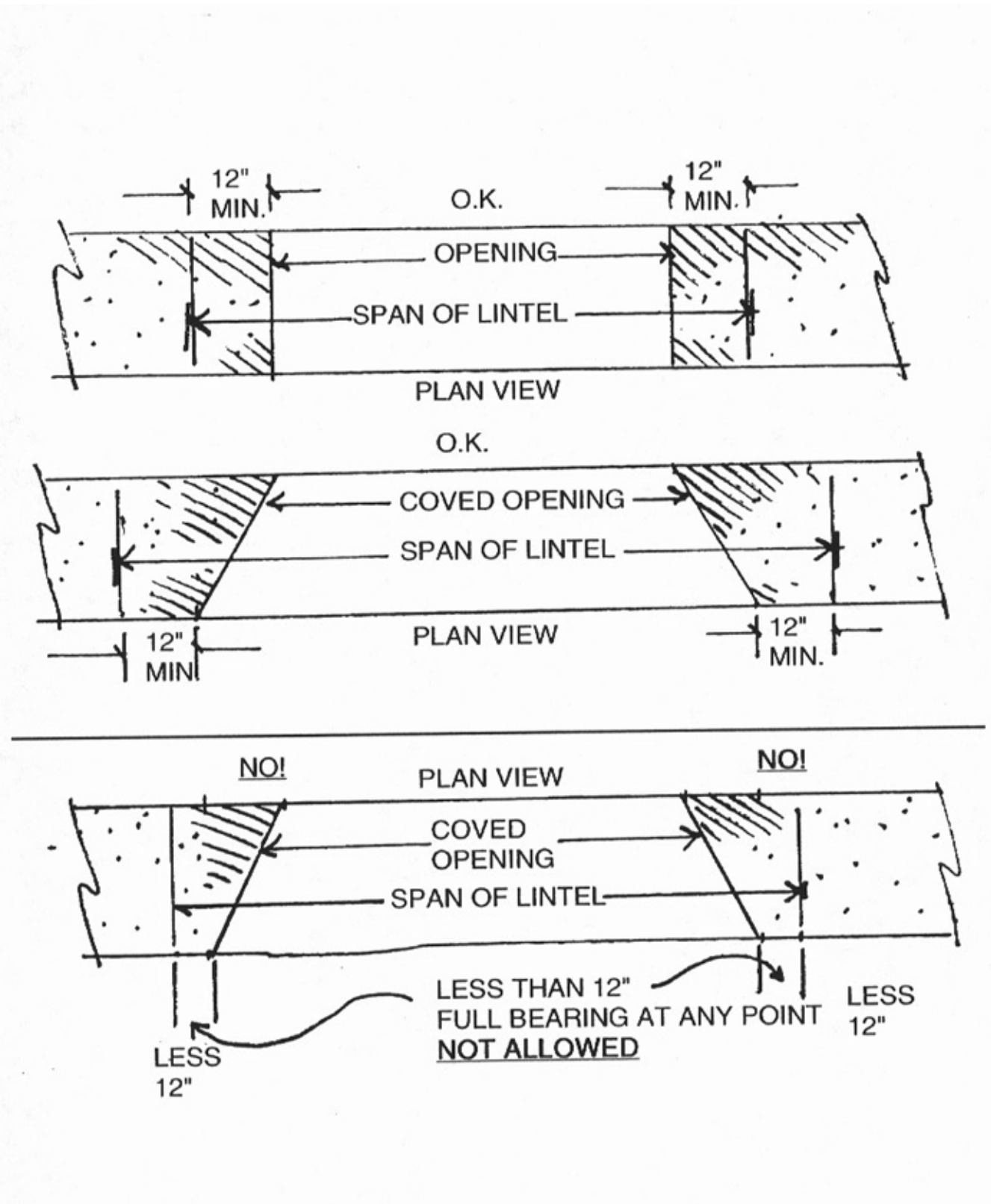
14.11.11 NMAC

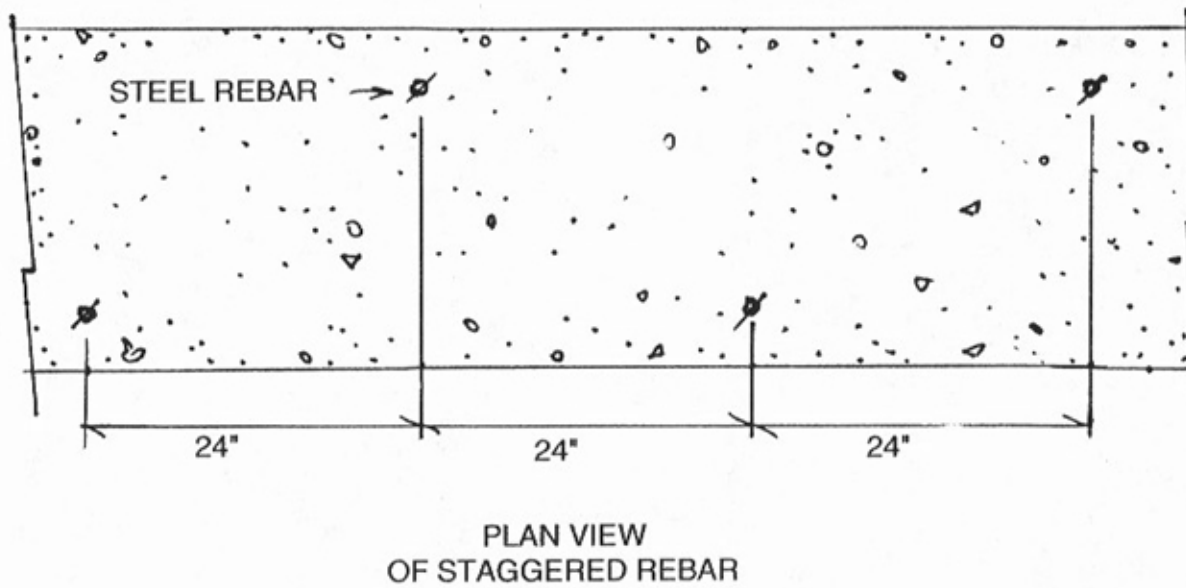
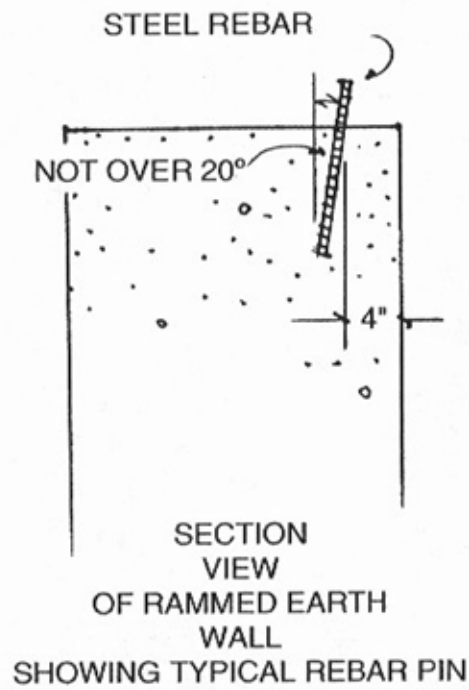
Figure 13



14.11.11 NMAC

Figure 14





2001
SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XII	Submittal Deadline	Publication Date
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 28

2002
SUBMITTAL DEADLINES AND PUBLICATION DATES

Volume XIII	Submittal Deadline	Publication Date
Issue Number 1	January 2	January 15
Issue Number 2	January 16	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 18	March 29
Issue Number 7	April 1	April 15
Issue Number 8	April 16	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 3	June 14
Issue Number 12	June 17	June 28
Issue Number 13	July 1	July 15
Issue Number 14	July 16	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

The *New Mexico Register* is the official publication for all material relating to administrative law, such as notices of rule making, proposed rules, adopted rules, emergency rules, and other similar material. The Commission of Public Records, Administrative Law Division publishes the *New Mexico Register* twice a month pursuant to 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.