

**NEW  
MEXICO  
REGISTER**



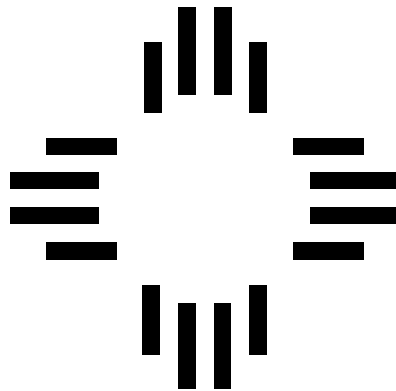
Volume XVI  
Issue Number 8  
April 29, 2005



# **New Mexico Register**

**Volume XVI, Issue Number 8**

**April 29, 2005**



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

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Administrative Law Division  
Santa Fe, New Mexico  
2005

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# New Mexico Register

Volume XVI, Number 8

April 29, 2005

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#### Effective Date and Validity of Rule Filings

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

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

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

#### NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD NOTICE OF PUBLIC MEETING AND HEARING

#### Proposed Revision of 20.2.99 NMAC — Conformity to the State Implementation Plan of Transportation Plans, Programs and Projects (EIB 05-03 (R))

The New Mexico Environmental Improvement Board (Board) will hold a public hearing on July 5, 2005, in conjunction with their normal July meeting. The hearing will begin at 9:00 a.m. at the New Mexico State Capital Building in Santa Fe, New Mexico. At this hearing, the Board will consider proposed revisions to the EIB 05-03(R) Air Quality Control Regulation 20.2.99 NMAC — *Conformity to the State Implementation Plan of Transportation Plans, Programs, and Projects*.

The purpose of the public hearing is to consider and take possible action on a petition from the New Mexico Environment Department (NMED) regarding proposed revisions to the above-listed State Implementation Plan (SIP) revision. These proposed changes are intended to incorporate mandated revisions from the U.S. Environmental Protection Agency for transportation conformity. The NMED proposal includes minor revisions of the 18-month requirement for initial SIP submissions, the addition of a grace period for newly designated non attainment areas and amendments for the new 8-hour ozone and particulate matter 2.5 microns in size National Ambient Air Quality Standards.

The proposed changes may be reviewed during regular business hours at the NMED Air Quality Bureau office located at 2044 Galisteo, Santa Fe, New Mexico. A full text of the NMED's proposed changes are also available on the NMED's web site at [www.nmenv.state.nm.us](http://www.nmenv.state.nm.us), or by contacting Gail Cooke by phone at (505) 955-8022 or by e-mail at [Gail\\_Cooke@nmenv.state.nm.us](mailto:Gail_Cooke@nmenv.state.nm.us).

The hearing will be conducted in accordance with 20.1.1 NMAC (Rulemaking Procedures) Environmental Improvement Board, the Environmental Improvement Act, Section 74-1-9 NMSA 1978, the Air Quality Control Act Section 72-2-6 NMSA 1978 and other applicable procedures.

All interested persons will be given reasonable opportunity at the hearing to submit relevant evidence, data, views and arguments, orally or in writing, to introduce exhibits, and to examine witnesses. Persons wishing to present technical testimony must file with the Board a written notice of intent to do so. The notice of intent shall:

- (1) identify the person for whom the witness(es) will testify;
- (2) identify each technical witness that the person intends to present and state the qualifications of the witness, including a description of their education and work background;
- (3) summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration of the testimony of that witness;
- (4) list and describe, or attach, each exhibit anticipated to be offered by that person at the hearing; and
- (5) attach the text of any recommended modifications to the proposed changes.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than **5:00 pm on June 24, 2005**, and should reference the name of the SIP revision and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Barbara Claire, Board Administrator  
Office of the Environmental Improvement Board  
Harold Runnels Building  
1190 St. Francis Dr., Room N-2150 / 2153  
Santa Fe, NM 87502  
Phone: (505) 827-2425, Fax (505) 827-2836

Any member of the general public may testify at the hearing. No prior notification is required to present non-technical testimony at the hearing. Any such member may also offer exhibits in connection with his testimony, so long as the exhibit is not unduly repetitious of the testimony.

A member of the general public who wishes to submit a written statement for the record, in lieu of providing oral testimony at the hearing, shall file the written statement prior to the hearing, or submit it at the hearing.

Persons having a disability and needing help in being a part of this hearing process should contact Judy Bentley by June 24, 2005 at the New Mexico Environment Department, Personnel Services Bureau, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico, 87502, telephone 505-827-9872. TDY users please access her number via the New Mexico Relay

Network at 1-800-659-8331.

The Board may deliberate and rule on the proposed amendments at the close of the hearing or the Board may convene a meeting after the hearing to consider action on the proposal.

cc: Ms. Gay Dillingham, Chair

### NEW MEXICO STATE PERSONNEL BOARD

State Personnel Board Public Rules Hearing

The State Personnel Board will convene a Public Rules Hearing in Santa Fe, New Mexico on Thursday, June 9, 2005. The meeting will be held beginning at 10:00 a.m., located at the Leo Griego Auditorium in the Willie Ortiz Building (State Personnel Office) at 2600 Cerrillos Road, Santa Fe, New Mexico, 87503.

The purpose of the Rule Hearing is to consider amending various SPB Rules and Regulations.

A final agenda for the board meeting will be available at the board office on Friday May 27, 2005.

Persons desiring to present their views on the proposed amendments may appear in person at said time and place or may submit written comments no later than 5:00 p.m. Tuesday, May 31, 2005 to the board office, PO Box 26127, 2600 Cerrillos Road, Santa Fe, New Mexico, 87503, attention, Sandra Perez. Copies of the proposed rules are available on request from the Board office at the address listed above, by phone (505) 476-7805, or on the Internet at [www.state.nm.us/spo/](http://www.state.nm.us/spo/) beginning April 30, 2005.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service in order to attend or participate in the hearing, please contact the Director at 2600 Cerrillos Road, Santa Fe, New Mexico prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Director if a summary or other type of accessible format is needed.

**NEW MEXICO PUBLIC EDUCATION  
DEPARTMENT**

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

The Public Education Department (“Department”) hereby gives notice that the Department will conduct a public hearing at Mabry Hall, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico, 87501-2786, on Monday June 6, 2005, from 10:00 AM to Noon. The purpose of the public hearing will be to obtain input on the following rules:

<b>Rule Number</b>	<b>Rule Name</b>	<b>Proposed Action</b>
6.10.7 NMAC	Statewide Standardized Testing Security Issues and Irregularities	Amend rule
6.19.1 NMAC	Public School Accountability: General Provisions	Repeal rule
6.19.2 NMAC	Public School Accountability: Public School Accountability System for Schools Rated Probationary	Repeal rule

Interested individuals may testify at the public hearing or submit written comments to Dr. William Blair, Deputy Director, Assessment and Accountability Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 ([bblair@ped.state.nm.us](mailto:bblair@ped.state.nm.us)) (telefax (505) 827-6689). Written comments must be received no later than 5 p.m. on the date of the hearing. However, the submission of written comments as soon as possible is encouraged.

Copies of the proposed amendments to 6.10.7 NMAC (Statewide Standardized Testing Security Issues and Irregularities) may be accessed on the Department’s website (<http://ped.state.nm.us/>) or obtained from Ms. Barbara Vigil, Administrative Assistant, Assessment and Accountability Division, Public Education Department, Jerry Apodaca Education Building, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786 at (505) 827-6683.

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

**NEW MEXICO PUBLIC REGULATION  
COMMISSION**

BEFORE THE  
NEW MEXICO PUBLIC  
REGULATION COMMISSION

IN THE MATTER OF THE ADOPTION  
OF PROPOSED AMENDMENTS TO  
THE COMMISSION’S RULES FOR  
CORPORATIONS AND  
OTHER LEGAL ENTITIES,

Docket No. 05-00148-PRC

CORPORATIONS BUREAU STAFF  
OF THE PUBLIC REGULATION  
COMMISSION,

Petitioner.

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission (“Commission”) proposes to adopt various amendments to the Commission’s Rules for Corporations and Other Legal Entities. This matter comes before the Commission on Staff’s Amended Motion to Initiate Rulemaking (“Amended Motion”) filed on March 29, 2005, by the Commission’s Corporations Bureau Staff (“Staff”). Staff asks the Commission to commence a proceeding to adopt proposed amendments to the Commission’s Rules for Corporations and Other Legal Entities. Staff attached a draft of its recommended proposed rules to its Amended Motion, and Staff’s proposed rules are attached to this Notice of Proposed Rulemaking (“NOPR”) as Exhibit A. Having considered Staff’s Amended Motion and the draft rules attached to the Amended Motion, and being fully advised,

**THE COMMISSION FINDS AND CONCLUDES:**

1. The Public Regulation Commission Act authorizes the Commission to “adopt such reasonable regulatory and procedural rules as may be necessary or appropriate to carry out its powers and duties.” NMSA 1978, Section 8-8-4(B)(10). The Commission is granted the power and authority by the Business Corporation Act (“Act”) to administer the Act. NMSA 1978, Section 53-18-1. *See also id.* Section 53-19-66 (Commission has same power and authority to administer the Limited Liability Company Act).



2. Staff's Motion generally recommends changes throughout the proposed rules to: eliminate duplicative material existing in statutory law; expand and clarify the requirements for all legislatively mandated entities regulated by the Commission, including the filing of reports and other documents; delete definitions and other provisions that are now contained in the extensively revised Act; repeal all existing rules pertaining to corporations and other regulated legal entities; and update citations to the Act throughout the rules to reference the revised Act.

3. Staff states that it has formatted the proposed rules consistent with the requirements for compilation into the New Mexico Administrative Code and, if the proposed rules are adopted, they would be contained in Title 12, Chapter 3 of the New Mexico Administrative Code.

4. Staff's Amended Motion is well taken and should be granted as provided by this Notice of Proposed Rulemaking. The Commission has made changes to Staff's Amended Motion to correct formatting, punctuation and spelling errors.

5. The proposed rules attached to this Notice of Proposed Rulemaking change general provisions for filing and reporting by regulated entities; provide forms; implement new sections of the Act and other laws dealing with regulated entities including domestic and foreign profit and nonprofit corporations, domestic and foreign limited liability companies, cooperative associations, business development corporations, foreign business trusts, Sanitary Projects Act associations, water users associations and waterworks corporations; provide for administrative revocation and reinstatement of regulated entities; and provide an appeal process for challenges to Commission action concerning regulated entities.

6. The Commission will accept written comments on the rules proposed in this Notice of Proposed Rulemaking from any interested person. Interested persons shall file their written comments no later than May 25, 2005. Comments suggesting changes to the proposed rules shall state and discuss the particular reasons for the suggested changes and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rules shall be in legislative format. A copy of the proposed rules in electronic format may be obtained from the Commission to facilitate this requirement. Any proposed

changes to Exhibit A shall be submitted in hard copy, and the Commission strongly encourages all persons proposing such changes to file an additional copy in electronic format (compact disc in Microsoft 2000 Word format). The label on the compact disc shall clearly designate the name of the person submitting the proposed changes and the docket number of this proceeding. All pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this Notice.

7. Comments on the proposed amendments to the Rules for Corporations and Other Legal Entities shall be sent to:

Bettie Cordova  
 ATTN: Proposed Rules for Corporations and Other Legal Entities  
 New Mexico Public Regulation Commission  
 P.O. Box 1269  
 Santa Fe, NM 87504-1269  
 Telephone: (505) 827-4526

8. Additional copies of the proposed rules can be obtained from:

Ann Echols  
 ATTN: Proposed Rules for Corporations and Other Legal Entities  
 Corporations Bureau  
 New Mexico Public Regulation Commission  
 P.O. Box 1269  
 Santa Fe, NM 87504-1269  
 Telephone: (505) 827-4508

Copies of the proposed rules may also be downloaded from the Commission's web site, [www.nmprc.state.nm.us](http://www.nmprc.state.nm.us), under "Corporations Bureau," then "Proposed Rules for Corporations and Other Legal Entities."

9. The Commission will review all timely submitted written comments and will hold public hearing on Wednesday, June 1, 2005, at 9:30 a.m., Marian Hall, 224 East Palace Avenue, 1st floor hearing room, to take oral comment regarding the proposed rules.

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

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

12. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. The amended Rules for Corporations and Other Legal Entities, attached to this Notice of Proposed Rulemaking as Exhibit A, are proposed for adoption as permanent rules as provided by this Notice.

B. Interested persons shall file their written comments on the proposed rules.

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

D. A copy of this Notice, excluding Exhibit A, shall be mailed to all persons listed on the attached Certificate of Service, and shall be published in two newspapers of general circulation in the state and in the New Mexico Register. The Commission shall provide the Notice by e-mail or facsimile transmission to any persons who so request, and shall post a copy of the proposed rules on the Commission's web site.

E. This Notice is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 5th day of April, 2005.

NEW MEXICO PUBLIC REGULATION COMMISSION

\_\_\_\_\_  
 BEN R. LUJAN, CHAIRMAN

\_\_\_\_\_  
 JASON A. MARKS, VICE-CHAIRMAN

\_\_\_\_\_  
 DAVID W. KING, COMMISSIONER

\_\_\_\_\_  
 LYNDA M. LOVEJOY, COMMISSIONER

\_\_\_\_\_  
 E. SHIRLEY BACA, COMMISSIONER

**End of Notices and  
 Proposed Rules Section**

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## Adopted Rules

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.1.10 NMAC, effective 04-29-2005.

**16.60.1.10 FEES AND OBLIGATIONS:** Fees charged by the board shall be as follows.

**A.** Fees set by the board for CPA examination applicants shall not unreasonably exceed the amount required for the board to operate CPA examination administration on a break even basis, but in no case shall the fee be less than the state's cost of procuring and administering the exam.

**B.** Initial examination qualification review under Section 27F of the Act shall be \$75.

**C.** Delinquency fee for incomplete or delinquent continuing education reports, certificate/license or firm permit renewals under Section 27D of the Act shall be \$50.

**D.** Certificate application under Section 27B of the Act shall be: initial certificate, \$150; certificate renewal, \$100.

**E.** No annual renewal fee shall be assessed for an individual who holds an inactive certificate and who has reached the age of 70.

~~[E]~~ **F.** Firm permit application or renewal fee under Section 27C of the Act shall be \$45 for each firm, regardless of form of entity.

~~[F]~~ **G.** Firm permit renewal delinquency fee under Section 27C of the Act shall be \$50 and includes all practitioners whose renewal applications are delinquent.

~~[G]~~ **H.** Certificate/license reinstatement fee under Section 27G of the Act shall be \$175 plus the current year's renewal fee. No delinquency fee shall be assessed.

~~[H]~~ **I.** No fee shall be charged for firm permit reinstatement, and no delinquency fee shall be assessed; only the current year's renewal fee shall be assessed.

~~[I]~~ **J.** Continuing professional education waiver and reentry into active certificate status and to comply with continuing professional education under Sections 27H and 27I of the Act shall not exceed \$75 each occurrence.

~~[J]~~ **K.** Administrative fees for services under Section 27F shall be:

- (1) list of certificate or permit holders, \$.25 per name or line item;
- (2) duplicate or replacement certificate card or permit card, \$10 each;
- (3) duplicate or replacement wall

certificate, \$25 each;

(4) board evaluation of coursework for continuing professional education credit, \$50 per hour of board staff research and study;

(5) certificate application package for reciprocity and grade transfer candidates and replacement packages for by-examination candidates, \$20 each;

(6) copies of combined Accountancy Act and board rules, \$10 each;

(7) copies of records and documents, \$.25 per page;

(8) the board may, at its discretion, charge for other administrative costs as it deems appropriate.

~~[K]~~ **L.** Fee for the transfer of licensure or examination information to a third party under Section 27E of the Act shall be \$20.

~~[L]~~ **M.** Fee for notification of intent to practice in New Mexico under Section 26 of the Act shall be \$90.

~~[M]~~ **N.** The board may waive charges as it deems appropriate.

[16.60.1.10 NMAC - Rp 16 NMAC 60.2.8, 02-14-2002; A, 01-15-2004; A, 04-29-2005]

### NEW MEXICO PUBLIC ACCOUNTANCY BOARD

This is an amendment to 16.60.3 NMAC, Sections 9, 13, and 15, effective 04-29-2005.

#### 16.60.3.9 INITIAL CERTIFICATE/LICENSE REQUIREMENTS:

**A.** An applicant for initial certification/licensure shall demonstrate to the board's satisfaction that he:

(1) is of good moral character and lacks a history of dishonest or felonious acts;

(2) meets the education, experience and examination requirements of the board; and

(3) passes the American institute of certified public accountants ethics examination with a score of 90 percent or higher.

**B.** Moral character requirements: The board may assess moral character requirements based upon applicant-provided character references and background checks to determine an applicant's history of dishonest or felonious acts.

**C.** Education and examination requirements: Education and examination requirements are specified in the Act, Section 61-28B7 and Section 61-28B8 (After July 1, 2004) and are further delineated in Part 2 of board rules. An applicant who has passed the uniform CPA examination prior to July 1, 2004, is exempt from the 150-semester-hour requirement.

**D.** Experience required: Applicants documenting their required experience for issuance of an initial certificate pursuant to Section 7H of the act, and after July 1, 2004 Section 8H of the act shall:

(1) provide documentation of experience in providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills; acceptable experience shall include experience gained through employment in industry, government, academia or public practice;

(2) have their experience verified ~~[and demonstrate that all experience was obtained under the direct supervision of]~~ by an active, licensed CPA as defined in the act or ~~[under the direct supervision of]~~ by an active, licensed CPA from another state; the board shall consider and evaluate factors such as complexity and diversity of the work in determining acceptability of experience submitted;

(a) one year of experience shall consist of full or part-time employment that extends over a period of no less than 1 year and no more than 3 years and includes no fewer than 2,000 hours of performance of services described above;

(b) experience documented in support of an initial application must be obtained within the 7 years immediately preceding passing of the examination or within 7 years of having passed the examination upon which the application is based; this does not apply to applicants who qualified and sat for the examination during or prior to the November 2001 administration;

(c) any licensee requested by an applicant to submit evidence of the applicant's experience and who has refused to do so shall, upon request of the board, explain in writing or in person the basis for such refusal; the board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information;

(d) the board may inspect documentation relating to an applicant's claimed experience; any applicant may be required to appear before the board or its representative to supplement or verify evidence of experience.

**E.** Replacement wall certificates and licenses to practice: Replacement wall certificates and licenses to practice may be issued by the board in appropriate cases and upon payment by the CPA or RPA of the fee as set by the board. A certificate/license holder is specifically prohibited from possessing more than one wall certificate and more than one license to practice as a CPA or RPA. When a replacement wall certificate or license to practice is

requested, the certificate/license holder must return the original certificate/license or submit a notarized affidavit describing the occurrence that necessitated the replacement certificate or license.

**F. Renewal requirements:** Certificates/licenses for individuals will have staggered expiration dates based on the individual's birth month. Deadline for receipt of certificate/license renewal applications and supporting continuing professional education affidavits or reports is no later than the last day of the ~~[month prior to the]~~ CPA or RPA certificate/license holder's birth month or the next business day if the deadline date falls on a weekend or holiday.

(1) The board may accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications.

(2) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(3) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the continuing professional education requirements of Sections 9E and 12A of the act and of these rules.

(4) The board shall mail renewal application notices no less than 30 days prior to the renewal deadline.

[16.60.3.9 NMAC - Rp 16 NMAC 60.4.8.2 & 16 NMAC 60.4.8.3, 02-14-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005]

### **16.60.3.13 RECIPRO CITY REQUIREMENTS:**

**A. Interstate Reciprocity:** The board may issue a certificate/license to the holder of a certificate issued by a state other than New Mexico as defined under Sections 3Q, 11B and D, and 26A of the Act provided that the license from the other state is valid and in good standing and that the applicant:

(1) provides proof from a board-approved national qualifications service that their CPA qualifications are substantially equivalent to the CPA requirements of the act; or

(2) successfully completed the CPA examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate; and

~~[(3) has satisfied the education requirements set out in Sections 7C and 8C of the Act; and]~~

~~[(4)]~~ (3) meets the experience requirements under the act and these rules for issuance of the initial certificate; and

~~[(5)]~~ (4) has met the CPE requirement of the state in which he is currently licensed pursuant to the act and board

rules; and

~~[(6)]~~ (5) has passed either the American institute of certified public accountants ethics examination with a score of 90 percent or higher or an ethics examination of another state board of accountancy with a score of 90 percent or higher.

**B.** An applicant who holds a certificate from another state based upon passage of the examination but who does not hold a license to practice shall not be eligible for licensure by reciprocity.

**C.** The board may rely on the national association of state boards of accountancy (NASBA), the American institute of certified public accountants (AICPA), or other professional bodies deemed acceptable to the board for evaluation of other state's CPA qualification requirements in making substantial equivalency determinations.

**D. International reciprocity:** The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a New Mexico CPA certificate and may issue a certificate/license to the holder of a professional accounting credential issued in a foreign country.

(1) The board may rely on NASBA, AICPA, or other professional bodies deemed acceptable to the board for evaluation of foreign credentials in making equivalency determinations.

(2) The board may satisfy itself through qualifying examination(s) that the holder of a foreign country credential deemed by the board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards and the board's rules. The board will specify the qualifying examination(s) and may rely on NASBA, AICPA, or other professional bodies to develop, administer, and grade such qualifying examination(s).

(3) The board recognizes the existence of the international qualifications appraisal board (IQAB), a joint body of NASBA and AICPA, which is charged with:

(a) evaluating the professional credentialing process of certified public accountants, or their equivalents, from countries other than the United States; and

(b) negotiating principles of reciprocity agreements with the appropriate professional and governmental bodies of other countries seeking recognition as having requirements substantially equivalent to the requirements for the certificate of a certified public accountant in the United States.

(4) The board shall honor the terms of all principles of reciprocity agreements issued by IQAB.

(5) The board recognizes the international uniform CPA qualification examination (IQEX), written and graded by

AICPA, as a measure of professional competency satisfactory to obtain a New Mexico certificate by reciprocity.

(6) The board may accept a foreign country accounting credential in partial satisfaction of its certificate/license requirements if:

(a) the holder of the foreign country accounting credential meets the issuing body's education requirement and has passed the issuing body's examination used to qualify its own domestic candidates; and

(b) the foreign country credential is valid and in good standing at the time of application for a certificate/license.

(7) The board shall accept the following foreign credentials in partial satisfaction of its certificate/license requirements:

(a) Canadian chartered accountant;

(b) Australian chartered accountant;

(c) Australian certified practising accountant;

(d) Mexican contador publicos certificado;

(e) chartered accountants in Ireland.

**E.** An applicant for renewal of a CPA certificate/license originally issued in reliance on a foreign country accounting credential shall:

(1) meet all board prescribed certificate/license renewal requirements; and

(2) present documentation from the foreign country accounting credential issuing body that the applicant's foreign country credential has not been suspended or revoked and is not the subject of a current investigation; and

(3) report any investigations undertaken or sanctions imposed by a foreign country credential body against the CPA's foreign country credential.

**F.** If the foreign country credential has lapsed, expired, or been cancelled, the applicant must present proof from the foreign country credentialing body that the certificate holder/licensee was not the subject of any disciplinary proceedings or investigations at the time the foreign country credential lapsed.

**G.** Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential by the foreign credentialing body shall be considered evidence of conduct reflecting adversely upon the CPA's fitness to retain the certificate and may be a basis for board action.

**H.** Conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country is evidence of conduct reflecting adversely on the CPA's fitness to retain a certificate/license and is a basis for board action.

**I.** The board shall notify

the appropriate foreign country credentialing authorities of any sanctions imposed against a CPA. The board may participate in joint investigations with foreign country credentialing bodies and may rely on evidence supplied by such bodies in disciplinary hearings.

[16.60.3.13 NMAC - Rp 16 NMAC 60.4.9, 02-14-2002; A, 09-16-2002; A, 01-15-2004; A, 06-15-2004; A, 12-30-2004; A, 04-29-2005]

**16.60.3.15 CONTINUING PROFESSIONAL EDUCATION (CPE) REQUIRED TO OBTAIN OR MAINTAIN AN "ACTIVE" CPA LICENSE:**

**A.** The following requirements of continuing professional education apply to certificate/license renewals and reinstatements pursuant to Sections 9E and 12A of the act. An applicant for certificate/license renewal shall show completion of no less than 120 clock hours of CPE, complying with these rules during the 36-month period [~~preceding the first~~ ending on the last] day of the certificate/license holder's birth month.

(1) Any applicant seeking a license/certificate or renewal of an existing license shall demonstrate participation in a program of learning meeting the standards set forth in the statement on standards for continuing professional education (CPE) programs jointly approved by NASBA and AICPA or standards deemed comparable by the board.

(2) Each person holding an active CPA certificate/license issued by the board shall show completion of no less than 120 hours of continuing professional education complying with these rules during the [~~3 calendar years preceding the first day~~ preceding 36-month period ending on the last day of the certificate/license holder's [CPA]] birth month, with a minimum of 20 hours completed in each year. Licensees shall report CPE completion on board prescribed forms including a signed statement indicating they have met the requirements for participation in the CPE program set forth in board rules.

(3) The board may, at its discretion, accept a sworn affidavit as evidence of certificate/license holder compliance with CPE requirements in support of renewal applications in lieu of documented evidence of such. Reciprocity and reinstatement applications shall require documented evidence of compliance with CPE provisions.

(4) Deadline for receipt of license renewal applications and supporting CPE reports or affidavits is no later than the last day of the [~~month prior to the~~] certificate/license holder's birth month. Renewal applications and supporting CPE affidavits or reports shall be postmarked or hand-delivered no later than the renewal

deadline date or the next business day if the deadline date falls on a weekend or holiday.

(5) In the event that a renewal applicant has not completed the requisite CPE by the renewal deadline, he shall provide a written explanation for failure to complete CPE; request an extension for completion of the required CPE; and shall provide a written plan of action to remediate the deficiency.

(a) The extension request and action plan shall accompany the renewal application.

(b) The provisions of the action plan shall be executed within 60 days of the expiration date of the license.

(c) The board reserves the right not to approve a plan of action or grant an extension.

(d) Although a plan of action may be approved immediately upon receipt, the board reserves the right to levy a fine at a later date for late CPE of \$10.00 per day not to exceed \$1,000.

(e) The board may waive this fine for good cause.

(f) If all CPE requirements are not met within 90 days beyond the expiration date of the license, the license shall be subject to cancellation.

(6) Renewal applications and CPE reports received after prescribed deadlines shall include prescribed delinquency fees.

(7) Applications will not be considered complete without satisfactory evidence to the board that the applicant has complied with the CPE requirements of Sections 9E and 12A of the act and of these rules.

(8) Reinstatement applicants whose certificates/licenses have lapsed shall provide documented evidence of completion of 120 hours of CPE in the preceding 36 months before their application will be considered complete.

**B.** Exemption from CPE requirements through change of certificate/license status between inactive/retired and active status:

(1) Pursuant to Section 9E of the act, the board may grant an exception to CPE requirements for certificate holders who do not provide services to the public. Persons desiring exemption from CPE rules requirements may request to change from "active" to "inactive" or "retired" certificate/license status, provided that they:

(a) complete board-prescribed change-of-status forms and remit related fees;

(b) not practice public accountancy as defined in Section 3M of the act; and

(c) place the word "inactive" or "retired" adjacent to their CPA or RPA title on a business card, letterhead or other documents or devices, except for a board-

issued certificate.

(2) Persons requesting to change from "inactive" or "retired" to "active" certificate/license status shall:

(a) provide documented evidence of compliance with all CPE requirements of this rule prior to request for certificate/license change of status to "active"; and

(b) complete board-prescribed change-of-status forms and remit related fees.

**C.** Hardship exceptions: The board may make exceptions to CPE requirements for reason of individual hardship including health, military service, foreign country residence, or other good cause. Requests for such exceptions shall be subject to board approval and presented in writing to the board. Requests shall include such supporting information and documentation as the board deems necessary to substantiate and evaluate the basis of the exception request.

**D.** Programs qualifying for CPE credit: A program qualifies as acceptable CPE for purposes of Sections 9E and 12A of the act and these rules if it is a learning program contributing to growth in professional knowledge and competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the statement on standards for continuing professional education programs jointly approved by NASBA and AICPA, by accounting societies recognized by the board, or such other standards deemed acceptable to the board.

(1) The following standards will be used to measure the hours of credit to be given for acceptable CPE programs completed by individual applicants:

(a) an hour is considered to be a 50-minute period of instruction;

(b) a full 1-day program will be considered to equal 8 hours;

(c) only class hours or the equivalent (and not student hours devoted to preparation) will be counted;

(d) one-half credit increments are permitted after the first credit has been earned in a given learning activity.

(2) Service as a lecturer, discussion leader, or speaker at continuing education programs or as a university professor/instructor (graduate or undergraduate levels) will be counted to the extent that it contributes to the applicant's professional competence.

(3) Credit as a lecturer, discussion leader, speaker, or university professor/instructor may be allowed for any meeting or session provided that the session would meet the continuing education requirements of those attending.

(4) Credit allowed as a lecturer,

discussion leader, speaker or university professor/instructor will be on the basis of 2 hours for subject preparation for each hour of teaching and 1 hour for each hour of presentation. Credit for subject preparation may only be claimed once for the same presentation.

(5) Credit may be allowed for published articles and books provided they contribute to the professional competence of the applicant. The board will determine the amount of credit awarded.

(6) Credit allowed under provisions for a lecturer, discussion leader, speaker at continuing education programs, or university professor/instructor or credit for published articles and books may not exceed one half of an individual's CPE requirement for a 3-year reporting period (shall not exceed 60 hours of CPE credit during a 3-year reporting period).

(7) For a continuing education program to qualify under this rule, the following standards must be met:

(a) an outline of the program is prepared in advance and preserved;

(b) the program is at least 1 hour in length;

(c) a qualified instructor conducts the program; and

(d) a record of registration or attendance is maintained.

(8) The following programs are deemed to qualify, provided the above are met:

(a) professional development programs of recognized national and state accounting organizations;

(b) technical sessions at meetings of recognized national and state accounting organizations and their chapters; and

(c) no more than 4 hours CPE annually may be earned for board meeting attendance.

(9) University or college graduate-level courses taken for academic credit are accepted. Excluded are those courses used to qualify for taking the CPA exam. Each semester hour of credit shall equal 15 hours toward the requirement. A quarter hour credit shall equal 10 hours.

(10) Non-credit short courses - each class hour shall equal 1 hour toward the requirement and may include the following:

(a) formal, organized in-firm educational programs;

(b) programs of other accounting, industrial, and professional organizations recognized by the board in subject areas acceptable to the board;

(c) formal correspondence or other individual study programs which require registration and provide evidence of satisfactory completion will qualify with the amount of credit to be determined by the board.

(11) The board will allow up to a total of 24 hours of CPE credits for firm peer review program participation. Hours may be earned and allocated in the calendar year of the acceptance letter for the firm's CPAs participating in the peer review.

(a) Firms having an engagement or report peer review will be allowed up to 12 hours of CPE credits.

(b) Firms having a system peer review will be allowed up to 24 hours of CPE credits.

(c) Firms having a system peer review at a location other than the firm's office shall be considered an off-site peer review and will be allowed up to 12 hours of CPE credits.

(d) The firm will report to the board the peer review CPE credit allocation listing individual firm CPAs and the number of credits allotted to each CPA. Individual CPAs receiving credit based upon a firm's report to the board may submit firm-reported hours in their annual CPA report forms to the board. If CPE credits will not be used, no firm report will be necessary.

(12) The board may look to recognized state or national accounting organizations for assistance in interpreting the acceptability of the credit to be allowed for individual courses. The board will accept programs meeting the standards set forth in the NASBA CPE registry, AICPA guidelines, NASBA quality assurance service, or such other programs deemed acceptable to the board.

(13) For each 3-year reporting period, at least 96 of the hours reported shall be courses, programs or seminars whose content is in technical subjects such as audit; attestation; financial reporting; tax, management consulting; financial advisory or consulting; and other areas acceptable to the board as directly related to the professional competence of the individual.

(14) For each 3-year reporting period, at least 24 of the hours reported shall be taken outside of the individual's firm, agency, company, organization or normal work setting in a public presentation environment, which is defined as a group program, classroom, live instructor setting in which at least 10 percent of the registered participants are not members, associates, clients, or employees of the firm, agency, company, organization or normal work environment.

(15) For each 3-year reporting period, credit will be allowed once for any single course, program or seminar unless the individual can demonstrate that the content of such course, program or seminar was subject to substantive technical changes during the reporting period.

**E.** Programs not qualifying for CPE:

(1) CPA examination review or

"cram" courses;

(2) industrial development, community enhancement, political study groups or similar courses, programs or seminars;

(3) courses, programs or seminars that are generally for the purpose of learning a foreign language;

(4) partner, shareholder or member meetings, business meetings, committee service, and social functions unless they are structured as formal programs of learning adhering to the standards prescribed in this rule.

**F.** Continuing professional education records requirements: When applications to the board require evidence of CPE, the applicants shall maintain such records necessary to demonstrate evidence of compliance with requirements of this rule.

(1) Reinstatement and reciprocity applicants shall file with their applications a signed report form and statement of the CPE credit claimed. For each course claimed, the report shall show the sponsoring organization, location of program, title of program or description of content, the dates attended, and the hours claimed.

(2) Responsibility for documenting program acceptability and validity of credits rests with the licensee and CPE sponsor. Such documentation should be retained for a period of 5 years after program completion and at minimum shall consist of the following:

(a) copy of the outline prepared by the course sponsor along with the information required for a program to qualify as acceptable CPE as specified in this rule; or

(b) for courses taken for scholastic credit in accredited universities and colleges, a transcript reflecting completion of the course. For non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.

(3) Institutional documentation of completion is required for formal, individual self-study/correspondence programs.

(4) The board may verify CPE reporting information from applicants at its discretion. Certificate holders/licensees or prospective certificate holders/licensees are required to provide supporting documentation and/or access to such records and documentation as necessary to substantiate validity of CPE hours claimed. Certificate holders/licensees are required to maintain documentation to support CPE hours claimed for a period of 5 years after course completion/CPE reporting. Should the board exercise its discretion to accept an affidavit in lieu of a CPE report, the board shall audit certificate/license holder CPE rules compliance of no less than 10 percent of active CPA/RPA licensees annually.

(5) In cases where the board determines requirements have not been met,

the board may grant an additional period of time in which CPE compliance deficiencies may be removed. Fraudulent reporting is a basis for disciplinary action.

(6) An individual who has submitted a sworn affidavit on their renewal application as evidence of compliance with CPE requirements and is found, as the result of a random audit, not to be in compliance will be subject to a minimum \$250.00 fine and any other penalties deemed appropriate by the board as permitted by Section 20B of the act.

(7) The sponsor of a continuing education program is required to maintain an outline of the program and attendance/registration records for a period of 5 years after program completion.

(8) The board may, at its discretion, examine certificate holder/licensee or CPE sponsor documentation to evaluate program compliance with board rules. Non-compliance with established standards may result in denial of CPE credit for non-compliant programs and may be a basis for disciplinary action by the board for fraudulent documentation and representation by a CPE sponsor or certificate holder/licensee of a knowingly non-compliant CPE program.

[16.60.3.15 NMAC - Rp 16 NMAC 60.6.6, 02-14-2002; A, 09-16-2002; A, 06-15-2004; A, 07-30-2004; A, 12-30-2004; A, 04-29-2005]

**NEW MEXICO PUBLIC ACCOUNTANCY BOARD**

This is an amendment to 16.60.4.8 NMAC, effective 04-29-2005.

**16.60.4.8 FIRM PERMIT APPLICATION, RENEWAL, REINSTATEMENT AND NOTIFICATION REQUIREMENTS:**

**A.** Pursuant to Sections 12B and 13A, B, C, and I of the Act, any CPA or RPA acting as the sole proprietor, partner, shareholder or member of a legal business entity who performs or offers to perform accountancy for a client or potential client by holding themselves out to the public must obtain a firm permit to be granted authority to practice public accountancy as a CPA or RPA firm. All firm permit applications for initial issue, renewal, or reinstatement shall be made on board-prescribed forms and meet all information and fee requirements to be considered complete and filed with the board.

**B.** Renewal requirements: Deadline for receipt of firm permit renewal applications is no later than 30 calendar days prior to the expiration date printed on the firm permit. Renewal applications shall

be postmarked or hand-delivered no later than the last day of the month preceding the month of expiration or the next business day if the deadline falls on a weekend or holiday. The board shall mail firm permit renewal application forms to firm permit holders no less than 30 days prior to the renewal deadline date.

**C. Reinstatement requirements:**

(1) Reinstatement due to non-renewal/expiration: Requests to reinstate a firm permit that lapsed or expired as a result of non-renewal shall be made on board-prescribed forms and meet all board-prescribed requirements for reinstatement including ~~[past renewal fees, delinquency fees,]~~ the current year's renewal fee and peer review program requirements. This rule shall not apply to firms whose permits lapsed or expired for a period of 3 years or more.

(2) Reinstatement applications for relief from disciplinary penalties: A firm whose permit to practice has been subject to board disciplinary action may apply to the board for modification of the board action after completion of all requirements contained in the board's original order.

(a) the application shall be in writing and substantiate the reasons constituting good cause for the relief sought; and

(b) shall be accompanied by at least 2 supporting recommendations, under oath, from practitioners who have personal knowledge of the activities of the applicant since the board action was imposed.

**D.** Action by the board: An application pursuant to Section 21 of the Act will be processed by the board upon the basis of the application materials submitted, supplemented by such additional inquiries the board may require. At the board's discretion, a hearing may be held on an application following procedures the board may find suitable for the particular case.

(1) The board may impose appropriate terms and conditions for firm permit reinstatement or modification of board disciplinary action.

(2) In considering a reinstatement application, the board may consider:

(a) all activities of the applicant since the disciplinary penalty from which relief is sought was imposed;

(b) the offense for which the applicant was disciplined;

(c) the applicant's activities during the time the firm permit was in good standing;

(d) the applicant's rehabilitative efforts;

(e) restitution to damaged parties in the matter for which the penalty was imposed; and

(f) the applicant's general reputation for trust and professional probity.

(3) No application for reinstatement

will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court imposed probation or parole.

**E.** Notification requirements: A firm registered pursuant to Section 13 of the Act shall file written notification with the board of any of the following events concerning the practice of public accountancy within this state within 30 days of occurrence:

(1) formation of a new firm;

(2) change in legal form or name of a firm;

(3) firm termination;

(4) establishment of a new branch office or the closing or change of address of a branch office in this state; or

(5) the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the act or these rules.

[16.60.4.8 NMAC - Rp 16 NMAC 60.4.11, 02-14-2002; A, 04-29-2005]

**NEW MEXICO DEPARTMENT OF AGRICULTURE**

**TITLE 21 AGRICULTURE AND RANCHING  
CHAPTER 17 PEST, DISEASE, AND WEED CONTROL  
PART 35 APPLE MAGGOT INTERIOR QUARANTINE**

**21.17.35.1 ISSUING AGENCY:** New Mexico State University, New Mexico Department of Agriculture. [21.17.35.1 NMAC - N, 4/29/2005]

**21.17.35.2 SCOPE:** Part 35 of Chapter 17 applies to any person(s) displaying, donating, selling, or processing regulated articles within a quarantined area or transporting regulated articles out of a quarantined area. [21.17.35.2 NMAC - N, 4/29/2005]

**21.17.35.3 STATUTORY AUTHORITY:** Granted to the board of regents of New Mexico state university under the Pest Control Act, Chapter 76, Article 6, Sections 1 through 9, NMSA 1978 Compilation. [21.17.35.3 NMAC - N, 4/29/2005]

**21.17.35.4 DURATION:** Permanent. [21.17.35.4 NMAC - N, 4/29/2005]

**21.17.35.5 EFFECTIVE DATE:** April 29, 2005, unless a later date is cited at the end of a section.

[21.17.35.5 NMAC - N, 4/29/2005]

**21.17.35.6 OBJECTIVE:** The objective of Part 35 of Chapter 17 is to prevent further spread of apple maggot to New Mexico counties not known to be infested. [21.17.35.6 NMAC - N, 4/29/2005]

**21.17.35.7 DEFINITIONS:**

**A. "Apple maggot"** refers to any developmental stage or synonym of *Rhagoletis pomonella*.

**B. "Board"** means the board of regents of New Mexico state university or any officer or employee to whom authority to act in their stead has been or hereafter may be delegated.

**C. "Certificate"** is a document issued or authorized by the department indicating a regulated article is not infested with a specific pest.

**D. "Department"** means the New Mexico department of agriculture.

**E. "Developmental stage"** includes adult, pupae, larvae, or egg.

**F. "External inspection"** means the visual inspection of the exterior of regulated fruit.

**G. "Infested"** means reasonable expectation that regulated articles may harbor any developmental stage of apple maggot. All regulated articles originating within a quarantined area will be considered infested, unless accompanied by a certificate.

**H. "Interior inspection"** means the visual inspection of the interior of regulated fruit.

**I. "Lot(s)"** means a defined quantity or population of regulated fruit with a common identity; i.e., box, shipment, or orchard.

**J. "Orchard(s)"** means area in which regulated fruit is grown, irrespective of the number of trees.

**K. "Regulated article"** means any developmental stage of apple maggot, plant tissue, or material capable of or having a reasonable expectation of harboring any developmental stage of apple maggot.

**L. "Regulated fruit"** means fruit capable of harboring any live developmental stage of apple maggot.

**M. "Retail"** means sales or donations of regulated fruit primarily sold or donated to individual consumers.

**N. "Signs"** means visual indicators found on the surface of regulated fruit that indicates the possible presence of apple maggot infestations. Examples include, but are not limited to, fruit discoloration, necrosis, soft areas, longitudinal discolorations, or a bumpy appearance or feel.

**O. "Wholesale"** means sales or donations of regulated fruit sold or

donated primarily to retailers.

**P. "Units"** means the smallest quantity offered at the retail level; i.e., pint, quart, or apple.

[21.17.35.7 NMAC - N, 4/29/2005]

**21.17.35.8 APPLE MAGGOT INTERIOR QUARANTINE:**

Apple maggot is not known to be a widespread pest of apples and other fruit in New Mexico. In order to prevent the further spread of apple maggot in New Mexico, the department hereby orders and declares that regulated fruit shall not be displayed or sold within the quarantined areas or allowed to be transported out of the quarantined area, except under restrictions herein described.

[21.17.35.8 NMAC - N, 4/29/2005]

**21.17.35.9 QUARANTINED AREAS:**

Quarantined areas are defined areas of the state in which the department has determined to contain established populations of apple maggot. Los Alamos, Rio Arriba, and Santa Fe counties are designated as quarantined areas.

[21.17.35.9 NMAC - N, 4/29/2005]

**21.17.35.10 REGULATED ARTICLES:**

Any live developmental stage of apple maggot. Plant tissue originating or repackaged within the quarantined areas and capable of harboring any live developmental stage of apple maggot. All material originating within the quarantined areas with a reasonable expectation of harboring any live developmental stage of apple maggot. Examples of regulated articles include, but are not limited to, boxes, soil, and the fruit of apple, crab apple, cherry, pear, and plum trees.

[21.17.35.10 NMAC - N, 4/29/2005]

**21.17.35.11 RESTRICTIONS:**

A certificate must accompany all regulated fruit displayed or sold within the quarantined area or to be transported out of the quarantined area. Following inspection, a certificate may be issued either directly by the department or under a compliance agreement for regulated fruit that complies with one or more of the following appropriate certification restrictions.

**A. Regulated fruit sold at the retail level or donated to individuals or organizations:** Following inspection, regulated fruit that complies with 1, 2, or 3 of this subsection will be considered apple maggot free and entitled to a certificate.

(1) All individual regulated fruit was determined to be free of external signs that may be indicative of apple maggot infestation. Based on internal inspections, no apple maggots were detected in 0.5 percent (i.e., 1 out of 200 apples or units) of regulated fruit.

(2) All regulated fruit was subjected to treatment as detailed in subsection "certification by treatment."

(3) All regulated fruit originated from orchards certified to be free of apple maggot as detailed in subsection "certification of orchards."

**B. Regulated fruit sold at the wholesale level:** Following inspection, specific lots of regulated fruit that comply with 1, 2, or 3 of this subsection will be considered apple maggot free and entitled to a certificate.

(1) Based on external inspections of a representative sample, no regulated fruit exhibited signs indicative of apple maggot infestation. A sample size will be based on one apple per box. Based on internal inspections, no apple maggots were detected in a representative sample consisting of 0.2 percent of the total regulated fruit. A minimum of five apples per lot will be inspected internally for apple maggot.

(2) All regulated fruit was subjected to treatment as detailed in subsection "certification by treatment."

(3) All regulated fruit originated from orchards certified to be free of apple maggot as detailed in subsection "certification of orchards."

**C. Repackaged fruit not originating within a quarantined area:**

Persons processing or repackaging regulated fruit not originating within quarantined areas must maintain documentation addressing the origin of those articles. Documentation must contain the name, address, and telephone number of the person who sold the regulated fruit and the location of the growing area.

**D. Certification by treatment:** Regulated fruit intended for donation or retail or wholesale sales will be issued a certificate by the department following completion of one of two officially supervised cold storage treatments.

(1) Regulated fruit will be subjected to a minimum of 90 days in cold storage. The temperature of regulated fruit will be maintained at forty (40) degrees fahrenheit or less.

(2) Regulated fruit will be subjected to a minimum of 40 days in cold storage. Temperature of regulated fruit will be maintained at thirty-two (32) degrees fahrenheit or less.

**E. Certification of orchards:** Regulated fruit intended for donation or retail or wholesale sales originating from an orchard certified to be free of apple maggot will be issued a certificate by the department following compliance with a department accepted control program.

[21.17.35.11 NMAC - N, 4/29/2005]

**21.17.35.12 EXEMPTIONS:**



**A.** Regulated fruit processed (juice, sauce, jam, etc.) within the quarantined areas in a manner that will destroy apple maggot.

**B.** The director of the department may authorize additional specific exemptions.  
[21.17.35.12 NMAC - N, 4/29/2005]

**21.17.35.13 DISPOSITION OF VIOLATIONS:** Failure to comply with the requirements as stated above shall be a violation of this rule and subject to penalties as provided under Chapter 76, Article 6, Section 9, NMSA 1978. Regulated articles found to be infested and/or in violation of this quarantine shall be destroyed at the owner's expense in a manner prescribed by the department or subjected to an approved cold treatment at the owner's expense.  
[21.17.35.13 NMAC - N, 4/29/2005]

**21.17.35.14 LIABILITY DISCLAIMER:** The board disclaims liability for any costs incident to inspection or compliance with the provisions of this rule.  
[21.17.35.14 NMAC - N, 4/29/2005]

**HISTORY OF 21.17.35 NMAC:**  
Pre-NMAC History: [RESERVED]

History of Repealed Material:  
21.17.34 NMAC, Apple Maggot Emergency Interior Quarantine, filed 9/24/04 - Expired December 23, 2004.

**NEW MEXICO  
DEPARTMENT OF  
AGRICULTURE**

**TITLE 21 AGRICULTURE  
AND RANCHING  
CHAPTER 17 PEST, DISEASE,  
AND WEED CONTROL  
PART 49 LUNA COUNTY  
PEST MANAGEMENT ASSOCIATION**

**21.17.49.1 ISSUING AGENCY:** Luna County Pest Management Association.  
[21.17.49.1 NMAC - Rp, 21 NMAC 17.49.1, 4/29/2005]

**21.17.49.2 SCOPE:** This rule establishes the control committee assessment to be paid by cotton producers in the Luna county control district governed by the Luna county pest management association.  
[21.17.49.2 NMAC - Rp, 21 NMAC 17.49.2, 4/29/2005]

**21.17.49.3 STATUTORY AUTHORITY:** Granted to the Luna county, New Mexico cotton boll weevil control

district control committee under the Cotton Boll Weevil Control Act, Chapter 76, Article 6A, Sections 1 through 16, NMSA 1978 Compilation.  
[21.17.49.3 NMAC - Rp, 21 NMAC 17.49.3, 4/29/2005]

**21.17.49.4 DURATION:** April 29, 2005, through February 5, 2010, unless the committee is sooner terminated under the Cotton Boll Weevil Control Act.  
[21.17.49.4 NMAC - Rp, 21 NMAC 17.49.4, 4/29/2005]

**21.17.49.5 EFFECTIVE DATE:** April 29, 2005, unless a later date is cited at the end of a section.  
[21.17.49.5 NMAC - Rp, 21 NMAC 17.49.5, 4/29/2005]

**21.17.49.6 OBJECTIVE:** The objective of Part 49, Chapter 17 is to establish the control district's assessment upon cotton producers for the support of the cotton boll weevil control district.  
[21.17.49.6 NMAC - Rp, 21 NMAC 17.49.6, 4/29/2005]

**21.17.49.7 DEFINITIONS:**  
**A. "Committee"** means Luna county pest management association.  
**B. "Control district"** means Luna county excluding the Las Uvas valley.  
**C. "Producer"** means any person producing five or more acres of cotton plants.  
[21.17.49.7 NMAC - Rp, 21 NMAC 17.49.7, 4/29/2005]

**21.17.49.8 ASSESSMENT:**  
**A.** The committee assessment rate is set forth at 2 dollars and fifty cents (\$2.50) per bale of cotton for all cotton producers in the control district. The assessment will be collected at the cotton gin.  
**B.** Payment of the assessment levied by a local control committee against a cotton producer will be due and payable when the cotton producer receives an assessment statement from the control committee.  
**C.** Failure to comply with payment of assessment to the committee may result in the recording of a lien on the cotton crop and/or property in the county clerk's office where the property is located. The lien will remain in effect until foreclosure or balance subject to the lien is paid in full. Interest may be assessed at a rate of 8 1/2 percent per annum on balance unpaid after 30 days.  
[21.17.49.8 NMAC - Rp, 21 NMAC 17.49.8, 4/29/2005]

**HISTORY OF 21.17.49 NMAC:**

Pre-NMAC History: [RESERVED]

History of Repealed Material:  
21 NMAC 17.49, Luna County Pest Management Association Assessment, filed 7/30/98 - duration expired 2/5/2003.

**NEW MEXICO  
DEPARTMENT OF  
FINANCE AND  
ADMINISTRATION**

**LOCAL GOVERNMENT DIVISION**

**TITLE 2 PUBLIC FINANCE  
CHAPTER 79 INDIVIDUAL  
DEVELOPMENT ACCOUNTS  
PART 1 GENERAL PROVISIONS**

**2.79.1.1 ISSUING AGENCY:** New Mexico Department of Finance and Administration, Local Government Division.  
[2.79.1.1 NMAC - N, 04/29/2005]

**2.79.1.2 SCOPE:** All individual development account program administrators funded pursuant to the Act, state agencies and other stakeholders affected by the rule. The scope of these rules includes, but is not limited to:  
**A.** policies concerning the eligible uses for and establishment of individual development accounts;  
**B.** selection criteria and requirements for participating individual development account program administrators; and  
**C.** eligibility criteria for individual account owners.  
[2.79.1.2 NMAC - N, 04/29/2005]

**2.79.1.3 STATUTORY AUTHORITY:** The Individual Development Account Act, Section 58-30-5, NMSA 1978 and Section 9-6-5 Subsection E, NMSA 1978.  
[2.79.1.3 NMAC - N, 04/29/2005]

**2.79.1.4 DURATION:** Permanent.  
[2.79.1.4 NMAC - N, 04/29/2005]

**2.79.1.5 EFFECTIVE DATE:** 04/29/2005 unless a later date is cited at the end of a section.  
[2.79.1.5 NMAC - N, 04/29/2005]

**2.79.1.6 OBJECTIVE:** The Individual Development Account Act (Sections 58-30-1 through 58-30-12 NMSA 1978; being Laws 2003, Chapter 362) established a structure to provide oversight to individual development account programs in New Mexico funded through the act. These rules are designed to:

**A.** identify and promote quality individual development account initiatives throughout the state while encouraging innovation and diversity;

**B.** ensure accountability of account owners, account programs, program administrators as well as other stakeholders; and

**C.** provide standards of eligibility and program administration for individual development account programs in New Mexico.

[2.79.1.6 NMAC - N, 04/29/2005]

#### 2.79.1.7 DEFINITIONS:

**A. "Account owner"** means the person in whose name an individual development account is originally established.

**B. "Act"** means the Individual Development Account Act, Sections 58-30-1 through 58-30-12 NMSA 1978.

**C. "Allowable use"** means monies expended from an individual development account for the account owner or the account owner's spouse or dependents for a use listed below:

(1) expenses to attend an approved post-secondary or vocational educational institution, including, but not limited to, payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence that is the first principal residence acquired or constructed by the account owner;

(3) costs of major home improvements or repairs on the principal residence of the account owner;

(4) capitalization or costs to start or expand a business including equipment, tangible personal property, operational and inventory expenses, legal and accounting fees and other costs normally associated with starting or expanding a business;

(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner, and

(6) in the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed to a beneficiary if not in conflict with the New Mexico Uniform Probate Code Sections 45-1-101 through 45-1-404, NMSA 1978. If the beneficiary is eligible to maintain the account, according to the provisions of the act and these rules, then the account as well as matching funds designated for that account from the program reserve fund of the program administrator may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

**D. "Authorized financial institution"** means a financial institution

authorized by the division to hold and manage individual development accounts and reserve accounts.

**E. "Business"** means a sole proprietorship, business venture or corporate structure in which the account owner will be an owner of greater than 50 percent.

**F. "Director"** means the director of the division.

**G. "Division"** means the local government division of the New Mexico department of finance and administration.

**H. "Earned income"** means wages from employment, payment in lieu of wages, disability payments, tribal distributions or earnings from self-employment or acquired from the provision of services, goods or property, production of goods, management of property or supervision of services.

**I. "Education"** means a job training or related educational program approved by the program administrator and the division.

**J. "Eligible individual"** means a person who meets the criteria for opening an individual development account.

**K. "Emergency withdrawal"** means a withdrawal by an account owner that:

(1) is a withdrawal of only those funds, or a portion of those funds, deposited by the account owner in the individual development account of the account owner;

(2) is permitted by a program administrator on a case-by-case basis; and

(3) is made due to a personal crisis, including but not limited to illness, eviction, potential foreclosure, job loss or urgent family reasons and approved in writing by a program administrator.

**L. "Financial institution"** means a bank, bank and trust, savings bank, savings association or credit union authorized to be a trustee of individual retirement accounts as defined by federal law, the deposits of which are insured by the federal deposit insurance corporation or the national credit union administration.

**M. "Financial literacy"** means a basic understanding of budgets and savings accounts, credit and interest and how to use financial services including, but not limited to having a savings plan to reach the account owner's savings goal for an individual development account.

**N. "First principal residence"** means a principal residence to be acquired or constructed by an account owner who has no ownership interest in a principal residence during the three-year period ending on the date of acquisition of the principal residence.

**O. "Individual develop-**

**ment account"** means an account established and maintained in an authorized financial institution by an eligible individual participating in an individual development account program pursuant to the act.

**P. "Individual development account program"** means a program established by a program administrator approved by the division to establish and administer individual development accounts and reserve accounts for eligible individuals and to provide financial training required by the division for account owners.

**Q. "Major home improvement or repair"** means a home improvement to a residential location that has been occupied continuously by the account owner for at least 12 months and is the principal residence of the account owner who is named as the mortgage holder. The home improvement must be one that increases the value of the residence or that will sustain the value of the home as approved by the program administrator. These improvements include, but are not limited to structural alterations and reconstruction, changes for improved functions and modernizations, elimination of health and safety hazards, and energy conservation improvements.

**R. "Matching funds"** means money deposited in a reserve account at a ratio of not less than one dollar (\$1.00) of program administrator funds to one dollar (\$1.00) of account owner deposits to match the withdrawals for allowable uses from an individual development account.

**S. "Non-profit organization"** means an instrumentality of the state or an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. X 501(c)(3)) and exempt from taxation pursuant to Section 501(a) of that code.

**T. "Post-secondary or vocational education"** means a post-secondary university, community college, vocational-technical school, institution or specialized degree-granting college or school legally authorized to grant degrees or certificates.

**U. "Program administrator"** means only 501(c)(3) nonprofit organizations, tribes and instrumentalities of the state that are determined by the director to be eligible to offer an individual development account program.

**V. "Reserve account"** means an account established pursuant to the act in an authorized financial institution in which matching funds are maintained and available for payment for a predetermined allowable use following completion of all program requirements by the account owner.

**W. "Savings plan"** means

a plan developed with an account owner and a program administrator defining savings goals and program requirements, including the allowable use of both the individual development account and the matching funds. The approved plan shall serve as the contract between the account owner and the program administrator.

**X. "Tribe"** means an Indian nation, tribe or pueblo located in whole or in part within New Mexico. [2.79.1.7 NMAC - N, 04/29/2005]

### **2.79.1.8 RESPONSIBILITIES OF THE DIVISION:**

**A.** Annually, based on the availability of state funds including administrative costs of program administrators, the division shall solicit requests for proposals from non-profit organizations or tribes interested in establishing or further developing an individual development account program.

**B.** The director shall determine if the entity is eligible to be a program administrator under the act and these rules. Individual development account programs and program administrators are subject to review and approval by the director.

**C.** Prior to receiving funds pursuant to the act, an individual development account program and program administrator shall be approved by the director.

**D.** The director shall monitor all individual development account programs and program administrators subject to the act and these rules and consult with the regional planning and development councils (COGs/EDDs) on program implementation as needed to ensure that account owners' accounts and the reserve fund accounts are being operated according to federal law, the provisions of the act and these rules.

**E.** Each November, the division shall provide a report of the activities under the act to the governor and to an appropriate interim committee of the legislature.

**F.** The division shall provide staff support and administrative services for the individual development account advisory committee in accordance with the act.

[2.79.1.8 NMAC - N, 04/29/2005]

### **2.79.1.9 RESPONSIBILITIES OF THE ADVISORY COMMITTEE:**

Pursuant to the act and these rules, the advisory committee shall provide oversight of the administration of individual development account programs operated by program administrators and subject to the act and these rules, suggest possible changes that benefit account owners or improve the effectiveness of the individual development account programs throughout the state.

**A.** The advisory committee shall meet at least two times in a calendar year to review the implementation of the act and these rules.

**B.** The advisory committee members are appointed by the governor and consist of the lieutenant governor and eight members to represent the state geographically. The director or his designee serves as an ex-officio member of the advisory committee.

[2.79.1.9 NMAC - N, 04/29/2005]

### **2.79.1.10 PARTICIPATION CRITERIA FOR PROGRAM ADMINISTRATORS:**

**A.** In order to receive state funds and be approved by the director, a program administrator shall demonstrate, to the satisfaction of the division, that it meets the criteria below.

(1) It shall qualify as a tax-exempt, not-for-profit organization under Sections 501(a) and 501(c)(3) of the Internal Revenue Code of 1986, a tribe or an instrumentality of the state.

(2) It shall establish a reserve account with an authorized financial institution sufficient to meet the matching fund commitments made to all account owners participating in the program and shall report at least quarterly to each account owner the amount of money available in the reserve account to match the account owner's withdrawal for an allowable use following completion of all program requirements.

(3) It shall offer a comprehensive financial literacy program and other necessary training pertinent to the allowable uses agreed to by the account owner either with its own staff or through a plan of action utilizing qualified providers.

(4) It shall develop partnerships with financial institutions, develop account owner matching funds and manage the operations of an individual development account that is established by the program administrator with fiduciary care.

(5) It shall have access to facilities that are reasonably accessible to account owners and comply with state and federal building laws.

(6) It shall have human and material resources sufficient to implement an individual development account program and shall have a successful history of providing service to low-income persons and of success in raising funds for that purpose. If it is a new organization, it shall have staff and board members who have had such experience in other organizations.

(7) It shall present a workable plan for development, implementation, fiduciary care and management of an individual development account program. The plan shall include endorsement from at least one cooperating local financial institution.

The plan shall indicate the length of time, in months and years, of the operation of the program by the organization, taking into account the resources that are or will be available.

(8) It shall provide a description of its contingency plan in the event the program administrator is no longer able to operate the program. Such contingency plan shall include, but not be limited to:

(a) a requirement of immediate notice to all account owners and the division; and

(b) all actions the program administrator shall take to ensure the orderly closing of the program.

(9) It shall not possess any other deficit that may raise doubt as to its ability to administer an individual development account program, including but not limited to, conviction of a crime by any officer of the program administrator.

(10) It shall enter into a contract with the division delineating its responsibilities in a form prescribed by the division.

**B.** The division may conduct site reviews of any individual development account program administrator at any time for compliance with applicable regulations and contracts. The program administrator shall provide the division with full access to any program records upon request. [2.79.1.10 NMAC - N, 04/29/2005]

### **2.79.1.11 ACCOUNT OWNER AGREEMENT:**

The program administrator operating an approved individual development account program shall be required to enter into an account owner agreement containing the following minimum requirements with an eligible individual:

**A.** a provision that the program administrator and account owner shall establish, in a timely manner, an individual development account in an authorized financial institution;

**B.** a deposit plan specifying the amount, form and schedule of deposits to be made by the account owner;

**C.** the rate at which the account owner's deposits will be matched;

**D.** the allowable use for which the account is maintained;

**E.** a provision that the program administrator shall provide financial literacy and asset-specific training approved by the division;

**F.** a provision that the account owner shall attend the financial literacy and asset-specific training;

**G.** an explanation of the withdrawal policies, including:

(1) the policies governing withdrawal of savings upon completion of the program,

(2) early withdrawal due to an account owner's decision to leave the pro-

gram,

(3) termination of account due to non-compliance by the account owner, and

(4) emergency withdrawals including the provision that if an account owner withdraws money from his individual development account for a use other than an allowable use, he forfeits a proportionate amount from the reserve account unless an amount equal to the withdrawn money is deposited into his individual development account within the twelve months following the withdrawal;

**H.** a provision that the account owner may request an emergency withdrawal;

**I.** a provision allowing for the development of a contingency plan in the event the account owner exceeds or fails to meet the savings goals outlined in the savings agreement;

**J.** a provision that the program administrator shall implement the contingency plan on record with the division in the event the organization is no longer able to operate the program [Paragraph (8) of Subsection A of 2.79.1.10 NMAC];

**K.** a provision that any agreement for the investment of assets shall be at the direction of the account owner after consultation with the program administrator;

**L.** a provision that the program administrator shall not require an account owner to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution, or other entity, other than the authorized financial institution in which the individual development account savings account is held;

**M.** a provision designating one or more beneficiaries of the funds, plus accrued interest, deposited by the account owner in the individual development account in the event of the account owner's death;

**N.** a verification that the eligible individual maintains no other individual development account; and

**O.** a provision that the agreement may be modified only with the written concurrence of the program administrator and the account owner.

[2.79.1.11 NMAC - N, 04/29/2005]

**2.79.1.12 FINANCIAL INSTITUTIONS:** A program administrator operating an approved state individual development account program shall be required to enter into a written governing instrument with an authorized financial institution. The written governing agreement shall provide for:

**A.** the establishment of

individual development accounts in the form of trust or custodial accounts for the benefit of the account owners, which meet the requirements of Section 404(5) of the Assets for Independence Act, as amended, and into which accounts the account owners shall make deposits;

**B.** an assurance that the financial institution shall pay at least a market rate of interest on the individual development accounts;

**C.** an assurance that the financial institution shall not charge fees on the account;

**D.** an assurance that if an account owner appears on ChexSystems, the financial institution will open the account as long as it does not violate the internal administrative rules of the financial institution; refusal to open an account based upon this may occur only in extreme circumstances such as the account owner having a previous conviction of fraud or other crime;

**E.** an assurance that the financial institution shall provide monthly savings statements to both the account owner and the program administrator; and

**F.** an assurance that the financial institution shall not require an account owner to make any purchase or enter into any commercial transaction with a specific individual, business, financial institution or other entity.

[2.79.1.12 NMAC - N, 04/29/2005]

**2.79.1.13 INDIVIDUAL DEVELOPMENT ACCOUNT SAVINGS ACCOUNTS:**

**A.** A program administrator shall apply criteria for minimum and maximum levels of deposit and minimum number of months that may go by without a deposit into the account. These criteria may be determined based upon the circumstances of the population to be served.

**B.** A program administrator approved by the director shall maintain a separate trust or custodial account for each account owner in an authorized financial institution. The trust account shall be an interest-bearing savings instrument not less favorable to the depositor than the rates and fees of prevailing market rate accounts of each participating financial institution, applicable to like deposits by financial institutions in this state, bearing rates and fees at least as favorable to the depositor as the best terms available to other customers with similar accounts at each participating financial institution.

**C.** To the extent that available funding, including funding from both public and non-public sources may allow, the match rate shall be at least one dollar (\$1.00) for each one dollar (\$1.00) deposited by the account owner into his individual

development account.

**D.** An eligible individual may open an individual development account upon verification by the program administrator that the individual maintains no other individual development account and fulfillment of all other requirements of the act and these rules.

**E.** An account owner shall complete a financial education program and all requirements made by the program administrator prior to the withdrawal of money from the account.

**F.** No withdrawal of funds from any individual development savings account may be permitted by a financial institution without signatures of both the account owner and an authorized representative of the program administrator. The financial institution in which an individual development account is held shall not be liable for withdrawals made for uses other than allowable uses. Prior to consenting to any withdrawal of funds, a representative of the program administrator shall discuss with the account owner the consequences of the intended withdrawal of funds. The program administrator may not unreasonably withhold its consent to the withdrawal.

**G.** The account owner may, upon the approval of the program administrator, withdraw moneys from the account owner's individual development account in the form of a joint check or transfer of funds made payable to the account owner and the payee of the approved withdrawal for any of the following allowable uses:

(1) expenses to attend an approved post-secondary or vocational educational institution, including, but not limited to, payment for tuition, books, supplies and equipment required for courses;

(2) costs to acquire or construct a principal residence that is the first principal residence acquired or constructed by the account owner;

(3) costs of major home improvements or repairs on the principal residence of the account owner;

(4) capitalization or costs to start or expand a business including equipment, tangible personal property, operational and inventory expenses, legal and accounting fees and other costs normally associated with starting or expanding a business; and

(5) acquisition of a vehicle necessary to obtain or maintain employment by an account owner or the spouse of an account owner.

**H.** In the case of a deceased account owner, amounts deposited by the account owner and held in an individual development account shall be distributed directly to the account owner's spouse, or if the spouse is deceased or there is no spouse, to a dependent or other named

beneficiary of the deceased if not in conflict with the New Mexico Uniform Probate Code, Sections 45-1-101 through 45-1-404 NMSA 1978. If the spouse, dependent or beneficiary is eligible to maintain the account, according to the provisions of Section 58-30-4, NMSA 1978 and 2.79.1.14 NMAC, then the account as well as matching funds designated for that account from the program reserve fund of the program administrator may be transferred and maintained in the name of the surviving spouse, dependent or beneficiary.

**I.** In the event that an account owner withdraws any money from an individual development account for a purpose other than an allowable use, there shall be a proportional reduction in the amount of money held by the program administrator in the reserve account maintained for that account owner. However, if within twelve months following the withdrawal of funds the account owner deposits an amount equal to the withdrawn money, the proportional amount held by the program administrator shall be maintained.

**J.** More than one eligible individual per household may hold an individual development account.

**K.** At the request of the account owner and with the written approval of the program administrator, amounts may be withdrawn from the account owner's individual development account and deposited in another individual development account established for an eligible individual who is the account owner's spouse or dependent.

[2.79.1.13 NMAC - N, 04/29/2005]

**2.79.1.14 ELIGIBLE ACCOUNT OWNERS:**

**A.** To participate as an account owner in an individual development account program approved by the director an individual, at the time of application, shall be a member of a household located in New Mexico whose adjusted gross income is not in excess of 200 percent of the federal poverty guidelines and shall:

- (1) have earned income;
- (2) be eighteen years of age or older; and
- (3) be a citizen or legal resident of the United States.

**B.** A child in foster care is an eligible individual if he:

- (1) is sixteen years of age or older;
- (2) has earned income that is no more than 200 percent of the federal poverty guidelines when the child's income is evaluated separately from the income of his foster household;
- (3) is a citizen or legal resident of the United States; and

(4) is a resident of New Mexico. [2.79.1.14 NMAC - N, 04/29/2005]

**2.79.1.15 REPORTING REQUIREMENTS OF PROGRAM ADMINISTRATORS:**

A program administrator whose individual development account program is approved by the director shall report to the division no later than November 1st of each year. The report shall not identify individual account owners and shall include, but not be limited to:

**A.** the number of individual development accounts established, by savings objective, and their status;

**B.** verification that deposits are being made by the account owners pursuant to the approved savings plans;

**C.** the balance and sources of funding in the program administrator's local reserve fund;

**D.** the total money in the aggregate deposited in individual development accounts and reserve accounts administered by the program administrator;

**E.** the amounts withdrawn from individual development accounts for either allowable uses or for uses other than allowable uses;

**F.** the projected balance of savings to be deposited by account owners, by quarter, in order to complete their savings goal;

**G.** levels of participation in financial literacy education courses differentiating between individual development account participants and the general public; and

**H.** other information requested by the director to monitor the costs and outcomes of the individual development account program.

[2.79.1.15 NMAC - N, 04/29/2005]

**2.79.1.16 TERMINATION OF INDIVIDUAL DEVELOPMENT ACCOUNT PROGRAMS APPROVED UNDER THE ACT:**

**A.** An individual development account program shall be terminated if:

- (1) the division determines that the individual development account program or program administrator is not operating pursuant to the provisions of the Individual Development Account Act or these rules;

(2) the provider of the program no longer retains its status as a program administrator;

(3) the program administrator ceases to provide an individual development account program; or

(4) the division provides written notice to the program administrator.

**B.** If a program is terminated the division shall seek to transfer management of the terminated program to another qualified entity awarded a contract under previous RFP processes.

**C.** If the division is unable to identify and approve a program administrator to assume the authority to continue to operate a terminated individual development account program, money held in the terminated program administrator's reserve fund shall be deposited into the individual development accounts of the account owners for whom the proportionate share of the reserve account was established as of the first day of termination of the program.

**D.** If a program with active individual development accounts is terminated, the division shall assume the responsibilities of the program administrator until such time as a new program administrator is assigned to manage the individual development accounts of the account holders of a terminated program.

[2.79.1.16 NMAC - N, 04/29/2005]

**2.79.1.17 NON-DISCRIMINATION:**

**A.** No eligible individual, as defined by the act and these rules, shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any activity or program funded in whole or in part with division funds on the grounds of the race, religion, color, national origin, sex, sexual preference, age, or handicap of any person.

**B.** If an individual believes that he has been unfairly denied access to an approved state individual development account program or otherwise treated inequitably as an account owner, the individual may file a complaint with the division no later than thirty days after the alleged injury. The division shall investigate the complaint and shall attempt to informally resolve it. Where applicable, the division may refer the individual to the appropriate state or federal agency for potential relief.

[2.79.1.17 NMAC - N, 04/29/2005]

**HISTORY OF 2.79.1 NMAC:** [Reserved].

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

**TITLE 6 PRIMARY AND SECONDARY EDUCATION  
CHAPTER 64 SCHOOL PERSONNEL - COMPETENCIES FOR LICENSURE  
PART 16 COMPETENCIES FOR ENTRY-LEVEL TECHNOLOGY STUDIES/EDUCATION TEACHERS**

**6.64.16.1 ISSUING AGENCY:**

Public Education Department  
[6.64.16.1 NMAC - N, 04-29-05]

**6.64.16.2 SCOPE:**

All institutions of higher education in New Mexico that establish or maintain a curriculum for persons seeking an endorsement in technology studies/education to a state educator license.

[6.64.16.2 NMAC - N, 04-29-05]

**6.64.16.3 STATUTORY**

**AUTHORITY:** Sections 22-2-1 and 22-2-2 (J), NMSA 1978.

[6.64.16.3 NMAC - N, 04-29-05]

**6.64.16.4 DURATION:**

Permanent

[6.64.16.4 NMAC - N, 04-29-05]

**6.64.16.5 EFFECTIVE DATE:**

April 29, 2005, unless a later date is cited in the history note at the end of a section.

[6.64.16.5 NMAC - N, 04-29-05]

**6.64.16.6 OBJECTIVE:**

This regulation establishes entry-level competencies that are based on what beginning technology studies/education teachers must know and be able to do to provide effective technology education programs in New Mexico schools. These competencies should be incorporated into all college or university curricula for persons seeking a technology studies/education endorsement to their state educator license.

[6.64.16.6 NMAC - N, 04-29-05]

**6.64.16.7 DEFINITIONS:**

A. "Design" means an iterative decision-making process that produces plans by which resources are converted into products or systems that meet human needs or solve problems.

B. "Design process" "a systematic problem-solving strategy, with criteria and constraints, used to develop many possible solutions to solve a problem or satisfy human needs and wants or to narrow down the possible solutions.

C. "System" means a group of interacting, interrelated or interdependent elements or parts that function together as a whole to accomplish a goal.

D. "Technology" means:

(1) Human innovation in action that involves the generation of knowledge and processes to develop systems that solve problems and extend human capabilities; or

(2) The innovation, change or modification of the natural environment to satisfy perceived human needs and wants.

E. "Technological literacy" means the ability to use, manage, understand and assess technology.

[6.64.16.7 NMAC - N, 04-29-05]

**6.64.16.8 REQUIREMENTS:**

A. Beginning teachers seeking an endorsement in technology education to an initial level I New Mexico teaching license must satisfy all of the requirements of the license as provided in the public education department (PED) rule for that license, which include, among other requirements, 24-36 semester hours in technology education.

B. Teachers seeking to add an endorsement in technology education to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, the predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in technology education, or

(2) successfully complete an undergraduate academic major (24-36 semester hours), coursework equivalent to an undergraduate major or a graduate degree in technology education, or

(3) obtain certification in technology education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in technology education to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of 6.64.16.8 NMAC or by demonstrating the teaching competencies for entry level technology education teachers as provided in 6.64.16.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas.

[6.64.16.8 NMAC - N, 04-29-05]

**6.64.16.9 COMPETENCIES FOR ENTRY-LEVEL TECHNOLOGY STUDIES/EDUCATION TEACHERS:**

A. The domain of technology include the preparation to teach technology studies/education which will result in individuals who can teach others the competencies in basic technology, the relationship between technology and society, technological design and the skills necessary for a technological world the teacher must:

(1) understand the nature of technology, including the characteristics and scope of technology, the core concepts of technology, the relationships among tech-

nologies and the connections between technology and other fields;

(2) recognize the relationship between technology and society, including the cultural, social, economic and political effects of technology, the effects of technology on the environment, the role of society in the development and use of technology and the influence of technology on history;

(3) develop an understanding of design, including the attributes of design, the processes of engineering design, the role of troubleshooting, research and development, invention and innovation and experimentation in problem solving;

(4) develop abilities for a technological world, including application of the design process, use and maintenance of technological products and systems and assessment of the impact of products and systems; and

(5) develop a working knowledge of the designed world, including medical technologies agricultural and related biotechnologies, energy and power technologies, information and communication technologies transportation technologies, manufacturing technologies and construction technologies.

B. Career cluster competencies involves preparation to teach technology studies/education which will result in individuals who can teach others the competencies in technology careers. Teachers must:

(1) achieve specific academic knowledge and skills required to pursue the full range of careers and post-secondary education opportunities within technology studies/education;

(2) use oral and written communication skills in creating, expressing and interpreting information and ideas including technical terminology and information within technology studies/education;

(3) employ technical communications effectively to maintain good records and reporting procedures;

(4) solve problems using critical thinking skills (e.g., analyze, synthesize and evaluate) independently and in teams;

(5) use information technology tools to access, manage, integrate and create information;

(6) identify health goals and safety procedures for technology studies/education occupations;

(7) use leadership skills in collaborating with others to accomplish organizational goals and objectives;

(8) know and understand the importance of professional ethics and legal responsibilities;

(9) know and understand the importance of employability skills; and

(10) use the technical knowledge and skills required to pursue the full range

of careers in technology studies/education.

C. Local program success competencies

(1) Instruction for preparation to teach technology studies/education which will result in individuals who can fulfill the instructional role in the technology education program to:

(a) demonstrate teacher behaviors documented by research to be related to student achievement including clarity, variability, enthusiasm, task-oriented/business like behavior and student opportunity to learn criterion material;

(b) demonstrate master teacher competencies including with-it-ness, student centeredness and an in-charge image;

(c) conduct and use research on how students learn technology, addressing both commonality and diversity of students;

(d) design and evaluate curricula and programs that enable all students to attain technological literacy; and

(e) demonstrate proficiency in the development and implementation of contextual-based, laboratory intensive technology studies/education programs.

(2) Career readiness involves preparation to teach technology studies/education which will result in individuals who can fulfill a school-to-career role in the technology education program. Teachers must:

(a) demonstrate knowledge of school-to-work programs;

(b) plan, implement and supervise appropriate school-to-work programs; and

(c) demonstrate sound judgment when supervising school-to-work programs.

(3) Technology studies advisory (TSA) preparation to teach technology studies/education which will result in individuals who can fulfill the TSA advisory role in the technology education program. Teachers must:

(a) plan, implement and supervise the activities of an active TSA chapter;

(b) undertake advisory responsibilities necessary for operating an active TSA chapter; and

(c) demonstrate sound judgment in the role of a TSA advisor.

(4) Partnerships involve preparation to teach technology studies/education which will result in individuals who can fulfill a partnership-building role in the technology education program. Teachers must:

(a) utilize stakeholder groups within and outside the school and community to improve the program (e.g., students, administrators, parents/guardians, colleagues, community members, advisory committee members, state technology education leaders and others);

(b) utilize resources from within and outside of the school and community to

improve the program; and

(c) recognize stakeholders for their contributions and support.

(5) Program marketing involves preparation to teach technology studies/education which will result in individuals who can fulfill a marketing role in the technology education program. Teachers must:

(a) demonstrate an ability to market their program to the school and community and build support for the program; and

(b) demonstrate an understanding of how to recruit potential students into the program.

(6) Professional growth involves preparation to teach technology studies/education which will result in individuals who can fulfill a professional role in the technology education program. Teachers must:

(a) join and participate in appropriate state and national technology education, as well as career and technical education, professional organizations;

(b) incorporate new ideas and technologies learned through in-service into their teaching and programs; and

(c) model systems implementation and analysis, design and communication in such a manner as to demonstrate the interwoven fiber of technology in all aspects of education and daily life.

(7) Program planning involves preparation to teach technology studies/education which will result in individuals who can fulfill a program-planning role in the technology education program. Teachers must:

(a) utilize stakeholder groups like an advisory committee in program planning; and

(b) inform school administrators about stakeholder group recommendations.

D. Program management competencies involves preparation to teach technology studies/education which will result in individuals who can manage the technology education program. Teachers must:

(1) maintain facilities, equipment and materials;

(2) demonstrate knowledge of departmental budgeting;

(3) complete required program records and reports; and

(4) balance all aspects of a strong program.

[6.64.16.9 NMAC - N, 04-29-05]

**6.64.16.10 IMPLEMENTATION:** Institutions of higher education that prepare teachers shall deliver the competencies in a PED approved endorsement program within a range of twenty-four (24) to thirty-six (36) semester hours of credit. For

secondary and K-12 licensed teachers, a minimum of twelve (12) semester hours must be upper division credit.

[6.64.16.10 NMAC - N, 04-29-05]

**HISTORY OF 6.64.16 NMAC:**  
**[Reserved]**

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

### TITLE 6 PRIMARY AND SECONDARY EDUCATION CHAPTER 64 SCHOOL PERSON- NEL - COMPETENCIES FOR LICEN- SURE PART 17 COMPETENCIES FOR ENTRY-LEVEL AGRICULTUR- AL EDUCATION TEACHERS

**6.64.17.1 ISSUING AGENCY:**  
Public Education Department  
[6.64.17.1 NMAC - N, 04-29-05]

**6.64.17.2 SCOPE:** All institutions of higher education in New Mexico that establish or maintain a curriculum for persons seeking an endorsement in agricultural education to a state educator license.  
[6.64.17.2 NMAC - N, 04-29-05]

**6.64.17.3 STATUTORY AUTHORITY:** Sections 22-2-1 and 22-2-2 (J), NMSA 1978.  
[6.64.17.3 NMAC - N, 04-29-05]

**6.64.17.4 DURATION:**  
Permanent  
[6.64.17.4 NMAC - N, 04-29-05]

**6.64.17.5 EFFECTIVE DATE:**  
April 29, 2005, unless a later date is cited in the history note at the end of a section.  
[6.64.17.5 NMAC - N, 04-29-05]

**6.64.17.6 OBJECTIVE:** This regulation establishes entry-level competencies that are based on what beginning agricultural education teachers must know and be able to do to provide effective agricultural education programs in New Mexico schools. These competencies were developed to ensure alignment with the New Mexico academic standards and benchmarks and the national career cluster knowledge and skills for agricultural, food and natural resources. These competencies should be incorporated into all college or university curricula for persons seeking an agricultural education endorsement to their state educator license.  
[6.64.17.6 NMAC - N, 04-29-05]

**6.64.17.7 DEFINITIONS:**  
[Reserved]

**6.64.17.8 REQUIREMENTS:**

A. Beginning teachers seeking an endorsement in agricultural education to an initial level I New Mexico teaching license must satisfy all of the requirements of the license as provided in public education department (PED) rule for that license, which include, among other requirements, 24-36 semester hours in agricultural education.

B. Teachers seeking to add an endorsement in agricultural education to an existing New Mexico teaching license of any level where the candidate has less than five full academic years of teaching experience, shall meet one of the following requirements:

(1) pass the content knowledge test(s) of the New Mexico teacher assessments, or predecessor New Mexico teacher licensure examination or accepted comparable licensure test(s) from another state, if available, in agricultural education, or

(2) successfully complete an undergraduate academic major (24-36 semester hours), or coursework equivalent to an undergraduate major or a graduate degree in agricultural education; or

(3) obtain certification in agricultural education for the appropriate grade level of New Mexico licensure from the national board for professional teaching standards.

C. Persons seeking to add an endorsement in agricultural education to an existing New Mexico teaching license of any level where the candidate has at least five full academic years of teaching experience, may do so by meeting the requirements of Paragraphs (1), (2) or (3) of Subsection B of this section, or by demonstrating the teaching competencies for entry level agricultural education teachers as provided in 6.64.17.9 NMAC through the state's high objective uniform standard of evaluation (HOUSE) for demonstrating competence in the core academic subjects and other endorsement areas.

[6.64.17.8 NMAC - N, 04-29-05]

**6.64.17.9 COMPETENCIES FOR ENTRY-LEVEL AGRICULTURAL EDUCATION TEACHERS:**

A. Agriculture, food and natural resources ("AFNR") career cluster competencies: Preparation to teach agricultural education will result in individuals who can teach others competencies in agricultural, food, and natural resource careers:

(1) achieve specific academic knowledge and skills required to pursue the full range of careers and post-secondary education opportunities within AFNR;

(2) use oral and written communi-

cation skills in creating, expressing and interpreting information and ideas including technical terminology and information within AFNR;

(3) employ technical communications effectively to maintain good records and reporting procedures;

(4) solve problems using critical thinking skills (e.g., analyze, synthesize, and evaluate) independently and in teams;

(5) access suitable resources to identify public policies, issues, and regulations impacting AFNR management;

(6) use information technology tools specific to AFNR to access, manage, integrate, and create information;

(7) understand roles within teams, work units, departments, organizations, inter-organizational systems, and the larger environment;

(8) identify how key organizational systems affect organizational performance and the quality of products and services;

(9) understand the importance of health, safety, and environmental management systems in organizations and their importance to organizational performance and regulatory compliance;

(10) identify health goals and safety procedures for AFNR occupations;

(11) use leadership skills in collaborating with others to accomplish organizational goals and objectives;

(12) know and understand the importance of professional ethics and legal responsibilities;

(13) know and understand the importance of employability skills;

(14) use the technical knowledge and skills required to pursue the full range of careers for all AFNR career pathways.

B. Local program success competencies:

(1) Instruction: Preparation to teach agricultural education will result in individuals who can fulfill the instructional role in the agricultural education program:

(a) develop an appropriate and accountable curriculum pattern and courses for the program resulting in industry certifications upon completion where appropriate;

(b) demonstrate teacher behaviors documented by research to be related to student achievement including: clarity, variability, enthusiasm, task-oriented/business like behavior, and student opportunity to learn criterion material;

(c) demonstrate master teacher competencies including with-it-ness, student centeredness, and an in-charge image.

(2) Supervised agricultural experience program ("SAE"): Preparation to teach agricultural education will result in individuals who can fulfill the SAE supervisory role in the agricultural education program:

(a) demonstrate knowledge of SAEs;

(b) can plan, implement, and supervise appropriate SAEs;

(c) demonstrate sound judgment when supervising SAEs.

(3) Future farmers of America (FFA): Preparation to teach agricultural education will result in individuals who can fulfill the FFA advisory role in the agricultural education program:

(a) can plan, implement, and supervise the activities of an active FFA chapter;

(b) undertake advisory responsibilities necessary for operating an active FFA chapter;

(c) demonstrate sound judgment in the role of a FFA advisor;

(d) link FFA leadership activities, award programs, and competitive events to high quality agricultural education curriculum.

(4) Partnerships: Preparation to teach agricultural education will result in individuals who can fulfill a partnership-building role in the agricultural education program:

(a) identify potential partners;

(b) utilize stakeholder groups within and outside of the school and community to improve the program (e.g., students, administrators, parents/guardians, colleagues, community members, advisory committee members, FFA alumni members, state agricultural education leaders, and others);

(c) utilize resources from within and outside of the school and community to improve the program;

(d) recognize stakeholders for their contributions and support.

(5) Program marketing: Preparation to teach agricultural education will result in individuals who can fulfill a marketing role in the agricultural education program:

(a) demonstrate an ability to market their program to the school and community;

(b) demonstrate an understanding of how to recruit potential students into the program;

(c) identify and meet business and industry needs.

(6) Professional growth: Preparation to teach agricultural education will result in individuals who can fulfill a professional role in the agricultural education program:

(a) join and participate in appropriate state and national agricultural education and career and technical education professional organizations;

(b) incorporate new ideas and technologies learned through in-service into their teaching and program;



(c) develop a personal professional growth plan.

(7) Program planning: Preparation to teach agricultural education will result in individuals who can fulfill a program-planning role in the agricultural education program:

(a) utilize stakeholder groups like an advisory committee in program planning;

(b) inform school administrators about stakeholder group recommendations;

(c) inform stakeholders of federal, state, and local laws and/or regulations relating to the agricultural education program;

(d) understand and integrate New Mexico core academic content standards and benchmarks into the AFNR curricula where appropriate.

C. Program management competencies: Preparation to teach agricultural education will result in individuals who can manage the agricultural education program:

(1) maintain facilities, equipment, and materials;

(2) demonstrate knowledge of departmental budgeting;

(3) can complete required program records and reports;

(4) can balance all aspects of a strong program.

D. AFNR career pathway competencies: The following areas are designed to allow potential agricultural education teachers to construct their pre-service education with an emphasis in two or more content domain pathways, while insuring they receive agricultural education in any area which they might be required to teach.

(1) The domain of food products and processing systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in food products and processing systems:

(a) apply principles of food processing to the food industry;

(b) apply principles of food science to the food industry;

(c) plan, implement, manage, and/or provide services for the preservation and packaging of food and food products;

(d) identify processing, handling, and storage factors to show how they impact product quality and safety.

(2) The domain of plant systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in plant systems:

(a) apply principles of anatomy and physiology to produce and manage plants in both a domesticated and natural environment;

(b) address taxonomic or other classifications to explain basic plant anat-

omy and physiology;

(c) apply fundamentals of production and harvesting to produce plants;

(d) exercise elements of design to enhance an environment (e.g., floral, forest, landscape, farm).

(3) The domain of animal systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in animal systems:

(a) apply knowledge of anatomy and physiology to produce and/or manage animals in a domesticated or natural environment;

(b) recognize animal behaviors to facilitate working with animals safely;

(c) provide proper nutrition to maintain animal performance;

(d) know the factors that influence an animal's reproductive cycle to explain species response;

(e) identify environmental factors that affect an animal's performance.

(4) The domain of power, structural, and technical systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in power, structural, and technical systems:

(a) apply physical science principles to engineering applications with mechanical equipment, structures, biological systems, land treatment, power utilization, and technology;

(b) apply principles of safe operation and maintenance to mechanical equipment, structures, biological systems, land treatment, power utilization, and technology;

(c) apply principles of safe service and repair to mechanical equipment, structures, biological systems, land treatment, power utilization, and technology;

(d) exercise basic skills in blueprint and design development to create sketches, drawings and plans;

(e) read and relate structural plans to specifications and building codes;

(f) examine structural requirements to estimate project costs;

(g) develop skills required to safely use construction/fabrication equipment and tools;

(h) plan, implement, manage, and/or provide support services to facility design and construction; equipment design, manufacture, repair, and service; and agricultural technology;

(i) use the variety of tools available in computer systems to accomplish fast, accurate production in the workplace;

(j) safely use available power sources to plan and apply control systems;

(k) explain geospatial technology to demonstrate its applications.

(5) The domain of natural

resources and environmental service systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in natural resources and environmental service systems:

(a) recognize importance of resource and human interrelations to conduct management activities in natural habitats;

(b) use effective venues to communicate natural phenomena to the public;

(c) apply scientific principles to natural resource management activities;

(d) employ knowledge of natural resource industries to describe production practices and processing procedures;

(e) practice responsible conduct to protect natural resources;

(f) identify public policies and regulations impacting environmental services to determine their effect on facility operation;

(g) apply scientific principles to environmental services;

(h) understand environmental service systems.

(6) The domain of agribusiness systems: Preparation to teach agricultural education will result in individuals who can teach others competencies in agribusiness systems:

(a) employ leadership skills to accomplish goals and objectives in an AFNR business environment;

(b) practice good record keeping to accomplish AFNR business objectives;

(c) apply generally accepted accounting principles and skills to manage budget, credit, and optimal application of AFNR business assets;

(d) employ AFNR industry concepts and practices to manage inventory;

(e) utilize technology to accomplish AFNR business objectives;

(f) use sales and marketing principles to accomplish AFNR business objectives.

[6.64.17.9 NMAC - N, 04-29-05]

#### 6.64.17.10 IMPLEMENTATION:

Institutions of higher education that prepare teachers shall deliver the competencies in a PED approved endorsement program within a range of twenty-four (24) to thirty-six (36) semester hours of credit. For secondary and K-12 licensed teachers, a minimum of twelve (12) semester hours must be upper division credit.

[6.64.17.10 NMAC - N, 04-29-05]

**HISTORY OF 6.64.17 NMAC:**  
[Reserved]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.3 NMAC Sections 2, and 7 through 10, effective 04-29-05

**6.60.3.2 SCOPE:** All persons who have earned at least a baccalaureate degree but have not completed educator preparation programs and seek alternative routes to licensure in early childhood education, elementary education, middle level education, K-12 specialty area education, secondary education, or special education. [07-01-00; 6.60.3.2 NMAC - Rn, 6 NMAC 4.2.2.1.2 & A, 06-14-01; A, 04-29-05]

### 6.60.3.7 DEFINITIONS:

A. "Particular field" means the license and/or endorsement area being sought.

B. "Appertains and corresponds to the subject area of instruction and level of instruction" means:

(1) that for early childhood licensure, the degree, including the credit hours, shall be related to early childhood education, birth through grade 3;

(2) that for elementary licensure, the degree, including the credit hours, shall include completed course work in any combination of the subject areas of language arts, mathematics, science, social studies, history, fine or performing arts and foreign language;

(3) that for middle level, secondary, and K-12 specialty area licensure the degree, including the credit hours, shall be in the license and/or endorsement area being sought; and,

(4) that for special education licensure, the degree, including the credit hours, shall include completed course work in any combination of the subject areas of language arts, mathematics, science, social studies, history, fine or performing arts and foreign language, or shall be related to special education (such as general elementary or secondary education, special education, psychology, child development, reading education).

C. "A program approved by the ~~[state board]~~ department" means that the same program approval standards and procedures used by the ~~[state board]~~ department for approving university preparatory programs shall be applied to alternative programs.

D. "[~~Academic~~] Core academic subjects" means English, language arts, reading, mathematics, science, ~~[modern and classical languages, except for the modern and classical Native American languages and cultures of New Mexico tribes~~

~~or pueblos,~~ the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except for the modern and classical Native American languages and cultures of New Mexico tribes or pueblos.

E. "A highly qualified, beginning early childhood, elementary, middle level, secondary, K-12, ~~[or special education teacher]~~ specialty area" teacher, under this rule, means a teacher who is fully qualified to teach the core academic subjects ~~[or special education]~~, who is new to the profession, who has pursued an alternative route to licensure and who:

(1) meets the requirements for alternative licensure in 6.60.3.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for the level of licensure under 6.60.5.8 NMAC.

F. "A highly qualified beginning middle or junior high school teacher holding alternative elementary K-8 licensure", under this rule, means a teacher who is fully qualified to teach the core academic subjects in a public middle or junior high school, and who is new to the profession and has pursued an alternative route to licensure, and who:

(1) meets the requirements for alternative elementary K-8 licensure in 6.60.3.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for elementary K-8 licensure in 6.60.5.8 NMAC, and

(4) if the teacher is new to the profession after June 30, 2006, or if the teacher was hired after the first day of school of the 2002-2003 school year and assigned to work in a title I targeted assistance program or a title I school-wide program:

(a) has passed the content knowledge test(s) of the New Mexico teacher assessments or comparable licensure tests from another state in each subject area the teacher teaches ~~[and in which the teacher is required to have a licensure endorsement]~~, or

(b) has successfully completed an undergraduate academic major or coursework equivalent to an undergraduate major, or a graduate degree, in each core academic subject the teacher teaches ~~[and in which the teacher is required to have a licensure endorsement]~~.

G. "A highly qualified beginning K-12 special education teacher,"

under this rule, means a teacher who is new to the profession and who has pursued an alternative route to licensure and who is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, by being fully qualified to teach each core academic subject the special education teacher teaches, or by being fully qualified to teach either language arts or mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment and who:

(1) meets the requirements for K-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC, and

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

~~[G.] H.~~ "A highly qualified teacher candidate for level I alternative licensure" means a person participating in an alternative route to licensure, who meets all of the following requirements:

(1) has fulfilled the degree requirements set forth in Subsection A of 6.60.3.8 NMAC; and

(2) receives high-quality professional development that is sustained, intensive, and classroom-focused, and includes classroom management and lesson planning for teaching New Mexico's diverse student population, both before and while teaching; and

(3) participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program; and

(4) assumes duties as a teacher only for a period of time not to exceed three years; and

(5) demonstrates satisfactory progress toward full alternative licensure by completing at least nine semester hours per year in his/her alternative licensure program or successfully demonstrates competency by way of portfolio assessment or by way of local evaluations for two full school years.

~~[H.] I.~~ "Internship license" means a ~~[one-year renewable alternative]~~ three-year non-renewable certificate or license issued by the ~~[state board]~~ department authorizing a candidate to teach where he/she does not yet meet the requirements for ~~[an]~~ a level one alternative license but is satisfactorily participating in an alternative route to licensure under 6.60.3 NMAC.

~~[I.] J.~~ "Undergraduate academic major", under this rule, means thirty

(30) semester hours in a ~~core academic~~ subject area.

K. "Full school year", for purposes of this rule, means a minimum of 160 instructional days in a school year or 320 instructional days over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding an internship teaching license. Instructional days may include teaching in summer school or similar educational setting. [07-01-00; 6.60.3.7 NMAC - Rn, 6 NMAC 4.2.2.1.7, 06-14-01; A, 06-30-03; A, 04-29-05]

**6.60.3.8 REQUIREMENTS FOR ALTERNATIVE LICENSURE:** To receive a level 1, three-year alternative license, an applicant must meet the following requirements:

A. Degree requirements - An applicant for alternative licensure must meet the provisions of Subsection A, Paragraphs ~~[(1), (2) and (3) of 6.60.3.8 NMAC]~~ (1), (2) or (3).

(1) must possess a bachelor of arts or science degree from a regionally accredited college or university including completion of a minimum of thirty semester hours of graduate or undergraduate credit in a particular field that pertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the department; or

(2) must possess a master of arts or science degree from a regionally accredited college or university including completion of a minimum of twelve graduate credit hours in a particular field that appertains and corresponds to the subject area of instruction and level of instruction that will enable the applicant to teach in a competent manner as determined by the department; or

(3) must possess a doctor's degree from a regionally accredited college or university; the degree shall correspond to the subject area of instruction and particular grade level that will enable the applicant to teach in a competent manner as determined by the department.

B. Professional teacher education requirements - An applicant for alternative licensure must meet the provisions of ~~[Subsection B, Paragraphs (1) and (2) of 6.60.3.8 NMAC, and]~~ Paragraphs (1), (2), or (3) or (4) of this Subsection.

(1) ~~[For those]~~ Persons seeking either early childhood B-3, elementary K-8, or special education K-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has a ~~[state board approved]~~ department-approved alternative

licensure program containing no less than twelve (12) nor more than twenty-one (21) semester hours of credit and meeting the following criteria:

(a) the credits must include six (6) semester hours of coursework in the teaching of reading [courses]; and

(b) the credits must include the ~~[state board's]~~ department's competencies for entry level teachers that correspond to the license being sought; and

(c) the credits must be in a program approved by the department; and

(d) the program must include a student teaching or field-based component.

(2) ~~[For those]~~ Persons seeking either middle level 5-9, or secondary 7-12 licensure, must complete various semester hours of credit earned through a regionally accredited college or university that has department-approved alternative licensure program containing no less than twelve (12) nor more than eighteen (18) semester hours of credit~~[-]~~ and meeting the following criteria:

(a) the credits must include three (3) semester hours of coursework in the teaching of reading [courses]; and

(b) the credits must include the state board's competencies for entry level teachers that correspond to the license being sought; and

(c) the credits must be in a program approved by the department; and

(d) the program must include a student teaching or field-based component ~~[- or in lieu of complying with Paragraph (1) or (2) of Subsection B above].~~

(3) Must successfully demonstrate the department's approved competencies for entry level teachers that correspond to the license being sought by way of a portfolio assessment pursuant to 6.2.4 NMAC. Such applicants shall also complete the reading courses set forth at ~~[Subsection B of 6.60.3.8 NMAC above]~~ Paragraphs (1) or (2) of this Subsection prior to being granted a portfolio review. Pursuant to 6.2.4 NMAC, under no circumstance shall an individual be granted a portfolio review unless that person has passed all sections of the current department-required New Mexico teacher test.

(4) Must successfully demonstrate the department's approved competencies for entry level teachers that correspond to the license being sought by way of evaluations conducted by a local school district over a period of at least two full school years as part of a PED-approved school-based or statewide teacher preparation program that provides the professional development that is required to support a highly qualified teacher candidate for level I alternative licensure as defined in this rule. The professional development program shall be developed in collaboration with a college,

university, or other professional development providers. Such applicants shall also complete the reading courses set forth at Paragraphs (1) or (2) of this Subsection prior to being recommended for licensure by a local school district. Under no circumstance shall an individual be recommended for licensure by a local school district unless that person has passed all sections of the current department-required New Mexico teacher test.

C. Testing requirements: An applicant for alternative licensure must pass all of the New Mexico teacher assessments, including any applicable content knowledge assessment required by 6.60.5 NMAC, prior to receiving level one alternative licensure, and

D. An applicant for alternative licensure must be a highly qualified, beginning early childhood, elementary, middle level, secondary, K-12, or special education teacher, or be a highly qualified beginning middle or junior high school teacher holding alternative elementary K-8 licensure.

[07-01-00; 6.60.3.8 NMAC - Rn, 6 NMAC 4.2.2.1.8, 06-14-01; A, 06-01-02; A, 06-30-03; A, 08-31-04; A, 04-29-05]

### 6.60.3.9 REQUIREMENTS FOR INTERNSHIP LICENSURE

A. A candidate for alternative licensure ~~[teaching the core academic subjects and special education, who is enrolled in an alternative route to licensure by way of taking required coursework,]~~ may be permitted to assume the functions of a teacher prior to completion of licensure requirements and be issued a ~~[one-year]~~ three-year non-renewable internship license, if he/she is a highly qualified teacher candidate for level I alternative licensure, as defined in this rule~~[- or]~~.

~~[B. A candidate for alternative licensure who is a highly qualified teacher candidate for level I alternative licensure, is teaching in the core academic subjects or in special education, and who is pursuing an alternative path to licensure by way of portfolio assessment under Subsection A and Paragraph (3) of Subsection B of 6.60.3.8 NMAC, may as described below assume teaching duties prior to successfully demonstrating the department's approved competencies for entry level teachers.]~~

(1) Such a candidate may be issued a ~~[one-year]~~ three-year non-renewable internship license to allow time to complete the teacher competency testing requirements of 6.60.5.8 NMAC, and the reading coursework requirement set forth in Paragraphs (1) or (2) of Subsection B of 6.60.3.8 NMAC, and to present a portfolio or be evaluated for competency by a local school district.

(2) At the time of internship licensure application, the candidate must:

(a) present proof of registration for the New Mexico teacher assessments at the next available testing date, and

(b) present proof of enrollment in the required coursework for the teaching of reading.

(3) If a candidate for this licensure is not successful in demonstrating competency by way of portfolio assessment or by way of local public school district evaluations, he/she may still proceed by way of the alternative route set forth in [Subsection A of 6.60.3.9 above, provided that the one-year internship license previously held under this subsection shall count toward the total period of time of three years the candidate is permitted to hold internship licenses under Subsection C, below] this Subsection although the three-year non-renewable license issued under Paragraph (1) of Subsection B of 6.60.3.9 NMAC shall not be extended or renewed in order to provide additional time to complete an alternative licensure program.

[C. Renewal of internship licenses

(1) An internship license issued under Subsection A may be renewed two times for a total period not to exceed three school years, if the candidate meets the requirements of Paragraphs (2) and (3) of Subsection E of 6.60.3.7 NMAC.

(2) An internship license issued under Subsection B of 6.60.3.9 NMAC may be renewed one time for a total period not to exceed two school years, if the candidate meets the requirements of Paragraphs (2) and (3) of Subsection E of 6.60.3.7 NMAC, provided that he/she has, within the effective period of the first internship license passed all applicable portions of the New Mexico teacher assessments and completed all required reading coursework.

(3) Any renewal of an internship license must include verification by the superintendent of the employing school district that the candidate is making adequate progress toward demonstrating the competencies of level I licensure.]

[D.] B. A candidate enrolled in a department approved post-baccalaureate teacher preparation program or advanced degree program with a teacher preparation component may be considered to be participating in an alternative route to licensure and be issued internship licenses under Subsection A [and Paragraph (1) of Subsection C] of 6.60.3.9 NMAC. Upon the completion of approved teacher preparation program requirements, the candidate may be issued a standard level I license if, in addition, the candidate meets the requirements for standard licensure within the three-year period allowed to complete an alternative route to licensure.

[E.] C. After June 30, 2003, the time that a person provides services under an internship license shall not be counted toward or considered for advancement to level two or level three licensure.

[07-01-00; 6.60.3.9 NMAC - Rn, 6 NMAC 4.2.2.1.9, 06-14-01; 6.60.3.9 NMAC - N, 06-30-03; A, 08-31-04; A, 04-29-05]

**6.60.3.10 REQUIREMENTS FOR STANDARD LICENSURE:** To receive a standard level two license, an applicant must meet all of the [following] requirements for licensure advancement to level two set forth in Subsection A of 6.60.6.9 NMAC.

[A. Successfully complete requirements set forth in 6.60.3.8 NMAC for an alternative license.

B. Satisfactorily complete a one to three year mentorship program approved by the department. Each local board of education shall adopt policies governing a mentorship program. The local mentorship program shall:

(1) align with and support the district's long range plan for student success;

(2) align with the department's teaching competencies;

(3) be mandatory for all teachers holding alternative licensure;

(4) establish a definitive separation between mentorship activities and formal staff evaluation processes;

(5) include training activities and programs for mentors;

(6) establish the structure and content of the mentorship program;

(7) describe the process for selection, training, and evaluation of mentors;

(8) describe incentives for mentors and beginning teachers;

(9) describe the method for evaluating the effectiveness of the mentorship program; and

(10) establish a process for addressing disputes or grievances between mentors and beginning teachers.

C. Obtain verification from the superintendent of the local school district or the governing authority of the nonpublic school where the applicant has most recently been employed that the applicant has satisfactorily demonstrated the department's competencies for the level of license and type sought in accordance with 6.60.3 NMAC, "Specific Performance Evaluation Requirements.:"

[07-01-00; 6.60.3.10 NMAC - Rn, 6 NMAC 4.2.2.1.10, 06-14-01; 6.60.3.10 NMAC - Rn, 6.60.3.9 NMAC, 06-30-03; A, 08-31-04; A, 04-29-05]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.5 NMAC, Sections 1, 2, 3, and 6 through 14, effective 04-29-05

**6.60.5.1 ISSUING AGENCY:** [State Board of Education] Public Education Department

[12-31-98, 07-30-99; 6.60.5.1 NMAC - Rn, 6 NMAC 4.2.2.2.1, 10-13-00; A, 04-29-05]

**6.60.5.2 SCOPE:** All persons seeking teaching licensure, certain licensure endorsements, [administrator licensure,] and bilingual education endorsement on or after July 30, 1999; and all persons who have registered to take or have taken any portion of the New Mexico teacher assessments [all persons whose teaching or administrative licensure have lapsed].

[12-31-98, 07-30-99; 6.60.5.2 NMAC - Rn, 6 NMAC 4.2.2.2.2 & A, 10-13-00; A, 07-01-01; A, 07-15-02; A, 04-29-05]

**6.60.5.3 STATUTORY AUTHORITY:** Sections 22-2-1 and 22-2-2 [and 22-10-22], NMSA 1978.

[12-31-98; 6.60.5.3 NMAC - Rn, 6 NMAC 4.2.2.2.3, 10-13-00; A, 07-01-01; A, 04-29-05]

**6.60.5.6 OBJECTIVE:** This regulation is adopted by the [State Board of Education ("hereinafter "state board")] public education department (hereinafter department) for the purpose of establishing the New Mexico teacher assessments ("NMTA") as the primary acceptable examination for educator licensure in New Mexico. Although the [State Board] department adopts the New Mexico teacher assessments as the successor examination to the core battery of the national teachers examination, this regulation also provides for acceptance of passing test scores from those applicants who took the core battery of the national teachers examination and have applied for licensure on or after July 30, 1999. This regulation also establishes the New Mexico content knowledge assessments ("NMCKA"), which is part of the NMTA, as the content tests required to be taken to hold certain endorsements on teaching licenses or to receive an initial elementary K-8 license. This regulation also establishes Prueba de Español para la Certificación Bilingüe as the [State Board's] department's required Spanish language proficiency examination for persons seeking an endorsement to a teaching license in Spanish/English bilingual education and allows that test to be used as the content

knowledge test to be taken for an endorsement in modern and classical languages for Spanish. This regulation also allows the national family and consumer sciences test to be used as the content knowledge test to be taken for an endorsement in family and consumer sciences. Lastly, this regulation establishes procedures for investigating NMTA testing irregularities and taking corrective action.

[12-31-98, 07-30-99; 6.60.5.6 NMAC - Rn, 6 NMAC 4.2.2.2.6 & A, 10-13-00; A, 07-01-01; A, 07-15-02; A, 02-14-03; A, 04-29-05]

#### 6.60.5.7 DEFINITIONS:

A. "NMCKA" means the New Mexico content knowledge assessments, which are the teacher-tests approved by the [state board] department, portions of which individuals must take and pass in order to receive endorsements on an initial license or as an option to add endorsements to an existing license in language arts, reading, mathematics, science, [and] social studies, the arts (music or visual arts), modern and classical languages, health, physical education, library/media, teaching English to speakers of other languages (TESOL), and family and consumer sciences, or to receive initial licensure in elementary education from grades K-8.

B. "NMTA" means the New Mexico teacher assessments, which are the teacher-tests approved by the [state board] department that all individuals must take and pass in order to receive initial educator licensure; the NMTA consists of the New Mexico assessment of teacher basic skills, [the New Mexico Assessment of Teacher General Knowledge, until August 1, 2003, at which time that test shall be discontinued,] the New Mexico assessment of teacher competency (both at the elementary and secondary levels), and the New Mexico content knowledge assessments ("NMCKA"); it shall include any test materials related to a testing applicant's taking of or registration for the NMTA.

C. "Test administrator" means the business entity, namely, the national evaluation systems, inc. or NES that developed the NMTA, administers the NMTA at testing centers throughout New Mexico, scores the NMTA, and reports NMTA testing results to the [state department of education ("SDE")] department.

D. "Testing applicant" means a person who has filed an NMTA registration form with the test administrator, or has yet taken a portion of the NMTA.

E. "Testing irregularity" means any circumstance within or beyond the control of a testing applicant that, in the sole opinion of the [SDE] department or NES raises doubts about the propriety of a testing applicant's NMTA registration,

NMTA score, or conduct during an NMTA test.

F. "Withheld NMTA score(s)" means the suspension of use by and disclosure to a testing applicant of his NMTA score(s) for up to 120 days upon a determination made by the [SDE] department professional licensure [unit] bureau director that testing irregularity is likely to have occurred.

G. "Voided NMTA score(s)" means the cancellation, invalidation and non-disclosure of a testing applicant of his NMTA score(s) after a final determination of testing irregularity by the [SDE] department's professional licensure [unit] bureau director or by a hearing officer of the [State Board of Education] secretary of education.

H. "Rules of test participation" means any written rules in the applicable NMTA registration bulletin that a testing applicant has expressly agreed to comply with as a condition of registering for or taking the NMTA.

I. "Educator licensure application" means an application for any professional teaching or administrative license, excluding licensure for an athletic coach, educational assistant, substitute teacher, or [related service] instructional support providers.

J. "Core academic subjects" English, language arts, reading, mathematics, science, modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes or pueblos, the arts, including music and visual arts, and social studies, which includes civics, government, economics, history, and geography.

K. "Highly qualified", under this rule, means a teacher of the core academic subjects who has no certification or licensure requirements waived on a temporary basis.

[6.60.5.7 NMAC - N, 07-01-01; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05]

#### 6.60.5.8 REQUIREMENTS:

The NMTA consists of two generic categories of assessments. The first category is the basic knowledge, skills and competency assessments identified at Subsection A of 6.60.5.8 NMAC below. The second category is the content knowledge assessments, sometimes called content tests, identified at Subsection B of 6.60.5.8 NMAC below.

A. Beginning July 30, 1999 except for those individuals covered by [Subsections C, D and E of 6.60.5.8 NMAC below, and commencing on August 1, 2003, when the Assessment of Teacher General Knowledge shall be discontinued,] Subsection C of 6.60.5.8 NMAC, below all applicants for initial licensure [and all applicants whose prior licensure has expired for

more than one year,] in addition to meeting all other licensure and background check requirements of the [state board] department, are required to take the basic knowledge, skills and competency assessments of the New Mexico teacher assessments, which consist of the following tests and obtaining the following passing scores:

(1) assessment of teacher basic skills: passing score = 240; and

(2) either:

(a) assessment of teacher competency, elementary level (for those seeking early childhood B-3 through the testing date in July, 2004, or elementary K-8 licensure including special education K-12, middle level 5-9 and grade K-12 licensure): passing score = 240; or

(b) assessment of teacher competency, secondary level (for those seeking secondary 7-12 licensure including special education K-12, middle level 5-9 and grade K-12 licensure): passing score = 240; or

(c) assessment of teacher competency, early childhood level (for those seeking early childhood B-3 licensure beginning with the testing date in September, 2004): passing score = 240.

B. [Beginning with the September 2002 administration of the state board's department's content testing and in] In addition to the testing requirement above, all applicants for initial teacher licensure must take and pass a test in their content area subject according to the following schedule:

(1) Beginning with the September, 2002, administration of the department's content testing, if they are seeking licensure in elementary K-8, they shall take and pass the [state board's] department's content knowledge assessment in elementary education prior to issuance of that license except as provided in Paragraph (6) of Subsection B of 6.60.5.8 NMAC.

(2) Beginning with the September, 2002, administration of the department's content testing, if they are applying for licensure in early childhood birth - grade 3 or elementary K-8 and are also seeking an endorsement in reading, [or Secondary 7-12, Middle Level 5-9 and/or Grade K-12 and are also seeking endorsement in language arts, reading, mathematics, science or social studies, or any combination thereof, or if they are applying for licensure in Early Childhood B-3, Elementary K-8, Secondary 7-12, Middle Level 5-9 and/or Grade K-12 after September 1, 2004, and also seeking an endorsement in the arts (music or visual arts) or modern and classical languages (Spanish, French, or German) they must take and pass the state board's content knowledge assessment(s) in the respective content area prior to issuance of the

~~endorsement(s);] they shall take and pass the department's content knowledge assessment in that content area prior to issuance of that license.~~

~~[(3) if they currently hold a license but seek to add an endorsement in language arts, reading, mathematics, science or social studies, or any combination thereof, or if they currently hold a license but seek to add an endorsement in the arts (music or visual arts) or modern and classical languages (Spanish, French, or German), after September 1, 2004, they must take and pass the state board's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s);~~

~~(4) regardless of which of the content knowledge assessments they take, they must attain a score of 240 to pass.]~~

~~(3) Beginning with the September, 2004, administration of the department's content testing, if they are applying for licensure in early childhood B-3, elementary K-8, secondary 7-12, middle level 5-9 and/or grade K-12, and are also seeking an endorsement in the arts (music or visual arts) or modern and classical languages (Spanish, French, or German) they must take and pass the department's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).~~

~~(4) Beginning with the September, 2002, administration of the department's content testing, if they are applying for licensure in secondary 7-12, middle level 5-9 and/or grade K-12 and are also seeking endorsement in language arts, reading, mathematics, science or social studies, or any combination thereof, they shall take and pass the department's content knowledge assessment in that content area prior to issuance of that license.~~

~~(5) Beginning with the September, 2006, administration of the department's content testing if they are applying for licensure in early childhood B-3, elementary K-8, secondary 7-12, middle level 5-9 and/or grade K-12, and are also seeking an endorsement in the health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they must take and pass the department's content knowledge assessment(s) in the respective content area prior to issuance of the endorsement(s).~~

~~(6) An elementary K-8 licensed teacher who is new to the profession and who teaches language arts, social studies, mathematics, or science in a middle school or junior high school must either:~~

~~(a) take and pass the department's middle level content knowledge assessment(s) in each core subject area the teacher teaches; or~~

~~(b) complete twenty-four semester hours of coursework, upper or lower division, in each core academic subject the teacher teaches and take and pass the content knowledge assessment in elementary education.~~

~~(7) If they currently hold a license and seek to add an endorsement in language arts, reading, mathematics, science, social studies, the arts (music or visual arts), modern and classical languages (Spanish, French, or German), health, physical education, library/media, teaching English to speakers of other languages (TESOL), or family and consumer sciences, they may be issued an endorsement in the content area upon passage of the department's content knowledge assessment(s) in the respective content area except that a candidate who has passed the prueba de español para la certificación bilingüe must also complete required coursework in order to add an endorsement in modern and classical languages (Spanish).~~

~~[C. Except as set forth in Subsection G of 6.60.5.8 NMAC below, a license that has been expired for more than one year shall be deemed to have lapsed. Anyone holding a license requiring the taking of the state board's teacher test to be valid that has lapsed shall not be required to take the state board's teacher test, provided that on a form acceptable to the professional licensure unit ("PLU") of the SDE, they submit evidence of having satisfactorily taught under their previous state license for at least five (5) complete school years. All licenses issued under this subsection shall be a level I license regardless of the level of the license that lapsed.]~~

~~[D.] C. Applicants for an initial Spanish/English bilingual endorsement to a teaching license must, in addition to meeting all other [state board] department requirements for the endorsement, pass Prueba de Español para la Certificación Bilingüe by obtaining a score of 2 or higher on any 12 of the 15 subsections. Applicants seeking this endorsement through licensure reciprocity should consult 6.60.4 NMAC for guidance.~~

~~[E. Commencing on August 1, 2003, the Assessment of Teacher General Knowledge will be discontinued and eliminated as a requirement to obtain educator licensure in New Mexico.]~~

~~[F.] D. A person who has failed any portion of the NMTA, excluding any New Mexico content knowledge assessment, may nevertheless qualify for issuance of a level I license provided that he or she:~~

~~(1) must at the time of issuance of such a license, have attempted but failed at least twice any portion of the NMTA, excluding any New Mexico content knowledge assessment;~~

~~(2) must at the time of issuance of~~

such a license, have attained a score of at least 170 on each of the basic skills, general knowledge and teacher competency tests;

~~(3) must at the time of issuance of such a license, have been employed and observed teaching in the same school district on either a substandard, temporary or combination of such licenses for at least two full school years;~~

~~(4) must at least once annually retake any failed test; and,~~

~~(5) must, pursuant to 6.60.10 NMAC ("Mentorship Programs for Beginning Teachers"), be assigned a mentor by a school district and must successfully complete at least one year of an approved mentorship program.~~

~~[G.] E. No such level I license authorized by Subsection [F] D of 6.60.5.8 NMAC, shall be issued unless:~~

~~(1) the superintendent of the employing school district certifies in writing to the [state board] department through the professional licensure [unit of the SDE] bureau of the PED, that the individual failing a portion of the NMTA as described above, should be relieved from passing one or more portions of the NMTA because he/she has successfully performed at a high degree in the same school district during at least two consecutive school years;~~

~~(2) the required high degree of performance in the case of an elementary K-8 teacher, must be documented on at least two annual evaluations and address the individual's subject knowledge and teaching skills in reading, mathematics, and other areas of the basic elementary school curriculum;~~

~~(3) the required high degree of performance in the case of a secondary 7-12 teacher, must be documented on at least two annual evaluations and address the individual's subject knowledge and teaching skills in the endorsement area in which licensure is sought.~~

~~[H.] E. Limitations on level I licenses issued pursuant to Subsections [F and G] D and E of 6.60.5.8 NMAC:~~

~~(1) there shall be no exception to the requirement that a person must take and pass a state content knowledge assessment required under this rule;~~

~~(2) although a person issued such a license may receive an unrestricted level II license once he/she receives a certification of competencies at the time of licensure renewal, until this occurs he/she must, as a condition of holding this licensure, remain employed in the school district that certified that he/she should be relieved from passing one or more portions of the NMTA;~~

~~(3) during the time that a person holds such a license, if he/she was hired by a district after the first day of school of the 2002-2003 school year, he/she may not be assigned by the district to work in a target-~~

ed assistance program or school-wide program that is funded by Title I of the Elementary and Secondary Education Act;

(4) under no circumstances shall any level I license be issued under these subsections after June 30, 2005;

(5) A person issued a level I license ~~[under these subsections,]~~ who has not passed one or more portions of the NMTA, shall not acquire a property interest in that license. Nor shall a person issued such a license acquire professional status by reason of being issued that license and holding it from year to year. Accordingly, such a license may be suspended, revoked, or its issuance denied for any reason without a hearing at any time by a vote of the ~~[state board]~~ department upon a written recommendation by the ~~[state superintendent of public instruction]~~ secretary of education ("the secretary") or his designee that states the reason for the recommendation. The individual whose license is considered for suspension, revocation, or denial of issuance, shall be given notice from the ~~[state superintendent]~~ secretary of the reason for the proposed suspension, revocation or denial of issuance of his license, the date and time when the ~~[state board]~~ secretary will consider taking final action against his license, and an opportunity to address the ~~[state board]~~ secretary. Besides acts of immorality, incompetence or misconduct, such a license may be suspended, revoked or its issuance denied, for any condition not satisfied in Subsection ~~[F and G]~~ D or E of 6.60.5.8 NMAC.

[12-31-98, 07-30-99, 02-14-00; 6.60.5.8 NMAC - Rn, 6 NMAC 4.2.2.2.8 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 06-30-03; A, 04-29-05]

**6.60.5.9 IMPLEMENTATION:** Except as provided in Subsection B of this section, applicants described in Section 6.60.5.8 NMAC who have not completed all testing requirements but have met all other licensure and background check requirements of the ~~[state board]~~ department will be granted a nonrenewable one-year license, effective on July 1 of the year of application and expiring on June 30 of the following year.

A. Consistent with Title I, Section 1119 (a) (1) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, if a teacher is not highly qualified and has been issued a one-year license by the ~~[state board]~~ department in the core academic subjects under this section, local education agencies receiving funds under title I of the act shall not assign that teacher to teach the core academic subjects in a title I targeted assistance program or schoolwide program, if he/she was initially employed after the first day of school of the 2002-2003 school year.

B. Consistent with Title I, Section 1119 (a) (2) and Title IX, Section 9101 (23) (A) (ii) of the No Child Left Behind Act, which requires that all teachers of the core academic subjects be highly qualified by the end of the 2005-2006 school year, the ~~[state board]~~ department will not issue one year licenses in the core academic subjects under this section after June 30, 2006.

[07-30-99; 6.60.5.9 NMAC - Rn, 6 NMAC 4.2.2.2.9, 10-13-00; A, 06-30-03; A, 04-29-05]

**6.60.5.10 SAVINGS CLAUSE:** Applicants described in Section 6.60.5.8 NMAC applying for licensure after July 30, 1999, who have taken the professional knowledge portion of the core battery of the national teachers examination within ten years of application for licensure or who have ever taken the communications skills and general knowledge portions of the core battery of the national teachers examination that correspond with portions of the NMTA as indicated below, will be exempt from taking the same portions of the NMTA provided they have obtained the following minimum scaled score that correspond with each test of the core battery of the national teachers examination:

A. professional knowledge  
630 corresponds with NMTA-teacher proficiency 240

B. communication skills  
644 corresponds with NMTA-basics skills 240

~~[C. General Knowledge  
645 corresponds with NMTA General Knowledge 240]~~

[07-30-99; 6.60.5.10 NMAC - Rn, 6 NMAC 4.2.2.2.10 & A, 10-13-00; A, 07-15-02; A, 02-14-03; A, 04-29-05]

**6.60.5.11 TESTING IRREGULARITIES:** Where a potential testing irregularity is reported to the ~~[SDE, the SDE]~~ department, the department shall make a preliminary inquiry to determine if further investigation is warranted.

A. If after a preliminary inquiry the ~~[SDE]~~ department determines that a potential testing irregularity warrants further investigation, the ~~[SDE]~~ department may cause that testing applicant's NMTA score to be withheld pending the completion of an investigation. The ~~[SDE]~~ department shall notify a testing applicant that any NMTA score suspected of being obtained by means of or following a testing irregularity may be withheld for up to 120 days pending an investigation. At the conclusion of its investigation, the ~~[SDE]~~ department shall notify the test administrator and the testing applicant of its findings and conclusions, whether or not a testing irregularity has been substantiated.

B. If after an investigation the ~~[SDE]~~ department finds and concludes that a testing irregularity is substantiated by the evidence, it may, after notifying the test administrator and the testing applicant of its findings, conclusions and intended action:

(1) void the applicant's test score(s);

(2) bar the applicant from retaking the NMTA for up to five (5) years;

(3) direct that the applicant's registration fee be forfeited;

(4) direct that the applicant's registration fee be refunded;

(5) permit the applicant to retake all or portions of the NMTA under controlled conditions; or

(6) impose any combination of the foregoing options.

C. If after an investigation the ~~[SDE]~~ department finds and concludes that no testing irregularity is substantiated by the evidence, it shall promptly notify the test administrator and the testing applicant and direct that any withheld NMTA be released and available for use in the educator licensure process.

[6.60.5.11 NMAC - N, 07-01-01; A, 04-29-05]

**6.60.5.12 RIGHTS OF A TESTING APPLICANT:** The ~~[SDE]~~ department shall advise the testing applicant at the time he is notified that his NMTA score will be withheld or voided, that he can at any time provide the ~~[SDE]~~ department with a statement or documentary evidence rebutting the likely or substantiated existence of a testing irregularity. However, the testing applicant shall be cautioned that any statement or document he provides may later be used against him at ~~[an SDE]~~ a department administrative proceeding, a civil proceeding or a criminal proceeding.

A. Where a testing applicant has an initial educator licensure application on file with the ~~[SDE]~~ department at the time he is notified that a testing irregularity has been substantiated, he shall have a right to request a hearing within 30 days of the notification and shall be afforded all the procedural and substantive due process rights contained in ~~[6 NMAC 4.2.4.4]~~ 6.68.2 NMAC ("Denial of Applications for Licenses for School Personnel"), which regulation shall govern the proceedings. The ~~[SDE]~~ department may combine this hearing with a licensure denial hearing. The right to discovery shall be limited as set forth in section 13 of 6.60.5 NMAC below.

B. Where a testing applicant does not have an initial educator licensure application on file with the ~~[SDE]~~ department at the time he is notified that a testing irregularity has been substantiated, he shall have 20 days to notify the ~~[SDE]~~ department professional licensure director

of his desire to schedule a telephonic conference-call or in-person meeting with the director. Such request must be in writing. Any relevant documents may be introduced and either side may be represented by an attorney and up to three witnesses may be called. The formal rules of evidence shall not apply and either side may at their own expense request that any witness statements be sworn and that a record be made of the meeting. The director shall issue a written decision consisting of written findings, conclusions and action to be taken. The decision will be issued to the testing applicant within 14 days of the meeting. The decision of the director, which must be based on a preponderance of the evidence, shall be final and not subject to review, appeal, or reconsideration by the agency.

C. A testing applicant with an initial educator licensure application on file with the ~~[SDE]~~ department at the time he is notified that a testing irregularity has been substantiated, may waive his right to a hearing and proceed by way of a meeting with the director as set forth in the immediately preceding paragraph. [6.60.5.12 NMAC - N, 07-01-01; A, 04-29-05]

**6.60.5.13 LIMITED DISCOVERY RIGHTS:** The NMTA is the ~~[sole State Board approved]~~ primary department-approved teacher test for the state of New Mexico. It was developed by the test administrator under contract with the ~~[SDE]~~ department to help identify candidates for educator licensure who have demonstrated the level of knowledge and skills necessary for performing the duties of a teacher in New Mexico's public schools. The ~~[SDE]~~ department holds the exclusive copyright on the NMTA. As such, the ~~[SDE]~~ department must safeguard not only the copyright but also the confidentiality of the NMTA. Any testing applicant who timely requests a meeting or a hearing as permitted by this regulation, shall have only limited access to the questions and answers of his NMTA and/or related materials.

A. Given the proprietary nature of the NMTA and/or related materials, under no circumstance shall a testing applicant's disputed or undisputed NMTA be released to a testing applicant, his attorney, his representative, or the general public.

B. Upon request made to the director, a testing applicant, his attorney, or representative shall be given as much access to the applicant's disputed or undisputed NMTA and/or related materials as is deemed reasonably necessary by the director, or hearing officer as the case may be, to prepare for his pending meeting or hearing.

C. Anyone given permission to view a testing applicant's disputed or

undisputed NMTA and/or related materials, must sign a confidentiality agreement offered by the ~~[SDE]~~ department. An NMTA and/or related materials may only be viewed during routine office hours of the ~~[SDE]~~ department under supervision of an ~~[SDE]~~ department employee and on the ~~[SDE]~~ department premises. No NMTA and/or related materials may be written on, marked, electronically copied, hand-duplicated, or otherwise removed from the premises of the ~~[SDE]~~ department. The form, subject matter, substance and wording of any NMTA test question or answer may also not be removed from the premises of the ~~[SDE]~~ department nor may they be further disclosed in any other way. A person granted permission to review the materials covered by this section may not bring any manual or electronic copying devices to the location where the materials are offered. Such copying devices referred to in the preceding sentence shall include but not be limited to cameras, camcorders, tape recorders, writing utensils, hand-held computers, paper, briefcases, etc. The said confidentiality agreement shall accomplish this as well as other test-security goals. Anyone who enters the ~~[SDE]~~ department premises to review the materials covered by this section and who violates or attempts to violate any protected security measure may be, at the discretion of the ~~[SDE]~~ department, removed from the premises and be considered to have forfeited any additional access to an applicant's disputed or undisputed NMTA and/or related materials.

D. The original or copy of any NMTA and/or related materials used as evidence at any meeting or hearing shall also be subject to confidentiality by all attendees and participants. Accordingly, all such meetings or hearings shall be closed to the public.

[6.60.5.13 NMAC - N, 07-01-01; A, 04-29-05]

**6.60.5.14 LICENSURE DENIAL OR REVOCATION:** Engaging in a testing irregularity shall constitute a good and just ground to deny a testing applicant's licensure application or to revoke or suspend any license held by a testing applicant that was issued by the ~~[State Board]~~ department. In the case of licensure revocation or suspension, the ~~[SDE]~~ department shall proceed under authority and procedure of ~~[6 NMAC 4.2.4.5]~~ 6.68.3 NMAC ("Suspension or Revocation of a License Held by a Licensed School Individual") and the Uniform Licensing Act [Sections 61-1-1 through 61-1-31 NMSA 1978].

[6.60.5.14 NMAC - N, 07-01-01; A, 04-29-05]

## NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.60.6 NMAC. Sections 7 and 9 through 12, effective 04-29-05

### 6.60.6.7 DEFINITIONS:

A. "Level one teaching license" means a provisional teaching license issued for the first three years of teaching that gives a beginning teacher the opportunity, through a formal mentorship program, for additional preparation to be a quality teacher.

B. "Level two teaching license" means a professional teaching license given to a teacher who is a fully qualified professional who is primarily responsible for ensuring that students meet and exceed state board-adopted academic content and performance standards; a teacher may choose to remain at level two for the remainder of his/her career.

C. "Level three-A teaching license" means a master teaching license and is the highest level of teaching competence for those teachers who choose to advance as instructional leaders in the teaching profession and undertake greater responsibilities such as curriculum development, peer intervention, and mentoring.

D. "Full school year" means a minimum of 160 instructional days in a school year or 480 instructional days over multiple school years of full-time or part-time teaching during which the teacher is the teacher of record in at least one class each school year while holding a standard teaching license. Instructional days may include teaching in summer school or similar educational setting.

[6.60.6.7 NMAC - N, 09-30-03; A, 04-29-05]

### 6.60.6.9 REQUIREMENTS FOR ADVANCEMENT AND RENEWAL OF TEACHING LICENSES AFTER JUNE 30, 2004:

A. A teacher holding a valid level I license and after June 30, 2004 seeking a level II license pursuant to the provisions of this regulation shall meet the following requirements, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience as the teacher of record at standard level I New Mexico licensure with successful annual evaluations, except that a teacher who has completed two full school years of teaching experience while holding standard teaching licensure in New Mexico or in another state or country ~~[and]~~ or has obtained level I New



Mexico teaching licensure through reciprocity in 6.60.4 NMAC and is seeking advancement to level II ~~[must still complete at least]~~ may be required by a local New Mexico school district to complete up to two full years of teaching experience in New Mexico before being eligible for licensure advancement to level II; and

(2) submit, in a form acceptable to the director, a completed licensure application and professional development dossier (PDD), as provided in 6.69.4.11 NMAC only between February 1st and March 1st, June 1st and July 1st, and October 15th and November 15th of any year; the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection A of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level I licensure.

(3) complete the mentorship requirement for beginning teachers in 6.60.10 NMAC.

B. A teacher holding a valid level II license and seeking a level III-A license pursuant to the provisions of this regulation shall meet the following requirements, which may not be waived or substituted by any other experience:

(1) complete three full school years of teaching experience as the teacher of record at standard level II New Mexico licensure with successful annual evaluations, except that a teacher who has four or more full school years of teaching experience while holding standard teaching licensure in New Mexico or in another state or country ~~[and]~~ or has obtained level II New Mexico teaching licensure through reciprocity in 6.60.4 NMAC and who is seeking advancement to level III ~~[must still complete at least]~~ may be required by a local New Mexico school district to complete up to two full years of teaching experience in New Mexico before being eligible for licensure advancement to level ~~[H]~~ III; and

(2) hold a post-baccalaureate degree from a regionally accredited college or university or hold certification from the national board for professional teaching standards; and

(3) submit, in a form acceptable to the director, a completed licensure application and professional development dossier (PDD), as provided in 6.69.4.11 NMAC only between February 1st and March 1st, June 1st and July 1st, and October 15th and November 15th of any year, and beginning in 2005, where the PDD may be submitted up to three months in advance of the completion of the requirement in Paragraph (1) of Subsection B of 6.60.6.9 NMAC with final PDD approval dependent upon the completion of three full years of teaching experience at level II

licensure.

C. A teacher holding a valid level II or level III-A teaching license and seeking licensure renewal ~~[pursuant to the provisions of this regulation]~~ at the same level as his current license shall meet the ~~[following]~~ requirements of either (1) or (2) below:

~~(1) submit a completed application for level II licensure renewal to the director and~~

~~(2) submit to the director a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal that the applicant has satisfactorily demonstrated the competencies for level II licensure and met other requirements of the high objective uniform standard of evaluation for level II licensure renewal as is evidenced by the teacher's annual evaluations;~~

(1) If renewing a license through the public education department (department), submit, along with the fee specified in 6.60.7.8 NMAC, a completed application for licensure renewal to the director and verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for his current level of licensure and has met other requirements of the high objective uniform standard of evaluation for his current level of licensure as evidenced by the teacher's annual evaluations.

(2) If renewing a license through a local New Mexico school district, state institution or charter school, complete the department's application for licensure renewal. The employing school district or charter school shall attach to the application the department's verification by the superintendent of the local school district or the governing authority of the state institution or charter school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for his level of licensure and has met other requirements of the high objective uniform standard of evaluation for his level of licensure as is evidenced by the teacher's annual evaluations. These documents will be maintained on file in the teacher's personnel file in the local school district, state institution or charter school. The superintendent or his designee will authorize the department to issue the renewal of licensure through electronic notification procedures established by the depart-

ment when the department determines such an electronic system is viable and operational. The license shall be printed by, and mailed to the license holder from, the department. Under no circumstances will local school districts directly issue or print a New Mexico educator license. The department shall determine how or if renewal fees authorized in 6.60.7.8 NMAC shall be paid by an applicant who renews his license under Paragraph (2) of Subsection C of 6.60.6.9 NMAC.

(3) If a ~~[level II]~~ teacher does not satisfactorily demonstrate the competencies ~~[of level II]~~ for his level of licensure or other requirements of the high objective uniform standard of evaluation for ~~[level II]~~ licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a license.

~~[D.] A person holding a valid level III A license and seeking licensure renewal pursuant to the provisions of this regulation shall meet the following requirements:~~

~~(1) submit a completed application for level III licensure renewal to the director; and~~

~~(2) submit to the director a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal that the applicant has satisfactorily demonstrated the competencies for level III licensure and met other requirements of the high objective uniform standard of evaluation for level III licensure renewal as is evidenced by the teacher's annual evaluations; or~~

~~(3) if a level III teacher does not satisfactorily demonstrate the competencies of level III licensure or other requirements of the high objective uniform standard of evaluation for level III licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-31, NMSA 1978, might not be issued a level III license.~~

~~[E.] D.] A person holding a valid level III-A license may choose ~~[to]~~ not to renew his or her level three-A license and apply for a level II license. The superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure must submit to the director a verification that the applicant has satisfactorily met the high objective uniform standard of evaluation for level two license as is evidenced by the teacher's annual evaluations.~~

[F.] E. If a level III-A teacher does not satisfactorily meet the high objective uniform standard of evaluation for level III-A licensure renewal, the applicant, depending on the outcome of any due process proceeding under the Uniform Licensing Act, sections 61-1-1 through 61-1-3-1, NMSA 1978, might not be issued a level III-A license. In that case, the applicant may be issued a level II license if the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, submits to the director a verification that the applicant has satisfactorily met the high objective uniform standards of evaluation for level II licensure as is evidenced by the teacher's annual evaluations. [6.60.6.9 NMAC - N, 09-30-03; A, 08-31-04; A, 04-29-05]

#### **6.60.6.10 REQUIREMENTS FOR RENEWAL AND ADVANCEMENT FOR EDUCATORS OTHER THAN TEACHERS:**

A. A person holding a valid level I license and seeking a level II license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level II license of the type sought.

B. A person holding a valid level II license and seeking a level III license pursuant to the provisions of this regulation shall meet the following requirements:

(1) a completed application for continuing licensure shall be submitted to the director;

(2) the applicant must hold a master's degree from a regionally accredited college or university;

(3) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant was most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated the competencies required by the public education department for a level III license.

C. A person holding a valid level II and/or level III license and seeking continuing licensure pursuant to the provisions of this regulation shall meet the ~~following~~ requirements of either (1) or (2) below:

~~(1) a completed application for continuing licensure shall be submitted to the director;~~

~~(2) the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for continued licensure must submit to the director a verification that the applicant has satisfactorily demonstrated those level II and/or level III competencies required by the public education department.]~~

(1) If renewing licensure through the department, submit, along with the fee specified in 6.60.7.8 NMAC, a completed application for continuing licensure to the director and verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies required by the department.

(2) If renewing through a local school district, complete the department's application for continuing licensure. The employing school district shall attach to the application the department's verification by the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies required by the department. These documents will be maintained on file in the individual's personnel file in the local school district. The superintendent or his designee will authorize the issuance of the renewal of licensure through procedures established by the department. The license shall be printed by, and mailed to the teacher from, the department. Under no circumstances will local school districts print a license. The department shall determine how or if renewal fees authorized in 6.60.7.8 NMAC shall be paid by an applicant who renews his license under Paragraph (2) of Subsection C of 6.60.6.9 NMAC.

[6.60.6.10 NMAC - N, 09-30-03; A, 08-31-04; A, 04-29-05]

#### **6.60.6.11 EXCEPTIONS:**

A. Exceptions for "exigent circumstances":

(1) The provisions of this paragraph shall apply to an individual holding a

valid New Mexico license who, in exigent circumstances, is unable to secure a verification of the required competencies for licensure renewal.

(2) As used in this paragraph, "exigent circumstance" means:

(a) the non-availability of the superintendent of the local school district or of an authorized representative of the state institution or private school by which the applicant has been most recently employed; or

(b) the licensed individual has not been employed in elementary or secondary education during the term of the license (s) or when as a level I teacher has been employed and completes less than three full school years in a New Mexico school district or combination of school districts.

(3) A person seeking to renew his or her current level of licensure who, in exigent circumstances, is unable to secure verification of the required competencies shall submit a sworn statement asserting the exigent circumstance(s). In this situation, an applicant may be granted a three-year level I license.

B. Exceptions for persons unable to demonstrate "exigent circumstances": A person seeking licensure renewal pursuant to this regulation and who cannot show exigent circumstances for the lack of verification of the satisfactory demonstration of the competencies required by the public education department may, upon the expiration of a period of three years from the date of expiration of the valid New Mexico license, apply to the director for a level I license. Level I licenses granted pursuant to this paragraph shall be subject to advancement at level II in the same manner as other such licenses.

C. A person seeking level II, III-A, or III-B licensure renewal pursuant to this regulation who has worked in education but not in an elementary or secondary school setting or who has retired from or has not continued to work in elementary and secondary education under a New Mexico license during the effective period of the license shall submit a sworn statement asserting that he or she has not worked in an elementary or secondary school setting during the effective period of the license, and may renew the license at the current level he or she holds.

[6.60.6.11 NMAC - Rp 6.60.6.9 NMAC, 09-30-03; A, 08-31-04; A, 04-29-05]

**6.60.6.12 IMPLEMENTATION:** Persons meeting these requirements may obtain a license at the level and for the duration as adopted by the public education department.

A. Absent the exceptions provided in 6.60.6.11, a level I license shall not be renewed.

B. Continuing level II and level III licenses granted pursuant to 6.60.6.8 NMAC of this regulation shall be granted for nine years.

C. Applications and requirements for licensure advancement or renewal must be completed no later than June 30 of the year following expiration of the license. After that date the license is deemed to have lapsed.

D. ~~[Notwithstanding the provisions of Subsection C of 6.60.5.8 NMAC,]~~ A license that has lapsed may be renewed at the same level of the lapsed license if the applicant submits evidence of having satisfactorily carried out his duties as previously authorized by the lapsed license for five complete school years and submits a verification from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed as of the date of the application for licensure renewal, that the applicant has satisfactorily demonstrated the competencies for his level of lapsed licensure as evidenced by annual evaluations. If the applicant cannot provide both the verification of five years experience and competency from the superintendent of the local school district or the governing authority of the state institution or private school by which the applicant has been most recently employed, the applicant shall be issued only a level I license.

[6.60.6.12 NMAC - Rp 6.60.6.11 NMAC, 09-30-03; A, 08-31-04; A, 04-29-05]

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

This is an amendment to 6.60.7 NMAC, Sections 2, 6, and 8 through 10, effective 04-29-05

**6.60.7.2 SCOPE:** Chapter 60, Part 7 governs the collection of an application fee for initial and renewal applications for educational licensure and for adding licensure endorsements.

[6-15-98; 6.60.7.2 NMAC - Rn, 6 NMAC 4.2.4.7.2, 10-13-00; A, 04-29-05]

**6.60.7.6 OBJECTIVE:** This rule establishes specific requirements for the payment of an application fee for initial and renewal applications for educator licensure and for adding licensure endorsements.

[6-15-98; 6.60.7.6 NMAC - Rn, 6 NMAC 4.2.4.7.6, 10-13-00; A, 04-29-05]

**6.60.7.8 REQUIREMENTS:**

A. Applicants seeking an initial educator license shall pay by money order or certified check or other form

acceptable to the public education department the following fees prior to or at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of \$50.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of \$15.00.

(3) applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of \$15.00.

B. Applicants seeking the renewal of an existing educator license through the public education department shall pay by money order or certified check or other form acceptable to the public education department the following fees at the time of submission of their applications:

(1) all applicants, except those described in Paragraphs (2) or (3) below, shall pay an application fee of \$25.00.

(2) applicants for educational assistant, school health assistant licensure or substitute teacher certification shall pay an application fee of \$15.00.

(3) applicants for athletic coaching licensure who are seeking a coaching license only shall pay a fee of \$15.00.

C. Applicants seeking the advancement to higher levels of teacher licensure by submission of a professional development dossier (PDD) as provided in 6.69.4.11 NMAC shall pay by money order, certified check or other payment method acceptable \$175.00 to the public education department or its contractor at the time of submission of their PDD. If submission of the PDD corresponds with the renewal of licensure, the fee for renewal in Subsection B of this section shall be waived.

D. Beginning May 1, 2005, applicants seeking to add an endorsement or endorsements to an existing license shall pay by money order or certified check or other form acceptable to the public education department a fee of \$25.00.

[6-15-98; 6.60.7.8 NMAC - Rn, 6 NMAC 4.2.4.7.8 & A, 10-13-00; A, 09-30-03; A, 08-31-04; A, 04-29-05]

**6.60.7.9 IMPLEMENTATION:**

A. An applicant for initial or renewal educator licensure or for adding an endorsement may apply for multiple licenses or endorsements through one application and pay one application fee. Subsequent initial or renewal applications for additional licenses or endorsements will require the payment of another full fee.

B. An applicant for initial licensure shall pay a single application fee. Additional application fees will not be charged when a one-year license is changed to a three-year license after the applicant

has completed the requirements for licensure.

C. A person who already holds a New Mexico educator license and for whom a superintendent is seeking a one-year ~~[emergency license]~~ waiver, will not be charged a fee for that license, nor for subsequent one-year ~~[emergency licenses]~~ waiver, if any, while removing licensure deficiencies. When an applicant meets all requirements for a license, he/she will submit an application for an initial license and pay the fee provided in Subsection A of Section 6.60.7.8 NMAC.

D. An applicant whose license has been expired for more than one year must submit an initial application for a new license and pays the initial application fee established in Subsection A of Section 6.60.7.8 NMAC.

E. All application fees are non-refundable.

[6-15-98; 6.60.7.9 NMAC - Rn, 6 NMAC 4.2.4.7.9, 10-13-00; A, 04-29-05]

**6.60.7.10 EXEMPTIONS:**

A. An application fee shall not be charged for ~~[adding endorsements,]~~ changing name or address, replacing lost or misplaced licenses and for waivers of assignment.

B. An application fee shall not be charged to an individual who qualifies as being indigent. An applicant can qualify for relief from the application fee on the grounds of indigency by providing the PED with documentation which establishes that the applicant is not now, nor was in the previous year, the dependent of another person and that the fee represents more than three percent of the applicant's total income for the previous year.

[6-15-98; 6.60.7.10 NMAC - Rn, 6 NMAC 4.2.4.7.10, 10-13-00; A, 08-31-04; A, 04-29-05]

**NEW MEXICO PUBLIC EDUCATION DEPARTMENT**

This is an amendment to 6.61.6 NMAC, Sections 7 and 8, effective 04-29-05

**6.61.6.7 DEFINITIONS:**

~~[RESERVED]~~  
A. "Core academic subjects" means English, language arts, reading, mathematics, science, the arts, including music and visual arts, social studies, which includes civics, government, economics, history, and geography, and modern and classical languages, except the modern and classical Native American languages and cultures of New Mexico tribes and pueblos.

B. "A highly qualified beginning K-12 special education teacher" under this rule means a teacher who is new to the profession, has pursued a standard route to licensure and is fully qualified to teach special education students by either providing access for those students to a regular education classroom where instruction in the core academic subjects is delivered by a highly qualified regular education teacher, or being fully qualified to teach each core academic subject the special education teacher teaches, or being fully qualified to teach either language arts, mathematics or science and becoming fully qualified to teach any other core academic subjects which the teacher teaches within two years after the date of initial employment, and who

(1) meets the requirements for K-12 special education licensure in Subsections A or B in 6.61.6.8 NMAC,

(2) has no licensure requirements waived on an emergency or temporary basis, or for any other reason, and

(3) has passed all applicable teacher testing requirements for licensure in 6.60.5.8 NMAC.

[6.61.6.7 NMAC - N, 04-29-05]

#### 6.61.6.8 REQUIREMENTS:

A. Persons seeking licensure in special education pursuant to the provisions of this regulation shall meet all the requirements enumerated in Subsections A or B of this section.

(1) bachelor's degree from a regionally accredited college or university and including, for those licensees or applicants first entering a college or university beginning in the fall of 1986, the following:

(a) twelve (12) semester hours in English;

(b) twelve (12) semester hours in history including American history and western civilization;

(c) six (6) semester hours in mathematics;

(d) six (6) semester hours in government, economics or sociology;

(e) twelve (12) semester hours in science, including biology, chemistry, physics, geology, zoology, or botany;

(f) six (6) semester hours in fine arts; and

(2) credits from a regionally accredited college or university which include: thirty (30) semester hours of professional education in a special education program approved by the public education department ("department"), including completion of the department's approved functional areas and related competencies; and including

(3) a mandatory student teaching component and at the option of the college or university, a practicum component; and

(4) twenty-four (24) semester hours in one of the following teaching fields: mathematics, science(s), language arts, reading, and social studies (or other content related areas); and

(5) in addition to the requirements specified in Subsection A of this section, six (6) hours of reading in subject matter content for those licensees or applicants who first entered any college or university on or after August 1, 2001 regardless of when they graduate or earn their degree; and

(6) passage of all required portions of the current New Mexico teacher test or any successor teacher test adopted by the department; ~~or~~ and

(7) if new to the profession and hired after the first day of school of the 2003-2004 school year, satisfy the requirements of a highly qualified beginning K-12 special education teacher; or

B. A valid certificate issued by the national board for professional teaching standards for the appropriate grade level and type.

[11-14-98; 6.61.6.8 NMAC - Rn, 6 NMAC 4.2.3.6.8 & A, 10-31-00; A, 06-01-02; A, 05-28-04; A, 04-29-05]

## NEW MEXICO TAXATION AND REVENUE DEPARTMENT

### TITLE 3: TAXATION CHAPTER 2: GROSS RECEIPTS TAXES PART 241 DEDUCTION - GROSS RECEIPTS TAX - RECEIPTS OF HEALTH CARE PRACTITIONERS

3.2.241.1 **ISSUING AGENCY:**  
Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630  
[3.2.241.1 NMAC - N, 4/29/05]

3.2.241.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.  
[3.2.241.2 NMAC - N, 4/29/05]

3.2.241.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[3.2.241.3 NMAC - N, 4/29/05]

3.2.241.4 **DURATION:**  
Permanent.  
[3.2.241.4 NMAC - N, 4/29/05]

3.2.241.5 **EFFECTIVE DATE:**  
4/29/05, unless a later date is cited at the end of a section, in which case the later date is the effective date.

[3.2.241.5 NMAC - N, 4/29/05]

3.2.241.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.

[3.2.241.6 NMAC - N, 4/29/05]

3.2.241.7 **DEFINITIONS: "SCOPE OF PRACTICE" DEFINED:** As used in Section 7-9-93 NMSA 1978, the term "scope of practice" means the health care activities authorized to be conducted by, or at the direction of, the health care practitioner under a license granted to the health care practitioner by the appropriate body under any of the acts specified under Paragraph (3) of Subsection B of Section 7-9-93 NMSA 1978.

[3.2.241.7 NMAC - N, 4/29/05]

3.2.241.8 **RECEIPTS DEDUCTIBLE UNDER OTHER SECTIONS:** Health care practitioners may not deduct under Section 7-9-93 NMSA 1978 receipts that are deductible under others sections of the Gross Receipts and Compensating Tax Act. Receipts deductible under other sections include:

A. receipts from the United States or an agent thereof under Part B of medicare (Title 18 of the federal Social Security Act); these receipts are deductible under Section 7-9-77.1 NMSA 1978;

B. receipts from a third party administrator of the federal TRICARE program; these receipts are deductible under Section 7-9-77.1 NMSA 1978; and

C. receipts from health care services sold to a hospital or other person for re-sale with respect to which the practitioner has accepted a Type 5 nontaxable transaction certificate executed by the buyer; these receipts are deductible under Section 7-9-48 NMSA 1978.

[3.2.241.8 NMAC - N, 4/29/05]

3.2.241.9 **RECEIPTS NOT DEDUCTIBLE UNDER SECTION 7-9-93 NMSA 1978:** Receipts of a health care practitioner other than from payments by a managed health care provider or health care insurer for commercial contract services or medicare Part C services provided by the health care practitioner are not deductible under Section 7-9-93 NMSA 1978. Receipts of health care practitioners not deductible under Section 7-9-93 NMSA 1978 include:

A. receipts from any payment, such as a co-payment, that is the responsibility of the patient under the managed health care plan or health insurance;

B. receipts on a fee-for-service basis; "fee-for-service" means a traditional method of paying for health care services under which health care practition-

ers are paid for each service rendered, as opposed to paying in accordance with a schedule of fees in a contract the health care provider has entered into with a third party;

C. receipts from providing services to medicaid patients; and

D. receipts from selling tangible personal property such as nonprescription medicine that is not incidental to the provision of a deductible service. [3.2.241.9 NMAC - N, 4/29/05]

**3.2.241.10 RECEIPTS OF CORPORATE PRACTICE:** A professional corporation or unincorporated business association may deduct under Section 7-9-93 NMSA 1978 its receipts from managed health care providers or health care insurers for commercial contract services or medicare Part C services provided on its behalf by health care practitioners who own or are employed by the professional corporation or unincorporated business association if:

A. the professional corporation or unincorporated business association is owned exclusively by licensed health care practitioners described in Section 7-9-93 NMSA 1978; or at least eighty percent of the ownership interest of a corporation other than a professional corporation or an unincorporated business association is owned by licensed health care professional described in Section 7-9-93 NMSA 1978; and

B. the professional corporation or unincorporated business association is not an organization described by Subsection A of Section 7-9-29 NMSA 1978 or a hospital, hospice, nursing home, outpatient facility or intermediate care facility licensed under the Public Health Act. [3.2.241.10 NMAC - N, 4/29/05]

**3.2.241.11 VALID CERTIFICATE OF COMPLIANCE REQUIRED:** A person is not a "health care insurer" as defined by Section 7-9-93 NMSA 1978 if the person does not have a valid certificate of compliance issued by the public regulation commission under the New Mexico Insurance Code to act as an insurer, health maintenance organization, nonprofit health care plan or prepaid dental plan. Receipts of health care practitioners from persons without such a valid certificate of compliance are not deductible under Section 7-9-93 NMSA 1978. [3.2.241.11 NMAC - N, 4/29/05]

**3.2.241.12 SELF-INSURERS MAY BE "MANAGED HEALTH CARE PROVIDERS":** If a person provides for the delivery of comprehensive basic health care services and medically necessary services to the person's employees enrolled in a self-insurance plan through contracting with selected or participating health care

practitioners, that person is a "managed health care provider". Example: New Mexico state government's self-insured plan under the Group Benefits Act. [3.2.241.12 NMAC - N, 4/29/05]

**3.2.241.13 PAYMENTS FROM WORKERS COMPENSATION:** Receipts of a health care practitioner from the state of New Mexico pursuant to the Workers Compensation Act are not receipts from a managed health care provider or health care insurer and are not deductible under Section 7-9-93 NMSA 1978. [3.2.241.13 NMAC - N, 4/29/05]

**3.2.241.14 RECEIPTS OF HEALTH CARE FACILITIES NOT DEDUCTIBLE:** An organization, whether or not owned exclusively by health care practitioners, licensed as a hospital, hospice, nursing home, outpatient facility or intermediate care facility under the Public Health Act is not a "health care practitioner" as defined by Section 7-9-93 NMSA 1978. Receipts of such an organization are not deductible under Section 7-9-93 NMSA 1978. [3.2.241.14 NMAC - N, 4/29/05]

**3.2.241.15 RECEIPTS FROM "MEDIGAP" INSURANCE POLICIES NOT DEDUCTIBLE:** Payments from an insurer in accordance with a Medigap policy supplementing Medicare coverage are not deductible under Section 7-9-93 NMSA 1978. Medigap policies are not paying for "commercial contract services" as defined by Section 7-9-93 NMSA 1978. [3.2.241.15 NMAC - N, 4/29/05]

**3.2.241.16 RECEIPTS FOR ADMINISTRATIVE SERVICES NOT DEDUCTIBLE:** Receipts of a third party for administering a health insurance or medical plan are not deductible under Section 7-9-93 NMA 1978. [3.2.241.16 NMAC - N, 4/29/05]

History of 3.2.241 NMAC: [RESERVED]

**NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

This is an amendment to 3.3.1 NMAC Sections 7 & 9, effective 4/29/05.

**3.3.1.7 DEFINITIONS:** For purposes of Subsection S of Section 7-2-2 NMSA and Section 3.3.1.9 NMAC, a "day" is any consecutive 24-hour period. [3.3.1.7 NMAC - N, 4/29/05]

3.3.1.9 [ **R E S I D E N C Y** ]

**SHOWN BY VOTER REGISTRATION AND OTHER EVIDENCE**

~~A. Section 7-2-2 NMSA 1978 defines a "resident" as an individual who is domiciled in this state on the last day of the taxable year. Every individual has a domicile somewhere and each individual has only one domicile at one time.~~

~~B. A domicile is a place of a true, fixed home and a permanent establishment to which one intends to return when absent and where a person has voluntarily fixed habitation of self and family with the intention of making a permanent home.~~

~~C. The following individuals are presumed to be domiciled in New Mexico, and therefore residents of New Mexico:~~

~~(1) individuals other than members of the United States armed forces:~~

~~(a) any individual who has registered to vote in the state during a taxable year and who has not subsequently registered to vote elsewhere outside this state on or before the last day of the taxable year; and~~

~~(b) any individual who:~~

~~(i) holds a valid driver's license issued by the taxation and revenue department pursuant to the Motor Vehicle Code and who has not been subsequently licensed, including the surrender of the New Mexico license, by another state on or before the last day of the taxable year; or~~

~~(ii) has claimed to be a New Mexico resident for any other official purpose, such as for paying resident tuition at state schools, colleges or universities or obtaining resident hunting or fishing licenses;~~

~~(2) individuals who are members of the United States armed forces:~~

~~(a) a member whose home of record is in New Mexico unless that member is registered to vote in another state on the last day of the taxable year or unless the member's compensation for military service is otherwise exempt from New Mexico income tax under the provisions of the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. App. 574; and~~

~~(b) any member stationed in New Mexico, whose compensation for military service is otherwise exempt from New Mexico income tax under the provisions of the Soldiers and Sailors Civil Relief Act of 1940, 50 U.S.C. App. 574, who is registered to vote in this state on the last day of the taxable year.~~

~~D. An individual presumed to be domiciled in New Mexico may rebut the presumption by establishing by a preponderance of evidence the state in which the individual is domiciled.~~

~~E. This version of Section 3.3.1.9 NMAC is applicable to taxable~~

years beginning on or after January 1, 1993.] **RESIDENCY**

**A. Full-year residents.**

For purposes of the Income Tax Act, the following are full-year residents of this state:

(1) an individual domiciled in this state during all of the taxable year, or

(2) an individual other than an individual described in Subsection D of this Section who is physically present in this state for a total of one hundred eighty-five (185) days or more during the taxable year regardless of domicile.

**B. Part-year residents.**

(1) An individual who is domiciled in New Mexico for part but not all of the taxable year, and who is physically present in New Mexico for fewer than 185 days, is a part-year resident.

(a) During the first taxable year in which an individual is domiciled in New Mexico, if the individual is physically present in New Mexico for less than a total of 185 days, the individual will be treated as a non-resident of New Mexico for income tax purposes for the period prior to establishing domicile in New Mexico.

(b) An individual domiciled in New Mexico who is physically present in New Mexico for fewer than 185 days and changes his place of abode to a place outside this state with the bona fide intention of continuing to live permanently outside New Mexico, is not a resident for Income Tax Act purposes for periods after that change of abode.

(2) An individual who moves into this state with the intent to make New Mexico his permanent domicile is a first-year resident. A first-year resident should report any income earned prior to moving into New Mexico as nonresident income even if he is physically present in New Mexico for 185 days or more.

**C. "Domicile" defined:**

(1) A domicile is a place of a true, fixed home, a permanent establishment where one intends to return after an absence and where a person has voluntarily fixed habitation of self and family with the intention of making a permanent home. Every individual has a domicile somewhere, and each individual has only one domicile at a time.

(2) The following individuals are presumed to be domiciled in New Mexico:

(a) an individual who is registered to vote in the state during a taxable year who has not subsequently registered to vote elsewhere outside this state on or before the last day of the taxable year;

(b) an individual who holds a valid driver's license issued by the taxation and revenue department pursuant to the Motor Vehicle Code and who has not been subsequently licensed by another state on or before the last day of the taxable year; or

(c) an individual who has claimed to be a New Mexico resident for any other official purpose, such as eligibility for resident tuition at state schools, colleges or universities, or for hunting or fishing licenses.

(3) An individual presumed to be domiciled in New Mexico may rebut the presumption by establishing by a preponderance of evidence the state in which the individual is domiciled.

**D. "Domicile" and residency for armed forces personnel.**

(1) A resident of this state who is a member of the United States armed forces does not lose residence or domicile in this state, or gain residency or domicile in another state, solely because the service member left this state in compliance with military orders.

(2) A resident of another state who is a member of the United States armed forces does not acquire residence or domicile in this state solely because the service member is in this state in compliance with military orders.

(3) A resident of another state who is a member of the United States armed forces does not become a resident of this state solely because the service person is in this state for one hundred and eighty-five (185) or more days in a taxable year.

(4) Compensation for service in the armed forces is subject to personal income tax only in the state of the service member's domicile. "Compensation for military service" does not include compensation for off-duty employment, or military retirement income.

(5) For purposes of this section, "armed forces" means all members of the army of the United States, the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by proper authority for duty either with the army or the navy, reservists placed on active duty, and members of the national guard called to active federal duty.

**E. Examples:**

(1) A, a life-long resident of Texas, accepts a job in New Mexico. On December 5, 2003, A moves to New Mexico with the intention of making New Mexico her permanent home. A has established domicile in New Mexico during the 2003 tax year. Because she was physically present in New Mexico for fewer than 185 days during that year, she should file as a part-year resident, and she will be treated as a resident for personal income tax purpose only for that period after she establishes a New Mexico domicile.

(2) B, a resident of Arizona, makes several weekend visits to New Mexico in the early months of 2004. On July 1, 2004, he moves to New Mexico with the intention of making it his permanent home. Family matters call him back to

Arizona on August 1, 2004, and he soon determines that he must remain in Arizona. B was domiciled in New Mexico during the thirty days he spent in this state with the intention of making it his permanent home. Because B was physically present in this state for fewer than 185 days in 2004, B should file as a part-year resident for that tax year. For personal income tax purposes he will be treated as a resident of New Mexico only from July 1 to August 1, 2004.

(3) C was born and raised in New Mexico. She leaves New Mexico in December 2003 to pursue a two-year master's degree program in Spain. She intends to return to New Mexico when she completes her studies. During her absence she keeps her New Mexico driver's license and voter registration. Because New Mexico remains her domicile, C should file returns for tax years 2003, 2004 and 2005 as a full-year New Mexico resident.

(4) D, a resident of California, comes to New Mexico on three separate occasions in 2004 to work on a movie. D does not intend to remain in New Mexico, and when the movie is completed, D returns to her home in California. D is physically present in New Mexico for 200 days in 2004. Because D was physically present in New Mexico for at least 185 days, D must file as a full-year resident of New Mexico for tax year 2004.

(5) E, a resident of New Mexico, joined the army. Since joining the military, E has been stationed in various places around the world. Although E has not been back to New Mexico in the ten years since he joined the army, he continues to vote in New Mexico and holds a current New Mexico driver's license. E must file as a full-year resident of New Mexico.

(6) Same facts as Example 5, except that in August 2003, while stationed in Georgia, E retires from the military. Instead of returning to New Mexico, E moves to Florida where he intends to spend his retirement. For tax year 2003, E must file as a part-year resident, because he was not physically present in the state for 185 days or more. E is a resident of New Mexico until August 2003, when he moves to Florida with the intent of making that his permanent home.

(7) F, a resident of Texas, is an air force officer. In March 2002 he moves to New Mexico with his spouse to begin a two-year assignment at Kirtland Air Force Base. F is registered to vote in Texas and holds a Texas driver's license. F is not a resident of New Mexico in 2002. F's spouse is a full-year resident of New Mexico in 2002, regardless of domicile, because she is physically present in New Mexico for 185 days or more. During the second year of F's assignment, he registers to vote in New Mexico, obtains a New

Mexico driver's license, and enrolls his son in a New Mexico university paying resident tuition. Although F's presence in New Mexico under military orders is not sufficient to establish New Mexico residency or domicile, his conduct in 2003 is sufficient to establish domicile. In 2003 F must file as a part-year resident of New Mexico. He will be treated as a non-resident for income tax purposes for that period of 2003 prior to establishing domicile in New Mexico.

(8) G is a Native American who lives and works on his tribe's pueblo in New Mexico. Federal law prohibits the state from taxing income earned by a Native American who lives and works on his tribe's territory. G joins the marines and is stationed outside New Mexico. Because G's domicile remains unchanged during his military service, G's income from military service is treated as income earned on the tribe's territory by a tribal member living on the tribe's territory, and is not taxable by New Mexico.

[10/23/85, 12/29/89, 3/16/92, 6/24/93, 1/15/97; 3.3.1.9 NMAC - Rn & A, 3 NMAC 3.1.9, 12/14/00, A, 4/29/05]

**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION**

18 NMAC 27.2, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction is hereby repealed effective 04/29/2005. This rule is replaced by 18.27.2 NMAC, Division 100 - General Provisions Standard Specifications for Highway and Bridge Construction, effective 04/29/2005.

**NEW MEXICO  
DEPARTMENT OF  
TRANSPORTATION**

**TITLE 18 TRANSPORTATION  
AND HIGHWAYS  
CHAPTER 27 HIGHWAY CON-  
STRUCTION GENERAL PROVISIONS  
PART 2 DIVISION 100 -  
GENERAL PROVISIONS STANDARD  
SPECIFICATIONS FOR HIGHWAY  
AND BRIDGE CONSTRUCTION**

**18.27.2.1 ISSUING AGENCY:**  
New Mexico Department of Transportation,  
Post Office Box 1149 Santa Fe, New  
Mexico 87504-1149 (505) 827-5631.  
[18.27.2.1 NMAC - Rp, 18 NMAC 27.2.1,  
04/29/05]

**18.27.2.2 SCOPE:** All agencies,  
the general public and highway construc-  
tion contractors.

[18.27.2.2 NMAC - Rp, 18 NMAC 27.2.2,  
04/29/05]

**18.27.2.3 S T A T U T O R Y  
AUTHORITY:** NMSA 1978, Sections 67-  
3-43, 13-1-99, 13-1-170 and 13-1-174.

[18.27.2.3 NMAC - Rp, 18 NMAC 27.2.3,  
04/29/05]

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

[18.27.2.4 NMAC - Rp, 18 NMAC 27.2.4,  
04/29/05]

**18.27.2.5 EFFECTIVE DATE:**  
04/29/05, unless a later date is cited at the  
end of a section.

[18.27.2.5 NMAC - Rp, 18 NMAC 27.2.5,  
04/29/05]

**18.27.2.6 OBJECTIVE:**

A. The purpose of this regulation, Division 100 General Provisions Standard Specifications for Highway and Bridge Construction, is to control the legal relations between the New Mexico department of transportation and its contractors performing public works construction. This regulation shall apply to those construction projects let to bid after the date this rule is promulgated by the department and duly filed in the state records center, and so designated in the invitation for bids as subject to this regulation.

B. Subsections referred to in this rule are contained within the current edition of the New Mexico state highway and transportation department Standard Specifications for Highway and Bridge Construction, Division 100.

[18.27.2.6 NMAC - Rp, 18 NMAC 27.2.6,  
04/29/05]

**18.27.2.7 DEFINITIONS:**

A. **Act of God:** An unusual, sudden, and unexpected manifestation of the forces of nature, the effect of which could not have been prevented by reasonable human foresight, pains, and care.

B. **Addendum:** A change in the plans or specifications issued after the advertisement but prior to the bid opening.

C. **Advertisement:** (also called invitation for bids). A public announcement inviting bids for work to be performed or materials to be furnished.

D. **As built plans:** Final drawings reflecting work and quantities performed under the contract.

E. **Assistant district engineer:** The engineer in charge of the construction operations in a designated portion of a department district.

F. **Award:** The written acceptance by the department of a contract bid.

G. **Base course:** The layer or layers of specified material placed on a sub base or a subgrade normally used to support a surface course.

H. **Basis of payment:** The terms under which "work" is paid, as a designated "pay item" in accordance with the quantity measured and the "pay unit".

I. **Bid:** The offer of a bidder, on the prescribed form, to perform the work and to furnish the labor and materials at the prices quoted.

J. **Bid form:** The approved form on which the department requires a bid to be prepared and submitted for the work.

K. **Bid guaranty:** The security furnished with a bid to guarantee that the bidder will enter into the contract if the bidder's bid is accepted.

L. **Bidder:** An individual, partnership, firm, corporation, joint venture, or their authorized representative submitting a bid.

M. **Borrow pit:** A source outside the roadway prism from where suitable material used primarily for embankment is obtained.

N. **Bridge:** A structure having a length as measured along the center of the roadway of more than 6.1 m (20 ft) between under copings of abutments or extreme ends of openings for multiple boxes, and carrying a pathway or roadway over a depression or obstacle. It includes all appurtenances necessary to its proper use. The length of a bridge structure is the distance along the line of survey stationing back-to-back of back walls of abutments, if present, or end-to-end of the bridge floor, and in no case less than the total clear opening of the structure. The bridge roadway width is that clear unobstructed width of bridge deck available for vehicle use measured normal to the centerline of the bridge.

O. **Cabinet secretary:** The individual who is in charge of the department.

P. **Calendar day:** Each and every day shown on the calendar, beginning and ending at midnight.

Q. **Casing:** A pipe or tube used for receiving and protecting utility lines.

R. **Change order:** A written order to the contractor detailing changes to the specified work quantities or increases or modifications in the scope of the original contract. The change order can consist of a supplemental agreement, or field sheet.

S. **Commercial material source:** A material source that has been utilized by any private producer in a commercial operation from which substantial material has been sold within the last 24 months

prior to the date of the letting.

T. **Completion dates:** Contracts may have the following completion dates as defined herein:

- (1) substantial completion date;
- (2) physical completion or "completion" date;
- (3) mandatory completion date.

U. **Conduit:** A pipe or tube used for receiving and protecting utility lines.

V. **Construction maintenance easement (CME):** A real property interest in land acquired by the department in conjunction with a highway project to provide permanent access to private property to perform specific construction and maintenance functions.

W. **Contract:** The written agreement between the department and the contractor setting forth the obligations of the parties thereunder, including, but not limited to, the performance of the work, the furnishing of labor and materials, and the basis of payment. The contract includes the advertisement, bid contract form and contract bond, standard specifications, supplemental specifications, special provisions, addenda, notice to contractors, general and detailed plans, standard drawing serials, and notice to proceed also any change orders and agreements that are required to complete the construction of the work in an acceptable manner, including authorized extensions thereof, all of which constitute one instrument.

X. **Contract bonds:** The approved payment and performance bonds executed by the contractor and the contractor's surety or sureties guaranteeing complete execution of the contract and all change orders pertaining thereto, and the payment of all debts pertaining to the construction of the project.

Y. **Contract item (pay item):** A specifically described unit of work for which a price is provided in the contract.

Z. **Contract time:** The time specified in the invitation for bids for completion of the contract. This time may be defined as a specified fixed date, a given number of workdays, or a given number of calendar days or a combination of the above. The contract time may be amended by mutual written agreement to include authorized extensions of time, as the performance of the contract requires.

AA. **Contractor:** The individual, partnership, firm, corporation, or joint venture contracting with the Department for performance of prescribed work.

AB. **Contractor furnished material source:** A source of material that is acquired by the contractor.

AC. **Cost reduction proposals:** Contractor provided alternates to

the work methods or materials specified in the contract that establish a better or approved equal product or result without affecting the functional purpose of the work being revised and that produce a net savings to the department.

AD. **County:** The county in which the work herein specified is to be done.

AE. **Cultural resource:** Any prehistoric or historic period artifact, site, building, structure, material remain, or traditional use area resulting from, or associated with, human cultural activity. Historically important cultural resources are those eligible for inclusion on the national register of historic places.

AF. **Culvert:** Any structure not classified as bridge or casing that provides an opening under a roadway.

AG. **Department:** The New Mexico department of transportation as constituted under the laws of the state of New Mexico for the administration of transportation work. Any reference to contract documents, plans, special provisions, standard drawing serials, forms, change orders, and any other pertinent written communication in which the terms "New Mexico state highway department" or "New Mexico state highway and transportation department" appears shall be the same as the term New Mexico department of transportation or its designated agent.

AH. **Detour:** A temporary route for traffic around a closed portion of a road.

AI. **Disadvantaged business enterprise (DBE):** As defined in 49 CFR, Part 26 and 18.28.2 NMAC.

AJ. **District:** A subdivision of the state for the purpose of executing the department's construction, maintenance, and administrative activities.

AK. **District engineer:** The engineer in charge of a department district.

AL. **District construction engineer:** The engineer in charge of the district construction operations who may also be known as the assistant district engineer.

AM. **Divided highway:** A highway with separated roadways for traffic, generally in opposite directions.

AN. **Embankment:** The portion of a roadway that is below the sub base, base course, and surface courses and that is built up in layers consisting principally of soil and broken rock or a combination thereof.

AO. **Embankment foundation:** The natural ground or backfilled areas upon which the embankment is constructed.

AP. **Engineer:** The designee of the cabinet secretary of the department.

AQ. **Environmental pro-**

**gram manager:** The individual who is in charge of the environmental section of the department.

AR. **Environmental resource:** The physical and biological components of the human and natural environment.

AS. **Equipment:** All machinery, tools, and equipment, together with the necessary supplies for upkeep and maintenance, that are necessary for the construction and completion of the contract.

AT. **Extra work:** Extra work means either 1) an item of work ordered under the contract for which there is no unit bid price; or 2) an increase or decrease of 25% in the original contract quantity of a major item. (See Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work.) Such work shall be performed as directed and will be paid for only on one of two grounds as provided in Subsection 109.5 [Subsection E of 18.27.2.15 NMAC], extra and force account work, by negotiated price agreement or by force account.

AU. **Fabricator:** An individual, partnership, firm, corporation, or joint venture with whom the contractor subcontracts to fabricate or supply structural steel or other structural items.

AV. **Field Sheet:** A contract change order to increase or decrease the quantities of existing items or make other changes within the scope of the contract, which does not require a contractor's signature.

AW. **Force Account:** The basis of payment for the directed performance of highway construction work, with payment based on the actual cost of labor, equipment, and materials, and including various constant additives.

AX. **Frontage road:** A street or road that is auxiliary to and located generally on the side of an arterial highway for service to the abutting property and adjacent areas, and for control of access.

AY. **General office (G.O.):** The department's main headquarters.

AZ. **Hazardous materials:** The term "hazardous materials" shall mean any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to the comprehensive environmental response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401, et seq.; the New Mexico Hazardous Waste Act, NMSA 1978,



Section 74-4-1, et seq.; the New Mexico Radioactive and Hazardous Materials Act, NMSA 1978, Section 74-4A-4, et seq.; and the Groundwater Protection Act, NMSA 1978, Section 74-6B-1, et seq. all as amended, or any other federal, state, or local statute law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material.

**BA. Highway, street, or road:** A general term denoting a public way for purposes of vehicular or pedestrian travel.

**BB. Holidays:** Holidays will be observed as follows unless otherwise provided by the legislature. If any holiday above falls on a Saturday or Sunday, the previous Friday or following Monday, respectively, shall be considered a holiday.

- (1) New Year's day
- (2) Martin Luther King Jr.'s birthday
- (3) Presidents' day
- (4) Memorial day
- (5) Independence day (4th of July)
- (6) Labor day
- (7) Columbus day
- (8) Veterans day
- (9) Thanksgiving day
- (10) Christmas day

**BC. Incidental:** Occurring or likely to occur at the same time or as a result of other items of work as specified in the contract for which no separate or additional payment will be made.

**BD. Inspector:** The project manager's authorized representative assigned to make detailed inspections of contract performance.

**BE. Incentive/disincentive provision:** Predetermined adjustments to the contract price for each day that work is completed ahead of or behind specified milestones, phases, or contract completion dates.

**BF. Invitation for bids:** See advertisement.

**BG. Laboratory:** A testing laboratory of the department or any other testing laboratory that may be designated by the engineer.

**BH. Listed material source:** A local source of material that may be listed and described in the plans and in the contract for possible use on a project.

**BI. Lump:** The mathematical quantity for a LUMP sum item is one.

**BJ. Major contract item:** Any item, excluding mobilization, having a total bid amount of 10% or more of the total amount bid for the contract, minus the amount bid for mobilization.

**BK. Mandatory comple-**

**tion date:** The date on which the project shall be completed. This may be either substantial completion or physical completion as specified in the contract documents. If neither is specified, it shall mean "substantial completion".

**BL. Materials:** Any substances specified for use in the construction of the project and its appurtenances.

**BM. Median:** That portion of a divided highway separating the traveled way for traffic in opposing directions.

**BN. Method of measurements:** The method in which a "pay item" is measured to conform with the "pay unit".

**BO. Notice to proceed (work order):** Written notice to the contractor to proceed with the contract work including, when applicable, the beginning date of contract time.

**BP. Notice to contractors:** An addition to the contract package, made prior to its issuance to the contractor, indicating changes to the plans and specifications.

**BQ. Pavement structure:** The combination of sub base, base course, and surface course placed on a sub grade to support and distribute the traffic load to the roadbed.

**BR. Physical completion:** All the work is physically completed on the project and it is accepted by the project manager. All documentation required by the contract and by law does not necessarily need to be furnished by this date.

**BS. Pit agreement:** An agreement with a property owner to provide borrow or surfacing material for highway construction or maintenance.

**BT. Plans:** The approved contract drawings showing profiles, typical cross sections, working drawings, or exact reproductions that show the location, character, dimensions, and general or specific details of the work to be done.

**BU. Profile grade:** The line obtained from the trace of a vertical plane intersecting the top of the surfacing at the locations shown on the plans and determined in accordance with the criteria set forth in the standard serials and drawings. Profile grade means either the elevation or the gradient of such trace according to the context. The location of the profile grade will be designated by the department and shown on the plans. The profile grade may be used to designate the gradient and elevation of other construction features such as tops of curb, channels, sidewalks, etc.

**BV. Project:** The specific section of the highway or property on which construction is to be performed as described in the contract.

**BW. Project engineer:** A project manager who is a registered professional engineer.

**BX. Project manager:** The department's representative who is delegated the responsibility for administration of the project.

**BY. Right-of-way:** A general term denoting land or property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

**BZ. Right-of-way agreement:** A contract with a property owner to sell specific rights to the department for real property necessary to construct or maintain roadways.

**CA. Roadbed:** The graded portion of the highway with top and side slopes prepared as a foundation for the sub grade, pavement structure, and shoulders.

**CB. Roadside:** A general term denoting the area adjoining the outer edge of the roadway. Extensive areas between the roadways of a divided highway may also be considered roadside.

**CC. Roadside development:** Those items necessary to the complete highway that provide for:

- (1) preserving landscape materials and features;

- (2) rehabilitating all areas disturbed by construction and protecting them from erosion through seeding, sodding, mulching, and placing other ground covers; and

- (3) making such suitable plantings and other improvements as may increase the effectiveness and enhance the appearance of the highway.

**CD. Roadway:** A general term denoting the traveled way and the shoulders.

**CE. Roadway prism:** The roadway construction limits between the outside limits of the side slopes.

**CF. Shoulder:** The portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles, for emergency use, and for lateral support of base and surface courses.

**CG. Secretary:** See "cabinet secretary."

**CH. Sidewalk:** That portion of the roadway primarily constructed for use by pedestrians.

**CI. Small business:** As defined in Section 3 of the Small Business Act.

**CJ. Special provisions:** Additions and revisions to the standard and supplemental specifications covering conditions applicable to an individual project.

**CK. Specialty items:** Work not usually performed by highway contractors and so designated in the contract.

**CL. Specifications:** A general term applied to all provisions and requirements pertaining to performance of the work.

**CM. Standard drawings:**

Detailed drawings for specific items of work approved for repetitive use.

CN. **Standard specifications:** The department's book of specifications approved for general application and repetitive use.

CO. **State:** The state of New Mexico acting through its authorized representatives.

CP. **Structures:** Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing, manholes, end walls, buildings, sewers, service pipes, under drains, foundation drains, and other such features that may be encountered in the work.

CQ. **State materials engineer:** The engineer in charge of the state materials bureau.

CR. **Subbase:** The layer or layers of specified material thickness placed on a sub grade to support surface courses.

CS. **Subcontractor:** An individual, partnership, firm, corporation, or joint venture to whom the contractor subcontracts part of the contract.

CT. **Subgrade:** The portion of the roadbed prepared as a foundation for the pavement structure.

CU. **Substantial completion:** The point at which the project is complete such that it can be safely and effectively used by the public without further delays, disruption, or impediments as requested by the contractor and approved by the district construction engineer. For conventional bridge and highway work, it is the point at which all the following work is complete (or as otherwise defined in the contract):

- (1) bridge deck;
- (2) parapet;
- (3) pavement structure;
- (4) shoulder;
- (5) permanent signing;
- (6) a minimum of one application of striping;
- (7) traffic barrier; and
- (8) safety appurtenances.

CV. **Substructure:** All of that part of the bridge structure below the bearings of simple and continuous spans, skewbacks of arches, and tops of footings of rigid frames, together with the back walls, wing walls, and wing protection railings.

CW. **Superintendent:** The contractor's representative authorized in writing to be in responsible charge of the project.

CX. **Superstructure:** The entire bridge structure except the substructure.

CY. **Supplemental agreement:** Written agreement signed by the department and the contractor to perform work beyond the scope of the original contract but in conjunction with it.

CZ. **Supplemental specifi-**

**cations:** Approved additions and revisions to the standard specifications.

DA. **Supplier:** An individual or firm who manufactures or supplies materials to be incorporated into a construction project but who performs no actual work on the project site.

DB. **Surety:** The corporation, partnership, or individual, other than the contractor, executing a bond furnished by the contractor.

DC. **Surface course:** Layer or layers of a pavement structure designed to accommodate the traffic load, the top layer of which resists skidding, traffic abrasion, and the disintegrating effects of climate.

DD. **Surfacing pit:** A source from which suitable material for the production of surface course aggregate is obtained.

DE. **Suspension and debarment:** The disqualification of a bidder or contractor from bidding or performing construction work for a period of time determined by department regulations.

DF. **Temporary construction permit (TPC):** A temporary interest in land acquired in conjunction with a highway project to provide for the temporary use of private property for the duration of the construction to perform construction activities in which the improvements are not intended to be permanent.

DG. **Termini:** A general term used to describe the limits of a project, and including the beginning and end of the project, its right of way, pit sites, haul roads, and temporary and permanent construction or maintenance easements.

DH. **Titles (or headings):** The titles or headings of the sections and subsections herein are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

DI. **Total bid amount:** The total bid amount will be considered to be the correct sum of all bid items obtained by adding together the amounts bid for each item in the bid.

DJ. **Town, city, or district:** Subdivisions of the state used to designate or identify the location of the proposed work.

DK. **Traffic lanes:** See "traveled way."

DL. **Traveled way:** The portion of the right of way designated for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

DM. **Unbalanced bid:**

(1) **Materially:** A bid that generates a reasonable doubt that awarding the contract to the bidder submitting a mathematically unbalanced bid will result in the lowest ultimate cost to the department.

(2) **Mathematically:** A bid containing lump sum or unit bid items that do not reflect reasonable actual costs plus a reasonable proportionate share of the bidder's anticipated profit, overhead costs, and other indirect costs.

DN. **Unit bid price:** The price established by the contractor for an individual item of work on the bid form.

DO. **Work:** The furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the project, the successful completion of pay items, and the carrying out of all duties and obligations imposed by the contract.

DP. **Working day:** Each day exclusive of Saturdays, Sundays, and holidays on which work can be effectively prosecuted for six hours or more. Determination of whether a working day will be charged will be made by the project manager after the end of the work day, and by noon of the next work day, based on a review of weather conditions and any actual work performed by the contractor. If the contractor was able to effectively prosecute work on a critical path item (that is, paving, grading, structures, etc.) for six or more hours, a working day will be charged.

DQ. **Working drawings:** Contractor furnished documents including, but not necessarily limited to:

- (1) stress sheets;
- (2) shop drawings;
- (3) bending diagrams for reinforcing steel;
- (4) plans for erection, false work, framework, cofferdams, and other items; and
- (5) such other similar data required for the successful completion of the work.

DR. **Work order:** See "notice to proceed".

DS. **Work permit:** An agreement with the property owner that allows specific work to be accomplished on private property work that is necessary in conjunction with a construction project that will benefit the property owner.

DT. **AASHTO:** means American association of state highway and transportation officials.

DU. **ACNM:** means associated contractors of New Mexico.

DV. **AGC:** means associated general contractors of America.

DW. **AISI:** means American iron and steel institute.

DX. **ANSI:** means American national standards institute, inc.

DY. **APWA:** means American public works association.

DZ. **ASTM:** means American society for testing and materials.

EA. **ATSSA:** means

American traffic safety services association.

- EB. **AWWA:** means American water works association.
- EC. **FHWA:** means federal highway administration, department of transportation.
- ED. **MUTCD:** means manual on uniform traffic control devices.
- EE. **NEC:** means national electrical code.
- EF. **NMMBA:** means New Mexico minority businesses association.
- EG. **NMSSPWC:** means New Mexico standard specifications for public works construction.
- EH. **OSHA:** means occupational safety and health administration.
- EI. **TTCP:** means technical training & certification program.
- EJ. **UBC:** means uniform building code.
- EK. **SYMBOLS:** Some of the symbols for units of measurement used in the specifications and in the proposal form are defined as shown in Table 101-A. The symbols for other units of measurement used in the specifications are as defined in ASTM Designation: E-380, or in the various specifications and tests referenced in the specifications.

Table 101-A

As Used in the Specifications	As Used in the Bid Form	Definition
Mm	Mm	Millimeter
M	M	Meter
Km	Km	Kilometer
Mm2	mm2	Square Millimeter
Ha	Ha	Hectare (100,000 m2)
Km2	Km2	Square Kilometer
Mm3	mm3	Cubic Millimeter
L	L	Liter
m3	m3	Cubic Meter
G	G	Gram
Kg	Kg	Kilogram
T	T	Metric Ton (1000 kg)
Km/h	-	Kilometer per Hour
Pa	-	Pascal
KPa	-	Kilopascal
Mpa	-	Megapascal
N	-	Newton
m3/s	-	Cubic Meter per Second
Kg/m3	-	Kilogram per Cubic Meter
Oc	-	Degree Celsius

[18.27.2.7 NMAC - Rp, 18 NMAC 27.2.7, 04/29/05]

**18.27.2.8 BIDDING REQUIREMENTS & CONDITIONS:**

A. **Invitation for bids:** After the advertisement has been made, an invitation for bids shall be mailed to interested parties informing them that bids shall be received for the construction of specific projects. Such invitation shall indicate the project number, length, locations and descriptions, and the time and place for the public opening and reading of the bids received. Information concerning the cost and availability of plans and bid forms shall also be indicated in the invitation for bids.

B. **Pre-award responsibility review and prequalification of bidders:** If specified in the invitation for bids, the bidder may undergo a "pre-award responsibility review" prior to award of contract. Under this procedure, a bidder shall submit with it's bid answers to a "bidder information questionnaire" which shall be included with the bid package. The answers to this questionnaire shall be used by the department to determine whether the apparent low bidder is a "responsible bidder" as this term is defined in the New Mexico Procurement code. Such determination by the department shall be based on whether the bidder has submitted a responsive bid, and whether the bidder's financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the construction described in the invitation for bids. Alternatively, the department may require prequalification of bidders in the invitation for bids. If prequalification of bidders is required, a bidder shall complete and file with the department for it's review in advance of the letting such forms as may be prescribed by the department pursuant

to prequalification regulations it has promulgated. Thereupon, a determination that the bidder has properly prequalified for the work to be let to contract would be a condition precedent to acceptance of its bid for such work by the department.

C. **Suspension and debarment:** A bidder or contractor may be debarred or suspended by the department pursuant to the New Mexico Procurement Code and regulations promulgated by the department. A debarred or suspended bidder or contractor shall be ineligible to bid or become a subcontractor or supplier on department projects during the period of its debarment or suspension.

D. **Bid package:** Upon request, the department will furnish the prospective bidder with a bid package. This package includes the invitation for bids, bid from, bid schedule, contract bonds, supplemental specifications, special provisions, notice to contractors, addenda and plans, excluding standard drawings. When submitted in paper form, only those designated as required documents are to be submitted.

(1) When submitted in paper form, all forms bound with or submitted with or submitted with the bid package are considered a part thereof and must not be detached or altered when the bid is submitted.

(2) All electronic submittals will be specified in the department's invitation for bids. When specified in the invitation for bids, the bidder shall submit a bid in electronic format.

E. **Rejection of bids:** The department reserves the right to refuse to issue a bid form to a prospective bidder and to refuse to receive or open a bid form, once issued, or reject a bid for any of the following reasons:

(1) lack of competency, financial stability, or adequate machinery, plant or other equipment, by the prospective bidder;

(2) uncompleted work, for which the prospective bidder is responsible, that in the judgment of the department might reasonably be expected to hinder or prevent the prompt completion of additional work, if awarded;

(3) failure to pay, satisfactorily settle, or provide security for the payment of claims for labor, equipment, materials, supplies, or services legally due on previous or ongoing contracts;

(4) failure to comply with the prequalification regulations of the department;

(5) default under previous contracts;

(6) unsatisfactory performance of previous work, or failure to comply with progress schedule requirements under Subsection 108.3 [Subsection C of 18.27.2.14 NMAC], prosecution and progress;

(7) issuance of a notice of debarment or suspension under department regulations;

(8) failure to certify that the bidder has carefully examined the contract, addenda, plans, and work site, and that the bidder is satisfied as to conditions to be encountered in performing the work as required by Subsection 102.7 [Subsection G of 18.27.2.8 NMAC], examination of plans, specifications, special provisions, and site of work;

(9) submittal by the prospective bidder of more than one bid for the same work under the bidder's own name or under a different name;

(10) evidence of collusion between a prospective bidder and other bidder(s) in the preparation of a bid for any department construction project;

(11) uncompleted work or default on a contract in another jurisdiction for which the prospective bidder is responsible, which in the judgment of the department might reasonably be expected to hinder or prevent the prompt completion of additional work if awarded.

**F. Interpretation of quantities:** The quantities appearing in the bid schedule, plans, or other contract documents are approximate only and are prepared for the comparison of bids. Payment to the contractor will be made only for the actual quantities of work performed and accepted, or materials furnished, in accordance with the contract. The scheduled quantities of work to be done and materials furnished may each be increased, decreased, or omitted as hereinafter provided.

**G. Examination of plans, specifications, special provisions, and site of work:** The department will prepare plans and specifications in accordance with acceptable engineering standards, and that give such directions as will enable any competent contractor to carry them out. The bidder is expected to examine carefully the site of the proposed work, including material pits and haul roads; and the complete bid package, standard specifications and standard drawings before submitting a bid. The submission of a bid shall be considered prima facie evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the contract. The bidder must so certify on the face of the bid form before it will be considered a qualified bid. When available, boring logs, agreements, and other records of subsurface investigations including borrow, surfacing material, and other materials pits may be inspected by the bidders. It is understood that such information was obtained and is intended for department design and estimating purposes. It is made available to bidders so that they may have

access to the identical subsurface information available to the department. It is not intended as a substitute for personal investigation, interpretations, and judgment by bidders.

#### H. Preparation of bid:

The bidder shall submit the bid on the disc or paper forms furnished in the bid package by the department. The blank spaces in the bid shall be filled in correctly for each item given, the bidder shall state in numerals, in ink or typewritten, or in digital format the unit bid prices for which the bidder proposes to do each item of the work.

(1) The bidder shall specify a unit bid price for each item, except when a unit bid price is established by the department. The unit bid price will be taken to include any insurance or overhead expenses necessary to complete that bid item.

(2) If the unit bid price is omitted, the extended total shall be divided by the estimated quantity, thereby establishing a unit price. If both the unit price and the extended total are omitted, the bid shall be rejected.

(3) The bidder shall show the products of the respective unit bid prices and quantities, and shall also show the total amount bid in the space provided in the bid form. The total amount bid shall be the total sum obtained by adding the amounts of the extended totals. Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the bidder shall initial the change in ink.

(4) Mathematical errors in extension shall be corrected by the department during the review of bids.

(5) The bidder is permitted to show the amount(s) for the respective unit bid price(s) to a maximum of three decimal places. Additional decimal places in excess of three shall be truncated and will not be considered in the processing of the bid.

(6) All bids submitted shall exclude the applicable state gross receipts tax and local option tax. The department shall pay the applicable tax including increases in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax and local option tax shall be shown as a separate amount on each billing or request for payment made under the contract. The contractor shall certify at the time of final payment that all applicable gross receipts taxes and local option taxes have been paid.

(7) All bids submitted shall exclude any Indian business tax, tribal employment rights organization ("TERO") tax, and other tax imposed by a tribal government. The department shall pay the tax or will exercise its prerogative to challenge the tribal government's authority to impose the tax. If the department exercises its pre-

rogative to challenge the tribal government's authority to impose the tax, the department will reimburse the contractor for such tax only if a court of competent jurisdiction rules the tribe has authority to impose the tax. The department will reimburse the contractor only if the final decision of the litigation, or other final disposition of the litigation, results in a determination that the tribe has jurisdiction to impose the tax. The department shall be subrogated to the rights of the contractor to claim a refund of, or to contest, any such tax imposed on the work to the extent any alleged obligation of the contractor or the department to pay such tax arises under this section or through the contractor's performance of this contract.

**I. Innovative contract incentives:** From time to time the department may apply by special provision, notice to contractors, or addenda any forms of innovative contract incentives to encourage early completion of a project or minimize construction interference with the traveling public or encourage higher quality. Quality incentives may include incentives for early completion of the project, pavement smoothness, higher QC/QA, quality level, and willingness to provide a warranty for the pavement markings00.

**J. Irregular bids:** Bids will be considered irregular and will be rejected for any of the following reasons:

(1) if the bid is submitted on a paper form or disc other than that furnished by the department; if it is not properly signed; if the bid form is altered, or if the any part thereof is deleted from the bid package;

(2) if there are unauthorized additions, conditional or alternate proposals, or other irregularities of any kind which irregularities may tend to make the proposal incomplete, indefinite, or ambiguous as to its meaning;

(3) if the bidder adds any provisions reserving the right to accept or reject an award or to enter into a contract pursuant to an award;

(4) if the bid does not contain a unit price for each pay item listed, and an extended total is not shown except in the case of authorized alternate pay items;

(5) if any erasure or alteration of figures relating to unit prices is not initialed in ink by the bidder;

(6) bids may be rejected if any of the unit bid prices are either materially and/or mathematically unbalanced to the potential detriment of the department. In such cases, the department may require the apparent low bidder to detail in writing how the prices were determined, and to justify the basis for the unit prices or lump sum prices, before it makes a decision as to whether or not the bid is irregular.

**K. Bid guaranty:** No bid will be considered unless accompanied by a bid guaranty, which shall be a bid bond, certified check, cashier's check, postal money order, or bank money order in an amount of at least five percent of the amount bid. Under no circumstances will a personal check be accepted. Submittal of a personal check will render a bid nonresponsive.

**L. Delivery of bids:** Each bid submitted shall be placed in a sealed envelope plainly marked with the project number, control number (CN), location of the proposed project, and the name and address of the bidder on the outside of the envelope. When sent by United States mail or private carrier (i.e. federal express, united postal service, etc.), the sealed bid shall be mailed in accordance with the instructions in the invitation for bids, to the department at the address of and in care of the official in whose office the bids are to be received, and shall be received by such official no later than the close of business on the day preceding the bid opening. Bids may also be had-delivered by the bidder prior to the bid opening to the official designated by the department to open and read bids at the letting. Bids received by officials after the time specified above will be returned to the bidder unopened.

**M. Revision of bids:** A bidder may revise a bid after it has been deposited with the department, provided that the request for such revision is received by the department, in writing or by telegram, before the time set for bid opening.

**N. Withdrawal of bids:** A bidder may withdraw a bid after it has been deposited with the department and before the time set for opening bids by requesting to do so in person, in writing, or by telegram. Once a bid letting has commenced at the time and place designated in the invitation for bids, a contractor may not withdraw the bid; except that an opportunity will be given prior to the opening and reading of the bids on each project for a contractor to withdraw the contractor's own bid(s) for that project and for any other projects which have not yet been opened and read. Withdrawn bids shall not be resubmitted.

**O. Public opening of bids:** Bids will be opened and read publicly at the time and place indicated in the invitation for bids.

**P. Engineer's estimate:** The department shall prepare in advance of the letting an engineer's estimate for the project that shall contain the department's cost estimate for each bid item. This engineer's estimate shall be confidential and shall not be disclosed to, or be subject to inspection by, members of the public prior to the public opening of bids. When all

responsive bids for the project have been received and read during the public opening of bids, the engineer's estimate for the project shall be publicly disclosed. [18.27.2.8 NMAC - Rp, 18 NMAC 27.2.8, 04/29/05]

#### **18.27.2.9 AWARD & EXECUTION OF CONTRACT:**

**A. Consideration of bids:** After the bids are opened and read, they will be compared on the basis of the summation of the products of the approximate quantities shown in the bid schedule by the unit bid prices. The results of such comparisons will be available to the public. In the event of a discrepancy between unit bid prices and extensions, the unit bid price shall govern.

(1) The right is reserved to reject any or all bids, to waive technicalities, or to advertise for new bids, if in the judgment of the department the best interests of the public will be promoted thereby.

(2) In the event that the same low bid is submitted by two or more contractors, the successful bidder will be determined by the flip of a coin.

**B. Award of contract:** Except as described in Subsection 103.3 [Subsection C of 18.27.2.9 NMAC], bidding dispute resolution procedures, the award of contract will be made within 30 calendar days after the opening of bids to the lowest responsible and qualified bidder whose bid complies with all the requirements prescribed, unless the successful bidder agrees to a later time when requested by the department. The successful bidder will be notified by a letter mailed to the address shown on his/her bid form that the bid has been accepted and that the bidder has been preliminarily awarded the contract. The contract to be signed by the successful bidder will accompany the notice. When applicable, escrowing of bid documents will be specified in the bid documents.

**C. Bidding dispute resolution procedures:** In the event of a bidding dispute, the following procedure, including the stated time limits, shall control the award of the contract.

(1) Any contractor who has a claim against the department or another contractor in connection with the bidding or with the pre-award process must file a written protest with the secretary within 15 calendar days after knowledge of the facts or occurrences giving rise thereto. Failure to file a timely written protest constitutes a waiver of the contractor's right to protest. This bidder protest procedure is separate from the procedure to be followed for extra work or additional time as provided in Subsections 105.18 [Subsection R of 18.27.2.11 NMAC], claims for adjustment, and 105.19 [Subsection S of 18.27.2.11 NMAC], administrative remedy.

(2) When a timely protest is duly filed, the secretary will not proceed further with the award until the dispute is resolved as provided in this procedure, unless the secretary makes a determination that the award of the contract is necessary to protect the substantial interests of the department.

(3) If a written protest is filed in a timely manner, the bids of both the apparent low bidder and next apparent low bidder shall be automatically extended an additional 15 calendar days, thus allowing the department to make the award within 45 calendar days after the opening of bids.

(4) Within seven calendar days of receiving the written protest, the secretary or the secretary's designated hearing officer shall have mailed letters, together with a copy of the written protest (certified mail, return receipt requested), notifying all parties to the grievance to appear with all necessary material evidence for an informal hearing to be held in the secretary's conference room or elsewhere as designated.

(5) Within seven calendar days after the initial hearing date, the secretary shall have rendered and mailed a determination. Said determination shall state the reasons for the action taken and inform the losing party of its right to file an appeal in Santa Fe district court within 30 days of receiving the adverse determination as provided under Section 13-1-183 of the Procurement Code.

(6) At the same time that the "determination letter" leaves the department, a second letter, the "award letter" to the lowest responsible bidder, will be mailed. The award letter, if it meets the 45-day requirement, will bind the lowest responsible bidder to accept the project or reject and forfeit the bid bond. The award letter will contain the proviso that the award is conditioned upon no appeal being made by the losing party to the Santa Fe district court within the 30-day deadline.

(7) If an appeal to the Santa Fe district court is made under Section 13-1-183 of the Procurement Code, the department may extend the award letter to such later date as agreed upon by the apparent successful bidder. If such an extension cannot be agreed upon, or for any other reason, the department may cancel the award and advertise for new bids when it is in the best interest of the department.

**D. Cancellation of award:** When in the best interest of the public, the department may cancel the award of any contract at any time before the execution of said contract by all parties without the department incurring liability.

**E. Return of bid guaranty:** All bid guaranties in the form of checks, except those of the two lowest bidders, will be returned immediately following the opening and checking of the bids. The

retained bid guaranty of the unsuccessful of the two lowest bidders, if in the form of a check, will be returned within 10 days following the award of contract. The retained bid guaranty of the successful bidder, if in the form of a check, will be returned after a satisfactory contract bid bond has been furnished and the contract has been executed. Bid guaranties in the form of bid bonds will be returned only upon the request of the unsuccessful bidder.

**F. Requirement of contract bond:** At the time of the return of the signed contract, the successful bidder shall furnish a contract payment bond and a contract performance bond in a sum equal to the full amount of the contract. The surety and form of the bond must be acceptable to the department.

**G. Execution and approval of contract:** The contract shall be signed by the successful bidder and returned together with both contract bonds, and lists of subcontractors and suppliers within 15 days after the contract has been received by the bidder. If the contract is not executed by the department within 30 days following receipt from the bidder of the signed contract and bonds, the bidder shall have the right to withdraw the bid without penalty. No contract shall be effective until it has been fully executed by all of the parties thereto. In the event that escrowing of bid documents is specified, the contract will no be executed until the department has accepted the submittal as complete.

**H. Failure to execute contract:** Failure to return the signed contract with acceptable contract bonds within 15 days after the contract has been received by the bidder shall be just cause for the cancellation of the award and the forfeiture of the bid guaranty which shall become the property of the department, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be readvertised and constructed under contract, or otherwise, as the department may decide. [18.27.2.9 NMAC - Rp, 18 NMAC 27.2.9, 04/29/05]

#### 18.27.2.10 SCOPE OF WORK:

**A. Intent of contract:** The intent of the contract is to provide for the construction and completion in every detail of the work described. The contractor shall furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the plans, specifications, and terms of the contract, except those materials to be furnished by the department in accordance with the provisions of Subsection 106.9 [Subsection I of 18.27.2.12 NMAC], department furnished material.

#### B. Significant changes in

**the character of work:** The engineer reserves the right to make, in writing, at any time during the work, such modifications in quantities and such alterations to the work as are necessary to satisfactorily complete the project. Such modifications in quantities and alterations to the work shall not invalidate the contract nor release the surety, and the contractor shall agree to perform the work as altered. If the alterations to the work or modifications in quantities significantly change the character of the work under the contract whether such alterations or modifications are in themselves significant changes to the character of the work or because by affecting other work they cause such other work to become significantly different in character an adjustment, excluding anticipated profit, shall be made to the contract. The basis for the adjustment shall be agreed upon prior to the performance of the work. If a basis cannot be agreed upon, then an adjustment shall be made either for or against the contractor in such amount as the engineer may determine to be fair and equitable. If the alterations to the work or changes in quantities do not significantly change the character of the work to be performed under the contract, the altered work will be paid for as provided elsewhere in the contract. The term "significant change" shall be construed to apply only to the following circumstances:

(1) when the character of the work as changed differs materially in kind or nature from that involved or included in the original proposed construction; or

(2) when a major item of work as defined elsewhere in the contract is increased in excess of 125% or decreased below 75% of the original contract quantity. Any allowance for an increase in quantity shall apply only to that portion in excess of 125% of original contract item quantity, or in the case of a decrease below 75%, to the actual amount of work performed;

(3) when the change affects work performed under a subcontract agreement approved by the department, adjustments will be made if prior to doing the work the prime contractor can show the department that the initiated change adversely affected the subcontractor or the subcontractor's work or payment. No consideration will be given to customary increases/decreases in quantities necessary to complete the work that were changed by the contractor's schedule of operations, by his or her planning of the work, or for unscheduled mobilizations. No consideration will be made after subcontractor work is completed and claims for additional compensation are received.

**C. Differing site conditions:** During the progress of work, if subsurface or latent physical conditions differing materially from those indicated in the

contract are encountered at the site or if unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract, are encountered at the site the party discovering such conditions shall promptly notify the other party in the contract in writing of the specific differing conditions before they are disturbed, or as soon as practicable thereafter, and before the affected work continues.

(1) Upon written notification, the engineer shall, within a reasonable time, investigate the conditions. If the engineer determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the contract, an adjustment that excludes anticipated profits but includes cost of delays will be made, and the contract will be modified in writing accordingly, in accordance with Subsection 109.10 [Subsection J of 18.27.2.15 NMAC], compensation for project delays. The engineer shall notify the contractor of the determination and whether or not an adjustment of the contract is warranted.

(2) In the event the contractor fails to provide the written notification in a timely fashion and the department's costs are increased as a result, the damage that could have been mitigated by timely notice will be calculated and the contract adjustment will be reduced accordingly.

**D. Extra work:** The contractor shall perform extra work as defined in Subsection 101.3 [Subsection AS of 18.27.2.7 NMAC], terms and definitions, whenever it is deemed necessary or desirable in order to fully complete the work as contemplated. Such work shall be performed in accordance with the specifications and will be paid for as provided under Subsections 104.2 [Subsection B of 18.27.2.8 NMAC], significant changes in the character of work, and 109.5 [Subsection E of 18.27.2.15 NMAC], payment for changes, differing site conditions, extra work, and force account work.

**E. Maintenance of traffic:** The contractor shall furnish, erect, and maintain barricades, warning signs, flaggers, and pilot cars in accordance with the MUTCD, the traffic control plan, and the requirements of division 700, traffic control devices. Flaggers shall be provided with equipment and training pursuant to requirements of the MUTCD. The equipment used by the flaggers shall be kept clean and in good repair by the contractor at the contractor's expense. The contractor shall take all steps necessary to either keep the existing roadway open with a minimum of inconvenience to the traveling public or provide an approved alternate route.

(1) When requested by the con-

tractor and approved by the engineer, when directed by the project manager, or when shown on the plans, sections of the project may be opened to traffic prior to completion of the entire contract. Such opening shall not constitute acceptance of the work or any part thereof, or a waiver of any provisions of the contract. For sections not shown on the plans, written instructions from the project manager will state which sections will be opened prior to completion of the contract.

(2) On any portions of the project that are ordered by the project manager to be opened to traffic because of unforeseen necessity that is not the fault of the contractor, compensation for additional expenses, if any, and an allowance for additional time, if any, shall be negotiated and set forth in a change order, if such adjustment qualifies under Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work.

(3) When a section is opened as a result of the contractor's request, the contractor shall remain liable until final acceptance of the entire project, and damage to the highway occurring before that time shall be repaired by the contractor at the contractor's expense except the removal of earth or rock slides, which shall be paid as extra work under Subsections 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work, and 109.5 [Subsection E of 18.27.2.15 NMAC], payment for changes, differing site conditions, extra work, and force account work.

(4) The contractor's equipment shall enter and leave the traveled way only in the direction of public traffic. All movements on or across the traveled way shall be performed in a manner that will not endanger the traveling public.

(5) When directed by the engineer, the contractor shall maintain the pavement surface of the lanes open to traffic adjacent to the work zone within the limits of the project traffic control. This work will be paid for in accordance with Subsection 109.5 [Subsection E of 18.27.2.15 NMAC], payment for changes, differing site conditions, extra work, and force account work, and will either be negotiated or paid by force account.

(6) The department will be responsible for snow removal on all sections of roadway open to the traveling public. The contractor shall be responsible for snow removal as required for the protection of the work on all sections of the project not open to the traveling public.

(7) Should the contractor fail to furnish warning devices; take protective measures as above provided; or complete shoulder work, drainage structures, or other features of the work; the project manager, at his or her discretion, will notify the contrac-

tor in writing of the defects along with a reasonable period of time in which the work must be corrected or completed. If the contractor fails to make a reasonable effort toward correction in this period of time, the engineer may then take such steps, as the engineer deems necessary, to correct the defects; or the engineer may terminate the contract for default under Subsection 108.9 [Subsection I of 18.27.2.14 NMAC], default of contract.

(8) The contractor shall be liable and agrees to pay the department for additional costs and expenses incurred by the department in correcting the defect(s).

(9) The contractor shall provide ingress and egress to local businesses and residences for the duration of the contract. The contractor shall advise and schedule access modifications with local business owners, residences, and the engineer at least twenty-four (24) hours in advance.

**F. Rights in use of materials found on the work:** The contractor, with the approval of the engineer, may use on the project such stone, gravel, sand, or other material as may be found in a designated excavation and as determined suitable by the engineer, for accomplishing work described by other items. The contractor will be paid both for the excavation of such materials at the contract unit price for excavation and for the pay item for which the other acceptable material is used. The contractor shall replace with other acceptable material, at the contractor's own expense, all of the excavated material so removed, and which would have been used for the construction of embankments or bridge approaches, or for other purposes, provided that such material is required to fulfill the intent of the contract. No charge will be made against the contractor for materials so used. The contractor shall not excavate or remove material from within the right of way that is not within the grading limits as indicated by the slope and grade lines, without written authorization from the engineer. Unless otherwise provided, the material from existing old structures may be used temporarily by the contractor in the erection of the new structure. Such materials shall not be cut or otherwise damaged, except with the approval of the engineer.

**G. Final cleanup:** Before final acceptance, the roadway, all pit sites used by the contractor, and all ground occupied or used by the contractor in connection with the work shall be cleaned of all rubbish including but not limited to concrete and asphalt chunks, loose rock, excess materials, and temporary structures. All parts of the work shall be left in an acceptable condition. If appropriate arrangements have been made with private property owners, removal of equipment from private property shall not be required prior to final accept-

ance.

(1) Borrow pits, surfacing pits, haul roads, and all ground occupied by the contractor in connection with the work shall be revegetated in accordance with the requirements of Section 632, seeding, and as shown in the contract. Haul roads or other areas may be excepted from these requirements when a letter of intent from the landowner for future use has been accepted by the engineer.

(2) Borrow pits and surfacing pits, when indicated on the plans, shall be stripped, and the topsoil shall be stockpiled. After construction operations have been completed, stockpiled material shall be placed uniformly over the stripped area to form a seedbed for planting. Stockpiled waste that is not covered by agreement shall be spread over the stripped area prior to the placing of topsoil. Unless a contract pay item for the work is included in the bid, stripping, stockpiling, and replacement of topsoil and spreading of stockpiled waste will be considered incidental to completion of the work and no measurement or direct payment will be made therefor.

(3) Borrow pits and surfacing pits shall not change the general pattern of existing drainage and, where practicable, shall be well drained unless they are suitable for development as ponds or lakes, and notice in writing is received indicating that such development is planned by the owner.

(4) Upon completion of excavation, pits except quarry pits shall be contour graded to blend with the natural topography of the surrounding area, or as specified in the contract documents or agreements with the property owner(s).

**H. Value engineering cost proposal (VECP).** On projects with original contract amounts in excess of \$100,000, the contractor may submit, in writing, a proposal for modifying the contract. The cost reduction proposal shall not impair, in any manner, the essential functions or characteristics of the project, including, but not limited to, service life, economy of operation, ease of maintenance, desired appearance, or safety. The provisions of this subsection will not apply unless the contractor identifies the submission as a cost reduction proposal.

(1) Proposed changes in the pavement type, minor changes in a suggested traffic control plan, or a change in the pit location will not be considered as an acceptable cost reduction proposal. This restriction will normally include, but not necessarily be limited to, dimensional changes of pavements, bridges, or other structures.

(2) The cost reduction proposal shall be capable of standing on its own merit and shall require only a minimum of verification by the department.

(3) Cost reduction proposals shall

contain, at a minimum, the following information:

(a) a statement identifying the submittal as a cost reduction proposal;

(b) a description of the performance of the work under the existing contract requirements and under the proposed changes;

(c) engineering analysis including drawings, computations, and other documents necessary for evaluation by the department;

(d) a listing of the contract requirements that must be changed if the proposal is adopted, and a recommendation as to the manner in which the change(s) should be made;

(e) a detailed estimate for performing the work under the existing contract and for performing it under the cost reduction proposal. An estimate of the cost to the contractor for developing and implementing the changes must also be included;

(f) a listing of the contract items affected by the proposal and identifying the resulting difference in quantities;

(g) an assessment of the effects that the adoption of the proposal will have on other costs to the department, including future maintenance and operation;

(h) a deadline, if any, for the department to approve the proposal;

(i) a statement on the effect that the adoption of the proposal will have on the contract time;

(j) the requirements and procedures for cost reduction proposals are as follows:

(i) in order to process cost reduction proposals expeditiously and to minimize costly studies by the contractor which may have little chance of acceptance, the contractor may submit, on a form provided by the department, a summary of the cost reduction proposal for determination of merit; the summary will be evaluated by the department, and the department's recommendation will be submitted to the contractor; submittal of a favorable recommendation to the contractor will not be construed as acceptance of the entire summary or any part of the submittal;

(ii) if a cost reduction proposal is similar to a change in the plans or specifications that the department is considering for the project at the time the proposal is submitted or if the submittal is based upon or similar to the standard specifications, special provisions, standard drawing serials, or procedures adopted by the department after the advertisement for the contract the cost reduction proposal will not be accepted;

(iii) if the department accepts a cost reduction proposal, the necessary contract modifications will be effected by the execution of a change order;

(iv) when an accepted cost reduction proposal is adopted for general use, only the contractor who initially submitted such proposal will be eligible for compensation pursuant to this section; and in that case, only as to those contracts awarded to the contractor prior to submission of the accepted cost reduction proposal and as to which such cost reduction proposal is also submitted and accepted;

(v) all costs incurred by the department in implementing the accepted cost reduction proposal, and in implementing the changes, will be deducted from the actual savings;

(vi) the engineer will be the sole judge of the estimated net savings in construction cost resulting from the adoption of all or any portion of a cost reduction proposal; in determining the estimated net savings, the right is reserved to disregard the unit bid prices if, in the judgment of the engineer, the prices do not represent a fair measure of the value of the work that was performed or that was deleted; also, the net savings will be determined by taking into account the actual job mix formulas, shrink and swell factors, and other actual design criteria used;

(vii) the contractor's share of a cost reduction proposal will be 50% of the actual net savings;

(viii) the contractor's share will be considered full compensation to the contractor for effecting all changes pursuant to the change order stemming from the cost reduction proposal or cost savings suggestion;

(ix) if the actual cost of the cost reduction proposal exceeds the costs that would have been incurred if the work had proceeded according to the contract, the department will not pay beyond the amount originally committed;

(x) when the actual net savings have been determined, a second change order providing for a lump sum payment of the contractor's share will be executed; partial progress payments may be made on a schedule approved by the engineer;

(xi) in preparing cost reduction proposals, the contractor must perform an independent examination of the affected work site; the department shall rely exclusively upon the accuracy of the engineering data upon which the cost reduction proposal is based; the department is not required to perform additional investigations, cross checks, or site examinations; acceptance or adoption of a contractor's cost reduction proposal shall not be construed to alleviate or reduce the contractor's full and absolute liability if the proposal upon implementation fails to satisfactorily perform because of the contractor's use of inaccurate or incomplete engineering data

or because of the contractor's failure to adequately investigate and examine the affected construction site; except as set forth in Subsection 105.17(B) [Paragraph (2) of Subsection Q of 18.27.2.11 NMAC], final acceptance, such liability on the part of the contractor shall not extend beyond final written acceptance of the project.

[18.27.2.10 NMAC - Rp, 18 NMAC 27.2.10, 04/29/05]

### **18.27.2.11 CONTROL OF WORK:**

**A. Authority of the engineer:** In addition to the authority to manage the contract, alter the contract plans, modify the contract by change order, supervise and terminate the contract as expressly provided in other subsections of the standard specifications, the engineer will have the authority to suspend the work wholly or in part, or withhold progress payments, due to the failure of the contractor to correct conditions unsafe for the workers or the general public; for failure to carry out provisions of the contract; for failure to carry out directions of the engineer; or for such periods as the engineer may deem necessary due to unsuitable weather. No additional compensation will be paid to the contractor because of such suspension. The contractor shall not suspend work without written authority from the engineer.

(1) The engineer may also suspend the work wholly or in part for other conditions or reasons beyond the control of the contractor or not connected with the construction of the project when deemed necessary in the public interest. Additional work caused by such suspensions will be paid for by the department pursuant to Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work.

(2) Suspension of work on some, but not all, items shall be considered partial suspension.

(3) Any adjustment of contract time for suspension of work shall be made as provided in Subsection 108.6 [Subsection F of 18.27.2.14 NMAC], determination and extension of contract time.

**B. Plans, working drawings, and as-built plans:** The work shall be performed in accordance with the details as shown on the plans prepared by the department and those working drawings prepared and submitted by the contractor.

(1) It shall be solely the contractor's responsibility to provide working drawings of such a nature as to develop a finished product in accordance with the plans provided by the department. The contractor shall verify pertinent dimensions in the field prior to submitting the shop drawings to the department. Review of the contractor's working drawings by the engineer



shall not relieve the contractor of the responsibility for the satisfactory completion of the work.

(2) Working shop drawings shall be reviewed and approved in writing by the engineer before beginning the construction work and shall not thereafter be amended or altered without prior written approval of the engineer.

(3) The contract price will include the cost of furnishing all working drawings.

(4) The contractor shall maintain an up-to-date set of as-built plans for all work performed under the contract. These as-built plans shall be kept current. Changes that are made by the department will be given to the contractor for inclusion in the as-built plans. The department may inspect the as-built plans at any time.

**C. Compliance with plans and specifications:** All work performed and all materials furnished shall be in substantial compliance with the lines, grades, cross sections, dimensions, and material requirements, including tolerances, shown on the plans or indicated in the specifications. In the event the engineer finds the materials or the finished product in which the materials are used not in substantial compliance with the plans and specifications but that reasonably acceptable work has been produced, the engineer shall then make a determination if the work shall be accepted and remain in place. In this event, the engineer will document the basis of acceptance by contract modification, which will provide for an appropriate adjustment in the contract price for such work or materials as the engineer deems necessary to conform to the determination based on engineering judgment. In the event the engineer finds the materials, or the finished product in which the materials are used, or the work performed are not in substantial compliance with the plans and specifications and have resulted in an inferior or unsatisfactory product, the work or materials shall be removed and replaced or otherwise corrected by and at the expense of the contractor.

**D. Coordination of plans, specifications, supplemental specifications, and special provisions:** These specifications, the supplemental specifications, the plan special provisions, addenda, notice to contractor and all supplementary documents are essential parts of the contract, and a requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, the documents will govern in the following order of importance:

- (1) addenda;
- (2) notice to contractors;
- (3) special provisions;
- (4) plans exclusive of standard drawings;

- (5) supplemental specifications;
- (6) standard specifications; and
- (7) standard drawings:

(a) dimensions given on the plans or which can be calculated will govern over scale dimensions;

(b) when there is an apparent error or omission in the plans or there is an apparent conflict or contradiction between any of the various documents maintained above, or between the documents and the actual worksite, the contractor has a duty to immediately notify the engineer of the discrepancy; the engineer shall resolve the discrepancy in writing before the contractor proceeds further;

(c) failure of the contractor to notify the engineer of an apparent discrepancy may be deemed a waiver of the contractor's right to claim any adjustment in price for extra work; in addition, the contractor may be fully liable for damages suffered by the department resulting from this failure to timely notify of a discrepancy; the project manager, if agreed to by the contractor, may require the contractor to obtain drawings modifications and other documents necessary to correct the error or omission; the work shall be paid for by the department pursuant to Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of the work.

**E. Cooperation by contractor:** The contractor will be supplied with 10 sets of approved plans and contract assemblies, one set of which the contractor shall keep available on the work site at all times. The contractor may purchase additional sets for the cost of printing, assembling, and mailing the documents.

(1) The contractor shall give the work the constant attention necessary to facilitate the progress thereof and shall cooperate with the department personnel and other contractors in every possible way.

(2) The contractor shall have on the work site at all times, as the contractor's agent, a competent superintendent capable of reading and thoroughly understanding the plans and specifications and thoroughly experienced in the type of work being performed. The superintendent shall have full authority to execute orders of the engineer without delay and to promptly supply such materials, equipment, tools, labor, and incidentals as may be required. A superintendent shall be assigned to the project regardless of the amount subcontracted. The contractor shall maintain, on the job site or at a convenient nearby location, an office where the superintendent can be contacted.

(3) The contractor shall assure that the project superintendent attends the preconstruction conference for the project.

(4) The department will provide an experienced project manager or project

engineer with an adequate staff and crew to keep pace with the contractor's progress and will maintain an office on the job site or in a convenient nearby location.

(5) The contractor shall recognize the project manager or project engineer as the department's initial contact representative on all matters relating to the project.

**F. Cooperation with utilities:** The department will notify all utility companies, all pipeline owners, or other parties who seemingly are affected by the proposed construction and will endeavor to have all the necessary adjustments of the public or private utility fixtures, pipelines, and other appurtenances within or adjacent to the limits of construction made before the award of the contract or as soon as practicable thereafter.

(1) Potable and nonpotable waterlines, sanitary sewer or storm drain lines, electric or communication lines, gas or petroleum product lines, irrigation systems and appurtenances, pumping, generation, microwave, metering and substation facilities, individual property service and metering connections, buried utility manholes, galleries, conduits, cables, switching equipment, valve boxes, highway or street lighting, traffic signals, and all other utility appurtenances within or adjacent to the limits of the proposed construction which are to be relocated or adjusted, are to be moved by others at no expense to the contractor, except as otherwise provided for in the special provisions or as noted on the plans.

(2) If the contractor requests changes in the alignment of temporary haul roads or detours, or requests authority to use borrow pits or material pits other than those designated on the plans and described in the special provisions, it shall be the contractor's responsibility to make all the necessary arrangements and provide payment for utility adjustment or relocation incident thereto.

(3) The department will make available to the contractor upon request all information obtained from utility companies, pipeline owners and other parties that the department has notified concerning the proposed construction. The department furnished information does not abrogate the contractor's responsibility for effecting further verifications and inquiries as are necessary to properly address permanent and temporary utility appurtenances in the preparation of the contractor's bid.

(4) Additional time and compensation may be given a contractor for delays caused by a utility's failure to make timely relocation and for utilities not identified in the contract per Subsection 109.10 [Subsection J of 18.27.2.15 NMAC]. Such additional time and compensation may be given only if a contractor shows as part of the justification for additional time and

compensation, that the contractor submitted written notice to the utility and the utility failed to relocate in a timely fashion, thereby delaying the contractor. In the case of utilities not identified in the contract, notification will be given to the department who will notify the utility.

(5) In accordance with the requirements of Subsection 107.1 [Subsection A of 18.27.2.16 NMAC], laws to be observed, The contractor shall comply with 62 NMSA 14.1 through 14.8, 1978. The contractor shall be responsible for resolving all problems resulting from the contractor's failure to comply with a responsibility to make inquiries or notify all known utility companies, pipeline owners or other parties of any work or conflicts. In this instance the contractor will not be allowed adjustments for delays or extra expense.

(6) In general, the contract will indicate various utility items, certain of which are to be relocated or adjusted by the utility owner or others and those that are to be relocated or adjusted by the contractor. If the utility owner or others fail to relocate or adjust utility facilities, the responsibility for which is not imposed on the contractor by the contract, the work involved in the relocation or adjustment may be required to be effected by the contractor by a change order if necessary and performed at unit bid prices, or if none exist, at negotiated prices or on a force account basis in accordance with Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work, and Subsection 109.05 [Subsection E of 18.27.2.15 NMAC], payment for changes, differing site conditions and force account work.

(7) If public or private utility lines or pipelines or other appurtenances are encountered during the course of the work, which are unknown to the department and to the contractor, the contractor shall immediately suspend construction operations at the site of the utility in question until such time that the department and the utility owner negotiate and complete the required relocation or adjustment. The department will endeavor to expedite the relocation or adjustment of the utility. If the relocation or adjustment of the utility causes a delay in the contractor's construction operations, the engineer and contractor may negotiate compensation.

(8) All utility relocations shall be accomplished in accordance with all laws and regulations developed to protect archaeological sites.

(9) In some cases the contractor may be required by the engineer to effect the relocation or adjustment by a change order. This work shall be effected by the contractor at unit bid prices, or if none exist, at negotiated prices or on a force account

basis in accordance with Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work, or Subsection 109.5 [Subsection E of 18.27.2.15 NMAC].

**G. Cooperation between contractors:** The department reserves the right at any time to contract for and perform other or additional work on or near the work covered by the contract.

(1) When separate contracts are let within the limits of any one project, each contractor shall conduct his or her work so as not to unreasonably interfere with or hinder the progress or completion of the work being performed by other contractors. Contractors working on the same project shall cooperate with each other as directed.

(2) Each contractor involved shall assume all liability, financial or otherwise, in connection with his or her contract and shall protect and save the department harmless from any and all damages or claims that may arise because of inconvenience, delay, or loss experienced by the contractor because of the presence and operations of other contractors working within the limits of the same project. In the event that two or more contractors are unable to agree on the sequence of work or other matters, a contractor may petition the project manager for a decision resolving issues between the parties. The project manager shall allow a reasonable time for response by all affected parties. After review of all comments, the project manager shall render a decision within five days, which shall be binding on all parties. In situations where the department anticipates multiple contractors working on the same project, it shall include this information in the bid documents with sufficient information to allow bidders to reasonably estimate the impact of the concurrent work. If the department employs multiple contractors and conflicts are created thereby which could not have been reasonably anticipated at the time of bid openings, the contractor shall be allowed an equitable adjustment in the contract price and time.

(3) The contractor shall arrange the work and shall place and dispose of the materials being used so as not to unreasonably interfere with the operations of the other contractors within the limits of the same project. The contractor shall join his or her work with that of the others in an acceptable manner and shall perform it in proper sequence to that of the others.

**H. Authority and duties of project manager or project engineer:** As designee of the cabinet secretary, the project manager or project engineer has immediate charge of the engineering details of each construction project. The project manager or project engineer is responsible for the administration and satisfactory completion of the project. The project manager

or project engineer will be delegated commensurate authority and has the authority to reject defective material and workmanship. The contractor is required to submit all problems related to the project through the project manager or project engineer even if the ultimate decision is not that of the project manager. The project manager or project engineer has the authority to reject defective material and workmanship. The project manager or project engineer will decide all questions that may arise as to:

(1) the quality and acceptability of materials furnished;

(2) work performed;

(3) rate of progress of the work;

(4) interpretation of the plans and specifications;

(5) acceptable performance of the contract requirements; and

(6) administration of monthly progress payments; the decision of the project manager or project engineer on the aforementioned shall be in writing, and shall be delivered to the contractor's superintendent as quickly as possible.

**I. Duties of the inspector:** Inspectors employed by the department will be authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work and to the preparation, fabrication, or manufacture of the materials to be used. The inspector will not be authorized to alter or waive the provisions of the contract. The inspector will not be authorized to issue instructions contrary to the plans and specifications or to act as foreman for the contractor. The inspector will have the authority to reject work or materials until any questions at issue can be referred to and decided by the project manager; however, the inspector will have no authority to suspend the work, except for safety reasons.

**J. Inspection of work:** All materials and each detail of the work shall be subject to inspection by the engineer. The engineer shall be allowed access to all parts of the work and shall be furnished with such information and assistance by the contractor as is required to make a complete and detailed inspection.

(1) If the engineer requests it, the contractor, at any time before final acceptance of the work, shall remove or uncover such portions of the finished work as may be directed. After examination, the contractor shall restore said portions of the work to the standard required by the specifications. Should the work thus exposed or examined prove acceptable, the uncovering, or removing, and the replacing of the covering or making good of the parts removed will be paid for as extra work under Subsections 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work, and 109.5 [Subsection E of 18.27.2.15

NMAC]; but should the work so exposed or examined prove unacceptable, the uncovering, or removing, and the replacing of the covering, or making good of the parts removed will be at the contractor's expense.

(2) The contractor shall provide at least a 24 hour notice, or such other notice to which the parties have agreed, before beginning work on any item, and before resumption of work on an item after an extended suspension.

(3) Work done or materials used without inspection by an authorized department representative may be ordered removed and replaced at the contractor's expense unless the department representative failed to inspect after having been given the required notice that the work was to be performed. When a unit of government or political subdivision or a railroad corporation is to pay a portion of the cost of the work covered by this contract, its representative(s) shall have the right to inspect the work. Such inspection shall in no sense make the unit of government or political subdivision or the railroad corporation a party to this contract and shall in no way interfere with the rights of either party hereunder.

**K. Removal of unacceptable and unauthorized work:** All work that does not conform to the requirements of the contract will be considered unacceptable unless otherwise determined acceptable under the provisions of Subsection 105.3 [Subsection C of 18.27.2.11 NMAC], compliance with plans and specifications.

(1) Unacceptable work resulting from causes found to exist before the final acceptance of the work shall be removed and replaced in an acceptable manner and within the time limit set by the project manager.

(2) No work shall be done without lines and grades having been established. Work done contrary to the instruction of the engineer, work done beyond the lines shown on the plans, or as given, except as herein specified, and all work done without authority, will be considered unauthorized and will not be paid for under the provisions of the contract. Work so done may be ordered removed or replaced at the contractor's expense.

(3) Upon failure on the part of the contractor to comply forthwith with an order of the engineer made under the provisions of this subsection, the engineer will have authority to cause unacceptable work to be remedied or removed and replaced and unauthorized work to be removed and to deduct the costs from monies due or to become due the contractor.

**L. Load restrictions:** The contractor shall comply with all legal load restrictions and all contract requirements in the hauling of materials on public roads

beyond the limits of the project. A special permit will not relieve the contractor of liability for damage that may result from the moving of equipment.

(1) The contractor shall observe legal load restrictions when hauling equipment or material on public roads beyond the project limits or within completed or existing portions of the roadway within the project limits. Any exception shall be approved in writing by the project manager.

(2) The contractor shall not operate equipment or haul loads that will cause damage to structures, roadway or any other construction, whether hauling legal loads or not.

(3) The contractor shall not exceed legal loads on treated base or pavement under construction.

(4) No loads will be permitted over Portland cement concrete construction before the minimum curing period has expired or specified strength is obtained.

(5) When it is determined by the engineer that the contractor's hauling operations are causing undue damage to existing roadways or structures, the engineer shall immediately order the contractor, in writing, to cease those operations that are contributing to the damaging of the haul route. Within five calendar days of said notice, the engineer will determine which of the following actions will be taken.

(a) change the haul route;

(b) reduce the allowable load limit;

(c) allow the operations to continue with the requirement that the contractor repair all damaged areas when and where they occur; payment for this work will be made in accordance with paragraph (C) of Subsection 105.14 [Subsection N of 18.27.2.11 NMAC], corrective actions and methods of payment.

(6) The engineer may elect to impose two or more of these requirements simultaneously. If the above action does not resolve the problems, the engineer shall again halt the hauling operation and, within five additional calendar days, issue written instructions to the contractor.

**M. Basis of payment:**

(1) When a materials source(s) and haul road(s) is established in the contract, and the contractor elects not to use either of them and establishes his or her own materials source and haul road, the contractor will receive no payment for corrective actions that the contractor may be required to perform in order to repair damage to the existing roadway, structure, etc., that results from the contractor's hauling operations.

(2) When the contract specifies that the contractor establish his or her own materials source and haul road or when the contractor uses a materials source and haul

road specified in the contract, and the department determines that corrective action is necessary in order to preserve or restore the existing roadway, the corrective action and method of payment will be one, or a combination of, the methods listed under Subsection 105.14 [Subsection N of 18.27.2.11 NMAC], corrective actions and methods of payment.

(3) When the contractor establishes his or her own source(s), but uses all or a portion of the haul road(s) established in the plans, and the department determines that corrective action is necessary in order to preserve or restore the existing roadway, the corrective action and method of payment will be as follows:

(a) the contractor will receive no payment for corrective action(s) that the contractor may be required to perform in order to repair damage to the portion of the haul road(s) that was not established in the plans;

(b) the corrective action and method of payment for all or that portion of the established haul road(s) that the contractor uses for hauling operations will be one of, or a combination of, the methods listed under Subsection 105.14 [Subsection N of 18.27.2.11 NMAC], corrective actions and methods of payment.

(4) The limits and extent of the corrective action to be taken by the contractor will be determined by the engineer.

**N. Corrective actions and methods of payment:**

(1) When the engineer changes the haul route, the contractor shall either pay or be paid pursuant to one of the following formulas:

$$\text{Payment} = (R/t7\text{km}) \times (d1 - d_o) \text{ or } (R/t7\text{mi}) \times (d1 - d_o)$$

Where:

R = Rate in dollars (determined by Subsection 109.5[Subsection E of 18.27.2.15 NMAC])

t = metric ton (ton)

km = kilometer

mi = mile

do = original haul distance measured from the roadway access point to the stockpile area.

d1 = new haul distance measured from the roadway access point to the stockpile area.

(2) When the engineer reduces the allowable load limit, the contractor shall be paid pursuant to one of the following formulas:

$$\text{Payment} = QF \times (R/t7\text{km}) \times d_o$$

or

$$\text{Payment} = QF \times (R/t7\text{mi}) \times d_o$$

Where:

QF = final quantity in metric tons (tons)

LA = allowable load limit in metric tons (tons)

LR = reduced load limit in metric tons (tons)

R = Rate in dollars (determined by Section 109.5 [Subsection E of 18.27.2.15 NMAC])

t = metric tons (tons)

km = kilometers

mi = miles

do = haul distance

(3) When the engineer allows operations to continue, the contractor shall be paid at the unit bid price, or as per Section 109.5 [Subsection E of 18.27.2.15 NMAC], for the material utilized to make the repairs. If an item does not exist as part of the contract, the cost of the item will be established by negotiating the unit price for it. When it becomes necessary to repair a structure or the existing roadway, the department may consider payment to the contractor for the hauling of the repair materials to a rate of R if it is requested and justified by the contractor and is approved by the engineer.

**O. Maintenance during construction:** The contractor shall maintain the work during construction and until the project is accepted, except as otherwise provided in Subsections 104.5, [Subsection E of 18.27.2.10 NMAC] maintenance of traffic, and 105.17 [Subsection Q of 18.27.2.11 NMAC], acceptance. The maintenance shall constitute continuous and effective work prosecuted day by day, with adequate equipment and forces such that the roadway or structures are kept in satisfactory condition at all times.

(1) In the case of a contract for the placing of a course upon a course or sub grade previously constructed, the contractor shall maintain the previous course or sub-grade during all construction operations, including when the plan calls for placing traffic on the unfinished roadway.

(2) All cost of maintenance work during construction and before the project is accepted shall be included in the unit prices bid on the various pay items, and the contractor will not be paid an additional amount for such work, except as provided in Subsections 104.5 [Subsection E of 18.27.2.10 NMAC], maintenance of traffic, and 105.17 [Subsection Q of 18.27.2.11 NMAC], acceptance.

**P. Failure to maintain roadway or structure:** If the contractor, at any time, fails to comply with the provisions of Subsection 105.15 [Subsection O of 18.27.2.11 NMAC], maintenance during construction, the engineer will immediately notify the contractor of such noncompliance. If the contractor fails to commence to remedy unsatisfactory maintenance immediately after receipt of such notice and prosecute the remedial action with diligence, the engineer may immediately proceed to maintain the project, and the entire cost of this maintenance will be deducted from monies due or to become due the contractor.

**Q. Acceptance:**

(1) **Partial acceptance:** If at any time during the prosecution of the project the contractor satisfactorily completes a unit or portion of the project, such as a structure, an interchange, or a section of road or pavement, the contractor may request the engineer to make an inspection of that unit. If the engineer finds upon inspection that the unit has been satisfactorily completed in compliance with the contract, the engineer may accept that unit as being completed, and the contractor may be relieved of further responsibility for that unit unless before final acceptance of the work, latent defects are discovered. In this case the contractor remains responsible. Such partial acceptance shall in no way void or alter the terms of the contract.

(a) Devices intended to be used for traffic safety and control, which are permanently installed in their final position with all ancillary components and being used by the traveling public, shall be accepted when installed in accordance with the plans and specifications, prior to completion of the remaining work on the job.

(b) Permanently installed items accepted on this basis are limited to guardrail, impact attenuators, traffic signal systems, signs, lighting, raised pavement markers, concrete wall barrier, concrete bridge parapet, bridge railing, guard cable, guardrail anchorages, permanent pavement markings, and fence. All required performance tests and guarantees shall remain applicable.

(c) Damage, theft, or vandalism to these items by the public after acceptance will be repaired or replaced by the state, or by the contractor in conformance with Subsection, 104.4 [Subsection E of 18.27.2.15 NMAC] extra work. When the damage to an item is such that only partial repair or replacement is required and the work is to be done by the contractor, payment shall be made as provided in Subsection 109.4 [Subsection D of 18.27.2.15 NMAC], compensation for altered quantities. Items damaged due to negligence of the contractor shall be repaired or replaced at no cost to the state.

(d) The contractor shall erect these items in a logical sequence and time frame within the life of the project, and items constructed prematurely will not be accepted until such time in the life of the project that the device becomes effective for its intended use.

(2) **Final acceptance:** Upon receipt of written notice from the contractor of projected completion date of the entire project, the project manager will inspect the project on the projected completion date to verify that all work items have been completed. Upon verification that all items have been completed, the final inspection by the project manager and the district construc-

tion engineer shall be scheduled and conducted within 14 calendar days. If all construction provided for in the contract is found completed to their satisfaction, that inspection shall constitute the final inspection, and the project manager, in writing, will notify the contractor within seven working days of this acceptance.

(a) If, however, the inspection discloses work, in whole or in part, as being unsatisfactory, the project manager will give the contractor the necessary written instructions for correction of same and the contractor shall comply with and execute such instructions within the time limit set by the project manager. Upon correction of the work, the project manager will make an additional inspection and notify the contractor accordingly as soon as reasonably possible thereafter.

(b) Acceptance by the department shall be made as promptly as practicable after completion and inspection of all work required by the contract. Acceptance shall be final and conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud or as regards the department's rights under any warranty or guaranty.

**R. Claims for adjustment:** Claims for additional compensation and time shall be made under Subsection 108.6 [Subsection F of 18.27.2.14 NMAC].

(1) The contractor is barred from filing claims after the engineer has determined the work ordered is extra work. Payment will be made as provided in Subsection 109.5 [Subsection E of 18.27.2.15 NMAC].

(2) To make a claim, the contractor shall notify the project manager in writing of the intention to make claim for such additional compensation before the contractor begins the work on which the contractor bases the claim, or in the case of termination of contract under Subsection 108.10 [Subsection J of 18.27.2.14 NMAC], termination of contract; no fault of contractor, within 30 calendar days of the effective termination date.

(3) If the notification is not given, and the project manager is not afforded proper facilities by the contractor for keeping strict account of actual cost as required, then the contractor hereby waives claims for such additional compensation. This requirement may be waived in writing by the project manager, with adequate justification. Such notice by the contractor, and the fact that the project manager has kept account of the cost as aforesaid, shall not in any way be construed as proving or substantiating the validity of the claim. If the claim, after consideration by the project manager, is found to be just, the project manager shall originate a change order and submit the change order for approval. In any event, if the claim

is paid, it shall only be paid pursuant to Subsections 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work, and 109.5 [Subsection E of 18.27.2.15 NMAC].

**S. Administrative remedy:** Failure to strictly comply with the following time limitations and procedures for all claims made pursuant to Subsection 105.18 [Subsection R of 18.27.2.11 NMAC], claims for adjustment, shall constitute grounds for the department summarily dismissing the claim.

(1) The claim shall be made in writing by the contractor to the project manager. The written claim from the contractor shall detail the grounds for the claim and the amount requested by the contractor. Supporting documentation for the claim shall include:

- (a) a description of the issue;
- (b) the location where the issue arose;
- (c) the time and date the issue was identified, and the dates impacted;
- (d) a clear explanation of why the issue requires additional compensation or a change to the contract, including accurate references to the pertinent portions of the contract;
- (e) copies of all correspondence related to the issue;
- (f) and invoices identifying the labor, materials, and equipment used or proposed to be used.

(2) Subcontractor claims will not be considered except as submitted and certified by the contractor as the contractor's claim.

(3) The district engineer or designee shall have 30 calendar days, or such additional time as the parties shall agree in writing, to review and render a decision thereon. Should more than 30 calendar days elapse without the district engineer or designee rendering a decision on the claim or without the parties having agreed on additional time for this purpose, the claim shall be deemed denied by the district engineer or designee. The parties may elect to engage in informal mediation to resolve the claims at the district level. The engaging in such informal mediation by the parties shall not relieve the contractor from exhausting the provisions of the Public Works Mediation Act, NMSA 1978, Section 13-4C-1 et seq., prior to seeking judicial relief in a court of law.

(4) Within 10 calendar days of receiving a denial of its claim as specified in paragraph C of this Subsection [Paragraph (3) of Subsection S of 18.27.2.11 NMAC], the contractor may deliver a written request for the secretary to reconsider the claim. The secretary shall provide a written decision on the request to reconsider the claim or shall refer the claim to the department's

claims board within 15 calendar days of receipt of such request.

(5) If the claim is referred to the department's claims board, the secretary shall provide a written decision within 15 calendar days of receipt of a recommendation on the claim from the claims board.

(6) If the contractor is not satisfied with the secretary's decision, the contractor may either proceed with litigation in a court of competent jurisdiction or within 30 calendar days of receipt of the department's written decision the contractor may deliver a written request to convene an arbitration panel.

(a) Contractor may request arbitration only if the total amount in controversy for all claims the contractor has submitted for that construction project does not exceed \$250,000.00, or if the parties mutually agree to submit the claims to arbitration.

(b) By electing one of the two remedies, the contractor waives the right to redress under the other.

(c) In any event, prior to electing either remedy, the contractor must have exhausted the administrative procedure detailed in Subparagraphs A through D of this subsection [Paragraphs (1) through (4) of Subsection S of 18.27.2.11 NMAC].

(7) If the contractor requests arbitration, the panel shall consist of three members chosen as follows:

(a) in the arbitration request, the contractor shall submit the name of a non-employee panelist educated or experienced in highway construction methods and techniques who has agreed to serve on the panel;

(b) within 10 calendar days of receiving the arbitration request, the secretary shall submit the name of a non-employee panelist educated or experienced in highway construction methods and techniques who has agreed to serve on the panel;

(c) within 15 calendar days after the secretary panel appointment, the two panelists shall confer and choose a third panelist who shall not be an employee of either the department or the contractor and shall be educated or experienced in highway construction methods and techniques; if the two panelists are unable to agree, the third panelist shall be chosen from a list of four prospective panelists, two per party, by a district court judge from the first judicial district, pursuant to Section 44-7-3 of the Uniform Arbitration Act; application to the court for this appointment shall be made by either or both parties within 10 calendar days of the impasse;

(d) the panel so chosen shall convene and commence the hearing in Santa Fe county unless otherwise agreed by the department no later than 60 calendar days after the panel has been selected; provided

that if the panel fails to meet this deadline, it retains jurisdiction to hear and resolve the issues in dispute;

(e) each party shall pay the expenses and fees of its chosen panelist and attorney; both parties shall share equally the expenses and fees of the third panelist and the court reporter if mutually agreed that the hearing will be transcribed; if not mutually agreed, the party requesting the transcription shall pay the full cost;

(f) the proceedings and the decision of the panel shall be in compliance with the Uniform Arbitration Act, Section 44-7-1, et seq., NMSA, 1978; such decision is final and binding and may be vacated, confirmed or appealed only pursuant to the provisions of the Uniform Arbitration Act;

(g) whether the contractor elects to pursue the claim(s) in a court of competent jurisdiction or by arbitration, the contractor shall not be entitled to prejudgment interest, post judgment interest, or attorney fees on any award made to the contractor. [18.27.2.11 NMAC - Rp, 18 NMAC 27.2.11, 04/29/05]

#### **18.27.2.12 CONTROL OF MATERIALS:**

**A. Contractor furnished aggregate and borrow source:** The materials incorporated into the work shall meet all quality requirements of the contract. To expedite the inspection and testing of materials, the contractor shall notify the engineer of the proposed sources of materials prior to delivery to the job site. At the option of the engineer, materials may be approved at the source of supply before delivery is started. If it is found after trial that sources of supply for previously approved materials do not produce specified products, the contractor shall furnish materials from other sources or make the necessary changes as approved by the engineer.

(1) All costs of exploring and developing sources shall be borne by the contractor.

(2) When materials sources are requested for approval by the contractor, the requirements for environmental acceptability shall apply, and the contractor shall submit all environmental resource studies and cultural resource studies to the project manager, with copies to the environmental program manager.

(3) If the contractor purchases material, the requirements for environmental acceptability shall not apply. However, if the contractor negotiates with an owner of a commercial source to establish a material source within the boundaries of an existing commercial source and if the contractor obtains the material from the source with the contractor's own employees, then the environmental acceptability requirements identified for a noncommercial source shall

apply. In addition, the department may determine that certain commercial sources or specific areas within commercial sources, known to have sensitive environmental, social, or cultural concerns may not, as a matter of public interest, be approved for use. This information, if available to the department, shall be stated in the bidding documents before bid opening. If this information is not available until after bid opening and the department does not approve a commercial source, or use of a specific area within a commercial source, that was used by the contractor to prepare its bid, then the requirements of Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the work, shall apply. If the contractor purchases material from a material source established for another project by another contractor working under contract to the department, and if the material source must be expanded beyond the area where environmental and cultural resource approvals have previously been obtained pursuant to Subsection 107.14 [Subsection N of 18.27.2.13 NMAC], contractor's responsibility for environmental and cultural resources approval, then the requirements for environmental acceptability shall apply to the additional area and requirements of Subsection 107.14 [Subsection N of 18.27.2.13 NMAC] must be completed.

(4) The contractor shall provide documentation that all sources are acceptable regarding the following:

(a) location;

(b) all lease agreements, purchase orders or pit agreements made between parties involved with the pit owner or supplier and the contractor;

(c) environmental acceptability: environmental acceptability includes completing the environmental and cultural resource requirements of Subsection 107.14 [Subsection N of 18.27.2.14 NMAC], contractor's responsibility for environmental and cultural resources approval; the project manager shall notify the contractor when approval from the environmental program manager has been obtained. It may take 30 days from the date copies of documentation are delivered to the environmental program manager to obtain approval; the requirements of Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the work, shall apply if the time needed to obtain regulatory approval exceeds statutory requirements; environmental acceptability also includes completing, if required, the environmental and cultural resource management recommendations, such as construction of protective fences, or other environmental mitigation; the project manager shall notify the contractor when approval from the environmental program manager has been obtained:

(d) plans for restoration after use of acceptable standards of contouring and revegetation;

(e) laboratory testing: as defined in the contract.

(5) The contractor shall repair at its expense all damage to environmental resources or cultural resources caused by failure to meet the requirements for environmental acceptability or caused by failure to abide by management stipulations developed to protect resources identified during the environmental and cultural resources evaluation. The extent of such action shall be determined in coordination with the contractor, department representatives, and the regulatory authorities with management jurisdiction over the subject resources.

**B. Supplier plant inspection:** The engineer may undertake the inspection of materials at the source. In the event supplier plant inspection is undertaken, the following conditions shall be met:

(1) the engineer shall have the cooperation and assistance of the contractor and the producer with whom the contractor has contracted for materials;

(2) the engineer shall have full entry at all reasonable times to such parts of the plant as may concern the manufacture or production of the materials being furnished;

(3) when required by the engineer, the contractor shall arrange for such facilities as are necessary to adequately inspect the production or fabrication of the material;

(4) adequate safety measures shall be provided and maintained;

(5) the department reserves the right to retest all materials before or during incorporation into the work which had been tested and accepted at the source of supply, after the same have been delivered, and to reject all materials that, when retested, do not meet the requirements of the contract.

**C. Samples, tests, cited specifications:** Work in which materials which have not been tested or accepted by the department are used without written permission of the engineer shall be performed at the contractor's risk. Materials incorporated into the work without the engineer's prior written approval, which are later tested and found unacceptable, will not be paid for and, if directed by the engineer, shall be removed at the contractor's expense.

(1) Cited specifications will be the most recent standard or tentative standard of AASHTO, ASTM, APWA or NMTTCP, or other cited specifications.

(2) Unless otherwise designated, tests in accordance with the most recent cited standard methods of AASHTO, ASTM, NMTTCP or other cited specifications, which are current on the date of advertisement for bids, will be made by and at the expense of the department. Samples

will be taken by a qualified representative of the department. Results of the tests will be furnished to the contractor upon request.

(3) Failing test results will be transmitted without request to the contractor after the tests are completed.

**D. Certificate of compliance:** The contractor shall provide materials certificates of compliance to the project manager covering materials for all contract items. The contractor shall submit all materials certificates of compliance to the project manager before starting work for that item. All materials certificates of compliance, as provided by the contractor, shall include the following information:

(1) the project number;

(2) the name of the contractor providing the certification;

(3) the date and specification satisfied;

(4) an item number if applicable, and a description of the item supplied;

(5) the quantity;

(6) the shipment number;

(7) the heat number, lot number, or batch number, depending on the type of material certified;

(8) seal number, if applicable;

(9) manufacturer of material;

(10) the printed name, the signature and title of the company official who certified the document; as part of the materials certificate, the contractor will be certifying compliance with the following statements:

(a) that the materials described on this document comply with the requirements defined in the contract;

(b) that mill test reports, manufacturers' certificates of compliance, and other pertinent documents are made available to department personnel upon request;

(c) electric items meeting UL approval, and underground utility material meeting ASTM or AWWA specifications, and so certified or stamped on the product will require no further certification, unless requested in writing by the project manager;

(d) materials that appear on preapproved lists maintained by the department will require the manufacturer's certification, literature and shop drawings before fabrication and installation;

(e) material inspected and stamped during the manufacturing process by a representative of the department will require no further certification;

(f) materials that are not permanently incorporated into the project will not require a certificate of compliance, unless otherwise stated in the contract; the contractor shall supply material meeting the requirements of the department's standard specifications for highway and bridge construction even though a materials certificate of compliance is not required;

(g) the contractor may furnish material purchased in bulk or left over from previous projects by submitting materials certificate of compliance for the current project;

(h) all materials damaged in transit or during handling shall be replaced or repaired by the contractor at no additional cost to the department.

**E. Laboratory and field offices:** The contractor shall furnish field laboratories and field offices in accordance with the details shown in the contract, the requirements of Section 622, field laboratories & field offices, and as approved by the project manager.

**F. Foreign materials:** Materials manufactured outside the United States shall be delivered to approved locations within the state, or as otherwise permitted by the contract, where they shall be retained until sampling and testing can be completed.

(1) The contractor shall, at no cost to the department, arrange for required testing that the department is not equipped to perform. All testing by the contractor shall be performed within the state and be subject to witnessing by the engineer.

(2) Each lot of foreign material shall be accompanied by a certificate of compliance prepared in accordance with requirements of Subsection 106.4 [Subsection D of 18.27.2.12 NMAC], certification of compliance. In addition, certified mill test reports shall be attached to the certificate of compliance for those materials for which mill test reports are required and shall clearly identify the lot to which they apply.

(3) Structural materials requiring mill test reports will be accepted only from those foreign and domestic manufacturers that have previously established to the satisfaction of the engineer the adequacy of their in-plant quality control to assure delivery of uniform material in conformance with contract requirements.

(4) Adequacy of quality control shall be established, at the option of the engineer, by submission of detailed written proof of adequate control or through an in-plant inspection by the engineer or his or her representative.

(5) No structural materials will be accepted that cannot be properly identified with mill test reports and certificates of compliance.

**G. Storage of materials:** All materials shall be stored so as to assure the preservation of their quality and fitness for the work and to protect against vandalism or theft. The contractor shall be responsible for this protection and for the replacement or repair of materials affected by inadequate protection. Upon written approval of the project manager, portions of the right of

way may be used for storage purposes and for the placing of the contractor's plant and plant equipment; however, additional space must be provided by the contractor at his or her sole expense and liability. The contractor, at his or her own expense, shall restore the storage sites to their original condition.

**H. Handling and transporting materials:** All materials shall be handled in such manner as to preserve their quality and fitness for the work. Aggregates shall be transported from the storage site to the work site in vehicles constructed and operated to prevent loss or segregation of materials after loading and measuring so there will be no inconsistencies in the quantities of materials intended for incorporation in the work as loaded and the quantities actually received at the place of operations. All materials shall be transported in such a manner as to fully comply with all state and federal regulations, including the prevention of leakage or scattering of materials or damage to materials in any fashion.

**I. Department furnished material:** The contractor shall furnish all materials required to complete the work, except those specified to be furnished by the department.

(1) Materials furnished by the department will be delivered or made available to the contractor at the points specified in the contract.

(2) The cost of handling and placing all materials after they are delivered to the contractor shall be considered as included in the contract price for the item in connection with which they are used. The contractor will be held responsible for all material delivered to the contractor, and deductions will be made from monies due to the contractor to make good on shortages and deficiencies, from any cause whatsoever, and for damage which may occur after such delivery and for demurrage charges.

**J. Materials designated by trade name:** Materials or equipment will sometimes be designated on the plans or in the contract by a number of trade names or manufacturers' names. The substitution of materials or equipment of quality equal to those designated will be accepted subject to the prior written approval of the engineer. The contractor shall furnish, at his or her expense, all information necessary to establish the comparative quality of the material or equipment furnished, other than that designated.

**K. Guarantee and warranties:** The contractor shall obtain and assign to the department all manufacturers' and producers' guarantees or warranties that are normally provided as customary trade practice for items incorporated into the work. In the absence of manufacturer's or producer's guarantee, the contractor warrants that mechanical and electrical equip-

ment incorporated into the work is free from defects or imperfections in workmanship and material for a period of six months after acceptance by the department. The contractor shall be responsible for repairing malfunctions or defects in such equipment or material which develops during the six-month period. The contractor shall also supply manuals for all pieces of equipment incorporated in the project. Included in these manuals shall be operational procedures, complete nomenclature, wiring diagrams, schematics showing test voltage and procedural methods, functional description of circuits, parts lists, cross references to standard part numbers, flow diagrams, and, where appropriate, names and addresses of sources for testing procedures and other pertinent data.

**L. Material safety data sheets:** The contractor shall submit to the project manager, the most current material safety data sheets for all chemical materials to be used on the project. Each material safety data sheet shall contain the minimum information as described herein and be submitted immediately upon delivery of the chemical to the project site. The material safety data sheets shall contain the following information:

- (1) product identification;
- (2) name, address, and phone number of chemical manufacturer;
- (3) trade name of the product;
- (4) chemical name and formula of the product;
- (5) hazardous ingredients;
- (6) substances present in the product which are listed as hazardous in the hazard communication standard;
- (7) exposure limits for the hazardous ingredient;
- (8) physical hazard data fire and explosion data, proper extinguishing equipment;
- (9) health hazard information;
- (10) estimate of the hazard of the product;
- (11) routes of entry of the product;
- (12) acute and chronic health effects of exposure;
- (13) emergency first aid procedures;
- (14) reactivity data;
- (15) spill and leak procedures;
- (16) special protection information;
- (17) personal protective equipment necessary for safe handling of the chemical;
- (18) special precautions.

[18.27.2.12 NMAC - Rp, 18 NMAC 27.2.12, 04/29/05]

**REQUIREMENTS & RESPONSIBILITY TO THE PUBLIC:****A. Laws to be observed:**

The contractor shall keep fully informed of all federal and state laws, all local laws, ordinances and regulations, and all orders and decrees of bodies or tribunals having jurisdiction or authority which in any manner control pollution or impacts to the environment, affect those engaged or employed on the work, or which in any way affect the conduct of the work. The contractor shall at all times observe and comply with all such laws, ordinances, regulations, orders, and decrees; and shall protect and indemnify the state and its representatives against claims or liability arising from or based on the violation of such laws, ordinance, regulation, order, or decree, whether by the contractor himself or herself or by employees of the contractor. Before the start of project construction, the contractor shall contact the municipal or state agency responsible for air, noise, and water quality control regulations to determine the standards that shall be adhered to during construction operations.

**B. Permits, licenses, and taxes:**

The contractor shall procure all permits and licenses, pay all charges, fees, royalties, and appropriate taxes, and give all notices necessary and incidental to the due and lawful prosecution of the work.

**C. Compliance with payment of taxes:**

The contractor is required to observe and comply with all laws regarding the payment of taxes imposed by the state of New Mexico or by other lawful political entities. The successful bidder, upon returning the executed contract package, after receiving the preliminary award of contract notice, will provide to the department both the bidder's taxation and revenue department tax identification number and the bidder's motor transportation division (MTD) account number. If either or both of these numbers are unavailable, the contractor must submit a letter of explanation. A notice to proceed will not be issued until both numbers or a satisfactory letter of explanation is submitted.

**D. Gross receipts, Indian business activity, and TERO taxes:**

(1) All bids submitted shall exclude the applicable state gross receipts tax local option tax. The department shall pay the applicable tax including increases in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax and local option tax, shall be shown as a separate amount on each billing or request for payment made under the contract. The contractor shall certify at the time of final payment that all applicable gross receipts taxes and local option taxes.

(2) All bids submitted shall exclude any Indian business tax, tribal

employment rights organization ("TERO") tax, and other tax imposed by a tribal government. The department shall pay the tax or will exercise its prerogative to challenge the tribal government's authority to impose the tax. If the department exercises its prerogative to challenge the tribal government's authority to impose the tax, the department will reimburse the contractor for such tax only if a court of competent jurisdiction rules the tribe has authority to impose the tax. The department will reimburse the contractor only if the final decision of the litigation, or other final disposition of the litigation, results in a determination that the tribe has jurisdiction to impose the tax. The department shall be subrogated to the rights of the contractor to claim a refund of, or to contest, any such tax imposed on the work to the extent any alleged obligation of the contractor or the department to pay such tax arises under this section or through the contractor's performance of this contract.

**E. Patented devices, materials, and processes:**

If the contractor employs designs, devices, materials, or processes covered by letters of patent or copyright, the contractor shall provide for such use by suitable legal agreement with the patentee or owner. The contractor and the surety shall indemnify and save harmless the state and any affected third party or political subdivision from any and all claims for infringement by reason of the use of such patented designs, devices, materials, or processes or trademarks or copyrights and shall indemnify the state for costs, expenses, and damages that it may be obliged to pay by reasons of infringement during the prosecution or after the completion of the work.

**F. Restoration of surfaces opened by permit:**

The right to construct or reconstruct utility services in the highway or street or to grant permits for same, at any time, is hereby expressly reserved by the department for the proper authorities of the municipality or county in which the work is done, and the contractor shall not be entitled to damages for the digging up of the highway or street. Requests for a time extension by the contractor will be addressed in accordance with Subsection 108.6 [Subsection F of 18.27.2.14 NMAC], determination and extension of contract time.

(1) Individuals, firms or corporations wishing to make an opening in the highway surface must secure a permit from the department. The contractor shall allow parties bearing said permits, and only those parties, to make openings in the highway.

(2) When ordered by the engineer, the contractor shall make, in an acceptable manner, all necessary repairs due to such openings and such necessary work will be

paid for as provided in Subsections 104.02 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work, and 109.05 [Subsection E of 18.27.2.15 NMAC], extra and force account work.

**G. Federal aid provisions:**

When the United States government is obligated to reimburse the department for all or any portion of the cost of a project, the federal laws and the rules and regulations made pursuant to such laws shall be observed by the contractor, and work shall be subject to inspection by the appropriate federal agency. Such inspection shall in no sense make the federal government a party to this contract and will in no way interfere with the rights of either party hereunder.

**H. Sanitary, health, and safety provisions:**

The contractor shall provide and maintain in a neat, sanitary condition such accommodations for the use of the contractor's employees as may be necessary to comply with the requirements of the state and local boards of health or of other bodies having jurisdiction.

(1) The contractor shall comply with all federal, state, and local health rules and regulations, ensure no contractor or subcontractor employee is required to work under conditions that are unsanitary, hazardous, or dangerous to health or safety. Admit to the work site any inspector with proper credentials from OSHA or other legal agency responsible for health and safety administration

(2) Attention is directed to federal, state, and local laws, rules, and regulations concerning construction safety and health standards.

**I. Public convenience and safety:**

The contractor shall provide for the safety and convenience of the general public and the residents along the highway and the protection of persons and property, as specified under Subsection 104.5 [Subsection E of 18.27.2.10 NMAC], maintenance of traffic.

**J. Railroads:**

In addition to the insurance requirements set forth in Subsection 107.36 [Subsection AJ of 18.27.2.13 NMAC], insurance requirements, the following requirements must be met on contracts affected by railroad lines:

(1) Immediate construction site: As used in this subsection, the term "immediate construction site" shall mean the construction limits area within railroad company property.

(2) Department/contractor financial responsibilities: The department will be responsible for the costs of the engineering inspection and protection of the railroad company property within the immediate construction site. All work accomplished by the contractor or subcontractors or agents outside the immediate construction site shall be the financial responsibility of the



contractor.

(3) Notice to the railroad company: No work shall begin on the immediate construction site until the following has been accomplished:

(a) that the railroad company has been notified in writing by the contractor of the anticipated date to begin work, the anticipated type of work, and the anticipated length of time required to complete the work;

(b) that the railroad company has arranged to provide necessary flaggers or other railroad personnel to protect railroad property at the immediate construction site and minimize interference with the safe and timely operation of railroad equipment;

(c) that the railroad company has given its approval of the details of the construction affecting its property not included in the contract plans, such as working drawings and diagrams for bridge false work and overhang bracings;

(d) that a copy of written agreements between the railroad company and the contractor concerning the protection of the railroad company's property or completion of the work is provided to the department; generally, the department will be responsible for negotiating an agreement with the railroad company for the provision of personnel or devices for the protection of railroad company property at the immediate construction site;

(e) cooperation with railroad company: it is expected that the railroad company will cooperate with the contractor such that the work may be handled in an efficient manner; however, the contractor will be responsible for cooperating with the railroad company and shall have no claim for damages or extra compensation from the department in the event his or her work is delayed due to action or inaction on the part of the railroad company;

(f) storage of materials or equipment: without written permission from the railroad company, the contractor will not store material, park, or use equipment, or interfere with the nearest railroad track or overhead line within the following clearance limits:

(i) 3.1 m (10 ft) horizontally from the centerline of track, 6.9 m (22 ft 6 in.) vertical above top of rail;

(ii) the contractor shall not permit the construction or maintenance of electric wires unless they exceed the following clearances: 1) for lines carrying less than 750 V, 8.2 m (27 ft) vertically above top of rail; 2) for lines carrying 750 V, 8.6 m (28 ft) vertically above top of rail; 3) for lines carrying 15 kV to 20 kV, 9.2 m (30 ft) vertically above top of rail; 4) for lines carrying more than 20 kV, 10.4 m (34 ft) vertically above top of rail; when the contractor must maintain or operate equip-

ment inside of the above tolerances, or when there is to be excavation below elevation of the track, which may result in settlement or movement of the railroad company property, or if, during construction operations, the railroad company's representative feels that the railroad company's facilities may be endangered, after being so advised, the contractor shall notify the railroad company of said activities and afford the railroad company opportunity to provide personnel and protective devices to protect its property;

(g) movement across tracks: when the contractor desires to move equipment or materials across the railroad company's tracks for purposes not required by the contract, the contractor must obtain written permission from the railroad company; should the railroad company require it, the contractor shall obtain a private crossing agreement from the railroad company; the installation of such crossings, together with flagging or protective devices, shall be at the expense of the contractor; all such agreements must be in writing, with a copy furnished to the project manager prior to beginning any work under the agreement;

(h) cleanup: before requesting final acceptance of work accomplished on property belonging to the railroad company, the contractor shall obtain written release from the railroad company that the property has been cleaned, cleared, and returned to a condition acceptable to the railroad company and the contractor has removed all of the tools, implements, and other materials belonging to the contractor or a subcontractor, employee or agent of the contractor; if, after diligent effort, the contractor is not able to obtain a release from the railroad company, the contractor will provide the project manager with written evidence of efforts to obtain the release, and the project manager will either provide the contractor with a list of required additional steps to obtain the release, or else the release requirement will be waived; all of the above shall be in writing.

**K. Environmental and cultural resource approval:** Before construction, the department shall obtain the environmental and cultural resource approvals for the project area included in the contract documents. Special environmental and cultural resource requirements developed to protect resources shall be described in the contract documents. The contractor shall abide by all environmental and cultural resource management requirements. The project manager and the environmental program manager are available to assist.

**L. Environmental and cultural resource discoveries:** In the event the contractor encounters a previously unreported environmental resource or cultural

resource that is not included in the contract documents, the contractor shall terminate all further operation in the immediate area until the project manager determines that the environmental program manager and regulatory authorities have had the opportunity to review the location and complete appropriate mitigation actions. This termination shall not preclude continuation of work in other areas. The requirements of Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the work, shall apply if the time needed to obtain regulatory approval and complete appropriate mitigation actions exceeds statutory requirements.

**M. Responsibility for damage to environmental and cultural resources:** The contractor shall repair at its expense all damage to environmental resources or cultural resources caused by failure to abide by requirements included in the contract documents to protect resources identified during the environmental and cultural resources evaluation. The extent of such an action shall be determined in coordination with the contractor, department representatives, and the regulatory authorities with management jurisdiction over the subject resources.

**N. Contractor's responsibility for environmental and cultural resources approval:** Before beginning soil disturbing activities, at areas such as camp sites, plant sites, crusher sites, stockpile sites, equipment yards, borrow pits, and surfacing pits (see Subsection 106.1 [Subsection A of 18.27.2.12 NMAC] contractor furnished aggregate and borrow source), as well as for any construction area obtained by the contractor that is not included in the contract documents, the contractor shall employ a qualified environmental scientist and a cultural resource professional to conduct an environmental and cultural resources study. The environmental scientist and the cultural resource professional must have appropriate resource study permits and meet the professional qualifications established by regulatory authorities to conduct the required studies. The documentation prepared must meet the standards of the department and regulatory authorities. The documentation must also meet the standards of state, tribal, or federal land managing agencies if the proposed activity is located on land under their jurisdiction. The studies are required regardless of land ownership, and they are in conformance with the requirements included in the National Environmental Policy Act, the National Historic Preservation Act, and the New Mexico Cultural Properties Act.

(1) The department shall provide a form that shall be used to meet the requirements for the environmental study. The contractor and the environmental scien-

tist must sign the form. The cultural resources review must meet standards established by the state historic preservation officer and, if applicable, the appropriate land managing agency. A state, tribal, or federal agency with jurisdiction over the property may also establish other environmental and cultural resource study requirements.

(2) The documentation prepared for the environmental and cultural resources studies shall be submitted to the project manager and, if required, to other regulatory authorities with jurisdiction over the land or resources that are present. Copies shall also be submitted to the environmental program manager. The environmental program manager shall submit the cultural resource studies to the state historic preservation officer. The contractor shall complete any other coordination required by environmental regulations. The project manager shall notify the contractor when cultural resource approval from the environmental program manager has been obtained. The coordination may take 30 days from the date it is delivered to the environmental program manager. The requirements of Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the work, shall apply if the time needed to obtain approval exceeds any federal or state statutory requirements containing time limits.

(3) Approval of the state, tribal, or federal land managing agency, if applicable, and coordination with regulatory authorities and the state historic preservation officer must be completed before the contractor initiates any soil disturbing activities at the locations subject to this requirement. In addition, the contractor shall abide by all environmental and cultural resource requirements for protection of resources identified during the environmental and cultural resources studies. See Subsection 107.13 [Subsection M of 18.27.2.13 NMAC], responsibility for damage to environmental and cultural resources.

(a) Previously completed environmental and cultural resource investigations. Environmental resource and cultural resource investigations previously completed by others for the same location to be used by the contractor can be used for the environmental and cultural resource requirements described in this subsection if the studies meet the standards identified here. The contractor shall obtain copies of the environmental resource and cultural resource documentation and submit them to the project manager and if required, to other regulatory authorities with jurisdiction over the land or resources that are present. Copies shall also be submitted to the environmental program manager. The environmental program manager and the project manager shall determine if the documenta-

tion meets the standards identified in this subsection and is acceptable. If the previously completed studies do not meet the referenced standards, then new environmental resource and cultural resource studies must be completed.

(b) Parking equipment in highway right of way: Environmental resource and cultural resource inventories may not be completed by the department for some projects when construction is confined to the existing paved surface of the road. In these situations, it shall be noted in the contract documents, and the contractor shall identify all locations along the project corridor where equipment shall be parked during construction. The environmental resource and cultural resource requirements of this subsection must be completed by the contractor if any of the designated locations are in areas where previously undisturbed soils are present.

O. **Water quality:** The department shall apply for and obtain any and all permits required for construction involving waters of the United States as defined by the U.S. army corps of engineers. It shall be assumed that construction affecting a live stream shall require a permit from the corps of engineers. All construction activities occurring within regulated waters of the United States shall be completed in full compliance with the permit obtained for said construction, and the contractor shall be fully liable for all consequences arising as a result of the contractor's failure to comply with all requirements and conditions of the permit. A copy of the permit shall be provided in the contract documents. All work in the vicinity of live streams, water impoundments, wetlands or irrigation supplies shall be completed in such a manner as to minimize vegetation removal, soil disturbance, and erosion. Crossing of live streams with heavy equipment shall be minimized, as determined by the project manager. equipment refueling, maintenance and concrete dumping in the vicinity of watercourses is strictly prohibited. These activities shall be performed in proper containment areas. The contractor is responsible for compliance with the New Mexico Water Quality Act and applicable Clean Water Act permits and regulations.

P. **Protection of streams lakes and reservoirs and the national pollutant discharge elimination system (NPDES):** The contractor shall comply with the requirements of Section 603, temporary erosion and sediment control, and the requirements of NPDES. In carrying out work along or adjacent to live streams, the contractor shall comply with the regulations and requirements of the New Mexico game and fish department and other regulatory authorities as set forth in the plans and special provisions.

Q. **Air quality and dust abatement:** Dust abatement in the project area and all contractor occupied areas is subject to the requirements of Subsection 603.34, dust abatement. In addition, all burning operations, dust producing activities, and other operations that produce particulate matter shall comply with state and federal air quality regulations, as administered by the air pollution control bureau of the New Mexico environment department, as well as any local air quality regulations that may apply.

R. **Noise abatement:** In urban or populated rural areas where quiet conditions normally prevail, no equipment that emits noise above 70 DBA (decibels, A scale) measured at a distance of 15.24 meters (50 ft), shall be operated during nighttime hours unless such work is specified in the contract documents. The project manager may authorize nighttime work under special circumstances or emergency conditions. County or municipal ordinances shall apply if they are more stringent than the requirements in the specifications.

S. **Disposal of removed asphalt pavement materials:** Disposal of removed asphalt pavement material that is the property of the department shall be, upon approval of the project manager, recycled, mixed into the base course or subgrade of the new roadway, or disposed of by either:

(1) burying within the right of way or in any suitable location where requirements of Subsection 107.14 [Subsection N of 18.27.2.13 NMAC], contractor's responsibility for environmental and cultural resources approval, have been completed, and provided approval of the respective property owner is obtained, the material is not within 3 m (9.8 ft) of the recorded water table, it is not within a watercourse, and there is at least a 0.6-m (2.0 ft) clean fill cover placed over the material; or

(2) breaking down asphalt surfacing removed from the project to a nominal 50 mm (2.0 in.) size and hauling and stockpiling the material to an acceptable location designated and approved by the project manager;

(3) disposal or storage of removed asphalt pavement material that is the property of the contractor shall be in accordance with applicable requirements.

T. **Disposal of other materials and debris:** Items designated for removal without salvage, unsuitable construction materials, and debris from clearing and grubbing are to be placed in an environmentally suitable disposal site secured and coordinated by the contractor with the appropriate regulatory agencies, and in accordance with the requirements of this subsection. Nothing shall be placed in wet-

land areas or areas that may impact endangered species or cultural resources. An environmental and cultural resource approval shall be obtained by the contractor before disposal sites are accepted, in accordance with Subsection 107.14 [Subsection N of 18.27.2.13 NMAC], contractor's responsibility for environmental and cultural resources approval.

**U. Underground storage tanks:** The contractor shall follow all applicable state and federal regulations governing the discovery and removal of gasoline underground storage tanks (USTs). The discovery of USTs within the right of way (either temporary or permanent), pits, borrow areas, storage or equipment yards, must be reported within timelines required by the petroleum storage tank bureau of the New Mexico environment department (NMED). UST removals shall be performed in accordance with NMED petroleum storage tank bureau regulations.

**V. Hazardous waste material and reporting and cleanup of spills:** The contractor shall be responsible for reporting and cleanup of spills associated with project construction, and shall report and respond to spills of hazardous materials such as gasoline, diesel fuel, motor oils, solvents, chemicals, toxic and corrosive substances, and other materials that are a threat to public health or the environment. The contractor shall be responsible for reporting past spills encountered during construction and current spills not associated with construction. Reports shall be made immediately to the project manager or district construction engineer if on state right of way or to the property owner if outside of state right of way. Unreported spills identified after construction and associated with project construction shall be cleaned up by the contractor. Failure to report or respond to a spill shall result in the contractor bearing the full cost of remediation and cleanup of such unreported spills. The requirements of Subsection 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the work, shall apply if the time needed to obtain regulatory agency approval exceeds any federal or state statutory requirements containing time limits.

**W. Prime coat, tack coat, and soil sterilants:** Application of prime coat, tack coat and soil sterilants in roadway surfacing must avoid soils outside the roadway prism. Contamination must be carefully avoided in arroyos, irrigation supplies, wetlands, water impoundments, and live streams.

**X. State and federal land managing agencies:** In carrying out work within or adjacent to state or federal lands and forests, the contractor shall comply with all regulations of the state or federal authority having jurisdiction governing the

protection of these areas, and shall observe all sanitary laws and regulations. The contractor shall keep the areas in an orderly condition, dispose of all refuse, and obtain permits for the construction and maintenance of all construction camps, stores, warehouses, residences, latrines, cesspools, septic tanks, and other structures in accordance with the requirements of the applicable federal or state regulations.

**Y. Prevention of forest and grass fires:** The contractor shall take all responsible precaution to prevent and suppress forest and grass fires and shall require all employees and subcontractors, both independently and at the request of the appropriate officials, to do all reasonably within their power to prevent and suppress and to assist in preventing and suppressing forest fires and to make every possible effort to notify a forest official at the earliest possible moment of the location and extent of any fire seen by them. The contractor shall take the necessary steps to prevent and control fires in areas where severe fire hazard exists and, when required in the contract, shall furnish and maintain fire-fighting equipment and tools as required by the agency having jurisdiction. The contractor shall comply with fire regulations applicable to the area where the contractor is working and shall suspend fire hazardous operations when necessary, at the direction of the project manager and pursuant to Subsection 107.31 [Subsection AE., Section 13 of 18.27.2.13 NMAC], suspension of work ordered by the engineer.

**Z. Minimization of soil disturbance:** The contractor shall ensure that damage to or removal of vegetation and trees shall be kept to a minimum and that no extraneous clearing, grubbing, land disturbance or excavations shall take place. The contractor shall bear the full cost of vegetation remediation necessary due to the contractor's negligence as determined by the project manager.

**AA. Use of explosives:** When the use of explosives is necessary for the prosecution of the work, the contractor shall exercise the utmost care not to endanger life or property, including new work.

(1) The contractor shall comply with all laws and ordinances, as well as Title 29, Title 30, and the Code of Federal Regulations, Part 1926, Safety and Health Regulations for Construction" (OSHA), whichever is more restrictive, when using, handling, loading, transporting, and storing explosives and blasting agents.

(2) All explosives shall be stored in a secure manner in compliance with all laws and ordinances, and all such storage places shall be clearly marked. Where no local laws or ordinances apply, storage shall be provided satisfactory to the engineer and in general not closer than 305 m (1000 ft)

from roads, buildings, camping areas, or places of human occupancy.

(3) The contractor shall notify each public utility and railroad company having structures or facilities near the work site of the intention to use explosives. Sufficient notice shall be given before detonating the explosives to enable the companies to take such steps as they may deem necessary to protect their property from injury.

**AB. Protection and restoration of property and landscape:** The contractor shall be responsible for the preservation of all public and private property. The contractor shall protect carefully from disturbance or damage all land, governmental survey monuments, and property markers until the engineer has witnessed or otherwise referenced their location, and the contractor shall not move them until directed.

(1) The contractor shall be responsible for all damage or injury to property of any character, during the prosecution of the work, resulting from any act, omission, neglect, or misconduct in the contractor's manner or method of executing the work, or at any time due to defective work or materials, and said responsibility will not be released until the project has been completed and accepted, provided that said responsibility will be released as to the affected unit or portion upon partial acceptance under the provisions of Subsection 105.17(A) [Paragraph (1) of Subsection Q of 18.27.2.11 NMAC], partial acceptance, or opening to traffic under the provisions of Subsection 104.5 [Subsection E of 18.27.2.10 NMAC], maintenance of traffic.

(2) When or where direct or indirect damage or injury is done to public or private property by or on account of any act, omission, neglect, or misconduct in the execution of the work or in consequence of the non-execution thereof by the contractor, the contractor shall restore, at his or her own expense, such property to a condition similar or equal to that existing before such damage or injury was done, by repairing, rebuilding, or otherwise restoring as may be directed, or the contractor shall make good such damage or injury in an acceptable manner.

**AC. Responsibility for damage claims:** The contractor shall indemnify and hold harmless the department and its officers, employees and agents against liability, claims, damages, losses or expenses, including attorney fees, to the extent that the liability, damages losses or costs are caused by, or arise out of, the acts or omissions of the contractor, or its officers, employees or agents.

**AD. Contractor's responsibility:** Until final acceptance of the project by the engineer, the contractor shall

have the charge and care thereof and shall take every precaution against injury or damage to any part thereof, by the action of the elements or from other causes, whether arising from the execution or from the non-execution of the work. The contractor shall rebuild, repair, restore, and make good all injuries or damages to portions of the work occasioned by the above causes before final acceptance and shall bear the expense thereof except as provided in Subsections 104.5 [Subsection E of 18.27.2.10 NMAC], maintenance of traffic, and 105.17(A) [Paragraph (10) of Subsection Q of 18.27.2.11 NMAC], partial acceptance.

(1) Should the contractor be delayed in the prosecution or completion of the work by other contractors or subcontractors employed upon the work, or by damage caused by fire, flood, epidemics, quarantine restrictions, strikes, freight embargoes, acts of public enemy, acts of governmental authorities or acts of God, documented unavailability of construction material, for which the contractor is in no way responsible, then the time herein set for the completion of the work shall be extended for a period equivalent to the work time lost by reason of any or all of these causes, but the contractor shall not be entitled to damages for such delay. The extended time period shall be determined and fixed by the department, which determination shall be final, but no such allowance shall be made unless a claim therefore is in accordance with Subsection 105.18 [Subsection R., Section 11 of 18.27.2.11 NMAC].

(2) In case of suspension of work from any cause whatever, the contractor shall be responsible, subject to the provisions of Subsections 104.5 [Subsection E of 18.27.2.10 NMAC], maintenance of traffic, and 105.17(A) [Paragraph (1) of Subsection Q of 18.27.2.11 NMAC], Partial Acceptance, for the project and shall take such precautions as may be necessary to prevent damage to the project, provide for normal drainage, and erect necessary temporary structures, signs, or other facilities at his or her expense. During such period of suspension of work, the contractor shall properly and continuously maintain in an acceptable growing condition all living material in newly established plantings, seedings, and sodding, furnished under the contract, and shall take adequate precautions to protect new tree growth and other important vegetative growth against injury.

(3) For damage to the work due to unforeseeable causes beyond the control of and without the fault or negligence of the contractor, including but not restricted to acts of God, the public enemy, or governmental authorities, the contractor will be paid pursuant to Subsections 104.2 [Subsection B of 18.27.2.10 NMAC], significant changes in the character of work,

and 109.5 [Subsection E of 18.27.2.15 NMAC], extra and force account work.

**AE. Suspension of work ordered by the engineer:** If the performance of all or any portion of the work is suspended or delayed by the engineer in writing for an unreasonable period of time (not originally anticipated, customary, or inherent to the construction industry) and the contractor believes that additional compensation and/or contract time is due as a result of such suspension or delay, the contractor shall submit to the project manager a claim in accordance with Subsection 105.19 [Subsection S of 18.27.2.11 NMAC] in writing. The request shall set forth the reasons and support for such adjustment.

(1) Upon receipt, the engineer will evaluate the contractor's request. If the engineer agrees that the cost and/or time required for the performance of the contract has increased as a result of such suspension and the suspension was caused by conditions beyond the control of and not the fault of the contractor, its suppliers, or subcontractors at any approved tier, and not caused by weather, the engineer will make an adjustment (excluding profit) and modify the contract in writing accordingly. The contractor will be notified of the engineer's determination whether or not an adjustment of the contract is warranted.

(2) No contract adjustment will be allowed unless the contractor has submitted the request for adjustment within the time prescribed.

(3) No contract adjustment will be allowed under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided or excluded under any other term or condition of this contract.

**AF. Contractor's responsibility for utility property and services:** At points where the contractor's operations are adjacent to properties of railway, telegraph, telephone, and power companies or are adjacent to other property, damage to which might result in considerable expense, loss, or inconvenience, work shall not begin until all arrangements necessary for the protection thereof have been made by the contractor, the engineer, and the owner of the adjacent property.

(1) The contractor shall cooperate with the owners of underground or overhead utility lines in their removal and rearrangement operations in order that these operations may progress in a reasonable manner, that duplication of rearrangement work may be reduced to a minimum, and that services rendered by those parties will not be unnecessarily interrupted.

(2) In the event of interruption to water or utility services as a result of accidental breakage or as a result of being

exposed or unsupported, the contractor shall promptly notify the proper authority in the restoration of service. If water service is interrupted, the contractor shall provide continuous repair work until the service is restored. No work shall be undertaken around fire hydrants until provision for service has been approved by the local fire authority.

**AG. Furnishing right of way:** The department will be responsible for securing all necessary right of way in advance of construction. exceptions will be indicated in the contract.

**AH. Personal liability of public officials:** In carrying out the provisions of these specifications or in exercising powers or authority granted to them by or within the scope of the contract, there shall be no liability upon the Department, Engineer, or their authorized representatives, either personally or as officials of the State, it being understood that in such matters they act solely as agents and representatives of the State.

**AI. No third party liability:** It is specifically agreed between the parties executing this contract that it is not intended by the provisions of the contract to make anyone a third-party beneficiary or to authorize anyone not a party to this contract to maintain an action for damage pursuant to the terms or provisions of this contract.

**AJ. Insurance requirements:** Until final acceptance by the department of the work covered, the contractor shall procure and maintain at the contractor's expense insurance of the kinds and in the amounts herein provided. This insurance shall be provided by insurance companies authorized to do business in New Mexico and shall cover all operations under the contract, whether performed by the contractor, the contractor's agents or employees or by subcontractors. All insurance provided shall remain in full force and effect for the entire period of the work, up to and including final acceptance, and the removal of all equipment and employees, agents and subcontractors therefrom.

(1) Public liability insurance.

(2) General liability: bodily injury liability and property damage liability insurance applicable in full to the subject project shall be provided in the following minimum amounts:

(a) bodily injury liability: \$500,000 each occurrence; \$1,000,000 aggregate;

(b) property damage liability: \$500,000 each occurrence; \$1,000,000 aggregate.

(3) The policy to provide this insurance is to be written on a comprehensive general liability form or commercial general liability form which must include the following:

(a) coverage for liability arising out of the operation of independent contractors;

(b) completed operations coverage;

(c) attachment of the broad form comprehensive general liability endorsement.

(4) In the event that the use of explosives is a required part of the contract, the contractor's insurance must include coverage for injury to or destruction of property arising out of blasting or explosion.

(5) In the event that a form of work next to an existing building or structure is a required part of the contract, the contractor's insurance shall include coverage for injury to or destruction of property arising out of: the collapse of or structural injury to buildings or structures due to excavation, including borrowing, filling or backfilling in connection therewith, or to tunneling, cofferdam work or caisson work, or to moving, shoring, underpinning, razing or demolition of buildings or structures, or removal or rebuilding of structural supports thereof.

(6) Coverage must be included for injury to or destruction of property arising out of injury to or destruction of wires, conduits, pipes, mains, sewers or other similar property or any apparatus in connection therewith below the surface of the ground, if such injury or destruction is caused by or occurs during the use of mechanical equipment for the purpose of excavating, digging or drilling, or to injury to or destruction of property at any time resulting therefrom.

(7) Automobile liability insurance: Coverage for the contractor (whether included in the policy providing general liability insurance or in a separate policy) must provide liability for the ownership, operation and maintenance of owned, non-owned and leased or hired vehicles. The limits of liability for automobile liability insurance shall be provided in the following amounts:

(a) bodily injury liability: \$500,000 each person; \$1,000,000 each occurrence;

(b) property damage liability: \$1,000,000 each occurrence.

(8) Worker's compensation insurance: The contractor shall also carry worker's compensation insurance or otherwise fully comply with the provision of the New Mexico Workmen's Compensation Act and Occupational Disease Disablement Law.

(9) Department as additional insured: The contractor shall have the department named as an additional insured on the comprehensive general liability form or commercial general liability form furnished by the contractor pursuant to paragraph A.1 and B, of this Subsection [Subparagraphs (a) and (b)]. The certificate of insurance shall state that the coverage

provided under the policy is primary over any other valid and collectible insurance. The additional insured endorsement shall conform with the most current CG 2010 additional insured endorsement. The contractor shall furnish to the department a copy of the contractor's standard ISO CGL policy showing the additional insured endorsement prior to the department issuing a notice to proceed.

(10) Certificate of insurance: The contractor awarded the contract shall furnish evidence of contractor's insurance coverage by a certificate of insurance executed on the form provided by the department, to be made a part of the contract and included with the contract documents before signing the contract. Such certificate shall indicate compliance with these specifications and shall certify that the coverage shall not be changed, canceled or allowed to lapse without giving the department 30 day's written notice. Also, a certificate of insurance shall be furnished to the department on renewal of a policy or policies as necessary during the terms of the contract. The department shall not issue a notice to proceed until such time as the above requirements have been met.

(11) Umbrella coverage: The insurance limits cited in the above paragraphs are minimum limits. This specification is in no way intended to define what constitutes adequate insurance coverage for the individual contractor. The department will recognize following form excess coverage (Umbrella) as meeting the requirements of paragraph A.2 of this Subsection [Subparagraph (a)], should such insurance otherwise meet all the requirements of such subsections.

(12) Optimal insurance: The contractor shall procure and maintain, when required by the department, form and types of Bailee theft insurance such as, but not limited to, builder's risk insurance, contractor's equipment insurance, rigger's liability property insurance, etc., in an amount necessary to protect the department against claims, losses and expenses arising from the damage, disappearance or destruction of property of others in the care, custody or control of the contractor, including property of others being installed, erected or worked upon by the contractor, his or her agents, or subcontractors.

(13) Railroad insurance: In the event that railroad property is affected by the subject contract, the contractor, in addition to the above requirements, shall be required to furnish a railroad protective liability policy in the name of the railroad company involved. In addition, on those rails that are used by the national railroad passenger corporation (NRPC), the contractor will also obtain a railroad protective liability policy in the name of NRPC. The

limits of liability for the railroad protective liability policy (or policies) must be negotiated with the railroad company on a hazard and risk basis. In no event will the limits exceed the following:

(a) bodily injury liability, property damage liability: \$2,000,000 each occurrence;

(b) liability and physical damage to property: \$6,000,000 aggregate;

(c) the limits of liability state above apply to the coverages as set forth in the railroad protective liability endorsement form, subject to the terms, conditions and exclusions found in the form;

(d) the policy must afford coverage as provided in the standard railroad protective liability endorsement (AASHTO form).

**AK. No waiver of legal rights:** Upon completion of the work, the department will expeditiously make final inspection and notify the contractor of acceptance. Such final acceptance, however, shall not preclude or prevent the department from correcting any measurement, estimate, certificate, or price reduction made before or after completion of the work, nor shall the department be precluded or prevented from recovering from the contractor or his or her surety, or both, such overpayment as it may sustain, or by failure on the part of the contractor to fulfill the obligations under the contract. A waiver on the part of the department of breach of part of the contract shall not be held to be a waiver of any other or subsequent breach. The contractor, without prejudice to the terms of the contract, shall be liable to the department for latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the department's right under any warranty of guaranty.

**AL. Contractor's responsibility for the traveling public:** The contractor shall conduct work within the construction zone (defined as the area from the first traffic control sign announcing that road work is being performed ahead to the last sign announcing the end of the construction zone) so that there will be minimal hazard to anyone transiting the work site on the open lanes of travel. To keep hazards to a minimum, the contractor shall, as far as practical, keep equipment, materials, and workers from intruding into the travel lanes, remove any hazardous construction debris deposited on those lanes on a continuous and regular basis, inspect and repair the travel lanes, and remove obstacles deposited by the public as they transit the work site. Payment will be made in accordance with Section 109.5 [Subsection E of 18.27.2.15 NMAC].

(1) Notification that a hazard to the public exists may be received through the contractor's inspections, from the

employees of the NMSHTD, or the public. In any case, corrective action shall be taken to remedy the hazard within a reasonable time after notification is received. The contractor shall have a contact number answerable on a 24-hour basis so that action can be initiated quickly when hazards are identified.

(2) All claims from the public for losses that are alleged to have occurred within the construction zone shall be handled by the prime contractor, even though a subcontractor may have introduced the hazard that caused the damage. The contractor shall designate at or before the preconstruction conference the individual(s) whose responsibility it is to respond to third party claims. The individual(s) shall be readily available during normal working hours and shall respond to all damage claims. This individual(s) shall provide claimants with a written outline of the contractor's claims procedure, along with a written copy or the contractor's name, address, telephone number, and the name and title of the individual assigned to damage claim response. The contractor shall maintain a status report of all claims filed, and the status of such claims. This report shall contain, at a minimum, the name, address and telephone number of the claimant; the nature of the claim, pertinent findings regarding the claim, and a statement regarding the resolution of the claim. This report shall be available to the project manager upon request.

(3) The contractor shall establish a local contact number with area code for the purpose of filing claims, and post that number conspicuously so that claimants can contact the right person quickly. In addition, the contractor's name, address, telephone number shall be posted at each approach to the construction zone. All construction vehicles (contractor or subcontractor owned and privately owned) working in the construction zone shall have the license plates clean and unobstructed; and be marked legibly with appropriate company name.  
[18.27.2.13 NMAC - Rp, 18 NMAC 27.2.13, 04/29/05]

#### **18.27.2.14 PROSECUTION AND PROGRESS:**

**A. Subcontracting:** The contractor shall perform, with his or her own organization, work on the project consisting of not less than 50% of the original total bid amount. The contractor's own organization shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the prime contractor. At the preconstruction conference, the contractor shall submit a list of

intended subcontractors and material suppliers. In addition, the contractor will be required to update the list of subcontractors and material suppliers as the work progresses so that the department will have, at all times, a current and accurate list of subcontractors along with the work that they perform and material suppliers along with the materials supplied. The required forms for the provision of this information will be supplied by the department.

(1) No work shall be subcontracted without prior written consent of the engineer. The intent of this subsection shall not be circumvented by the contractor placing a subcontractor's employees directly on the contractor's payroll. If a person or group of persons generally operated as an independent contractor, the department will treat them as independent contractors for purposes of this subsection.

(2) The contractor's and the contractor's surety's liability under the contract and the bond shall not be waived or in any way diminished by subcontracting or other assignment of interest under the contract.

(3) This subsection shall not apply to items designated in the contract as "specialty items." Work performed on these specialty items may be performed by a subcontractor and the cost of such specialty item so performed by a subcontractor may be deducted from the total bid amount before computing the amount of work required to be performed by the contractor with his or her own organization. The subcontracting of specialty items will require the written consent of the engineer prior to commencing the work.

(4) Unless otherwise specifically provided in the subcontract, prime contractors shall pay all subcontractors their respective subcontract amount for undisputed acceptable work within 10 calendar days of receiving progress and prefinal payments, and within 30 calendar days of the contractor receiving the final estimate Form reflecting actual quantities of said work from the Department. Failure to do so may result in the withholding of future progress payments or in the department applying paragraph (C) of Subsection 102.5 [Paragraph (3) of Subsection E of 18.27.2.8 NMAC], rejection of bids, to future bids submitted by the contractor, and repeated failure may lead to suspension or debarment as provided in Subsection 102.3 [Subsection C of 18.27.2.8 NMAC], suspension and debarment.

**B. Notice to proceed:** The "notice to proceed" will stipulate the date on which it is expected the contractor will begin the construction and from which date contract time will be charged. Commencement of work by the contractor may be deemed and taken as a waiver on his or her part of this notice. After the contract

is executed, the notice to proceed shall be issued within 30 days unless agreed to by the parties.

**C. Prosecution and progress:** One week before the preconstruction conference or at the preconstruction conference if so approved by the project manager, the contractor shall furnish the project manager with a "progress schedule" for the engineer's approval. If the contractor's progress schedule is not approved, the project manager shall notify the contractor of the disapproval in writing. The contractor shall furnish a revised progress schedule or additional information supporting the original progress schedule. At the project manager's discretion, progress payments will not be made or if already started will be discontinued until the contractor's progress schedule has been approved. The engineer shall make a determination of approval or disapproval within 10 calendar days of receipt of the original progress schedule, revised progress schedule or additional information supporting a progress schedule. Upon approval of the progress schedule by the engineer, it will be considered the baseline progress schedule.

(1) The progress schedule shall be submitted in the format identified in the contract (critical path method (CPM) or bar graph.) If the CPM format is required, it shall be submitted two weeks prior to the pre-construction conference.

(2) The baseline progress schedule will be used as the basis for establishing major construction operations, for aid in determination and extension of contract time and for measurement of the progress of the work.

(a) Bar and graph progress schedule: The progress schedule shall be submitted in bar chart form or in a format approved by the project manager. The progress schedule shall list principal contract features or work activities in sufficient detail to demonstrate a reasonable and workable plan to complete the project within the contract time. Each work activity shall be identified by a bar on the progress schedule. Each bar shall indicate the estimated start and completion dates for each work activity. The progress schedule shall indicate the estimated cost and percentage of total contract amount for each work activity, the overall project cost and the estimated project completion date. The progress schedule shall indicate in writing projected percent completion on a monthly basis both in time and dollars. A plot of the monthly projected percent completion on a dollar basis shall be superimposed on the bar chart. Should it become apparent to the contractor that he will not be able to meet the requirements of the progress schedule, the contractor shall submit a revised progress schedule reflecting the actual

authorized time left for project completion to the project manager for the engineer's approval as per Subsection 108.3 [Subsection C of 18.27.2.14 NMAC]. The project manager may request a revised progress schedule no more than once every 30-calendar days.

(b) Critical path method (CPM) progress schedule: The CPM shall show work activities in sufficient detail to demonstrate a reasonable and workable plan to complete the project within the contract time, shall show the order and interdependence of activities and the sequence in which the work will be accomplished, shall describe all activities in a format prescribed by the department, so that the work is readily identifiable and the progress on each activity can be readily measured, shall readily identify the project critical path, and shall include any milestones specified in the contract documents.

(3) The CPM schedule shall consist of network diagrams and associated bar graphs. The CPM schedule shall include a tabulation of each activity shown on the detailed network diagrams. The CPM schedule shall show as a minimum the following information:

- (a) activity description;
- (b) early start date (each activity);
- (c) late start date (each activity);
- (d) original duration, in working days (each activity);
- (e) total float (each activity);
- (f) sequence and interdependence of all activities;
- (g) work days each week, holidays, number of shifts per day, number of hours per shift.

(4) The CPM schedule shall include a report of projected percent completion, measured in dollars and time, on a monthly basis or at each progress payment cutoff date as requested by the project manager.

(5) Float contained in the baseline CPM schedule is not for the exclusive use or benefit of either the department or the contractor. Float generated on the critical path activities due to the acceleration of contractor operations, shall be for the exclusive use of the contractor. Time extensions for damages or delays will be granted only to the extent that the critical path of the project's baseline CPM schedule current at the time of the delay is affected.

(6) Monthly CPM progress schedule: The contractor shall submit a monthly updated CPM progress schedule at each progress payment cutoff date or as mutually agreed to by the project manager. Progress payments will not be made until the monthly CPM progress schedule is received. The activities as shown on the monthly CPM progress schedule shall indicate the following information at a mini-

mum:

- (a) activity description;
- (b) anticipated start and finish dates;
- (c) anticipated duration in work days;
- (d) anticipated float;
- (e) anticipated monetary value of bid item activity;
- (f) anticipated work schedule for the next month;

(7) The project manager may request actual progress to date be shown on the monthly CPM progress schedule for items B through E [Subparagraphs (b) through (e)] above at a minimum.

(8) Revisions to CPM schedule. Should it become apparent to the department or the contractor that the contractor will not be able to meet the requirements of the baseline CPM schedule, the contractor shall submit to the project manager for the engineer's approval as per this section, a revised detailed CPM schedule and recovery plan demonstrating its proposed method to complete the project. Upon approval, the revised CPM schedule shall become the current approved baseline progress schedule. If the contract duration or scope of work substantially changes as a result of time extensions, supplemental agreements, or extra work, the project manager may request a revised CPM schedule be submitted by the contractor to reflect such changes. The revised schedule shall be submitted to the project manager for approval by the engineer as per this subsection. Upon approval by the engineer, the revised CPM schedule shall become the current approved baseline progress schedule.

(9) CPM schedule submittal format: The baseline, revised, or monthly progress CPM schedules shall be prepared in accordance with the "critical path method" using primavera project planner, Primavera Sure Trak project manager or Microsoft Project for Windows (or a later version thereof.) Should the contractor choose to use other software than those listed above, the contractor shall provide the department with the same software used to prepare their respective critical path schedules. Submittal of each schedule shall be in the form of one 3.5 inch diskette electronic format along with two color prints, and shall be time scaled.

(10) Unsatisfactory progress of work: Whenever the actual percent of the money earned on the project is above the estimated percent earned as shown on the latest approved baseline progress schedule by more than 15%, the contractor may receive written notice to submit a revised progress schedule to the project manager for approval by the engineer prior to the date of the next progress payment as per this section. If the actual percent of the money

earned on the project falls below the estimated percent earned as shown on the latest approved baseline progress schedule by more than 15%, the progress of the work will be deemed unsatisfactory and the contractor will receive a notice of unsatisfactory performance. When the CPM format progress schedule is used and it is determined by the project manager that any activity on the critical path shows negative float or is determined to be behind schedule due to the exhaustion of float of an activity not originally on the critical path that is now critical, the progress of the work will be deemed unsatisfactory and not the contractor will receive a notice of unsatisfactory performance. The notice of unsatisfactory performance will be sent to the contractor by certified mail, will note the unsatisfactory progress as revealed by the percentage computation above and will allow a reasonable time period as determined by the engineer but not to exceed a maximum of 30 calendar days from receipt of said notice to bring the progress of the work into compliance with the latest approved baseline progress schedule or provide written justification acceptable to the engineer of said lack of progress. The contractor shall within the time specified in the notice of unsatisfactory performance.

(a) Submit a revised progress schedule and recovery plan to the project manager for review and approval by the engineer, demonstrating its proposed method to complete the project within the overall time specified in the approved baseline progress schedule.

(b) Take all necessary action, including but not limited to additional overtime, shift work, additional workforce, extended workweek, additional equipment, etc., to ensure completion of the project within the overall time specified in the most recently approved progress schedule and at no additional cost to the department.

(i) If the progress of the work is not in compliance with the latest approved progress schedule within the time specified in the notice of unsatisfactory performance, the department may invoke Subsection 102.3 [Subsection C of 18.27.2.8 NMAC], suspension and debarment, withhold progress payment or any other administrative remedy that the engineer deems appropriate and in the best interest of the public.

(ii) The period of suspension will continue until the progress of the work on the contract is brought into compliance with the latest approved progress schedule or is otherwise determined Subsection 102.3 [Subsection C of 18.27.2.8 NMAC], suspension and debarment.

(11) Resumption of work: Should the prosecution of the work be discontinued

for any reason, the contractor shall notify the engineer, in writing, at least 48 hours in advance of resuming operations.

**D. Limitation of operations:** The contractor shall conduct the work at all times in such a manner and in such sequence as will assure the least practicable interference with traffic. The contractor shall have due regard to the locations of detours and to the provisions for handling traffic. The contractor shall not open up work to the prejudice or detriment of work already started. The engineer may require the contractor to finish a section on which work is in progress before work is started on additional sections if the opening of such section is essential to public convenience and the starting of work on additional sections would delay the finishing of the section.

**E. Character of workers, methods, and equipment:** The contractor shall at all times employ sufficient labor and provide the necessary equipment for prosecuting the several classes of work to full completion in the manner and time required by these specifications. All workers shall have sufficient skill and experience to perform properly the work assigned to them. Workers engaged in special work or skilled work shall have sufficient experience in such work and in the operation of the equipment required to perform all work properly and satisfactorily.

(1) Persons employed by the contractor or by subcontractors who, in the opinion of the engineer, do not perform work in a proper and skillful manner or are intemperate or disorderly shall, at the written order of the engineer, be removed forthwith by the contractor or subcontractor employing such person and shall not be employed again in any portion of the work without the approval of the Engineer.

(2) Should the contractor fail to remove such persons as required, or fail to furnish suitable and sufficient personnel for the proper prosecution of the work, the Engineer may suspend the work by written notice until such orders are complied with.

(3) All equipment proposed to be used on the work shall be of sufficient size and in such mechanical condition to meet requirements of the work and to produce a satisfactory quality of work. Equipment used on the project shall be such that no injury to the roadway, adjacent property, or other highways will result from its use.

(4) When the methods and equipment to be used by the contractor in accomplishing the construction are not prescribed in the contract, the contractor is free to use any methods or equipment that the contractor demonstrates, to the satisfaction of the engineer, will accomplish the contract work in conformity with the requirements of the contract.

(5) When the contract specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless otherwise authorized by the engineer. If the contractor desires to use a method or type of equipment other than that specified in the contract, the contractor may request authority from the engineer to do so. The request shall be in writing and shall include a full description of the methods and equipment proposed to be used and an explanation of the reasons for requesting the change. If approval is given, it will be on the condition that the contractor will be fully responsible for producing construction work in accordance with contract requirements. If, after the trial use of the substituted methods or equipment, the engineer determines that the work produced does not meet contract requirements, the contractor shall discontinue the use of the substitute method or equipment and shall complete the remaining construction with the specified methods and equipment. The contractor shall remove the deficient work and replace it with work of specified quality or take such other corrective action as the engineer may direct. No change will be made in basis of payment for the construction items involved nor in contract time as a result of authorizing a change in methods or equipment under these provisions. No less than seventy percent (70%) of the work force of an exclusively state-funded project authorized in 2003 N.M. Laws, Ch. 3, Sections 27 and 28 shall be residents of New Mexico.

**F. Determination and extension of contract time:** The number of days allowed for the completion of the work included in the contract will be stated in the invitation for bids and in the "bid" form and will be known as the "contract time."

(1) When the contract time is on a working day basis, the engineer will furnish the contractor a weekly statement showing the number of days charged to the contract for the preceding week and the number of days specified for completion of the contract. The contractor will be allowed one week after receipt of the statement in which to file written protest identifying in what respect the statement is incorrect, otherwise the statement shall be deemed to have been accepted by the contractor as correct.

(2) When the contract time is on a calendar day basis it shall consist of the number of calendar days stated in the contract counting from the effective date of the engineer's notice to proceed, or from the actual starting date if prior to the mandatory starting date, including all Saturdays, Sundays, holidays, and non-working days. All calendar days elapsing between the effective dates of any orders of the engineer to wholly suspend work and to resume work for suspensions not the fault of the contrac-

tor shall be excluded.

(3) During periods of partial suspension of the work, the number of calendar or working days to be charged as contract time will be computed by multiplying the number of days of original contract time by the ratio of the amount earned, on items not covered by the partial suspension order, during the period of partial suspension, to the original contract amount. Money earned from survey, mobilization, crushing and stockpiling of any materials will not be considered in the calculation of contract time used during a partial suspension period. In no case will the number of calendar days or working days to be charged exceed the total elapsed time of the partial suspension.

(4) If a project has been under partial or full suspension, upon lifting of the suspension the project manager will furnish the contractor a statement showing the number of calendar or working days charged during the partial or full suspension period and will identify the calendar or working days remaining in the contract. The contractor will be allowed one week after receipt of the statement in which to file a written protest identifying in what respect the statement is incorrect, otherwise the statement shall be deemed to have been accepted by the contractor as correct.

(5) When the contract time is based on a mandatory completion date, work on the project shall be in substantial completion on the date specified in the contract. Only by mutual written agreement shall the completion date be extended or amended except when the department orders extra work.

(6) In the event that the number of working days, calendar days, or completion date shown on the invitation for bids do not agree with the information shown on the bid form, the information shown on the bid form shall control.

(7) The number of days for performance allowed in the contract as awarded is based on the original quantities as defined in Subsection 102.6 [Subsection F of 18.27.2.8 NMAC], interpretation of quantities. If satisfactory fulfillment of the contract requires performance of work in greater quantities than those set forth in the bid, the contract time allowed for performance will be determined by multiplying the original contract time by the ratio of the final estimate total contract amount to the original amount bid.

(8) If, for contracts other than specified mandatory completion date contracts, the contractor finds it impossible for reasons beyond his or her control to complete the work within the contract time as specified or as extended in accordance with the provisions of the subsection the contractor may, at any time prior to the expiration of the contract time as extended, make a



written request to the project manager for an extension of time setting forth therein the reasons which the contractor believes will justify the granting of the request. The contractor's plea that insufficient time was specified is not a valid reason for extension of time. If the engineer finds that the work was delayed because of conditions beyond the control and without the fault of the contractor, including but not limited to labor disputes, the engineer may extend the time for completion in such amount as the conditions justify.

(9) An extension will be granted for the time required to restore the work to its original state where damage to the work occurred from causes beyond the control of the contractor. The extended time for completion shall be in full force and effect the same as though it were the original time for completion.

(10) If the engineer determines that the extra work does not impact the critical path of the project, the additional time will be addressed in accordance with this subsection.

(11) In all cases where extra work necessitates the extension of time, including those on specified mandatory completion date contracts, the extension shall be negotiated and addressed in the change order for the extra work.

(12) If the engineer disallows the time extension request the contractor's remedy is governed by Subsection 105.9 [Subsection I of 18.27.2.11 NMAC], duties of the inspector, and Subsection 105.19 [Subsection S of 18.27.2.11 NMAC], administrative remedy.

(13) When final inspection has been accomplished by the engineer as prescribed in Subsection 105.17 [Subsection Q., Section 11 of 18.27.2.11 NMAC], acceptance, the daily time charge will cease as of the date all pay items are completed as determined by the project manager or as specified in Section 109.9.

**G. Failure to complete on time:** For each calendar day or working day, as specified, that any work shall remain uncompleted after the contract time specified for the completion of the work provided for in the contract, the sum provided in Subsection 108.8 [Subsection H of 18.27.2.14 NMAC], liquidated damages, will be deducted from money due the contractor not as a penalty but as liquidated damages; provided, however, that due account will be taken of adjustments of the contract time for completion of the work granted under the provisions of Subsection 108.6 [Subsection F of 18.27.3.14 NMAC], determination and extension of contract time.

(1) Permitting the contractor to continue and finish the work or any part of it after the time fixed for its completion or

after the date to which the time for completion may have been extended will in no way operate as a waiver on the part of the department of its rights under the contract.

(2) The department may waive such portions of the liquidated damages as may accrue after the work is in an acceptable condition for safe and convenient use by the traveling public.

**H. Liquidated damages:** Time is an essential element of the contract, and it is important that the work be pursued vigorously to completion. The cost to the department of the administration of the contract, including engineering, inspection and supervision, will be increased as the time occupied in completing the work is increased. The public is subject to detriment and inconvenience when full use cannot be made of an incomplete project. Should the contractor fail to perform the entire project within the contract time, the contractor agrees to the following schedule of liquidated damages representing inconvenience and monetary damage to the traveling public:

*[Please see table on page 330]*

ORIGINAL CONTRACT AMOUNT

From More Than	To and Including	Charge Per Calendar Day	Charge Per Work Day
\$1,000,000	\$7,100,000	\$2,300.00	\$1,400.00
100,000	500,000	800.00	1,000.00
500,000	1,000,000	1,000.00	1,400.00
1,000,000	2,000,000	1,400.00	1,900.00
2,000,000	4,000,000	1,600.00	2,300.00
4,000,000	7,000,000	2,000.00	2,900.00
7,000,000	no limit	2,300.00	3,200.00

(1) When the contract time is on either the calendar day or specified completion date basis, the schedule for calendar days will be used. When the contract time is on a workday basis or is silent as to the basis, the schedule for workday will be used.

(2) The contractor agrees that the department may withhold additional payments under the contract or attach the contractor's performance bond to cover the liquidated damages set forth above. Liquidated damages shall continue until notice of satisfactory completion and final acceptance has been made as prescribed in Subsection 105.17 [Subsection Q of 18.27.2.11 NMAC], acceptance. When final acceptance has been duly made by the Engineer, the liquidated damages shall cease as of the date all pay items are complete as determined by the Project Manager.

**I. Default of contract:**

(1) The contractor may be declared to be in default of the contract if the contractor:

(a) fails to begin the work under the contract within the time specified in the "notice to proceed"; or

(b) fails to perform work with sufficient resources (supervision, workers, equipment and materials) to assure the prompt completion of said work; or

(c) performs the work unsuitably or neglects or refuses to remove materials or to perform new such work as may be rejected as unacceptable and unsuitable; or

(d) discontinues the prosecution of the work; or

(e) fails to resume work which has been discontinued within a reasonable time after notice to do so; or

(f) becomes insolvent or is declared bankrupt or commits any acts of bankruptcy or insolvency; or

(g) allows a final judgment, in a suit filed in connection with this contract, to stand against him or her unsatisfied for a period of 30 calendar days; or

(h) makes an assignment, in connection with this contract, for the benefit of creditors; or

(i) for any other cause, except as provided in the contract, fails to carry on the work in an acceptable manner.

(2) The engineer will give notice in writing to the contractor and the contractor's surety of such delay, neglect, or apparent default and will specify those provisions that have been violated and the corrective measures to be taken. If the contractor or surety, within a period of 10 calendar days after such notice, does not proceed in accordance therewith, then the department may, upon written notification from the engineer of the fact of such delay, neglect, or apparent default, and the contractor's failure to comply with such notice, have full power and authority without violating the contract to declare the contractor in default and take the prosecution of the work out of the hands of the contractor and demand compliance by the surety of the terms, conditions and obligations contained in the performance bond executed by the surety and contractor.

(3) Upon the default of the contractor as set forth above, the surety shall take charge of said work and complete the contract at its own expense pursuant to the terms of said contract, receiving, however, any balance of funds due and owing the contractor in the hands of the state of New Mexico under said contract. In the event the surety fails to so take charge of the project upon the demand of the department to do so, the department may undertake to complete the project with its own forces, or may procure a competing contractor to finish the work. All costs and charges thereby incurred by the department, together with the cost of completing the work under contract, will be deducted from contract funds which are due or may become due the defaulting contractor. If such expense exceeds the sum that would have been payable under the contract, then the defaulting contractor and the surety shall be jointly and severally liable for the amount of such excess expense.

**J. Termination of contract, no fault of contractor:** The department may, by written order, terminate the contract or any portion thereof after determining that, for reasons beyond either department or contractor control, the contractor is prevented from proceeding with or completing the work as originally contracted for, and that termination would therefore be in the public interest. Such reasons for termination may include, but need not be necessarily limited to, executive orders of the president of the United States relating to prosecution of war or national defense, national emergency that creates a serious shortage of materials, orders from duly constituted authorities relating to energy conservation, and restraining orders or injunctions obtained by third party citizen actions resulting from national or local environmental protection laws or where the issuance of such order or injunction is primarily caused by acts or omissions of persons or agencies other than the contractor.

(1) The department may, at its option, void any contracts currently in force with debarred or suspended contractors in accordance with the department's debarment and suspension rules and regulations.

(2) When the department orders termination of a contract effective on a certain date, payment will be made for the actual number of units or items of work completed at the contract unit price, or as mutually agreed for items of work partially completed or not started. Items that are eliminated in their entirety by such termination shall be paid for as provided in Subsection 109.6 [Subsection F of 18.27.2.15 NMAC], eliminated items.

(3) Acceptable materials, obtained by the contractor for the work but which have not been incorporated therein may, at the option of the department, be purchased from the contractor at actual cost delivered to a prescribed location or otherwise disposed of as mutually agreed.

(4) After receipt of notice of termination from the department, the contractor shall submit pursuant to Subsections 105.18 [Subsection R of 18.27.2.11 NMAC], claims for adjustment, and 105.19 [Subsection S of 18.27.2.11 NMAC], administrative remedy, his or her claim for additional damages or costs not covered above or elsewhere in these specifications. Such claim may include such cost items as reasonable idle equipment time, mobilization efforts, bidding and project investigative costs, overhead expenses attributable to the project terminated, legal and accounting charges involved in claim preparation, subcontractor costs not otherwise paid for, actual idle labor costs if work is stopped in advance of termination date, guaranteed payments for private land usage as part of original contract, and any other cost or damage item for which the contractor feels reimbursement would be made. In no event, however, will loss of anticipated profits be considered as part of any settlement.

(5) The contractor agrees to make his or her cost records available to the extent necessary to determine the validity and amount of each item claimed.

(6) Termination of a contract or portion thereof shall not relieve the contractor of the contractual responsibilities for the work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the work performed.

[18.27.2.14 NMAC - Rp, 18 NMAC 27.2.14, 04/29/05]

### **18.27.2.15 MEASUREMENT AND PAYMENT:**

**A. Measurement of quantity:** As a general rule, all work performed under the contract will be subject to the following definitions of quantity. However, the bidder is cautioned to carefully read the invitation for bid package to determine units of measurement deviating from the following standard terms. In the event that the invitation for bid package has a special reference to terms for measurement, the invitation for bid package will supersede the following terms and will control. The following terminology controls.

(1) A station shall be 1000 m (100 ft) measured longitudinally.

(2) Longitudinal measurements will be taken along and parallel to actual surfaces and not horizontally. No deduction will be made for fixtures in the work having

an area of less than 1 m<sup>2</sup> (1 yd<sup>2</sup>). Transverse measurements for areas of base course and pavements shall be the neat line dimensions shown on the plans. The structures will be measured according to the neat lines shown on the plans. All items which are measured by the meter will be measured parallel to the base or foundation upon which such items are placed.

(3) The volume of excavation will be computed by using the average end area method, or the prism modular method, or other approved method.

(4) A metric ton (t) shall consist of 1000 kg (a ton shall be 2000 lb).

(5) Materials measured or proportioned by weight shall be weighed on accurate scales. Scales shall be accurate within tolerances as prescribed by state law.

(6) The scales shall be sealed by at least once each year, each time the scales are relocated, and as often as the engineer may deem necessary. Scales shall be furnished by the contractor, or the contractor may utilize commercial scales.

(7) Scales shall be operated by weigh masters provided by the contractor, certified by the New Mexico department of agriculture. The certified weigh masters shall perform the duties according to the regulations of the New Mexico department of agriculture, division of standards and consumers services. The cost of the certified weigh masters, weigh masters' scales, scale tickets, scale house, and verifying the scale's accuracy will not be paid for separately but shall be included in the contract price for the weighed material.

(8) The operator of each vehicle weighed by a certified weigh master shall obtain a scale ticket (certificate of correct weight) from the weigh master and deliver the ticket to the engineer at the point of delivery of the material. The scale ticket shall include the following information:

- (a) project number;
- (b) date;
- (c) ticket number;
- (d) haul unit number;
- (e) gross weight;
- (f) tare weight;
- (g) net weight;
- (h) material type;
- (i) certified weigh master's name;
- (j) legal signature.

(9) Vehicles used to haul material being paid for by weight shall be weighed empty daily at times directed by the engineer and shall bear a plainly legible identification mark. The contractor shall furnish to the engineer, in writing, a list of identification marks, number of axles, and the distance between extreme axles of each delivery vehicle to be used on the project. This information shall be furnished before delivery of the material and at any subsequent

time the contractor changes vehicles, combination vehicles, or axle length relationships.

(10) Materials measured by volume in the hauling vehicle shall be hauled in vehicles approved by the project manager and shall be measured at the point of delivery. All such material shall be leveled in the vehicle prior to inspection.

(11) When approved by the engineer, material may be weighed and converted to cubic meter (cubic yard) for payment purposes. When approved by the engineer, materials may be measured and converted from cubic meter to metric ton (from cubic yard to ton). Factor(s) for conversion from weight measurement to volume measurement will be determined by the project manager and agreed to by the contractor before such method of measurement is used. If the project manager and the contractor do not reach an agreement, the project manager's factor(s) will be used.

(12) Bituminous materials will be measured by the metric ton (ton). This weight shall be based upon net certified scale weights or weights based on certified volume. The certified weights or volumes are subject to inspection and adjustment at point of delivery.

(13) Portland cement will be measured by the metric ton (ton), barrel or sack pursuant to the terms of the invitation for bid package. The term "barrel" will mean 170.55 kg (376 lb) of cement. The term "sack" will mean 42.64 kg (94 lb) of cement. Net certified scale weights will be used as a basis of measurement of Portland cement, subject to inspection and adjustment at point of delivery.

(14) Timber and lumber will be measured by the meter (foot) actually incorporated in the structure. Measurement will be based on nominal widths and thickness and the extreme length of each piece. All lumber and timber conforming to the American lumber standards for rough and dressed sizes will be accepted as conforming to the nominal widths and thickness specified in the plans.

(15) Standard manufactured items identified by unit weight or section dimensions will be measured utilizing nominal weights or dimensions. Unless more stringently controlled by tolerances in cited specifications, manufacturing tolerances established by the industries involved will be accepted.

**B. Approved equipment rental rates:** Equipment rental rates will be computed as follows:

(1) Monthly rate w 176 x rate adjustment table factor (The rate adjustment table factor and hourly operating cost are found in the rental rate blue book in effect at the time of equipment use, published by Primedia Information, Inc.) + hourly oper-

ating cost = hourly equipment rental rate

(2) The rates shown in the blue book have been computed from current costs of ownership and operation related to the average number of hours of usage per year. The rates shown do not include operating personnel. The ownership cost represents the total cost of depreciation, interest, insurance, taxes, storage, etc., reduced to an hourly rate. Estimated operating cost per hour includes fuel, lubricants, tires, and other operating expendables, such as the percentage of mechanics' wages chargeable to preventive and field maintenance.

(3) The current blue book as modified above by the department shall apply to machinery or special equipment (other than small tools), including fuel, lubricants and transportation costs, the use of which has been authorized by the engineer or designee.

(4) The contractor will receive the rental rates agreed upon in writing before such work is initiated or, if no agreement is reached, the blue book rates as described above will be used for the actual time that said equipment is in operation on the work. An additional 15% will be added to the total equipment rental rates.

(5) Equipment rental rates will be applied in accordance with the following criteria:

(a) Manufacturer's identification plates attached to equipment shall be used insofar as possible to determine identification and capacities of the designated items of equipment. Where the equipment is not provided with such plates, the contractor will be required to supply written statements certifying the equipment identification and capacity as shown by his or her equipment inventory.

(i) The engineer's records (form C-139) shall be completed in full to include type, capacity and horsepower for the equipment used in order to properly correlate the equipment with that described in the rental rate blue book schedule.

(ii) The listed blue book rates are the maximum for equipment of modern design and in good working condition. Equipment shall be so handled and used to provide normal output and production.

(b) Most commonplace items of equipment are listed in the blue book. In cases where the piece of equipment to be used is not listed in the blue book, the rental rate will be established by requesting a rate from equipment guide book company or by using the blue book rental rate for a comparable piece of equipment being used, as determined by the engineer. If the equipment used is of such age that it is not listed, then the most comparable machine shown in the blue book, as determined by the engi-

neer, will be used.

(c) In cases where the piece of equipment, whether specialized or not, to be used is rented or leased from an outside agency and used in the execution of negotiated or force account work, a reasonable rental rate agreed upon in advance by the contractor and the engineer may be allowed upon presentation of the rental agency's quotation. To the approved rental rate, the established "hourly operating costs" as listed in the current blue book will be added; to this total an additional 15% will be added for administering this item.

(d) "Move-in" and "move-out" charges required by the piece of equipment not available on the job will be included as part of the extra work at actual transportation cost if the particular piece of equipment is not moved onto the specific job under its own power. "Move-in" and "move out" charges will be paid only once for a particular piece of equipment except in unusual circumstances, which must be justified in writing and agreed to by the district highway engineer or designee.

(e) Equipment standby time rental rates, when authorized in writing by the district construction engineer, will be 50% of the computed equipment rental rate, without the operating cost. Under no circumstances shall it be assumed that idle equipment will be paid for under these standby provisions until the payment is authorized in writing by the district construction engineer.

(f) The regional difference percentage as described in Section 1, par. 9, of the blue book will not be applicable; however, the factors published in the rate adjustment tables will apply.

(g) Overtime is described in section 1 of the current blue book will not apply. All equipment used on extra work will be paid for at the regular hourly rate as determined by using the formula for NMDOT hourly equipment rental rate.

#### C. Scope of payment:

The contractor shall receive and accept compensation provided for in the contract as full payment for furnishing all materials and for performing all work under the contract in a complete and acceptable manner and for all risk, loss, damage, or expense of whatever character arising out of the nature of the work or the prosecution thereof. If the "basis of payment" clause in the specifications relating to any unit price in the bid schedule requires that the unit price cover and be considered compensation for certain work or materials essential to the item, this same work or material, except as provided in Subsection 104.6 [Subsection F of 18.27.2.10 NMAC], rights in and use of materials found on the work, will not be measured or paid for under any other pay item that may appear elsewhere in the spec-

ifications.

D. **Compensation for altered quantities:** When the accepted quantities of work vary from the quantities in the bid schedule, the contractor shall accept, as payment in full, insofar as contract items are concerned, payment at the original contract unit prices for the accepted quantities of work done. No allowance except as provided in Subsections 104.2 [Subsection B of 18.27.2.10 NMAC], Significant Changes in the Character of Work, and 104.3 [Subsection C of 18.27.2.10 NMAC], differing site conditions, will be made for increased expenses, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the contractor resulting either directly from such alterations or indirectly from unbalanced allocation among the contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursements therefor or from any other cause.

E. **Payment for changes, differing site conditions, extra work, and force account work:** Payment will be made to the contractor for this work in accordance with the provisions of Subsections 104.2, 104.3, or 104.4 [Subsections B, C or D of 18.27.2.10 NMAC] by change order by one of the following methods: contract unit prices, agreed unit prices, agreed lump sum, or force account basis.

(1) Work is to be done as force account shall be compensated as follows.

(a) Labor: For all labor and supervisors in direct charge of the specific operations, the contractor will receive the wage rate actually paid during the pay period ending prior to the issuance of the order. If a wage rate has not been established for the type of work required, the new wage rate will be determined and agreed to in writing before beginning the work. Include the actual reasonable costs paid to, or on behalf of, workers for subsistence and travel allowances, health and welfare benefits, pension fund benefits, or other benefits when they are required by collective bargaining agreements or other employment contract applicable to the class of labor employed. Add an additional 35% of the above labor cost for project overhead and profit.

(b) Bond, insurance, and tax: For property damage, liability, and worker's compensation insurance premiums, unemployment insurance premiums or contributions, applicable payroll taxes, (not including gross receipts taxes) and social security taxes on the force account work, the contractor will receive the actual cost, to which cost 6% will be added. The contractor shall furnish satisfactory evidence of the rate or

rates paid for such bond, insurance, and taxes (not to include gross receipts taxes). In lieu of providing an actual rate, the contractor may use a rate of 30% of labor costs for labor burden plus 1% for bond.

(c) Materials: For the materials accepted by the engineer and incorporated into the work, the contractor will receive the actual cost of such materials delivered on the work, including transportation charges paid by him or her (exclusive of machinery rentals as hereinafter set forth), to which cost 15% will be added.

(d) Equipment: For machinery or special equipment (other than small tools), including fuel and lubricants and transportation costs, the use of which has been authorized by the engineer, the contractor will receive the rental rates as determined in accordance with Subsection 109.2 [Subsection B of 18.27.3.15 NMAC], approved equipment rental rates, unless otherwise agreed to in writing.

(e) Miscellaneous: No additional allowance will be made for general superintendence, the use of small tools, or other costs for which no specific allowance is herein provided.

(f) Compensation: Daily, the contractor's representative shall compare records with the engineer on the cost of work done as ordered on a force account basis.

(g) Statements: No payment will be made for work performed on a force account basis until the contractor has furnished the engineer with duplicate itemized statements of the cost of such force account work detailed as follows:

(i) name, classification, date, daily hours, total hours, rate, and extension for each laborer and foreman;

(ii) designation, dates, daily hours, total hours, rental rate, and extension for each unit of machinery and equipment;

(iii) quantities of materials, prices, and extensions;

(iv) transportation of materials;

(v) cost of property damage, liability and worker's compensation insurance premiums, unemployment insurance contributions, and social security tax;

(vi) statements shall be accompanied and supported by receipted invoices, or copies thereof, for all materials used and transportation charges; however, if materials used on the force account work are not specifically purchased for such work but are taken from the contractor's stock, then, in lieu of the invoices, the contractor shall furnish an affidavit certifying that such materials were taken from the contractor's stock, that the quantity claimed was actually used, and that the price and transportation

claimed represent the actual cost to the contractor;

(vii) the additional payment, based on the percentage stated above, shall constitute full compensation for all items of expense not specifically designated; the total payment made as provided above shall constitute full compensation for such work.

(2) If the work is to be paid as force account or as extra work, administrative costs for subcontracts shall be compensated as follows: The contractor shall receive an amount of 10% of the total cost of such subcontract work for profit and overhead.

#### F. Eliminated items:

Should items contained in the bid be found unnecessary for the proper completion of the work, the project manager may, upon written order to the contractor, eliminate such items from the contract, and such action shall in no way invalidate the contract. When a contractor is notified of the elimination of items, he or she will be reimbursed for actual work done and all costs incurred, including mobilization of materials and equipment prior to said notification. An additional 15% will be added to such cost of mobilization of materials and equipment.

#### G. Partial payments:

Partial payments shall be made at least once each month as the work progresses provided the contractor is in compliance with all material terms and conditions of the contract. If the contractor is not in compliance with all material terms and conditions of the contract, the department may withhold partial payments until the contractor is in compliance. Partial payments shall be based upon estimates prepared by the project manager of the value of the work performed and materials complete in place and in accordance with Subsection 109.8 [Subsection H of 18.27.2.15 NMAC], payment for materials on hand.

(1) No progress payment will be made when the total value of the work done since the last estimate is less than \$1,000.00 unless requested in writing by the contractor and concurred with by the department.

(2) The amounts ascertained as payable will be paid by the following method.

(3) One hundred percent of the amount ascertained as payable will be paid to the contractor until such time as the sum of the partial payments made equals 95% of the total amount due under the contract. Thereafter, no additional payments will be made until after completion of the entire contract in an acceptable manner unless approved by the project manager or DCE.

(4) When all pay items have been completed, the work with respect to those items has been inspected and approved, and

the work has been accepted by the project manager, conditional on full performance of specified items of work that are incidental to the completion of work, the project manager may, at his or her discretion and with the consent of the surety, prepare an estimate from which will be retained an amount equivalent to the estimated cost of the incidental work remaining to be done or the estimated damages that would be incurred if the contractor failed to complete the incidental work remaining to be done, whichever is greater, and the remainder less all previous payments may then be certified for payment to the contractor.

(5) When all pay items are in place and the only remaining items to be completed are incidental and cleanup, the project manager, with the consent of surety, may authorize a pre-final payment and release all retainage less any disputed amounts and an estimated amount to complete the project. In the event of late payment by the department of a sum due and owing the contractor, the contractor shall be entitled to late payment charges in the amount and under the conditions stated in Section 13-1-158 NMSA 1978.

#### H. Payment for material

**on hand:** After measurement by the project manager, partial payments may be made to the contractor up to 95% of the delivered cost, if:

(1) the materials are to be actually incorporated in the work;

(2) materials are delivered to the job site or to a storage place accepted by the project manager;

(3) the delivered materials meet the requirements of the plans and specifications;

(4) the materials are purchased from a supplier or a manufacturer and are not produced by the contractor or a subcontractor;

(5) paid invoices are submitted to the project manager by the contractor, and the invoices are certified as paid by the supplier or the manufacturer; and

(6) application is made in writing to the project manager and partial payment is approved by the project manager:

(a) in no event will partial payments for materials on hand exceed the total unit bid price;

(b) in the event materials are stored a significant distance off the job site, an amount for freight shipment will be deducted from the 95% of the delivered cost;

(c) in those instances where the project manager determines that it is not practical to determine delivered cost of materials, partial payments may be made as follows:

(i) a partial payment of up to 75% of the applicable contract unit

price for each of the following pay items may be made when the acceptable aggregate for the item is stockpiled at designated locations. 1) base course; 2) subbase; 3) surface treatment aggregate;

(ii) a partial payment of up to 60% of the applicable contract price for each of the following pay items may be made when the acceptable aggregate for the item is stockpiled at designated locations: 1) plant mix bituminous treated base 2) aggregate for road mix bituminous treated base 3) cement treated base 4) plant mix bituminous pavement asphalt concrete 5) open graded friction course 6) aggregate for road mix bituminous pavement;

(iii) a partial payment of up to 40% of the contract price for "plant mix bituminous pavement (complete)" may be made when the acceptable aggregate for this item is stockpiled at designated locations;

(iv) \$13.08/m<sup>3</sup> (\$10.00/yd<sup>3</sup>) may be paid for portland cement concrete aggregate to be used in concrete pavement when stockpiled at designated locations.

**I. Acceptance and final payment:** Within 30 days, once the project is substantially complete as per Subsection 101.3 [Subsection C of 18.27.2.7 NMAC], a post construction conference shall be conducted, at which time all outstanding items and issues shall be addressed, including time to complete the project. An agreement shall be reached on the schedule for final completion, inspection and payment. To achieve such agreement the contractor shall submit to the project manager the contractor's proposed schedule for completion, final inspection and payment within five (5) calendar days of the post construction conference. Upon approval by the project manager of the contractor's proposed schedule for completion, final inspection and payment, daily contract time charges shall cease as of the date of substantial completion. However, if all items of work are not completed by the date specified in the agreement, time charges shall resume until all pay items of work are complete. The 5% retainage shall not be released until the items above are scheduled and agreed to by both parties. A portion of the retainage will be withheld to cover punch list items at the discretion of the project manager until final acceptance.

(1) When the project has been finally accepted as provided in Subsection 105.17(B) [Paragraph (2) of Subsection Q of 18.27.2.11 NMAC], final acceptance, the engineer will prepare the final estimate of the quantities for the various classes of work performed. If the contractor has a disputed and pending claim for damages or payment against the department, the contractor will have the right to sign the alter-

nate final estimate form provided by the department. Upon approval of the final estimate under either the regular form or the alternate form, the contractor will be paid the entire sum found to be due after deducting all previous payments and all amounts to be retained or deducted under the provisions of the contract.

(2) In the event there are no claims filed or such claims have been finally resolved under Subsections 105.18 [Subsection R of 18.27.2.11 NMAC], claims for adjustment, and 105.19 [Subsection S of 18.27.2.11 NMAC], administrative remedy, the contractor must approve and return the department's final estimate within 30 calendar days of receipt. Failure to do so provides the department the remedy of accepting the work, paying the balance due under the final estimate and closing the project.

(3) All prior partial estimates and payments shall be subject to correction in the final estimate and payment.

(4) As a part of final acceptance procedure, the contractor shall furnish a certificate of payments of claims, if any, from the person or persons who initiate said claim for labor performed and material, supplies, and services furnished by the contractor or subcontractor.

(5) The project will not be considered complete until the work, as defined in Subsection 101.3 [Subsection C of 18.27.2.7 NMAC], definitions and terms, has been fully performed and finally and unconditionally accepted. In the event of late payment of a sum due and owing the contractor, the contractor shall be entitled to late payment charges in the amount and under the conditions stated in Section 13.1.158 NMSA 1978.

**J. Compensation for project delays:** Compensation for project delays that are the result of neglect or default of the department will be allowed only for the following:

- (1) non-salaried labor expenses;
- (2) material costs;
- (3) equipment costs;
- (4) costs of extended job site overhead;
- (5) an additional 10% of the total of items A, B, C, and D to cover any unabsorbed home office overhead;
- (6) the contractor shall document all actual costs resulting from the delay using actual records; expenses will be measured using generally accepted accounting principles;
- (7) the department will not reimburse the contractor for the following items:
  - (a) loss of anticipated profit;
  - (b) labor inefficiencies;
  - (c) home office overhead exceeding that provided;
  - (d) consequential damages,

including but not limited to loss of bonding capacity, loss of bidding opportunities, and insolvency;

(e) any indirect costs or expenses;

(f) attorneys' fees, interest, claim preparation expenses, or litigation costs;

(8) as used in this section, the term "delay" shall not be used to describe time extensions granted by the department for additional work as defined in Section 109.4 [Subsection D of 18.27.2.15 NMAC]. [18.27.2.15 NMAC - Rp, 18 NMAC 27.2.15, 04/29/05]

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## End of Adopted Rules Section

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## Other Material Related to Administrative Law

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### NEW MEXICO BOARD OF EXAMINERS FOR ARCHITECTS

New Mexico Board of Examiners for  
Architects

PO Box 509  
Santa Fe, NM  
505-827-6375

#### Regular Meeting

The New Mexico Board of Examiners for Architects will hold a regular open meeting of the Board in Santa Fe, New Mexico on Friday, May 6, 2005. The meeting will be held in the Conference Room of the Board office, Lamy Building, 491 Old Santa Fe Trail, beginning at 9:00 a.m. Disciplinary matters may also be discussed.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or other form of auxiliary aid or service to attend or participate in the meeting, please contact the Board Office at 827-6375 at least one week prior to the meeting. Public documents, including the agenda and minutes can be provided in various accessible formats. Please contact the Board Office if a summary or other type of accessible format is needed.

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**End of Other Related  
Material Section**

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## 2005

## SUBMITTAL DEADLINES AND PUBLICATION DATES

<b>Volume XVI</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 3	January 14
Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 14
Issue Number 4	February 15	February 28
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 31
Issue Number 7	April 1	April 14
Issue Number 8	April 15	April 29
Issue Number 9	May 2	May 13
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 15
Issue Number 12	June 16	June 30
Issue Number 13	July 1	July 15
Issue Number 14	July 18	July 29
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 31
Issue Number 17	September 1	September 15
Issue Number 18	September 16	September 30
Issue Number 19	October 3	October 17
Issue Number 20	October 18	October 31
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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 Section 14-4-7.1 NMSA 1978. For further subscription information, call 505-476-7907.