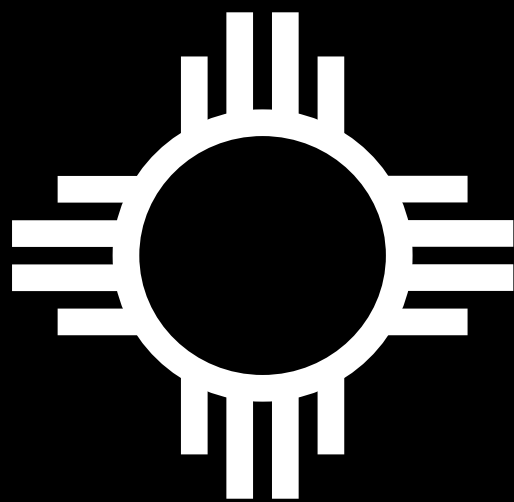


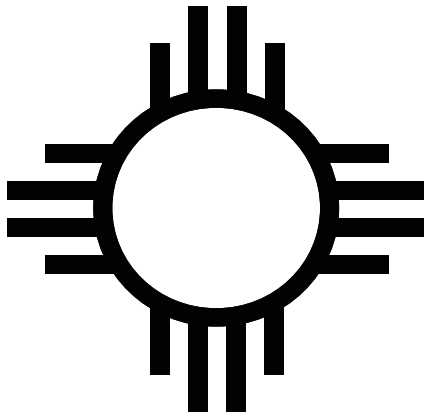
**NEW
MEXICO
REGISTER**



Volume XXIII
Issue Number 5
March 15, 2012

New Mexico Register

**Volume XXIII, Issue Number 5
March 15, 2012**



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

The Commission of Public Records
Administrative Law Division
Santa Fe, New Mexico
2012

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New Mexico Register

Volume XXIII, Number 5

March 15, 2012

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

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Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF DENTAL HEALTH CARE

LEGAL NOTICE

Public Rule Hearing and Regular Board and Committee Meeting

The New Mexico Board of Dental Health Care will hold a Rule Hearing on Friday, April 20, 2012. Following the Rule Hearing the New Mexico Dental Hygienists Committee will convene a regular meeting; following the New Mexico Dental Hygienist Committee meeting the New Mexico Board of Dental Health Care will convene a regular meeting to adopt the rules and take care of regular business. The New Mexico Board of Dental Health Care Rule Hearing will begin at 9:00 a.m. and the Regular Board Meetings will convene following the rule hearing. The meetings will be held at the Farmington City Hall, 800 N. Municipal Drive, Farmington, NM 87401, in the Executive Conference Room.

The purpose of the rule hearing is to consider adoption of proposed amendments, repeals and additions to the following Board Rules and Regulations in 16.5 NMAC: Part 1 General Provisions, Part 2 Impaired Practitioners Program, Part 6 Dentists, Licensure by Examination, Part 7 Dentists, Temporary License, Part 8 Dentists, Licensure by Credentials; Part 15 Dentists, Anesthesia Administration, Part 16 Dentists Disciplinary Proceedings, Part 21 Dental Hygienist, Temporary License, Part 29 Dental Hygienists, Practice, Part 30 Dental Hygienists, Disciplinary Proceedings, Part 33 Dental Assistants, Requirements for Certification, Part 40 Disciplinary Proceedings, Part 42 Expanded Function Dental Auxiliary, Requirements for Certification, Part 46 Expanded Function Dental Auxiliary, Practice and Supervision, Part 47 Expanded Function Dental Auxiliary, Disciplinary Proceedings, Part 52 Community Dental Health Coordinator, Continuing Education Requirements, Part 54 Community Dental Health Coordinator, Practice and Supervision, Part 55 Community Dental Health Coordinator, Disciplinary Proceedings and Part 56 Parental Responsibility Compliance.

You can contact the board office at the Toney Anaya Building located at 2550 Cerrillos Road in Santa Fe, New Mexico 87505, call (505) 476-4680 or copies of the proposed rules are available on the Dental board's website: www.RLD.state.nm.us/boards/dental_health_care.aspx. In order for the Board members to review the comments in

their meeting packets prior to the meeting, persons wishing to make comment regarding the proposed rules must present them to the Board office in writing no later than April 1, 2012. Persons wishing to present their comments at the hearing will need fifteen (15) copies of any comments or proposed changes for distribution to the Board and staff.

If you have questions, or if you are an individual with a disability who wishes to attend the hearing or meeting, but you need a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to participate, please call the Board office at (505) 476-4680 at least two weeks prior to the meeting or as soon as possible.

Kathy Ortiz, Board Administrator
PO Box 25101- Santa Fe, New Mexico
87505

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

STATE OF NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT OIL CONSERVATION DIVISION SANTA FE, NEW MEXICO

The State of New Mexico, through its Oil Conservation Commission hereby gives notice pursuant to law and Commission rules of the following meeting and public hearing to be held at 9:00 A.M. on **March 27, 2012**, in Porter Hall at 1220 South St. Francis Drive, Santa Fe, New Mexico, before the Oil Conservation Commission. The Commission will hear the application of the Oil Conservation Division concerning the amendment of 19.15.14.8 NMAC issued pursuant to the Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38. If additional time is needed, the hearing may continue at a later date announced by the Commission. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service to attend or participate in the hearing please contact Commission Clerk Florene Davidson at (505) 476-3458 or through the New Mexico Relay Network (1-800-659-1779) by **March 17, 2012**. Public documents can be provided in various accessible forms. Please contact Ms. Davidson if a summary or other type of accessible form is needed. A

preliminary agenda will be available to the public no later than two weeks prior to the meeting. A final agenda will be available no later than 24 hours preceding the meeting. Members of the public may obtain copies of the agenda by contacting Ms. Davidson at the phone number indicated above. Also, the agenda will be posted on the Oil Conservation Division website at www.emnrd.state.nm.us.

**STATE OF NEW MEXICO TO:
All named parties and persons
having any right, title, interest
or claim in the following cases
and notice to the public.**

NOTICE OF RULE MAKING

Case No: 14805: The Oil Conservation Division seeks a hearing concerning the following changes to Section 8 of Title 19, Chapter 15 Part 14 of the New Mexico Administrative Code: amend Subsection A of 19.15.14.8 NMAC. The proposed change would require an operator to obtain a permit prior to commencing drilling operations, deepening or plugging back a well. Copies of a summary of the intended effect of the proposed rule change and of the text of the proposed new rule and amendment are available from commission clerk Florene Davidson at (505) 476-3458 or from the Division's web site at <http://www.emnrd.state.nm.us/ocd> under "Rules/Proposed Rules." Written comments on the proposed amendments and pre-hearing statements must be received no later than 5:00 p.m. on March 20, 2012. Any person may present non-technical testimony or make an unsworn statement at the hearing. Any person who intends to present technical testimony or cross-examine witnesses at the hearing shall, no later than 5:00 p.m. on March 20, 2012 file six sets of a pre-hearing statement with Ms. Davidson. The pre-hearing statement shall include the person's name and the name of the person's attorney; the names of all witnesses the person will call to testify at the hearing; a concise statement of each witnesses' testimony; all technical witnesses' qualifications including a description of the witnesses' education and experience; and the approximate time needed to present the testimony. The person shall attach to the pre-hearing statement any exhibits he or she plans to offer as evidence at the hearing. Any person recommending modifications to a proposed rule change shall, no later than March 13, 2012, file a notice of recommended modifications with Ms. Davidson including the text of the recommended modifications, an explanation of the modifications' impact, and the reasons for adopting the modifications. Written comments, pre-hearing statements and

notices of recommended modifications may be hand-delivered or mailed to Ms. Davidson at 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, or may be faxed to Ms. Davidson at (505) 476-3462. Faxed documents must be entirely received prior to 5:00 p.m., Mountain Time, on the due date.

Given under the Seal of the State of New Mexico Oil Conservation Commission at Santa Fe, New Mexico on this 28th day of February 2012.

STATE OF NEW MEXICO
OIL CONSERVATION
DIVISION

Jami Bailey
Director, Oil Conservation
Division

S E A L

NEW MEXICO GAME COMMISSION

STATE GAME COMMISSION PUBLIC MEETING AND RULE MAKING NOTICE

On **Thursday, April 5, 2012**, beginning at 9:00 a.m., in the **Council Chamber of Gallup City Hall, 110 West Aztec Avenue, Gallup, NM 87305**, the State Game Commission will meet in public session to hear and consider action as appropriate on the following: commission approval for disposal items; proposed department reorganization plan; State Land Office easement for hunting, fishing, and trapping; quarterly depredation report; proposed amendments to the following rules: Open Gate, Antelope Private Land Use System (A-PLUS), Manner and Method, Migratory Game Bird, Upland Game, Bighorn Sheep, Bear and Cougar, Revocation; and general public comments (comments are limited to three minutes).

Obtain a copy of the agenda from the Office of the Director, New Mexico Department of Game and Fish, P.O. Box 25112, Santa Fe, New Mexico 87504, or from the Department's website. This agenda is subject to change up to 24 hours prior to the meeting. Please contact the Director's Office at (505) 476-8008, or the Department's website at www.wildlife.state.nm.us for updated information.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact Sonya Quintana at (505) 476-8027. Please contact Ms. Quintana at least 3 working days before the meeting date.

Public documents, including the Agenda and Minutes are provided in various accessible forms upon request.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

NOTICE

The New Mexico Human Services Department (HSD) is scheduling a public hearing on Wednesday, April 18, 2012, at 11:00 a.m. in the South Park Conference Room, Ste. 500-590, 2055 S. Pacheco, Santa Fe, NM.

The subject of the hearing is: Methods and Standards for Establishing Payment - Inpatient Hospital Services - Sole Community Provider Fund

The Human Services Department/Medical Assistance Division is proposing changes to 8.311.3 NMAC, *Methods and Standards for Establishing Payment - Inpatient Hospital Services*, to be effective June 1, 2012. The current language related to the Sole Community Provider Fund will be amended to provide that if in any year the Department uses any portion of the funds provided by a county to make a refund to the federal government of the federal share of previous payments, the calculation of the payment amount by the Department shall include the portion of the county transferred funds used to make the refund plus the federal share that those funds would have earned had they been used for payments to the hospital.

Interested persons may submit written comments no later than 5:00 p.m., April 18, 2012, to Sidonie Squier, Secretary, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of all comments will be made available by the Medical Assistance Division upon request by providing copies directly to a requestor or by making them available on the MAD website or at a location within the county of the requestor.

Copies of the Human Services Register and their proposed rules are available for review on our Website at <http://www.hsd.state.nm.us/mad/registers/2012> or by sending a self-addressed stamped envelope to Medical Assistance Division, Benefits Services Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

Notice

The New Mexico Human Services Department (HSD) published a Notice of Public Hearing in the New Mexico Register Volume XXII, Number 24 dated December 30, 2011. The public hearing was held on February 9, 2012 to obtain input on the following rules: 8.314.5 NMAC, *Developmental Disabilities Home and Community-Based Services Waiver*; and 8.290.400 NMAC and 8.290.600 NMAC, *Medicaid Eligibility for Home and Community Based Services Waiver (Categories 090, 091, 092, 093, 094, 095 and 096), Recipient Policies, and Benefit Description*.

The Department will issue a "**Withdrawal of Proposed Regulations**" register. At a later date the Department intends to initiate the rulemaking process, at which time a notice will be published and a public hearing scheduled.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

NOTICE OF REGULAR MEETING AND RULE HEARING

The New Mexico Commission of Public Records will hold a regular meeting on Tuesday, March 27, 2012, at 9:30 A.M. During the meeting the Commission will also hold a Rule Hearing to take public comment regarding the following proposed rulemaking actions:

New Rule

1.18.379 NMAC E R R D S ,
Public Employee Labor Relations Board

Amendment

1.15.8 NMAC G R R D S ,
General Medical Records
1.17.230 NMAC JRRDS, New
Mexico District Courts
1.18.308 NMAC E R R D S ,
Office of the State Auditor
1.18.333 NMAC E R R D S ,
Taxation and Revenue Department

1.18.430 NMAC	ERRDS, Public Regulation Commission
1.18.521 NMAC	ERRDS, Energy, Minerals, and Natural Resources Department
1.18.667 NMAC	ERRDS, New Mexico Environment Department
1.19.4 NMAC	LRRDS, Board of County Commissioners, County Managers

Repeal

1.18.670 NMAC	ERRDS, Veterans' Service Commission
---------------	-------------------------------------

New-Replacement

1.18.670 NMAC	ERRDS, Veterans' Services Department
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A copy of the agenda and proposed rules are available at the Office of the State Records Administrator, 1205 Camino Carlos Rey, Santa Fe, NM 87507 and on the Commission website at: www.nmcpr.state.nm.us/index.htm. The agenda is subject to change up to 24 hours prior to the meeting.

The meeting will be held at the New Mexico State Records Center and Archives in the Commission Room, 1205 Camino Carlos Rey, Santa Fe, NM 87507, which is an accessible facility. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Antoinette L. Solano at 476-7902. The Commission requests at least 5 business days advance notice to provide requested alternative formats and special accommodations. Public documents, including the agenda and minutes, can be provided in various accessible formats.

End of Notices and Proposed Rules Section

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NEW MEXICO PUBLIC EDUCATION DEPARTMENT

This is an amendment to 6.10.7 NMAC, Sections 9 and 14, effective 03-15-2012.

6.10.7.9 DISTRICT TEST COORDINATOR'S RESPONSIBILITY:

To produce valid results, standardized test materials should be stored, handled, disposed of and administered in a uniform and secure manner. This requires adherence to training procedures and topics, test preparation procedures and administration practices that emphasize test security, compliance with test vendor legal, administration, handling, and disposal procedures, and adherence to the New Mexico Standards of Professional Conduct set forth at 6.60.2 .9 NMAC. These practices are intended to apply to all individuals, other than the tested students themselves, who are expressly or implicitly given access to standardized tests. The district test coordinator shall attend semiannual workshops held by PED in order to be trained and then shall provide training for all district personnel involved in test administration, preparation, and security. It shall be the responsibility of each school district's test coordinator to, at a minimum, implement and carry out the following test material preparation, handling, storage, administration, and secure disposal practices.

A. In the absence of a written district policy that includes the following procedures, the district test coordinator shall develop a checklist and written procedure for storing and handling standardized test material whereby:

(1) standardized tests shall be counted, inventoried and stored in a secure area;

(2) space permitting, standardized test material should be stored in sealed containers in a secure area;

(3) standardized test material not stored in sealed containers shall be segregated, wrapped in clear or unclear paper, and sealed securely with packing tape bearing the sealing date and the initials of the person sealing it; and

(4) standardized test material, as directed by the PED, shall be disposed of by either shredding or returning such materials to the test vendor.

B. In the absence of a written district policy that includes the following procedures, the district test coordinator shall develop a checklist and procedure for accessing standardized test material whereby:

(1) access to standardized test material shall be restricted, limited and controlled, with personnel having access designated by the district superintendent;

(2) records shall be maintained

that identify the individual who removed a standardized test(s) or other standardized test material, the name of the standardized test(s) or standardized test material that was removed, how many standardized tests or standardized test materials were removed, the identifying number of the standardized test(s) or standardized test material removed, and the date the standardized test(s) or standardized test material was removed;

(3) each standardized test material access record shall be maintained for at least five (5) calendar years and be made available for review by the PED upon request;

(4) records similar to paragraph (2) of subsection B of section 9 of 6.10.7 NMAC above shall be maintained on the return of any standardized test material removed; and

(5) the district test coordinator shall inform all district teachers, aides, educational assistants, substitutes, volunteers, licensed and unlicensed office staff, and anyone else who is likely to come into contact with standardized testing material, of the need to maintain strict standardized test security by:

(a) developing and disseminating handouts to these individuals;

(b) offering in-service training to these individuals; and

(c) prior to and during a state-mandated assessment administration window, posting conspicuous signs near school copy machines warning that PED rules prohibit the copying of any portion of a standardized test including a student's answer, and any other standardized testing material.

C. In the absence of a written district policy that includes the following procedures, the district test coordinator shall develop a checklist, in-service training and a written procedure for administering standardized tests whereby:

(1) in-service training shall be provided to all persons who administer or proctor a standardized test, and no one shall be permitted to administer or proctor a standardized test without first completing training in accordance with timelines, topics, and materials designated by the PED;

(2) only certified school instructors and administrators, excluding substitutes, educational assistants, school nurses, and coaches, shall administer a standardized test;

(3) PED sign-in forms, listing training topics and printed name and signature, shall be maintained as a record by date to identify all individuals who have completed the district training in test security, practice materials, and administration of standardized tests;

(4) each sign-in record shall be maintained for at least five (5) calendar years and be made available for review by the PED upon request;

(5) all test examiners and proctors

shall be informed that prohibited test practices include but are not limited to:

(a) changing a student's standardized test answers [~~or directing a student to~~], including but not limited to erasing, double-marked or lightly erased or lightly marked answers, or directing or suggesting that a student change a standardized test answer;

(b) providing students with a review of specific standardized test items, specific standardized test items with minor changes in settings or numbers, verbal or written restatements of standardized test items, specific vocabulary from standardized test directions or standardized test items, or answers before, during or after a standardized test;

(c) discussing, photocopying, or reproducing in any other fashion including paraphrasing, any portion of a standardized test or a student's answer;

(d) affording any student under a standardized administration extra time to complete a timed subtest, unless permitted as an accommodation;

(e) reading standardized test items aloud to students unless required in a specific standardized test or unless a student is required to be provided with special accommodations; permitting students to talk, become disruptive or exchange any papers during a standardized test;

(f) permitting students during a standardized test to have on their desk or use any unauthorized items, including but not limited to, scrap paper (if not required for a subtest), hand computers, laptop computers, cell phones with or without cameras, cameras, calculators, calculator watches and rulers unless any of these are required or permitted by standardized test instructions;

(g) permitting students to observe standardized test vocabulary words with definitions, addition or multiplication tables (in various forms), spelling words on the standardized test, or similar assistance material during the administration of the standardized test;

(i) permitting students to begin a subtest, leave the testing room, and return to finish the subtest;

(j) permitting students to enter a testing room after the standardized test has already commenced;

(k) permitting state-mandated test material to remain unattended in an unlocked room;

(l) taking standardized or state-mandated test material off campus unless specifically authorized by the district test coordinator;

(m) displaying or failing to conceal visual aids that may assist students in the testing room;

(6) test examiners shall take prompt, corrective action if they observe a

student engaged in any prohibited conduct during a standardized test; and

(7) all test examiners shall be informed of their duty to promptly report testing irregularities as soon as they are aware to the district test coordinator.

D. Regardless of whether a district elects to appoint a school test coordinator, district test coordinators shall provide in-service training to all principals in their district in the storing, handling, destruction, and administration of standardized test material.

(1) Principals shall receive the same in-service training and be charged with the same knowledge as those administering standardized test material and those serving as test examiners as set forth in Subsection C of Section 6.10.7.9 NMAC above.

(2) Although district test coordinators need not directly train assistant principals within their districts, if they choose not to train them, they shall at a minimum require assistant principals to be knowledgeable in accordance with subsection C of section 9 of 6.10.7 NMAC above.

E. All training required by this section shall be administered prior to the fall and spring test administration windows. The assessment and evaluation unit of the PED shall inform the district test coordinators of the dates of those test administration windows in a memo disseminated to each district test coordinator at least annually.
[6.10.7.9 NMAC - N, 09-28-01; A, 11-13-09; A, 03-15-12]

6.10.7.14 CORRECTIVE MEASURES: After investigating suspected testing irregularities and confiscating any standardized test material it deems necessary to conclude its investigation, the PED may take any combination of the following corrective measures:

A. direct the district or a named individual to cease and desist engaging in a particular testing irregularity or the administration of further standardized tests during the current school year;

B. confiscate any standardized test materials that jeopardizes the security of the standardized test;

C. recommend any further action it deems reasonable and necessary to maintain test security;

D. invalidate the standardized test results and inform the district that a specific standardized test or portion of a standardized test must be replaced with a re-administered similar or alternative form, or any affected student will not receive scores on portions or all of a standardized assessment;

E. refer the matter for possible suspension or revocation of

a person's educator or administrator licensure or other PED licensure pursuant to procedures set forth in the PED's suspension/revocation rule;

F. refer the matter to the accreditation team for appropriate action;

G. take any other action authorized by state or federal law or regulation;

H. modify school and district accountability determinations.

[6.10.7.14 NMAC - N, 09-28-01; A; 11-13-09; A; 03-15-12]

NEW MEXICO SECRETARY OF STATE

The following Secretary of State rules: Rule No. 88-1, Optech I-III Absentee Ballot Card Form for Electronic Vote Tabulating Machines, filed 10/14/1988, 1 NMAC 10.3, Fail Safe Voting, filed 5/16/1996, 1.10.26 NMAC, Inactive Voter List, filed 9/16/2005 and 1.10.28 NMAC, Distribution of Voter Information, filed 9/16/2005 are repealed effective 3/15/2012.

NEW MEXICO SECRETARY OF STATE

TITLE 1 G E N E R A L GOVERNMENT ADMINISTRATION CHAPTER 10 ELECTIONS AND ELECTED OFFICIALS PART 35 VOTER RECORDS SYSTEM

1.10.35.1 ISSUING AGENCY:
Office of the Secretary of State
[1.10.35.1 NMAC - N, 3-15-2012]

1.10.35.2 SCOPE: This rule applies to the uniform operation and maintenance of the statewide computerized voter registration system in each of the thirty-three (33) counties of New Mexico and the office of the secretary of state.
[1.10.35.2 NMAC - N, 3-15-2012]

1.10.35.3 S T A T U T O R Y AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Section 1-5-31 C., NMSA 1978, Public Law 103-31, The National Voter Registration Act of 1993; Public Law 107-252, The Help America Vote Act of 2002;. The issuing authority shall issue rules to establish and administer the statewide computerized voter registration system and to require deadlines and timelines for the updating of voter files.
[1.10.35.3 NMAC - N, 3-15-2012]

1.10.35.4 D U R A T I O N :
Permanent.
[1.10.35.4 NMAC - N, 3-15-2012]

1.10.35.5 EFFECTIVE DATE:
3-15-2012, unless a later date is cited at the end of a section.

[1.10.35.5 NMAC - N, 3-15-2012]

1.10.35.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 270, Laws 2005. The purpose of the amendment is to require the secretary of state to adopt such rules as are necessary to establish and administer the statewide computerized voter registration system and to require timelines for the updating of voter files. It is also the objective of this rule to provide for uniform administrative practices to carry out the provisions of the Election Code.

[1.10.35.6 NMAC - N, 3-15-2012]

1.10.35.7 DEFINITIONS:

A. "Active voter" means a registered voter: (1) who has no change of address; (2) who has had a change of address and who has informed the county clerk of that change of address; (3) who has had a change of address, been sent a confirmation mailing, and who has voted in any election since the confirmation mailing was sent; or (4) is a registered voter who has not been declared to be an inactive voter.

B. "Agency central" means the secretary of state's office when entering data into the statewide voter file to notice county clerks that ineligible voters be removed from the voter file due to death or felony conviction.

C. "Board of registration" means the voters of a county who are appointed by the board of county commissioners and serve under the provisions of 1-4-33 through 1-4-38, NMSA 1978.

D. "Cancelled" means the status of a person's voter registration record when that person is no longer eligible to vote due to death; transfer of residence to another county or state; a finding by a court of legal insanity; felony conviction while the person is in prison, on parole, or on supervised probation; or at the voter's request.

E. "Certificate of registration" means the form, prescribed by the secretary of state or the federal form complying with the National Voter Registration Act of 1993, used by qualified electors to register to vote in the state.

F. "Confirmation card" means a postage prepaid and preaddressed notice, with language in compliance with the National Voter Registration Act of 1993, sent by forwardable mail, with a postage prepaid return postcard on which a voter may state the voter's current address.

G. "Confirmation mailing" means a non-discriminatory mass mailing; conducted by the office of the

secretary of state to voters flagged as NVRA on the statewide voter file and to voters who have filed a change of address request with the postal service since the last confirmation mailing.

H. “County” means an administrative district of the state of New Mexico.

I. “County register” means a physical file of voter registration records kept in fire resistant containers at the county clerk’s office

J. “County voter file” means the computerized version of the county register, comprising a portion of the statewide voter file.

K. “Data recording media” means physical material that holds data expressed in any existing electronic format.

L. “District” means a distinct territorial subdivision containing a body of eligible voters within the represented area.

M. “Duplicate reports” means the process of verifying that voters are not registered in more than one county of the state, or registered more than once in a single county.

N. “Election” means any statewide special election, general election, primary election, special county-wide election or special elections to fill vacancies in the office of United States representative and regular or special school district elections.

O. “File maintenance” means the total activities undertaken by county or state election officials to ensure the accuracy and integrity of the statewide voter file.

P. “Inactive voter” means a voter who has been mailed a confirmation card in accordance with 42 U.S.C. 1993 gg 6(d) and who has either failed to respond or has failed to vote in any election conducted after the mailing of the confirmation card.

Q. “Initial mailing” means the first mailing to a voter, by the county clerk, which is returned as undeliverable by the postal service.

R. “Mailing address” means the address at which a voter receives correspondence; it is the address in the “physical street address where you live now” box on the certificate of registration, unless the voter’s address has been updated by the county clerk and the updated address is attached to the certificate of registration, or unless a voter has entered a different mailing address in the “address where you get your mail (if different from above)” box on the certificate of registration.

S. “Module” means a portion of the statewide voter records system program that carries out a specific function and may be used alone or combined with

other modules of the same program.

T. “New registrant” means a voter who has never been registered in any county within the state.

U. “Non-standard address” means an unnamed street, unknown structure or directional address not on the county street file.

V. “NVRA” means a designation in the statewide voter file indicating a voter was sent a non-discriminatory mailing other than a confirmation mailing, which was returned to the county clerk as undeliverable.

W. “Physical address” means the location of a voter’s residence.

X. “Precinct” means a part of a county with definite boundaries established for electoral administrative functions.

Y. “Precinct part” means the designation given when a precinct is divided by one or more electoral districts.

Z. “Precinct voter list” means a voter list arranged in alphabetical order of voter surname within and for each precinct.

AA. “Public service request” means information prepared for an individual or organization requesting certain information from the voter records system.

BB. “Registrant detail” means all data entered into the voter records system for an individual voter.

CC. “Removable” means the designation in the statewide voter file for the voter registration record of a person registered to vote whose voter registration has been cancelled due to death, transfer of residence to another county or state, a finding by a court of legal insanity, felony conviction while the person is in prison, on parole or on supervised probation, or at the voter’s request.

DD. “Scanned image” means the digital conversion of the certificate of registration and any other document relating to the voter’s record.

EE. “Special voter list” means a prepared list of selected voters arranged in the order in which requested.

FF. “Street file” means a method of geocoding, including address ranges, road networks and providing for incremental updates.

GG. “Suspense status” means an applicant for voter registration whose status as a voter is held in abeyance until certain voter qualifications are met.

HH. “Transfer report” or previous registration report means a listing of voters on the voter file who have moved from one county to another and reregistered in their new county of residence.

II. “Undeliverable mailing” means correspondence sent to a voter and returned by the postal service

indicating that the voter no longer receives mail at that address.

JJ. “Voter” means any qualified elector who is registered under the provisions of the Election Code.

KK. “Voter data” means selected information from the voter file.

LL. “Voter file” means all voter information required by law and by the secretary of state that has been extracted from the certificate of registration of each voter in the county, stored on the voter records system and certified by the county clerk as the source of all information required by the Voter Records System Act.

MM. “Voter history” means extracted voter information from the voter file indicating the jurisdiction where a voter voted, election and date, political party, if any, precinct or precinct part, location and method of voting.

NN. “Voter list” means any prepared list of voters.

OO. “Voter records system” means the statewide computerized voter registration system, in compliance with the Help America Vote Act of 2002, developed, implemented, established, supervised and maintained by the secretary of state.

[1.10.35.7 NMAC - N, 3-15-2012]

1.10.35.8 ADDING AND TRANSFERRING VOTERS:

A. A new registrant added to the county voter file shall be entered using the duplicate search module to determine if the voter is new to the state or is to be transferred from another county.

B. All registrant detail and statutorily required data must be entered from the certificate of registration into the voter file including social security number and date of birth.

C. The county clerk may establish a best practice of proofreading data entry to prevent errors and duplicate voter entry. Proofreading may be done by a staff member who did not complete the original entry and the proofreading search for the record may be conducted using different criteria (i.e. date of birth or name rather than social security number).

D. The county clerk shall scan each certificate of voter registration in the county register. All scanned images attached to a voter record transferred to another county shall be retained as attached to that record.

E. In addition to any e-mail notification, the county clerk shall prepare a monthly transfer report or report of previous registration. The names of voters from the transfer report shall be used to attach to the original certificate of registration in the county register when a voter is being removed from the county voter file. The county clerk shall not mail photocopies of

certificates of registration to another county in lieu of the transfer report.

F. Pursuant to Section 1-4-15 C, NMSA 1978, a voter who does not declare a political party preference shall be entered into the voter file as "Decline to State". County clerk staff shall not check the "no party" box on the certificate of voter registration, but shall leave it blank.

G. A voter who is not eighteen (18) years of age at the time of registration, but will be eighteen (18) years of age by the date of the next election, shall be placed in suspense status. At thirty-five (35) days and twenty-one (21) days prior to the next election, the county clerk shall run a suspense query report of the county voter file and activate suspense voters on the appropriate date prior to the election.

H. Any necessary notations on the certificate of registration by county clerk's staff shall be done on the appropriate area of the form.

I. The county clerk shall maintain a listing of addresses for commercial mail box establishments, if any, to prevent the entry of a non-residential address as a residence address into the voter file.

[1.10.35.8 NMAC - N, 3-15-2012]

1.10.35.9 FILE MAINTENANCE:

A. The secretary of state shall contract with a postal service approved vendor of the national change of address program (NCOA) pursuant to Section 1-4-28, NMSA 1978. The entire statewide voter file shall be compared to the NCOA listings for the confirmation mailing.

B. The secretary of state shall also create a file of all active voters designated NVRA on the statewide voter file due to an initial undeliverable mailing returned to the county clerk and so designated by the county clerk in the county voter file.

C. All active voters appearing in either the NCOA or the NVRA files shall be mailed a confirmation card to the voter's mailing address. The confirmation card shall be returned by the voter no later than twenty-eight (28) days prior to the next general election.

D. The secretary of state shall deliver returned and address corrected confirmation cards to the county clerk and the county clerk shall enter the corrected address into the voter file, scan the confirmation card and attach the scanned image to the voter's record in the voter file. The physical confirmation card shall be attached to the voter's certificate of registration to be filed in the county register.

E. The secretary of state shall return to the county clerk any confirmation card with an address indicating that the voter has moved to another state or

county. If the voter has moved to another county, the county clerk shall forward a photocopy or scanned image of the confirmation card to the county clerk of that county and the voter shall be mailed a new certificate of registration by the county clerk of the county where the voter now resides.

F. If the voter's confirmation card indicates they have moved to another state or country, they shall be removed from the file and the voter's certificate of registration, with the confirmation card attached, shall be removed from the county register, and retained for six (6) years.

G. A voter whose confirmation card is returned undeliverable shall be designated on the voter file as "inactive" The designation shall be carried out only by the secretary of state.

H. A voter is eligible for removal from the voter file if the voter has not been returned to active status, corrected the voter's address on the certificate of registration and not appeared to vote during a period beginning on the date of the confirmation mailing and ending on the day after the date of the second general election that occurs after the date of the confirmation mailing.

I. Cancellation of voter registration shall be by the board of registration and subject to the provisions of the election code. Upon cancellation, the county clerk shall remove the certificate of registration from the county register and retain it for six (6) years.

J. The county clerk shall conduct monthly duplicate reports on the voter file, but in no case shall this maintenance be conducted when voter registration is closed for an election. Duplicate reports shall use combinations of data searching (e.g. first name, last four digits of social security number, birth date) the county clerk determines will be most productive in discovery of duplicate voter registrations.

K. The county clerk shall establish a street file of standard 911 residential addresses within the voter file to determine a registrant's physical address and shall attempt to correct all non-standard addresses, if any.

L. The county clerk shall ensure that all political subdivision changes due to reapportionment, redistricting or annexations are entered into the voter file and voters are assigned to correct voting districts, precincts or precinct parts, if any.

M. The county clerk shall designate a cancelled voter's record as removable in the county voter file if the voter is deceased, an ineligible felon, has been declared incompetent by a court of law, has moved outside the county or state, or has a duplicate registration. A voter's record shall

also be designated cancelled or removable at the voter's request or in the case of data entry error.

N. The county clerk shall, after each election, enter the voter history for each voter in the election into the voter file.

O. List maintenance activities shall be conducted in a non-discriminatory manner and in no instance shall select groups of voters be targeted for cancellation or removal from the voter file.

P. All user names and passwords shall be kept confidential by each authorized user of the statewide voter registration system.

[1.10.35.9 NMAC - N, 3-15-2012]

1.10.35.10 VOTER RECORDS REQUESTS:

A. All requesters of voter file data or public service requests shall complete the affidavit of authorization prescribed by the secretary of state.

B. The secretary of state shall develop a uniform fee schedule for data recording media, voter data, voter lists, special voter lists, precinct lists, printed labels, and early and absentee daily voting reports. County clerks may require a deposit for any data requested.

[1.10.35.10 NMAC - N, 3-15-2012]

1.10.35.11 F E L O N Y CONVICTION AND RESTORATION OF ELIGIBILITY:

A. The secretary of state, as agency central shall enter all state and federal felony convictions into the statewide voter file monthly. The secretary of state shall send monthly notices of ineligibility to each county clerk. Upon such notice, the county clerk shall remove the voter's certificate of registration from the county register.

B. When the secretary of state receives notice of restoration to voting status, the secretary of state shall enter the voter's restoration of eligibility into agency central.

C. The secretary of state shall send special notices of conviction or restoration of eligibility prior to the close of registration for any election.

[1.10.35.11 NMAC - N, 3-15-2012]

1.10.35.12 D E C E A S E D VOTERS:

A. The secretary of state as agency central shall enter, as the method of forwarding to county clerks, the list of deceased voters received from vital statistics into the statewide voter file monthly.

B. The county clerk shall check the daily or weekly obituaries in the local newspaper of record. The county clerk may also use probate information or information pursuant to Section 1-4-25 F, NMSA 1978.

C. Upon designating a voter as cancelled or removable in the voter file, the county clerk shall remove the voter's certificate of registration from the county register and retain it for six (6) years. [1.10.35.12 NMAC - N, 3-15-2012]

HISTORY OF 1.10.35 NMAC:
[RESERVED]

NEW MEXICO SECRETARY OF STATE

This is an amendment to 1.10.12 NMAC, Sections 2, 6-15, 17-20, effective March 15, 2012.

1.10.12.2 SCOPE: This rule applies to any special statewide election, general election, primary election or elections to fill vacancies in the office of United States representative, special county wide and regular or special school district elections as modified by the School Election Law (Sections 1-22-1 to 1-22-19 NMSA 1978). [1.10.12.2 NMAC - N, 3-31-2000; A, 3-15-2012]

1.10.12.6 OBJECTIVE: The Absent Voter Act (Sections 1-6-1 through 1-6-18 NMSA 1978) hereinafter referred to as the act was enacted by Laws 1969, Chapter 240, Section 127. Pursuant to the New Mexico Constitution, Art. IV, Section 23, the act was amended by Laws 1999, Chapter 267, Laws 2001, Chapter 58, Laws 2003, Chapter 357 and Laws 2005, Chapter 270. The purpose of the act is to allow voters to vote twenty-eight (28) days prior to an election on paper ballots by mail or on paper ballots on voting systems in person at the office of their county clerk or to vote in person at an alternate voting location or mobile alternate voting location established by the county clerk [on paper ballots or a voting machine]. The Absent Voter Precinct Act (Sections 1-6-19 through 1-6-25 NMSA 1978) was enacted by Laws 1969, Chapter 54, Section 1. The objective of this rule is to establish rules and regulations protecting the integrity, security and secrecy of the absentee ballot. [1.10.12.6 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

1.10.12.7 DEFINITIONS:

A. "Absentee ballot" means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

B. "Absentee ballot register" means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition

of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter; and the date and time of receipt of the ballot.

C. "Absentee voting daily report" means a form prescribed and approved by the office of the secretary of state consisting of the voting machine serial number, beginning public counter number, ending public counter number, [~~beginning protective counter number, ending protective counter number, closing seal number~~] and daily total number of voters per machine. It shall contain a signature line for the county clerk or authorized deputy and a line for the date.

D. "Alternate voting location" means a site outside the office of the county clerk, established by the county clerk, where a voter may cast an absentee ballot and includes mobile alternate voting locations.

E. "Application" means an absentee ballot application, prescribed by the secretary of state.

F. "Ballot" means a [~~paper ballot card used on an optical scan vote tabulating machine or direct recording electronic voting system~~] system for arranging and designating for the voter the names of candidates, constitutional amendments and other questions to be voted on and for the marking, casting or otherwise recording or such votes, and the term includes absentee ballots, provisional ballots and all other paper ballots.

G. "Blank ballot" means a paper ballot on which the voter has not selected any of the alternatives allowed in any candidate contest or ballot question.

H. "Challenger" means a voter of a precinct located in that county to which [~~he~~] the voter is appointed as challenger.

I. "County canvassing board" means the board of county commissioners in each county (Section 1-13.1 NMSA 1978).

J. ~~"Direct recording electronic voting system"~~ means one that records votes by means of a ballot display provided with electro-optical devices that can be actuated by the voter, that processes the data by means of a computer program, and that records ballot images in internal memory devices. It produces a tabulation of the voting data as a hard copy or stored in a removable memory device.

K. ~~"Election"~~ means any special statewide election, general election, primary election or special elections to fill vacancies in the office of United States representative, special county wide and regular or special school district elections.

L. ~~"Early voter"~~ means

a voter who votes in person before election day, and not by mail.

M. ~~"Election cycle"~~ means the period of time commencing at 7:00 a.m. on the day of the general election until 7:00 p.m. on the day of the general election two (2) years subsequent.

N. ~~"Electronic vote tabulating (EVT) marksense voting system"~~ or **"optical scan vote tabulating system"** means a voting system which records and counts votes and produces a tabulation of the vote count using one ballot card imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

O. ~~"High-speed central count marksense ballot tabulator"~~ means a self-contained optical scan ballot tabulator, that uses an automatic ballot feeder to process ballots placed in the tabulator [~~in any orientation~~]. Ballots are processed at high-speed and the tabulator has a built in sorting system to divert processed ballots into appropriate bins.

P. ~~"Marksense ballot"~~ means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high speed central count marksense vote tabulator.

Q. ~~"Overvoted ballot"~~ means a ballot on which the voter has voted for more than the number of candidates to be elected for that office, or in both the affirmative and negative on a ballot question.

R. ~~"Precinct board"~~ means the deputized individuals who staff the absent voter [precinct board] ballot counting location or alternate voting location, who are appointed election officials pursuant to [~~Section 1-6-24 NMSA 1978~~] the provisions of the Election Code.

S. ~~"Required voter identification"~~ means the forms of identification as specified in Section 1-1-24 NMSA 1978.

T. ~~"Undervoted ballot"~~ means a paper ballot that is not a blank ballot and on which the voter has selected at least one candidate or answered at least one ballot question in accordance with the instructions for that ballot type, but on which the voter has selected fewer than the number of alternatives allowed in a candidate contest or on a ballot question.

U. ~~"Voter"~~ means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provisions of the Election Code of the state of New Mexico.

V. ~~"Voting response area"~~ means the place on an absentee ballot where the voter is instructed to mark his preference

for a candidate or question.

[1.10.12.7 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-30-2004; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

1.10.12.8 APPLICATION:

A. An application for an absentee ballot may be made only on a blank form prescribed by the secretary of state. The prescribed form may not be altered without approval of the secretary of state.

B. Completed applications shall be signed by the voter and returned to his the voter's county clerk. Applications returned to the county clerk by facsimile means shall not be accepted except as provided by Subsection D of Section 1-6-4.1 NMSA 1978 and Subsection G of Section 1-6-5 NMSA 1978. The county clerk shall not accept any application without the original signature of the voter except as provided by Subsection D of Section 1-6-4.1 NMSA 1978 and Subsection G of Section 1-6-5 NMSA 1978.

[1.10.12.8 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-30-2004; A, 4-28-2006; A, 3-15-2012]

1.10.12.9 A B S E N T E E VOTING:

A. A voter may vote absentee by:

(1) completing and subscribing an absentee ballot application, wherein the ballot is mailed to the residence or temporary residence of the voter; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter may mail or hand-deliver his the ballot to the office of the county clerk only, or designate another individual to deliver the ballot pursuant to the Absentee Voter Act; the voter may also deliver the ballot to any polling place within the voter's county of registration before the close of the polls;

(2) completing and signing an absentee ballot application in the office of the county clerk; the voter shall mark the ballot, seal the envelope and sign as provided according to the instructions; the voter shall hand-deliver the ballot to the county clerk or designated deputy prior to leaving the office of the county clerk;

(3) completing and signing an absentee ballot application in the office of the county clerk twenty-eight (28) days prior to the election; the voter may cast his ballot the vote on a paper ballot ~~[or direct recording electronic voting system or]~~ electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978;

(4) completing and signing an early voter absentee ballot application at an alternate location or mobile alternate voting location established by the county clerk

and voting on a ~~[direct recording electronic voting system or]~~ electronic vote tabulating marksense voting system certified and approved for use in New Mexico elections pursuant to Section 1-9-14 NMSA 1978; or

(5) requesting electronic transmission of an absentee ballot pursuant to the provisions of Section 1-6-4.1 NMSA 1978 ~~[or Subsection G of Section 1-6-5 NMSA 1978; only a federal qualified elector or overseas voter may transmit the ballot back to the county clerk by electronic transmission]~~ and 1-6-9 NMSA 1978.

B. Upon receipt of the absentee ballot application from the voter, the county clerk or precinct board member shall review it for completeness. When it is determined that the application is complete and that the applicant has a valid certificate of registration on file in that county, the county clerk or precinct board member shall mark the application "accepted" with the date and time of receipt and enter the required information in the absentee ballot register. If the applicant is voting absentee in-person, the county clerk or precinct board member shall instruct the voter on how to proceed to vote. The county clerk or precinct board member shall ensure that the applicant votes before leaving the office of the county clerk or alternate location.

C. An absentee in-person voter who requests assistance may be assisted only by a person of the voter's own choice, provided that the voter is visually impaired, physically disabled, unable to read or write, or a member of a language minority who has an inability to read well enough to exercise the elective franchise. The precinct board shall note the fact that the voter received assistance and the identity of the person providing the assistance.

D. For the purposes of absentee voting, electioneering is not permitted in the office of the county clerk, alternate voting location, or mobile alternate voting location. Electioneering consists of any form of campaigning within one hundred (100) feet of the door of the county clerk's office or alternate voting location. Electioneering includes the display of signs or campaign literature, campaign buttons, t-shirts, hats, pins, or other such items and includes the verbal solicitation of votes for a candidate or question.

E. Alternate voting locations shall be sited with respect to serving the convenience of the greatest number of voters, reducing travel time and ~~[to ensure]~~ ensuring a high level of voting system security.

F. An absentee voter who is required to present identification pursuant to the Election Code and has not done so at the time the voter's ballot is mailed, shall be mailed instructions by the county clerk. The instructions shall inform the voter that failure

to submit the required documents with the ballot may result in the ballot not being counted. The county clerk shall also instruct the voter not to place the required documents in the inner envelope with the ballot. A voter entitled to vote by absentee ballot pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act or a voter provided the right to vote under the provisions of the Voting Accessibility for the Elderly and Handicapped Act is exempt from the requirement that first time voters who registered by mail must provide identification pursuant to the provisions of the Election Code and Section 303 of the Help America Vote Act.

G. Transmittal and receipt of electronically transmitted ballots pursuant to the provisions of Section 1-6-4.1 NMSA 1978 shall be by a ~~[standalone, non-networked]~~ computer, within the office of the county clerk. ~~[No]~~ Electronically transmitted and received ballot materials shall be ~~[received]~~ processed in the office of the county clerk by ~~[any]~~ a computer that is ~~[connected to the statewide voter file or other networks that may be damaged by the transmission of computer viruses or other programs that may damage existing systems;]~~ equipped with secured intrusion detection and protection systems, protecting the firewall and local network from network intrusions, managed at the county level. Ballots may also be transmitted by facsimile means.

[1.10.12.9 NMAC - N, 3-31-2000, A, 4-30-2002; A, 7-15-2003, A, 4-30-2004; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

1.10.12.10 ABSENTEE PAPER

BALLOTS: Except as otherwise provided in Section 1-6-4.1 NMSA 1978 and the Uniformed and Overseas Citizens Absentee Voting Act, 1 U.S.C. Sections 101 et seq., there shall be one uniform paper ballot. No visual distinction shall be made between absentee ballots, emergency paper ballots, alternative[;] or provisional ~~[or fail-safe]~~ ballots. ~~[Ballot stubs may be color-coded to differentiate between political parties in a primary election or ballot combinations in other elections;]~~

[1.10.12.10 NMAC - N, 3-31-2000; A, 7-15-2003; A, 4-30-2004; A, 9-15-2008; A/E, 9-30-2008; A, 3-15-2012]

1.10.12.11 VOTING MACHINE BALLOT SECURITY:

A. At least ~~[five]~~ ten (10) days before the absentee voting period commences the county clerk shall prepare, inspect and seal any electronic voting machine in accordance with the specifications provided by the manufacturer and the provisions of state law.

B. At least one day before the absentee voting period commences, the

county clerk shall certify to the secretary of state and all political party county chairs, in a primary, general election or special election for U.S. representative, the type and serial number of each voting machine used in the county for absentee voting. The certification shall be ~~[sent by facsimile]~~ transmitted to the bureau of elections at the office of the secretary of state.

C. Each electronic voting machine shall be situated within the office of the county clerk, alternate voting location or mobile alternate voting location in a physical location that best safeguards the secrecy of the vote and protects the security of the voting system. Only the voter or the person assisting the voter shall be allowed to enter the voting ~~[machine]~~ booth or handle the ballot while the voter votes.

D. The county clerk shall ensure that each voting machine located within the office of the county clerk or alternate voting location shall be secured by a lock and key or seal. Each day during the ~~[absentee]~~ early voting period, the county clerk or designated deputy shall, in the presence of one other employee of the county clerk or precinct board member, unlock the office where the voting machine is located. Similarly, at the close of regular office hours, the county clerk or designated deputy shall, in the presence of one other employee of the county clerk or precinct board member, lock the office where the voting machine is located. Immediately after unlocking or locking the office where the voting machine is located, the county clerk and the employee or precinct board member present shall sign or initial the absentee voting daily report. The report shall immediately be transmitted ~~[by facsimile means]~~ to the bureau of elections at the office of the secretary of state. ~~[Absentee]~~ Early voting daily reports for a mobile alternate voting location shall be submitted for the previous day's activity on the next regular business day.

E. The county clerk shall prepare a list of those individuals ~~[that]~~ who have authorized access to alternate voting locations or mobile alternate voting location. This list shall indicate those persons authorized as custodians of voting machine or ballot box keys or seals. A copy of this list shall be provided to the office of the secretary of state and, in a primary, general election or special election for U.S. representative, the chairs of each county's political parties.

F. ~~[Thirty(30)]~~ Ninety (90) days prior to the beginning of early voting, a county clerk ~~[that]~~ who establishes an alternate location or mobile alternate voting location shall notify the secretary of state of the dates, times and locations. The county clerk shall ~~[also submit a security plan which includes, but is not limited to, a method to secure]~~ train all county clerk's staff and

precinct board members who process early and absentee voters ensuring that no voter who has cast a ballot at an alternate location or mobile alternate voting location may then cast a ballot at the voter's polling place on election day. Certificates of voting machine preparation for voting systems at alternate voting locations and mobile alternate voting locations shall be submitted to the secretary of state pursuant to Section 1-11-7 NMSA 1978.

G. The county clerk shall publicize the date, time of operation and location of any alternate voting location or mobile alternate voting location using media directed to, and appropriate for, the voters of that area.

H. A county clerk may exercise the discretion to designate a mobile alternate voting location if the clerk deems it will assist voters in rural areas of the county, or on an Indian nation, tribal area or pueblo land in the county. Mobile alternate voting locations shall be staffed by a precinct board consisting of a minimum of two registered voters of the county of different political parties or without political party affiliation. The county clerk shall ensure that each mobile alternate voting location has interpreters as may be required by state or federal law or federal consent decree. The mobile alternate voting location may not be staffed by the county clerk if the county clerk's name appears on the ballot.

[1.10.12.11 NMAC - N, 3-31-2000; A, 7-15-2003, A, 4-30-2004; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

1.10.12.12 ABSENTEE BALLOT BOX SECURITY:

A. The county clerk or authorized deputy shall be the sole custodian of absentee ballot box keys or seals and shall take all appropriate measures to provide for the security of such keys or seals.

B. Absentee ballot boxes shall not be opened from the commencement of absentee voting until election day, except as provided by Section 1-6-11 NMSA 1978.

~~[E:]~~ A county clerk shall provide separate absentee ballot boxes for each precinct.

~~D:]~~ C. Absentee ballot boxes shall be located in a physical location in the county clerk's office or alternate voting location that best safeguards the security and secrecy of the ballot.

[1.10.12.12 NMAC - N, 3-31-2000; A, 4-28-2006; A, 9-15-2008; A, 3-15-2012]

1.10.12.13 V O T E TABULATION:

A. Any absentee in-person voter voting by electronic vote tabulating marksense voting system shall be instructed to mark and personally feed the ballot into the voting machine in order to ~~[record]~~

tabulate the voter's vote. The absentee precinct board shall feed all absentee by-mail ballots into the voting machine in order to ~~[record]~~ tabulate the voter's vote.

~~B:]~~ Any voter voting absentee by means of a direct recording electronic system shall be instructed on the use of the voting machine before the voter enters the machine. The voter shall be instructed to press the square to the right of the candidate name or question on which he or she desires to vote, and after all selections are made, the voter shall be instructed to press the vote button in the lower right hand corner of the voting machine to record each vote. The direct recording electronic voting system shall not be reactivated if the voter has pressed the cast vote button before completing all selections.

~~C:]~~ B. Absentee votes cast on any voting device in the office of the county clerk twenty-eight (28) days prior to an election shall not be combined and counted with hand-delivered or mailed absentee ballots. A separate voting machine or voting machine ~~[cartridge]~~ removable storage media device shall be used to tabulate these ballots.

~~D:]~~ C. ~~[Class A]~~ Any counties in possession of high-speed central count marksense ballot tabulators shall use such machines ~~[on election day]~~ in the tabulation of hand-delivered or mailed marksense absentee ballots.

~~E:]~~ D. High-speed central count marksense vote tabulators used to tabulate marksense absentee ballots shall be programmed to tabulate ballots by precinct.

[1.10.12.13 NMAC - N, 3-31-2000; A, 4-30-2002; A, 7-15-2003; A, 4-30-2004; A, 9-15-2008; A, 3-15-2012]

1.10.12.14 O V E R V O T E D , BLANK, MISREAD AND UNDERVOTED BALLOTS:

A. Electronic vote tabulating marksense voting systems shall be programmed to ~~[insure]~~ ensure that no overvoted, blank, or misread ballots are accepted or scanned by the voting system, and that all undervoted ballots are accepted or scanned by the voting system. Overvoted, blank or misread ballots shall be rejected by the voting system and returned to the voter, if the voter is voting absentee in-person.

B. If an absentee in-person ballot is returned as overvoted, the overvoted ballot shall be spoiled and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope ~~[and deposit the envelope into a ballot box]~~ and return the spoiled ballot envelope to the office of the county clerk, pursuant to Section 1-12-62 D, NMSA 1978. The voter shall then be issued a new ballot and be instructed to return to the voting booth and mark the ballot. Upon

emerging from the voting booth the voter shall personally feed the ballot into the electronic vote tabulating marksense voting system.

C. If an absentee in-person ballot is misread, the voter shall be instructed to insert the ballot in a different orientation. If the ballot is misread again, the ballot will be spoiled and the county clerk or precinct board member shall instruct the voter to insert the spoiled ballot into a spoiled ballot envelope ~~[and deposit the envelope into a ballot box]~~ and return the spoiled ballot envelope to the office of the county clerk, pursuant to Section 1-12-62 D, NMSA 1978. The voter shall then be issued a new ballot and be instructed to return to the voting booth and mark the ballot. Upon emerging from the voting booth the voter shall personally feed the ballot into the electronic vote tabulating marksense voting system.

D. If an absentee by-mail ballot that is overvoted, blank or misread is rejected when scanned by the voting system, it shall be fed a second time into the voting system which shall have been programmed to tabulate overvoted, blank, misread or undervoted ballots. Any absentee by-mail ballot that is rejected a second time shall be hand tallied by the absentee precinct board. [1.10.12.14 NMAC - N, 3-31-2000; A, 9-15-2008; A, 3-15-2012]

1.10.12.15 ABSENTEE PRECINCT BOARDS:

A. On election day, or pursuant to Section 1-6-11 NMSA 1978, prior to 7:00 a.m., the county clerk shall issue a receipt for all voting machines and ballot boxes to a special deputy county clerk. The receipt shall indicate the date and time the machine was removed from the office of the county clerk or alternate location, by whom, the serial number of the machine and the number of votes recorded on the machine. At 7:00 a.m. on election day, or pursuant to Section 1-6-11 NMSA 1978, a special deputy county clerk shall deliver the electronic voting machines, all ballot boxes ~~[and]~~, the absentee ballot register and signature roster to the absentee precinct board. The special deputy county clerk shall obtain a receipt executed by the presiding judge and each election judge specifying the serial number of the machine, the number of votes recorded on the machine, the number of ballot boxes delivered and shall return such receipt to the county clerk for filing.

B. The county clerk shall issue red pencils or pens to be used as writing instruments by the precinct board, except the presiding judge shall be issued an ink pen for the purpose of signing and filling out documents required by the Election Code. Precinct board members handling or counting ballots shall have no other writing

or marking instruments.

C. If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count the ballot as provided for in ~~[Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2]~~ Section 1-1-5.2 NMSA 1978. In no case, shall the counting team mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent. In the instance of machine malfunction or inability of the voting system to read the ballot, the precinct board shall hand tally ballots.

D. Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period and absentee ballots cast in-person on a voting machine in the office of the county clerk or at an alternate location shall be counted by precinct.

E. Absentee ballots received by mail or hand delivered during the twenty-eight (28) day absentee voting period shall not be counted on the same voting system used for in-person voting at the office of the county clerk or on any voting system used at an alternate location.

F. The absentee precinct board shall tally alternative, replacement~~[-]~~ and presidential ~~[and federal]~~ ballots only after determination that the voter has not voted with an absentee ballot or in person as an early voter.

G. An absentee ballot without a signature on the outer envelope shall be rejected, pursuant to the provisions of the Election Code, however a signature shall not be rejected because it contains an abbreviated name, lack or middle initial or name, or lack of suffix, provided that the absentee precinct board can identify the voter with other information provided on the outer envelope.

H. When an absentee ballot is received by a county clerk's office without a signature, the county clerk shall secure the unsigned ballot within the clerk's office and report on the total number of unsigned ballots to the canvassing board. The report shall be forwarded to the office of the secretary of state with other canvassing materials.

[1.10.12.15 NMAC - N, 3-31-2000, A, 4-30-2002; A, 7-15-2003, A 4-30-2004; A, 4-28-2006; A, 9-15-2008; A/E, 9-30-2008; A/E, 11-3-2008; A, 3-15-2012]

1.10.12.17 PAPER BALLOT TRANSFER:

A. If a tabulated ballot holding bin on an optical scanning voting system at an alternate voting location or polling place becomes full prior to the close of voting, the presiding judge and a member of the precinct board of another political party or undeclared political party affiliation

shall unlock the bin, in the presence of the precinct board and transfer the contents of the bin to a locked or sealed ballot box. The precinct board shall execute a certificate of ballot transfer, prescribed by the secretary of state, ~~[that]~~ which shall include the date and time of the ballot transfer and be signed by the members of the precinct board. The presiding judge shall then transfer the locked or sealed ballot box to the custody of the county clerk or a deputy county clerk who shall sign for receipt of the locked ballot box.

B. The deputy county clerk delivering the locked or sealed ballot box to the custody of the county clerk shall execute a certificate of transmittal, prescribed by the secretary of state, ~~[that]~~ which includes the date and time of receipt of the locked or sealed ballot box from the precinct board. The county clerk or a deputy county clerk shall sign for receipt of the locked or sealed ballot box on the certificate of transmittal and secure the ballot box in accordance with 1.10.12.12 NMAC.

[1.10.12.17 NMAC - N, 9-15-2006; A, 3-15-2012]

1.10.12.18 SECURITY FOR UNVOTED PRE-PRINTED BALLOTS AT ALTERNATE VOTING LOCATION:

A. On the first day of early/absentee voting at the alternate location, the county clerk or ~~[the county clerk's authorized deputy]~~ a deputy county clerk shall deliver to the alternate voting location a storage box containing unvoted marksense ballots locked with two padlocks.

B. In the presence of the alternate voting location precinct board members, the county clerk or ~~[the county clerk's authorized deputy]~~ a deputy county clerk shall open the storage box. The precinct board members and the county clerk or ~~[the county clerk's authorized deputy]~~ a deputy county clerk shall complete an affidavit that verifies the number of ballots by style that were issued to that early/absentee alternate voting location. Those numbers shall be documented on the affidavit.

C. The county clerk shall distribute one key per judge for the padlocks on the storage box. One key shall be for one padlock and the other key for the other padlock. These judges shall be from different ~~[major]~~ political parties or without party affiliation. The keys shall remain in their custody until the early/absentee voting period ends and then returned to the county clerk.

D. At the end of each day of early/absentee voting, the county clerk or ~~[the county clerk's authorized deputy]~~ a deputy county clerk or the presiding judge and the two judges from different major political parties shall verify and document the number of the unvoted marksense ballots

at the alternate location and place them in the storage box. The storage box shall be locked with the two padlocks by the two judges from different major political parties and placed in a locked room at the alternate location along with the early voting tabulator. The presiding judge, county clerk, or ~~the county clerk's authorized deputy~~ a deputy county clerk shall have sole possession of the key to the locked room. If a location does not have a locked room, the county clerk shall provide a cabinet with a locking device to be placed on the site for the presiding judge to place the storage box.

E. At the beginning of each day until the final day of early/absentee voting at the alternate location, the county clerk, or ~~the county clerk's authorized deputy~~ a deputy county clerk, or the presiding judge shall unlock the room. In the presence of the presiding judge, the judges from different major political parties who are in possession of the storage box keys shall open the padlocks on the storage box to retrieve the unvoted marksense ballots to be used at that early/absentee voting location.

F. The beginning ballot number for that day must match the ending ballot number from the prior day. If it does not match, the county clerk must be notified immediately. No voting at that alternate location shall be allowed until the discrepancy has been resolved to the satisfaction of the county clerk.

~~**G.** Pursuant to Section 1-6-10 NMSA 1978, at 5:00 p.m. on the Monday immediately preceding the date of election, the county clerk shall record the numbers of unused absentee ballots and shall publicly destroy in the county clerk's office all such unused ballots. A certificate of destruction shall be completed, listing the quantity and numbers of ballot styles destroyed.~~

~~**H.] G.** All voted marksense ballots shall remain in the voting tabulator except in accordance with 1.10.12.17 NMAC.~~

~~[1.10.12.18 NMAC - N, 9-29-2006; A, 9-15-2008; A, 3-15-2012]~~

1.10.12.19 SECURITY FOR ON DEMAND TYPE BALLOT GENERATION SYSTEMS AT ALTERNATE VOTING LOCATION:

A. The county clerk, county clerk staff and precinct board shall have unlimited access to the alternate voting location using on-demand type ballot generation systems and access during the voting period shall not be controlled by any third party.

B. User names and passwords for precinct board users, county clerk staff users, and county clerk staff administrators shall not be shared or disclosed to any person.

C. If a county clerk pre-

prints ballots on an on-demand type ballot generation system for emergency purposes, the ballots shall be stored under the provisions of 1.10.12.18 NMAC.

[1.10.12.19 NMAC - N, 3-15-2012]

1.10.12.20 EMERGENCY PROCEDURES FOR VOTING SYSTEM FAILURE AT ALTERNATE LOCATIONS:

A. If the removable storage media device fails in a voting system at an alternate location, the precinct board shall cease all tabulating on that voting system and contact county technicians. The technicians shall certify a new removable storage media device and, in the presence of the presiding judge and another precinct board member of different or no party affiliation, re-insert all ballots into the voting system for tabulation. After tabulation the ballots shall be removed to a locked or sealed ballot box and another certified removable storage media device shall be used for the balance of voting at that alternate location. The locked or sealed ballot box shall be secured in county clerk's office or the location where absentee ballots are stored.

B. If failure is caused by the voting system and not the removable storage media device, the voting system shall be replaced. If the precinct board determines that the number of ballots inserted into the voting system that failed matches the number of ballots cast, as shown on the public counter of the replacement voting system into which the removable storage media device has been inserted, then voting on that replacement voting system may proceed. If the number of ballots inserted into the voting system that failed does not match the number of ballot cast, as shown on the public counter of the replacement voting system in which the removable storage media device has been inserted, then ballots shall be re-tabulated and stored under the provisions of Subsection A of 1.10.12.20 NMAC. A county clerk may institute a policy requiring re-tabulation of all ballots due to voting system or removable storage media device failure.

C. In all cases of failure, re-tabulated ballots shall be kept separate from ballots cast and tabulated thereafter.

D. The secretary of state shall be notified of any machine failure within twenty-four (24) hours and the county clerk shall transmit appropriate recertification documents.

[1.10.12.20 NMAC - N, 3-15-2012]

NEW MEXICO SECRETARY OF STATE

This is an amendment to 1.10.22 NMAC, Sections 3, 6-10, effective March 15, 2012.

1.10.22.3 STATUTORY AUTHORITY: Election Code, Section 1-2-1 NMSA 1978; Chapter 356, Laws 2003, Public Law 107-252, The Help America Vote Act of 2002; Chapter 270, Laws 2005, Chapter 137, Laws 2011. The issuing authority shall issue rules to ensure securing the secrecy of the provisional paper ballot, especially during canvassing, reviewing or recounting and ~~protect~~ protecting against fraud in the voting process ~~create a uniform process and set of criteria for deciding if provisional, absentee and other paper ballots shall be counted, and to ensure the secrecy of the provisional ballots, especially during verification, canvassing, reviewing or recounting].~~

[1.10.22.3 NMAC - Rp, 1.10.22.3 NMAC, 4-28-06; A/E, 10-2-08, A, 3-15-12]

1.10.22.6 OBJECTIVE: The Election Code (Section 1-1-1 NMSA through 1-24-4 NMSA 1978) was amended by Chapter 356, Laws 2003 and Chapter 137, Laws 2011. The purpose of the ~~amendment] amendments~~ is compliance with the provisions of PL 107-252, effective October 29, 2002, which allows a voter whose name does not appear on the roster at the polling place, county voter file, or a new voter whose name does not appear on the roster and has not provided the required identification to cast a provisional paper ballot. ~~[The purpose of this rule is to ensure the secrecy of the provisional ballot and protect against fraud in the voting process.]~~ Chapter 270, Laws 2005 and Chapter 137, Laws 2011 amended the Election Code to require ~~a uniform process and set of criteria for deciding if provisional, absentee and other paper] uniform criteria used to determine if provision~~ ballots shall be counted, and to ensure the secrecy of the provisional ~~ballots, especially during canvassing, reviewing or recounting] ballot during verification, canvassing, recounting or election contest.~~

[1.10.22.6 NMAC - Rp, 1.10.22.6 NMAC, 4-28-06; A/E, 10-2-08, A, 3-15-12]

1.10.22.7 DEFINITIONS:

A. "Abbreviated address" means a voter using initials to designate a city within New Mexico and includes, but is not limited to, "LC" for Las Cruces, "SF" for Santa Fe, or "ABQ" for Albuquerque.

B. "Abbreviated name" means shortened given or surname including, but not limited to, "Pat" for Patrick, Patricio, or Patricia, "Wm" or "Bill" for William, or

'Rick' for Ricardo or Richard [,'Mtz' for Martinez].

C. "Absentee ballot" means a method of voting by ballot, accomplished by a voter who is absent from the voter's polling place on election day.

[D.] "Absentee ballot register" means a list of the name and address of each applicant; the date and time of receipt of the application; the disposition of the application; the date of issue of the absentee ballot; the applicant's precinct; whether the applicant is a voter, federal voter, qualified federal elector or an overseas citizen voter and the date and time of receipt of the ballot.

E.] D. "Absentee precinct board" means the voters of a county who are appointed by the county clerk to open, tabulate, tally and report absentee ballot results.

[F.] E. "Absentee provisional ballot" means the paper ballot [card] issued to an absent provisional voter.

[G.] E. "Alternate voting location" means a site outside the office of the county clerk, established by the county clerk, where a voter may cast [a] an absentee ballot [seventeen (17) days prior to an election] and includes mobile alternate voting locations.

[H.] "Alternative voter" means a voter, who, after the deadline for requesting an absentee ballot and due to unforeseen illness or disability, resulting in confinement to a hospital, sanatorium, nursing home or residence, is unable to vote at his precinct polling place.

I.] G. "Ballot" means a [paper ballot card that is used on an optical scan vote tabulating machine or hand tallied or the electronic image on a direct recording electronic voting system that presents a sequence of contests; ballot measures or both] system for arranging and designating for the voter the names of candidates, constitutional amendments, and other questions to be voted on and for the marking, casting or otherwise recording of such votes, and the term includes absentee ballots, provisional paper ballots and all other paper ballots.

[J.] "Challenger" means a voter in that county to which he is appointed under the provisions of the Election Code.

K.] H. "Contest" means court litigation that seeks to overturn the outcome of an election pursuant to Section 1-14-1 NMSA 1978.

[L.] "County canvassing board" means the board of county commissioners in each county.

J. "County voter file" means the computerized version of the county register, comprising a portion of the statewide voter file.

[M.] "Designated polling

place" means the voting location assigned to a voter based on that voter's residence within a precinct of the county.

N. "Direct recording electronic (DRE) voting system" means a voting system that records votes by means of a ballot display provided with mechanical or electro-optical components that can be actuated by the voter, that processes the data by means of a computer program, and that records voting data and cast vote records by in internal and external memory components. It produces a tabulation of the voting data stored in a removable memory component or in printed copy.

O. "Early voter" means a voter who votes in person before election day and not by mail.

P.] K. "Election" means any special statewide election, general election, primary election, countywide election or special election to fill vacancies in the office of United States representative and regular or special school district elections.

[Q.] L. "Electronic vote tabulating (EVT) marksense voting system" or "optical scan vote tabulating system" means a voting system which records and counts votes and produces a tabulation of the vote count using [one ballot card] a paper ballot imprinted on either or both faces with text and voting response locations. The marksense or optical scan vote tabulating voting system records votes by means of marks made in the voting response locations.

[R.] "Emergency paper ballot" means the paper ballot card used in a polling place on election day when a voting system is disabled, cannot be repaired in a reasonable length of time and when no other voting system is available to the voter.

S. "Federal ballot" means a paper ballot card that contains only federal candidates or questions.

T. "High speed central count marksense ballot tabulator" means a self-contained optical scan ballot tabulator that uses an automatic ballot feeder to process ballots placed in the tabulator in any orientation. Ballots are processed at high speed and the tabulator has a built-in sorting system to divert processed ballots into appropriate bins.

U. "Marksense or optical scan ballot" means a paper ballot card used on an electronic vote tabulating marksense vote tabulating system, optical scan vote tabulating system or high-speed central count marksense vote tabulator.

V.] M. "In-lieu of absentee ballot" means a paper ballot [card] provided to a voter at his polling place when the absentee ballot was not received by the voter before election day.

N. "In lieu of absentee ballot tally sheet" means a document or

computer based document used by the county clerk for the counting of votes cast by a qualified in-lieu of absentee ballot voter,

[W.] O. "Naked ballot" means [an absentee ballot,] a provisional ballot [alternative ballot, replacement absentee ballot] or in-lieu of absentee ballot that has not been placed in the inner secrecy envelope by the voter.

[X.] P. "Observer" means a voter of a county who has been appointed by a candidate, political party chair or election related organization pursuant to the provisions of the Election Code.

[Y.] "Overvoted ballot" means a paper ballot card on which the voter has selected more than the number of alternatives allowed in a contest or on a question.]

O. "Precinct" means a part of a county with definite boundaries established for electoral administrative functions.

[Z.] R. "Precinct board" means the appointed election officials at a polling place, consolidated polling place, absentee precinct or alternate location.

[A.] "Presidential ballot" means a paper ballot card containing only names of candidates for United States president.

BB.] S. "Provisional absentee voter" means a voter who votes on a provisional absentee ballot [after initially attempting to vote by absentee ballot but whose name does not appear on the roster or has failed to meet the voter identification requirements, pursuant to the provisions of the Election Code] because the voter is a new registrant to the state, registered to vote the first time by mail and has not submitted the required voter identification.

[CC.] T. "Provisional paper ballot" means a [marksense or optical scan] paper ballot [card] that is marked by a provisional voter.

[DD.] U. "Provisional paper ballot tally sheet" means a document [prepared and] or computer based document approved by the secretary of state, used by the county clerk for the counting of votes cast by a qualified provisional [voters for candidates and questions] voter.

[EE.] V. "Provisional paper ballot transmission envelope" means a sealed envelope or pouch marked and designated by the county clerk to transmit provisional ballots from the polling place or alternate location to the office of the county clerk.

[FF.] W. "Provisional voter" means a voter casting a provisional ballot pursuant to the provisions of the Election Code, or a voter whose name does not appear on the signature roster or on the county voter file.

X. "Required voter

identification” means the forms of identification as specified in Section 1-1-24 NMSA 1978.

~~[GG.]~~ **“Replacement absentee ballot”** means a paper ballot card issued by the county clerk prior to 5:00 p.m. on the Monday immediately preceding the date of the election to a voter who has applied for but not received an absentee ballot.

~~[HH.]~~ **Y. “Signature roster”** means the certified list of voters at a polling place which is signed by a voter [when presenting himself on election day] or county voter file at a consolidated polling place.

~~[H.]~~ **Z. “Tally sheet”** means a document prepared by the county clerk and used for the counting of provisional paper ballots, hand tallied absentee ballots, in-lieu of absentee ballots and emergency paper ballots.

~~[JJ.]~~ **AA. “Verification process”** means the [reviewing] process used by a county clerk to determine the [eligibility] qualifications of a voter who voted a provisional paper ballot or in-lieu of absentee [voter] ballot.

~~[KK.]~~ **BB. “Voter”** means any person who is qualified to vote under the provisions of the constitution of New Mexico and the constitution of the United States and who is registered under the provision of the Election Code of the state of New Mexico.

~~[LL.]~~ **“Voting response area”** means the place on a paper ballot card where the voter is instructed to mark his preference for a candidate or question:]

[1.10.22.7 NMAC - Rp, 1.10.22.7 NMAC, 4-28-06; A/E, 10-2-08, A, 3-15-12]

1.10.22.8 PRECINCT BOARD PROCEDURES:

A. A voter whose name does not appear on the signature roster or county voter file at a consolidated polling place or who is required to present identification at the polling place or alternate voting location and [fails] is unable to do so shall be entitled to cast a vote on a provisional paper ballot. The precinct board shall instruct the voter that the required voter identification must be taken to the office of the county clerk [before the county canvass begins for the vote] no later than 5:00 p.m. two (2) days after the election for the ballot to be qualified. The precinct judge shall give the voter written instructions on how the voter may determine whether the vote was counted and, if the vote was not counted, the reason it was not counted. The precinct board shall ensure that each provisional voter or in-lieu of absentee voter is provided with a toll free telephone number that may be called fourteen (14) days after the election for a determination on whether the provisional ballot was counted.

B. Each polling place shall

post the [phone] telephone numbers of the county clerk and the secretary of state and a map of the precincts represented in that polling place and an alphabetical list of the voters in each precinct in that polling place. [The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter whose name is not on the roster. The precinct board shall not accept any verbal authorization from the county clerk to allow a person to vote as a regular voter who is required to provide identification pursuant to the Election Code.] The precinct board shall also ensure that the provisional voter, [absentee provisional ballot] or in-lieu of absentee voter shall fill out all required information on the provisional paper ballot affidavit or in-lieu of absentee ballot affidavit and place the ballot in the inner secrecy envelope and outer envelope prescribed by the secretary of state. The precinct board shall ensure that the name of a provisional voter[, absentee provisional ballot] or in-lieu of absentee ballot voter is entered in the signature roster on the line immediately following the last entered voter’s name, pursuant to the Election Code.

C. The precinct board shall ensure that each provisional paper ballot voter completes the certificate of voter registration attached to the provisional paper ballot outer envelope and that the certificate of registration [is not placed in the envelope but] remains attached to the provisional ballot outer envelope and is returned to the county clerk in the provisional ballot transmission envelope.

D. The precinct board shall ensure that each provisional paper ballot, [absentee provisional ballot] or in-lieu of absentee ballot cast at a polling place or alternate site is placed in an inner or secrecy envelope prior to placing the inner or secrecy envelope in the outer envelope containing the voter’s oath or affirmation and certificate of voter registration.

E. The precinct board shall ensure [emergency paper ballots shall be handled and tallied pursuant to the provisions of the Election Code] that a provisional paper ballot voter or in-lieu of absentee ballot voter is not permitted to place the voted ballot into the electronic vote tabulating marksense voting system.

F. The precinct board shall ensure provisional paper ballot voters are not subject to challenge at the time of voting under the procedures provided in the Election Code.

~~[G.]~~ The precinct board shall ensure the voter registration card attached to the outer provisional ballot envelope shall be placed in the provisional ballot transmission envelope and returned to the county clerk.

H.] G. The precinct board shall ensure that a provisional paper ballot[;

absentee provisional ballot,] or in-lieu of absentee ballot shall not be placed in [a] the ballot box at the polling place, alternate voting location or county clerk’s office. Provisional paper ballots shall be deposited in a special sealed provisional paper ballot transmission envelope or pouch designated by the county clerk for that purpose. [The precinct board shall not open any absentee ballots delivered to the precinct but shall deliver the unopened official mailing envelopes to the absentee precinct boards.

~~F.] H.~~ [Absentee precinct boards are governed by 1.10.12.1 NMAC. Absentee precinct boards shall not open or tally any provisional absentee ballots, but shall convey them to the county clerk for processing according to the provisions of the Election Code and 1.10.22 NMAC.] Identification documents submitted with provisional absentee ballots shall be attached to the voter’s certificate of registration and a notation that the documents have been submitted shall be entered into the electronic file of registered voters.

[1.10.22.8 NMAC - Rp, 1.10.22.8 NMAC, 4-28-06; A, 3-15-12]

1.10.22.9 COUNTY CLERK PROCEDURES:

A. The provisional paper ballot outer envelope containing the voter’s oath shall not be opened until the county clerk has completed the verification process and determined the reason the provisional voter’s name was not on the signature roster, [or] whether the voter has provided identification, if required, by the Election Code or if the provisional absentee voter’s absentee ballot was received by the absentee precinct board. The county clerk shall place any naked ballot in an individual manila envelope to replace the inner secrecy envelope and mark the voter’s correct voting precinct on that envelope.

B. The county clerk has the authority to determine the qualification of a provisional paper ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional paper ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter’s address on the affidavit on the provisional paper ballot outer envelope does not match the voter’s address on the voter’s certificate of registration, provided the county clerk can identify the voter with other information provided on the affidavit or certificate of voter registration attached to the provisional paper ballot outer envelope.

C. The county clerk shall determine the qualification [or] of a provisional ballot, absentee provisional ballot or in-lieu of absentee ballot but shall not disqualify any provisional ballot, absentee provisional ballot or in-lieu of absentee ballot because the voter has used

an abbreviated name, abbreviated address, middle name, middle initial or suffix, provided the county clerk can identify the voter with other information provided on the affidavit on the provisional paper ballot outer envelope or certificate of voter registration attached to the provisional ballot outer envelope.

D. The county clerk shall determine the qualification of a provisional paper ballot but shall not disqualify any provisional paper ballot because the voter did not sign both the affidavit and the polling place roster if the voter provided a valid signature and the county clerk can identify the voter with information provided on the affidavit on the outer envelope [of the paper ballot or affidavit] or certificate of voter registration attached to the provisional paper ballot outer envelope.

E. A provisional paper ballot shall be qualified if both:

(1) the voter has provided all the information under Section 1-12-25.3 and Section 1-12-25.4 NMSA 1978 [~~provided that a voter shall not have his vote disqualified under Subsections B, C or D of this section;~~] and the voter provides a valid signature and sufficient information for the county clerk to determine the voter is a qualified elector;

(2) [if] the county clerk can determine the voter is a registered voter in the county; if a voter is registered in the county, but cast a provisional paper ballot at the wrong polling place, [~~the county clerk shall ensure that only those votes for the positions or measures for which the voter was eligible to vote are counted; if there is a conflict between New Mexico statute and this statewide standard, the statute will control] or if the voter was required to present identification.~~

F. A provisional paper ballot or in-lieu of absentee ballot shall be rejected if:

~~[(a)]~~ (1) the voter has not provided all the information under Sections 1-12-25.3 and 1-12-25.4 NMSA 1978 subject to the provision in Subsections B, C or D of this section;

~~[(b)]~~ (2) [~~the clerk cannot determine]~~ the voter is not a registered voter in the county;

~~[(c)]~~ (3) the voter [~~has voted outside his county of registration]~~ is registered to vote in another county in the state;

~~[(d)]~~ (4) the voter has voted an absentee ballot in the election and the ballot has been received by the absentee precinct board;

~~[(e)]~~ (5) the voter's registration was properly cancelled; or

~~[(f)]~~ (6) the voter [~~failed]~~ is unable to meet the voter identification requirements. [If there is a conflict between New Mexico

statute and this statewide standard, the statute will control.]

G. [~~A county canvass observer, pursuant to Section 1-2-31 NMSA 1978 may be present during the provisional ballot qualification process and canvass. At all times while observing the process and canvass, the observer shall wear self-made badges designating them as authorized observers of the organizations which they represent. They shall not wear any other form of identification, party or candidate pins. The observer shall not: (a) perform any duty of the workers; (b) handle any material; (c) interfere with the orderly conduct of workers conducting the process; and (d) use cell phones, audio or video tape equipment while observing the process.~~]

A county canvass observer, pursuant to Section 1-1-25 and Section 1-2-31 NMSA 1978 may be present during the provisional paper ballot qualification and canvass. During the provisional ballot qualification and canvass, the observer shall wear a self-made badge designating the observer as an authorized observer of the organization represented. The observer shall not wear any other form of identification and party or candidate pins are prohibited. The observer shall not perform any duty of the county clerk or authorized deputy, handle any material, interfere with the orderly conduct of the provisional paper ballot qualification or canvass or use cell phones or electronic recording equipment while observing.

H. The provisional paper ballot qualification process shall be [run] conducted as follows:

(1) [with] the county clerk [staff member reading] or authorized deputy shall read aloud the name and address [of] on the provisional paper ballot outer envelope;

(2) the county clerk or authorized deputy shall determine, by use of the statewide voter file, the registration status, county of registration and correct precinct of the provisional voter, or if the required identification is attached or verified; and

(3) the county clerk or authorized deputy shall publicly announce whether the provisional paper ballot is qualified or disqualified and the reasons for that determination.

I. The in-lieu of absentee ballot qualification process shall be conducted as follows:

(1) The county clerk or authorized deputy shall determine, by use of the absentee precinct board roster, if an absentee ballot has been received by the absentee precinct board.

(2) The county clerk or authorized deputy shall publicly announce whether the in-lieu of absentee ballot is qualified or disqualified and the reasons for that determination.

J. [A county canvass

observer may interpose a challenge to the qualification of the voter consistent with Subsections A-E of Section 1-12-20 NMSA 1978. The county clerk staff member shall handle the challenge consistent with Section 1-12-22 NMSA 1978.] The county clerk [staff member will then] or authorized deputy will announce aloud his or her decision regarding whether that provisional vote will or will not be qualified; the county clerk [shall] may assign a different county clerk staff member than those involved in the qualification process to receive and open the ballot [from] outer envelope for the tallying process. The observer may preserve for future reference written memorandum of any action and may raise it at the canvass meeting. Observers shall not be in the line of sight or view or make notes of the voter's [personal information:] date of birth [~~party affiliation, and~~] or social security number.

~~[(H)]~~ **K.** The determination of the provisional voter's status and whether the ballot shall be counted, along with the research done by the county clerk shall be noted on the provisional paper ballot outer envelope. The county clerk shall, after status determination, separate qualified ballots from unqualified ballots. Unqualified ballots shall not be opened and shall be deposited in an envelope or box marked "unqualified provisional paper ballots" [~~and~~] which shall be retained for twenty-two (22) months, pursuant to 42 USC 1974. The outer provisional paper ballot envelope for qualified provisional paper ballots shall be opened and deposited in an envelope or box marked "qualified provisional paper ballot outer envelopes" [~~and~~] which shall be retained for twenty-two (22) months, pursuant to 42 USC 1974. The county clerk or authorized deputy shall mark the number of the voter's correct precinct on the inner secrecy envelope and ballot for the purposes of a recount or contest, but no other information indicating the identity of the voter shall be furnished to the county canvassing board or any other person. After the tally of qualified provisional paper ballots, the county clerk or authorized deputy shall deposit the counted provisional paper ballots in an envelope or box marked "counted provisional paper ballots" [~~and~~] which shall be retained for twenty-two (22) months, pursuant to 42 USC [~~1972~~] 1974.

~~[(H)]~~ **L.** The county canvassing board shall direct the county clerk to prepare a tally of qualified provisional paper ballots, in-lieu of absentee ballots and absentee provisional ballots and include them in the canvass presented to the county canvassing board to be tallied and included in the canvass of that county for the appropriate precinct. Provisional paper ballots, in-lieu of absentee ballots and absentee provisional ballots shall be tallied on separate tally sheets. [~~The county clerk shall process~~

provisional absentee ballots using the same procedures used for provisional ballots cast at the polling place or alternate location.] The tally sheet may be a photocopy of a precinct tally sheet or a computer based tally sheet approved by the secretary of state, however it shall be clearly marked as designated for provisional paper ballots, in-lieu of absentee ballots or provisional absentee ballots. Upon the conclusion of the county canvass, the county clerk shall transmit the provisional paper ballot tally to the office of the secretary of state. The county clerk shall also prepare a report, on behalf of the county canvassing board, on the disposition of all provisional paper ballots cast within the county. The report shall contain the name, address and correct precinct number of each provisional voter [in-lieu of absentee ballot voter] or provisional absentee ballot voter and the qualification or disqualification of in-lieu of absentee ballots. The report shall be transmitted to the secretary of state within 10 days of the election. Pursuant to the Help America Vote Act, information about [access to information about] an individual provisional paper ballot shall be restricted to the individual who cast the ballot. The report shall include an explanation of why a provisional voter's name was not included on the signature roster and the reason why any provisional voter's ballot, in-lieu of absentee voter's ballot or provisional absentee voter's ballot was not counted. The report shall be in alphabetical order.

[F] M. Counting procedures for provisional paper ballots. The county clerk shall count the qualified provisional paper ballots using the hand tally method. One team of at least two persons shall be used to count each qualified provisional paper ballot. The team shall consist of one reader and one marker, not of the same political party [whenever] if feasible. The reader shall read the ballot to the marker and the marker shall observe whether the reader has correctly read the ballot; the marker shall then mark the tally sheet of the precinct where the vote was cast, and the reader shall observe whether the marker correctly marked the tally sheet. If consolidated precincts were used county-wide, provisional paper ballots may be counted by an optical scan vote tabulating system, with a separate memory card used.

[K] N. Votes to be counted. When counting provisional paper ballots, votes shall be counted for only those positions or measures for which the voter was eligible to vote in the precinct where the ballot was cast. If a ballot is marked indistinctly or not marked according to the instructions for that ballot type, the counting team shall count a vote as provided for in Subsection A and Paragraphs (1) through (4) of Subsection B of Section 1-9-4.2 NMSA 1978. In no case, shall the counting team

mark or re-mark the ballot. 1.10.23.12 NMAC contains illustrative examples of how to discern voter intent.

[E] O. The county clerk shall [establish] provide a free access system, such as a toll-free telephone number or internet web site[;] that a voter who casts a provisional paper ballot may access to ascertain whether the voter's ballot was counted, and, if the vote was not counted, the reason it was not counted. Access to this system is restricted to the voter who cast the ballot.

[M] The county clerk may designate emergency paper ballots for use as provisional ballots:

N] P. The county clerk shall notify by [certified] mail each voter whose provisional [ballots] paper ballot was not counted [of] and the reason the ballot was not counted. The clerk shall send out this notification any time between the closing of the polls on election day through the tenth calendar day following the election. The voter shall have until the Friday prior to the meeting of the state canvassing board to appeal this decision to the county clerk.

[O] Q. The appeal process pursuant to Subsection C of Section 1-12-25.2 NMSA 1978 shall be conducted as follows:

(1) the county clerk shall select a hearing officer(s) from staff or a person [from the community] who is not affiliated with any candidate on the ballot and knowledgeable of election law and the clerk shall provide a disability accessible room for the hearing officer to work;

(2) the voter shall schedule an appointment time for an appeal by calling the county clerk's office and shall appear under oath and show by a preponderance of the evidence that the vote should be counted;

(3) the voter may appear with [counsel] an advocate;

(4) the appeal hearing shall be an open meeting, but the voter's personal information:

(a) date of birth; and
(b) party affiliation, and

(c) (b) social security number shall not be stated out loud and the public shall not be in the line of sight or view or make notes of the voter's personal information;

(5) the county clerk [staff] or authorized deputies and the public may make a brief public comment and offer relevant exhibits but only the hearing officer shall be permitted to cross examine the witness;

(6) the hearing officer shall not be bound by the rules of civil procedure, but may use them for guidance and shall make an immediate oral decision or send by certified mail a letter explaining the hearing officer's decision to the voter;

(7) there is no statutory right of

appeal;

(8) all decisions shall cite a provision of the Election Code explaining the disposition and be announced or mailed by the Monday before the state canvassing board meeting;

(9) if the voter prevails, the hearing officer shall direct the county clerk staff to handle the ballot as a qualified provisional paper ballot as found above; and

(10) the county clerk shall notify the county canvassing board of the completion and results of the appeals process.

[1.10.22.9 NMAC - Rp, 1.10.22.9 NMAC, 4-28-06; A/E, 10-2-08; A/E, 11-3-08, A, 3-15-12]

1.10.22.10 SECRETARY OF STATE PROCEDURES:

A. Provisional voters wishing to determine the disposition of their ballot may call the office of the secretary of state fourteen (14) days after the election. The secretary of state shall make the agency toll free number available to county clerks for the purpose of determining the status of provisional paper ballots, or may establish a web-based computer program for the same purpose. The secretary of state, prior to providing information to a voter on the disposition of his ballot, shall verify the identity of the voter by name, address, date of birth and social security number.

B. The secretary of state shall not discuss the disposition of any provisional paper ballot with any person other than the provisional voter.

[1.10.22.10 NMAC - Rp, 1.10.22.10 NMAC, 4-28-06, A, 3-15-12]

NEW MEXICO DEPARTMENT OF WORKFORCE SOLUTIONS

This is an amendment to 11.1.2 NMAC, Sections 7 through 19, effective March 15, 2012.

11.1.2.7 DEFINITIONS: [RESERVED]

A. "Base wage rate" means the straight time hours and hourly rate paid each laborer or mechanic.

B. "Craft" means a particular construction trade.

C. "Director" means the director of the division.

D. "Division" means the labor relations division of the workforce solutions department.

E. "Fringe benefit" means payments made by a contractor, subcontractor, employer or person acting as a contractor, if the payment has been

authorized through a negotiated process or by a collective bargaining agreement, for: holidays; time off for sickness, injury, personal reasons or vacation; bonuses; authorized expenses incurred during the course of employment; health, life and accident or disability insurance; profit-sharing plans; contributions made on behalf of an employee to a retirement or other pension plan; and any other compensation paid to an employee other than wages.

F. "Labor organization" means an organization of any kind, or an agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.

G. "Locality" means one or more counties in the state of New Mexico.

H. "Prevailing wage and benefits" means the hourly wage rate and other benefits as determined by the director to be received by employees for worked performed under Public Works Projects or contracts.

I. "Secretary" means the secretary of the department of workforce solutions.

J. "Similar nature" means contract work performed on projects as defined in the several Subparagraphs of 11.1.2.17 NMAC.

K. "State" means the state of New Mexico.

L. "Wage" means the basic hourly rate of pay.

M. "Wage survey" means an investigation conducted by the director or the director's designee to determine the general prevailing wage rates for the crafts/classifications in circumstances where no collective bargaining agreements exist or the collective bargaining agreements do not cover the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.17 NMAC.

N. "Weighted average" means the sum of the products of the grouped man hours times group base wage rate divided by the total number of man hours worked in the classification.

[11.1.2.7 NMAC; A, 3/15/12]

11.1.2.8 PREAMBLE:

[A. Substantial evidence gathered from past surveys supports the conclusions that industry wage practices on projects within the type "A" construction classification are generally uniform throughout the state and that the statewide survey process is an adequate process to ascertain prevailing wage rates on projects within the type "A" construction classification. Moreover, no concern has

been expressed, either before the legislature or in public hearings preceding the adoption of these and predecessor regulations, that statewide surveys are not suitable for ascertaining prevailing wage rates on heavy engineering projects within the type "B" construction classification ("type "B" - heavy engineering"), and industry evidence is that industry wage practices on type "B" - heavy engineering projects are generally uniform throughout the state.

B. As noted, concern as to the suitability of the statewide survey process relates principally, if not solely, to commercial building projects (generally of smaller size) and to residential construction projects within the type "B" classification (both type "B" - building"). The only evidence presented by the industry in public hearings preceding the adoption of these and predecessor regulations is in complete support of the use of statewide surveys for ascertaining prevailing wage rates on type "B" - building projects.

C. Based upon the substantial evidence of industry practice summarized above, these regulations provide for a statewide survey process for type "A" construction and for all projects (both building projects and heavy engineering projects) within the type "B" construction classification. However, in view of the concerns expressed before the legislature, this office will encourage wider submission of wage information and will undertake to evaluate the wage information gathered during the course of its semi-annual surveys to determine, based upon hard evidence of industry practice gathered during the survey process, (1) whether minimum wage rates determined by the statewide survey process do or do not substantially reflect the prevailing wage rates being paid on type "B" - building projects throughout the state, and (2) whether certain kinds of residential construction projects do or do not constitute contract work of a nature similar to other type "B" - building projects. Each annual report to the governor required by Laws 1979, Chapter 204, Section 10 (850-1-7.1, NMSA 1978), shall include a report concerning the administration of the Public Works Minimum Wage Act including a report concerning the above undertaking. If, after sufficient data have been gathered and evaluated, substantial evidence does not support the continued use of the statewide survey process for ascertaining prevailing wage rates on type "B" - building projects (or on certain kinds of residential construction projects within that classification) and/or the continued classification as type "B" - building of certain kinds of residential construction projects, appropriate changes to these regulations will be recommended for adoption after notice and public hearing as required by law and applicable regulations.]

A. Every contract or project in excess of sixty thousand dollars (\$60,000) that the state or any political subdivision thereof is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads of the state and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, which shall be based upon the wages and benefits that will be determined by the director to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the state or locality, and every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project at wage rates and fringe benefit rates not less than those determined by the director to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

B. Consistent with the provisions of 11.1.2.12 NMAC the director shall determine prevailing wage rates and prevailing fringe benefit rates for respective classes of laborers and mechanics employed on public works projects at the same wage rates and fringe benefit rates used in collective bargaining agreements between labor organizations and their signatory employers that govern predominantly similar classes or classifications of laborers and mechanics for the locality of the public works project and the crafts involved.

C. If the prevailing wage rates and prevailing fringe benefit rates cannot reasonably and fairly be determined because no collective bargaining agreements exist or the collective bargaining agreements do not cover the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.17 NMAC, the director shall determine the prevailing wage rates and prevailing fringe benefit rates based upon the substantial evidence of industry practice gathered from surveys conducted pursuant to Subsection E of 11.1.2.12 NMAC.

[6/4/79; 11.1.2.8 NMAC - Rn, 11 NMAC 1.1.8, 12/31/09; A, 3/15/12]

11.1.2.9 [DESCRIPTION OF TYPES OF CONSTRUCTION FOR WHICH PREDETERMINED WAGE RATE DECISIONS WILL BE ISSUED] RESPONSIBILITIES AND DUTIES:

[A. Purpose and scope: The regulations contained in this part classify the types of construction work of a similar nature for which predetermined wage rate decisions will be issued by the director for public works subject to the Public Works

Minimum Wage Act.

~~_____ B. _____ Classifications _____ of construction work:~~

~~_____ (1) The street, highway, utility and light engineering construction classification shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields; highway bridges, median channels, and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling; telephone and electrical transmission lines and site preparations which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line, or more than five (5) feet from a building or heavy engineering structure, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction to the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure. Furthermore, this limitation will not apply to independent main lines and service out-lets (stub-out regardless of proximity to building or heavy engineering structure; construction and installation of pipelines (except cross-country transportation mainline pipelines), including municipal-type utility distribution pipelines, for the distribution of petroleum and/or natural gas, up to the first metering station or connection with the transportation mainline pipeline; provided, "First metering station or connection" means that point which divides cross-country transportation mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.~~

~~_____ (2) The general building and heavy engineering construction classification shall include the construction, alteration, repair and demolition of buildings, including office buildings, warehouses, industrial and commercial buildings, institutional and public buildings and all air-conditioning, conduit, heating and other mechanical and electrical works and site preparation for buildings or heavy engineering projects under this classifications; except that construction, alteration, repair and demolition of buildings under the scope of this classification shall not~~

~~include construction, alteration, repair and demolition of buildings under the class "C" classification of Subsection B of 11.1.2.9 NMAC, of these regulations; stadia; and shall include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building or heavy engineering structure, whichever is closer; provided, however, with regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or heavy engineering structure; and shall include construction, alteration, repair and demolition of heavy engineering work such as power generating plants, pump stations, natural gas compressing stations; covered reservoirs and covered sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of one million (1,000,000) cubic yards or over; radio towers, ovens, furnaces, kiln, silos, shafts and tunnels (other than highway shafts and tunnels); hydroelectric projects; and well drilling; telephone and electrical transmission lines which are part of general building and heavy engineering projects; mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other rocket-type missiles; construction and installation of cross-country transportation mainline pipelines for the distribution of petroleum and/or natural gas, up to the first metering station or connection with the distribution pipelines; provided, "first metering station or connection" means that point which divides cross-country transportation mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.~~

~~_____ (3) The residential building construction classification shall include the site preparation and construction, alteration, repair and demolition of residential buildings and shall include all structures intended for residential occupancy, be it by owners of said properties or tenants, including, but not limited to, single detached buildings, duplexes, tri-plexes, quad-plexes, residential condominium buildings, apartment buildings not to exceed four stories in height; and shall include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building, whichever is closer.~~

~~_____ C. _____ Providing for more than one (1) wage scale: On contracts which involve more than one (1) classification of construction, as defined in Subsection~~

~~B of 11.1.2.9 NMAC supra, the director shall issue predeterminations, including therein the appropriate wage rates for each classification of construction where none of the classifications comprises eighty percent (80%) of the total contract cost. Where one classification comprises eighty percent (80%) or more of the total contract cost, the predetermined rate for that classification shall be used for the entire contract.]~~

~~_____ A. _____ The director shall:~~

~~_____ (1) coordinate the administration of the Public Works Minimum Wage Act;~~

~~_____ (2) determine the prevailing wage and fringe benefit rates;~~

~~_____ (3) ensure enforcement of the payment of prevailing wages and fringe benefit rates;~~

~~_____ (4) adopt standard job classifications applicable on public works projects;~~

~~_____ (5) adopt appropriate wage rate for all apprentices and trainees on public works projects.~~

~~_____ B. _____ The contracting agencies:~~

~~_____ (1) All agencies proposing to contract for work to be performed subject to this act must make written request to the director, not less than three (3) weeks before the advertising date, for a wage rate decision applicable to the work to be performed, which request must contain the following information:~~

~~_____ (a) name, title and signature of requesting officer;~~

~~_____ (b) department or agency requesting decision;~~

~~_____ (c) date of request;~~

~~_____ (d) full description and estimated cost of each of the several classifications of construction as set out in 11.1.2.10 NMAC.~~

~~_____ (e) location (city or other description) of project site;~~

~~_____ (f) proposed advertising date and date by which bids are to be submitted.~~

~~_____ (2) The director shall issue and mail the appropriate wage rate decision or decisions to the requesting agency within five (5) working days of receipt by the director of such agency's proper written request.~~

~~_____ (3) The contracting agency or its agent; i.e., architect or engineer, shall upon award of the project, or if the project is canceled, promptly fill out and return to the office of the director of the labor relations division the notification of award and list of subcontractors forms. Any changes or additions of subcontractors shall also be promptly mailed to the director by the contracting agency or its agent; i.e., architect or engineer.~~

~~_____ (4) The contracting agency shall ensure that wage rate decisions are contained in advertised specifications for every contract subject to the Public Works Minimum Wage~~

Act.

(5) If a collective bargaining agreement is in effect governing the service sought, that agreement will define minimum wages, benefits and conditions that must be paid in order for a bidder to be considered responsible.

(6) In order to ensure compliance by contractors and all tiers of subcontractors with the wage decisions, contracting agencies shall include in the advertised specifications and the contract between the agency and the contractor for all work subject to the terms of the Public Works Minimum Wage Act a provision requiring contractors and all tiers of subcontractors to submit certified weekly payroll records to the contracting agency (biweekly), and to the director, when requested by the director or an interested party such as contractors, contracting agencies, labor organizations and contractor associations. The director may require disclosure of any information necessary to ensure compliance by all contractors at all tiers with the requirements of the New Mexico Public Works Minimum Wage Act.

(7) The contractual provision need not require any particular form for contractor or subcontractor payrolls; provided, all payrolls must contain the following information:

(a) the employee's full name and address need only appear on the first payroll on which the employee's name appears, unless a change of address necessitates an additional submittal to reflect the new address;

(b) the employee's classification (or classifications);

(c) the employee's hourly wage rate (or rates) ; the employee's hourly fringe benefits; and where applicable, the employee's overtime hourly wage rate (or rates);

(d) the daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted);

(e) the itemized deductions made;

(f) the net wages paid;

(g) the number of the wage rate decision issued on the project by the director.

(8) The contractual provision shall require that all payrolls be numbered, starting with number one for the first payroll at the beginning of the job and continuing in numerical order until the job is completed.

(9) The contractual provision shall require that the contractor and each of his subcontractors shall submit a bi-weekly statement of compliance in the following form:

Date _____

I, _____, (Name of Signatory Party)
 (Title)
 do hereby state:
 That I pay or supervise the payment of the persons employed by _____
 (contractor or subcontractor) on the _____;
 that (building or work)
 During the payroll period commencing on the _____ day of _____,
 20_____, and ending the _____ day of _____, 20_____, all persons
 employed on said project have been paid the full weekly wages earned, that no rebates have
 been or will be made either directly or indirectly to or on behalf of said _____

 (Contractor or subcontractor) from the full weekly wages earned by any person and that no
 deductions have been made either directly or indirectly from the full wages earned by any
 person, other than deductions permitted by law.
 That any payrolls under this contract required to be submitted for the above period are
 correct and complete; that the wage rates for laborers or mechanics contained therein are
 not less than the applicable wage rates incorporated into the contract; that the classifications
 set forth therein for each laborer or mechanic conform with the work he performed. That
 any apprentices or trainees employed in the above period are duly registered in a bona fide
 apprenticeship program registered with a state apprenticeship agency recognized by the
 office of apprenticeship United States department of labor, or properly enrolled in a bona
 fide training program approved for application on public works construction projects by the
 appropriate state or federal agency (ies) if and as required by law and applicable federal
 regulation.

I, _____, being first duly sworn on oath under penalty of
 perjury, swear that the foregoing information is true and correct.

Notary: Subscribed and sworn to before me at _____
 _____ this _____ day of _____, 19_____.

 Notary public

 (SIGNATURE) _____ (DATE)

My commission expires: _____

(10) The contractual provision shall require that the contractor and all subcontractors
 and their tiers shall deliver or mail legible copies of the certified weekly payrolls prepared in
 accordance with these regulations to the prime contractor and the contracting agency no more
 than five (5) working days following the close of the second payroll period. Weekly payrolls
 shall be submitted bi-weekly.

(11) The affidavit form must be filed prior to the final payment to a contractor.
 Bond monies and retainage will be released only to contractors who have filed affidavits
 pursuant to the provisions of these regulations. Any contractor or subcontractor who
 files a false statement or refuses to file any statement or record required to be filed under
 these regulations, shall be considered as non-compliant and shall be subject to debarment
 proceedings. The contracting agency and the prime contractor shall keep all certified payroll
 records for a period of time not less than four (4) years after the completion of the contract.

(12) Contracting agencies shall require wage rate inspections during the period of
 construction.

C. Contractor and subcontractor

(1) Contractors and all contracting tiers on projects must file a statement of intent
 to pay prevailing wages (intent), and an affidavit of wages paid (affidavit). The intent form
 must be filed with the contracting agency within three (3) business days of the award of each
 respective contract. Payments will not be made to a non-compliant contractor until an intent
 form is filed.

(2) The minimum wage rates must be posted by the contractor or subcontractor in
 a prominent, easily accessible place at the site of each particular project.

(3) The director shall furnish the contracting agency with a poster containing the
 minimum wage rates. Said poster is to be forwarded to the contractor for posting at each
 particular project site.

(4) The contractor and subcontractor shall comply with all requirements imposed
 by the Public Works Minimum Wage Act and these regulations.

11.1.2.10 [POWERS AND DUTIES OF THE DIRECTOR AND OF THE CONTRACTING AGENCIES IN THE ADMINISTRATION OF THE PUBLIC WORKS MINIMUM WAGE ACT] CLASSIFICATION OF TYPES OF CONSTRUCTION:

[Authority: Subsections A to F of 11.1.2.10 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.

A. Purpose and scope: The director sets forth in this part the requirements, as well as the voluntary aspects of the Public Works Minimum Wage Act, that apply to the contracting agencies who employ laborers and mechanics on public works projects in the state.

B. Requests for and issuance of wage decisions:

(1) All agencies proposing to contract for work to be performed subject to this act must make written request to the director, not less than three (3) weeks before the advertising date, for a wage rate decision applicable to the work to be performed, which request must contain the following information:

- (a) name, title and signature of requesting officer;
- (b) department or agency requesting decision;
- (c) date of request;
- (d) full description and estimated cost of each of the several classifications of construction as set out in Subsection B of 11.1.2.9 NMAC of these rules and regulations;
- (e) location (city or other description) of project site;
- (f) proposed advertising date and date by which bids are to be submitted.

(2) The director shall issue and mail the appropriate wage rate decision or decisions to the requesting agency within five (5) working days of receipt by the director of such agency's proper written request.

(3) The contracting agency or its agent, i.e., architect or engineer, shall upon award of the project, or if the project is canceled, promptly fill out and return to the office of the director of the labor and industrial division the notification of award and list of subcontractors forms. Any changes or additions of subcontractors shall also be promptly mailed to the director by the contracting agency or its agent, i.e., architect or engineer.

C. Wage rate decisions:

(1) Wage rate decisions must be contained in advertised specifications for every contract subject to the Public Works Minimum Wage Act.

(2) In order to ensure compliance by the contractor and his subcontract to all tiers of subcontractors with the wage

decisions, contracting agencies subject to the New Mexico Public Works Minimum Wage Act shall include in the advertised specifications and the contract between the agency and the contractor for all work subject to the terms of the Public Works Minimum Wage Act a provision requiring the contractor and all tiers of subcontractors to submit certified weekly payroll records to: (1) the contracting agency (biweekly), and (2) the director, when requested by the director or an interested party such as contractors, contracting agencies, labor organizations and contractor associations (the director may require disclosure of any information necessary to ensure compliance by all contractors at all tiers with the requirements of the New Mexico Public Works Minimum Wage Act):

(a) Form and content: The contractual provision need not require any particular form for contractor or subcontractor payrolls; provided, all payrolls must contain the following information:

- (i) the employee's full name, address and social security number. 1) The employee's full name and social security number need only appear on the first payroll on which his name appears. 2) The employee's address need be shown only on the first submitted payroll on which his name appears, unless a change of address necessitates an additional submittal to reflect the new address;
- (ii) the employee's classification (or classifications);
- (iii) the employee's hourly wage rate (or rates); the employee's hourly fringe benefits; and where applicable, the employee's overtime hourly wage rate (or rates);
- (iv) the daily and weekly hours worked in each classification, including actual overtime hours worked (not adjusted);
- (v) the itemized deductions made;
- (vi) the net wages paid;
- (vii) the number of the wage rate decision issued on the project by the director.

(b) Numbering payrolls: The contractual provision shall require that all payrolls be numbered, starting with number one (1) for the first payroll at the beginning of the job and continuing in numerical order until the job is completed.

(c) Certification of payrolls: The contractual provision shall require that the contractor and each of his subcontractors shall submit a bi-weekly statement of compliance in the following form:

Date _____
 I, _____, _____ (Name of Signatory Party)
 (Title)
 do hereby state:

That I pay or supervise the payment of the persons employed by _____
 _____ (contractor or subcontractor) on the _____;
 that (building or work)

During the payroll period commencing on the _____ day of _____,
 19_____, and ending the _____ day of _____, 19_____, all persons
 employed on said project have been paid the full weekly wages earned, that no rebates have
 been or will be made either directly or indirectly to or on behalf of said _____

(Contractor or subcontractor)
 from the full weekly wages earned by any person and that no deductions have been made
 either directly or indirectly from the full wages earned by any person, other than deductions
 permitted by law.

That any payrolls under this contract required to be submitted for the above period are correct
 and complete; that the wage rates for laborers or mechanics contained therein are not less
 than the applicable wage rates incorporated into the contract; that the classifications set forth
 therein for each laborer or mechanic conform with the work he performed.

That any apprentices or trainees employed in the above period are duly registered in a bona
 fide apprenticeship program registered with a state apprenticeship agency recognized by the
 bureau of apprenticeship and training, United States department of labor, or properly enrolled
 in a bona fide training program approved for application on public works construction
 projects by the appropriate state and/or federal agency (ies) if and as required by law and
 applicable federal regulation.

(d) Submission of payrolls: The contractual provision shall require that the
 contractor and all subcontractors and their tiers shall deliver or mail legible copies of
 the certified weekly payrolls prepared in accordance with these regulations to the prime

contractor and the contracting agency no more than five working days following the close of the second payroll period. Weekly payrolls shall be submitted bi-weekly. The director shall conduct a minimum of thirty random and pre-selected audits per quarter. The audit will include a review of payroll records and apprenticeship contributions as well as other relevant data as required by statute:

(e) Contractors and all contracting tiers on the project must file a statement of intent to pay prevailing wages (intent), and an affidavit of wages paid (affidavit). The intent form must be filed with the contracting agency within three (3) business days of the award of each respective contract. Payments will not be made to a non-compliant contractor until an intent form is filed.

(f) The affidavit form must be filed prior to the final payment to a contractor. Bond monies and retainage will be released only to contractors who have filed affidavits pursuant to the provisions of these regulations. Any contractor or subcontractor who files a false statement or refuses to file any statement or record required to be filed under these regulations, shall be considered as non-compliant and shall be subject to debarment proceedings. The contracting agency and the prime contractor shall keep all certified payroll records for a period of time not less than four (4) years after the completion of the contract.

(3) In order to accurately determine the minimum wages prevailing for corresponding classes of laborers and mechanics employed on contract work of a similar nature as required by Section 13-4-11, NMSA 1978, the director shall conduct a field survey to which he shall assign not fewer than three (3) deputies*/ on a full-time basis during each survey period, one of whom shall be designated as the chief deputy for public works. The function of the deputies assigned to the field survey shall be to authenticate and verify certified payrolls and verified wage information submitted in conformance with these regulations and to incorporate into the survey wage information on other contract work of a similar nature not subject to the terms of the New Mexico Public Works Minimum Wage Act. */ Note: The requirement of Paragraph (3) of Subsection C of 11.1.2.10 NMAC; that the director "shall assign not fewer than three (3) deputies on a full-time basis" shall become effective only upon budget availability.

(4) Wage information on contract work of a similar nature but not subject to the terms of the New Mexico Public Works Minimum Wage Act shall be incorporated into the survey only so long as it is prepared and submitted in accordance with the following:

(a) The validity and accuracy of

such wage information must be verified in writing and notarized or witnessed:

(b) Such written verification need not be in any particular form, but shall contain the following information:

(i) a statement by the person signing the verification that to the best of his knowledge and belief the information contained therein is true and accurate, specifying the source of his information;

(ii) a statement by classifications of the number of hours worked in such classification, the wages paid in such classification and the payroll periods covered;

(iii) a general description of the nature of the work performed on each project for which information is included and the name of the owner or lessee for whom the work is being performed.

(c) Submission of wage information: The verified wage information prepared in accordance with these regulations shall be delivered to the office of the director no later than closing day, July 31. In the event that July 31 falls on a holiday or non-business day, the deadline for submission of data shall be the first business day following that date. The director shall incorporate the information in his survey only if he has received verification covering all of the work performed under a contract during the survey period.

(d) Upon being informed in writing by any person that work described in any of the several Paragraphs of Subsection B of 11.1.2.9 NMAC supra, is being performed under a contract in the state of New Mexico, the director shall attempt to verify this fact and shall solicit from the contractor and subcontractors on said project the voluntary submission of certified payrolls or verified wage information prepared in accordance with these regulations covering all work performed on said project under the survey period.

(e) Partners must own at least 20% and must be registered with construction industries division to qualify as a partnership.

(f) Officers in a New Mexico registered corporation must own at least 20% of stock in a corporation for exemption from payment of the issued wage rates. Certified weekly payrolls must reflect officers' work classification, daily and weekly hours. Proof of owned stock must be supplied to the director of the labor and industrial division, when deemed necessary by him. Proof of ownership shall consist of a copy of registration of the corporate security register and show total number of shares in the corporation, total number of shares of each individual and the following affidavit:

I, _____, being first duly sworn on oath under penalty of perjury, swear that the foregoing information is true and correct.

Notary: Subscribed and sworn to before me at _____ this _____ day of _____, 19 _____.

Notary public

(SIGNATURE) _____ (DATE)

My commission expires: _____

(5) Contracting agencies are urged to require wage rate inspections during the period of construction.

D. Posting of minimum wage rates:

(1) The minimum wage rates must be posted by the contractor in a prominent, easily accessible place at the site of each particular project.

(2) The director shall furnish the contracting agency with a poster containing the minimum wage rates. Said poster is to be forwarded to the contractor for posting at each particular project site.

E. Procedure for investigation of violations: The enforcement of the provisions of the Public Works Minimum Wage Act is the responsibility of the director in cooperation with the contracting agencies, and as provided in the Public Works Minimum Wage Act. To insure compliance with the act and harmony in the completion of a public contract, the following procedure should be followed:

(1) When a violation is reported or detected, the director shall convey that information to the contracting agency. The director has a non-discretionary duty to request all payroll records in question from either the subcontractor or the prime contractor no later than thirty business days after receiving the information pertaining to the alleged violation. The contractor or subcontractor shall provide legible copies of the certified payroll records within ten (10) business days, when requested by either the director or an interested party through the director.

(a) The director shall investigate a complaint filed in writing by an interested party for violations of the Public Works Minimum Wage Act, as long as the complaint is filed before the contract is closed out between the contracting agency and the prime contractor on any public works project. (Closed out is defined as: when the contracting agency has made final payment on the project).

(b) The provisions of Subsection E of 11.1.2.10 NMAC do not affect any worker's right to make a claim through the wage and hour bureau or appropriate court for payment of prevailing wages and does not diminish the prime's or subcontractor's duty to cooperate with the wage and hour bureau.

(c) If the contractor or subcontractor has not complied with the request for certified payroll records or if the director determines that a violation of the Public Works Minimum Wage Act has occurred and not been rectified, payment to the contractor in proportion to that owed to the non-compliant contractor or subcontractor, shall be withheld by the contracting agency until compliance with these regulations has been secured pursuant to the certification procedure outlined in Section 13-4-14(A) & (B) NMSA 1978. The contractor or subcontractor that does not comply with the act or the provision of these regulations can also be subject to debarment. The contracting agency may, if necessary, request the attorney general, through the director to take legal action to ensure compliance with the act and the regulations contained herein.

(2) Investigation may be conducted by either the contracting agency or the director, or by both agencies jointly, and a report filed with the director, the contracting agency, and the contractor and/or subcontractor involved.

(3) In the event voluntary compliance by the contractor cannot be achieved, enforcement action shall be undertaken by the director and the contracting agency as provided in the Public Works Minimum Wage Act.

F. Confidentiality of employee information: In order to encourage the voluntary submission of wage information (whether in the form of verified wage information or certified payrolls) in connection with the director's wage rate surveys and in order to protect the privacy of employees with respect to whom such wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligations under the Public Works Minimum Wage Act, neither the labor and industrial commission nor the director, or any member of the director's staff, shall disclose to any person (other than to (1) the employer of the employee;

(2) the person or organization (such as a contractors' association, labor organization or contracting agency) which submitted or otherwise furnished such wage information; and (3) the employee, the employee's name; address, social security number or any other information clearly personal to any employee with respect to whom wage information is received, submitted or otherwise in the possession of the director without having received the prior written consent of the (1) the employer of the employee, (2) the person or organization which submitted or otherwise furnished such wage information; or (3) the employee.]

A. Classifications of construction work

(1) Type "A" The street, highway, utility and light engineering construction classification shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athletic fields; highway bridges, median channels, and grade separations involving highways; parks, golf courses, viaducts; uncovered reservoirs; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; telephone and electrical transmission lines and site preparations which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line, or more than five (5) feet from a building or heavy engineering structure, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction to the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure.

(2) Type "B" The general building classification shall include the construction, alteration, repair and demolition of buildings, including office buildings, warehouses, industrial and commercial buildings, institutional and public buildings and all air-conditioning, conduit, heating and other mechanical and electrical works and site preparation for buildings or heavy engineering projects under this classification; except that construction, alteration, repair and demolition of buildings under the scope of this classification shall not include construction, alteration, repair and demolition of buildings under the class "C" classification of Subsection A of 11.1.2.10 NMAC, of these regulations; stadia; and shall

include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building or heavy engineering structure, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction from the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure.

(3) Type "C" The residential building construction classification shall include the site preparation and construction, alteration; repair and demolition of residential buildings and shall include all structures intended for residential occupancy, be it by owners of said properties or tenants, including, but not limited to, single detached buildings, duplexes, tri-plexes, quad-plexes, residential condominium buildings, apartment buildings not to exceed four stories in height; and shall include electrical, gas, water, sewer lines and other such utility construction which are part of projects under this classification and included within the property line or less than five (5) feet from the building, whichever is closer, provided, however, with regard to electrical utilities such construction shall include construction to the first attachment of incoming power source without regard to the property line or proximity to the building or the heavy engineering structure.

(4) Type "H" The heavy engineering construction classification shall include construction, alteration, repair and demolition of heavy engineering work such as railroad and geothermal projects, power generating plants, pump stations, natural gas compressing stations; covered reservoirs and sewage and water treatment facilities; concrete linings for canals, ditches and channels; concrete dams; earth dams of one million (1,000,000) cubic yards or over; radio towers, ovens, furnaces, kiln, silos, shafts and tunnels (other than highway shafts and tunnels), hydroelectric projects; and well drilling, telephone and electrical transmission lines which are part of general building and heavy engineering projects; mining appurtenances such as tipples, washeries and loading and discharging chutes, and specialized structures for testing, launching and recovering space and other rocket-type missiles; construction and installation of cross-country transportation mainline pipelines for the distribution of petroleum or natural gas, up to the first metering station or connection with the distribution pipelines; provided, "first metering station or connection" means that point which divides cross-country transportation mainline transmission lines or higher pressure lateral and branch lines from lower pressure distribution systems.

B. On contracts which involve more than one classification of construction, as defined in 11.1.2.10 NMAC the director shall issue predeterminations, including therein the appropriate wage rates for each classification of construction where none of the classifications comprises eighty percent (80%) of the total contract cost. Where one classification comprises eighty percent (80%) or more of the total contract cost, the predetermined rate for that classification shall be used for the entire contract.

[5/31/72, 1/14/76, 1/14/77, 6/4/79, 1/29/81, 11/4/88, 9/25/89, 7/11/92, 7/14/92, 2/14/94, 11/29/97; 5/15/00; 11.1.2.10 NMAC - Rn, 11 NMAC 1.1.10, 12/31/09; A, 3/15/12]

11.1.2.11 [PROCEDURE TO BE EMPLOYED IN THE PREDETERMINATION OF WAGE RATES ON PUBLIC WORKS] ADOPTION OF STANDARD JOB CLASSIFICATIONS AND DESCRIPTIONS:

[Authority: Subsections A to G of 11.1.2.11 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation:

A. Purpose and scope: The regulations contained in this part set forth the procedure for the determination of prevailing wage rates, on a statewide basis, pursuant to Section 13-4-11, NMSA 1978:

B. Computation of prevailing wage rate and definitions: The prevailing wage rate for laborers and mechanics employed on projects within the street, highway, utility and light engineering construction classification (type "A") and for laborers and mechanics employed on building projects and heavy engineering projects within the general building (type "B") and heavy engineering construction classification (type "H") and for laborers and mechanics employed on projects determined within the residential building classification (type "C") shall be computed on a statewide basis without regard to zone, incentive, or subsistence pay. However, while zone, incentive, or subsistence pay shall not be considered in determining the statewide base wage rate, it shall be computed and applied on a locality basis in type "B" and type "C" construction in accordance with the same formula utilized to determine the prevailing statewide base wage rate. For the purpose of zone, incentive or subsistence pay determination, "locality basis" shall mean location, municipality or site from which the zone, incentive or subsistence pay data emanated for the survey. Working foreman hours shall be included in the determination of the prevailing wage for that particular craft by surveying hours worked with the majority of the mechanics in that classification paid by that contractor/subcontractor. Where working foremen are the only mechanics on that project, those hours will be surveyed at the predetermined rate issued on that project. Working foremen in groupings for truck drivers, operators, and laborers shall not be included. For each classification the director shall employ the following methodology:

(1) The base wage rate paid in each work classification shall be grouped in ten cent (\$.10) numerically consecutive intervals, beginning with \$.01 and including \$.105, from which a weighted average of each group shall be taken, (see the following example):

Example:

Rates paid as follows would be grouped in this manner:

256 man hours at \$10.01 =	\$2,562.56
340 man hours at \$10.05 =	\$3,417.00
204 man hours at \$10.10 =	\$2,060.40
800 man hours (for group) into	\$8,039.96 = \$10.05 base wage for group

2,011 man hours at \$10.11 =	\$20,331.21
722 man hours at \$10.16 =	\$7,335.52
1,067 man hours at \$10.20 =	\$10,883.40
3,800 man hours (for group) into	\$38,550.13 = \$10.14 base wage for group

and so forth

(2) The prevailing wage rate for a given classification on contract work of a similar nature in the state shall be:

(a) The base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the majority of man hours worked in said classification, or

(b) In the event that (1) is not applicable, then the base wage rate (as determined in Paragraph (1) of Subsection B of 11.1.2.11 NMAC above) paid for the greater number of man hours, provided that such greater number constitutes at least thirty per cent (30%) of the man hours worked in the classification;

(c) In the event that neither (1) nor (2) above is applicable the weighted average in the classification shall be the prevailing rate;

(d) In the event that the prevailing wage rate as determined by the application of (1) or (2) above (whichever is applicable) would result in lowering the prevailing wage as determined from the last survey immediately preceding by more than 3%, the director shall

compute the rate under Rule (3) above, and unless application of Rule (3) above would have the effect of further lowering the rate, the prevailing rate determined shall be the rate computed by application of Rule (3) above or the rate as was determined by the last survey preceding, whichever is lower:

(e) Fringe benefits as part of wages, as defined in Section 13-4-12 (A) (2), NMSA, 1978, shall be determined by applying Subparagraph (d) of Paragraph (2) of Subsection B of 11.1.2.11 NMAC above to the total dollar amount of fringe benefits paid by each contractor multiplied by the number of hours for which the total was paid. The fringe benefit figure so determined shall be expressed by a single dollar figure representing the total dollar amount of fringe benefits prevailing as a lump sum, rather than by separate dollar amounts representing each individual category of fringe benefits found to be prevailing.

(3) The term "base wage rate" contemplated in this section, shall mean the straight time hours and hourly rate paid each laborer or mechanic:

(4) The term "weighted average" shall mean the sum of the products of the grouped man hours times group base wage rate divided by the total number of man hours worked in the classification:

(5) The term "similar nature" shall mean contract work performed on projects as defined in the several Subparagraphs of Subsection B of 11.1.2.9 NMAC of these regulations:

(6) The term "director" shall mean the public official charged by law with the administration of the Public Works Minimum Wage Act.

(7) The term "state" shall mean the state of New Mexico:

C. Obtaining and compiling wage rate information and preparation of wage rate surveys: For the purpose of making wage determinations, the director shall conduct a continuing program for the obtaining and compiling of wage rate information, as required by Section 13-4-11, NMSA 1978, employing the procedures set forth in this Section:

(1) Separate surveys shall be prepared for the street, highway, utility and light engineering classification (type "A"), and for the general building (type "B") and heavy engineering construction classification (type "H") and for the residential construction classification (type "C"), and wage determination shall be issued on the basis thereof.

(2) The annual survey period shall be the month of June of each year. Wage rate decisions issued as a result of this survey and wage determination shall remain effective until superseded beginning fifteen (15) days following the making of the wage determination pursuant to Subsection

D of 11.1.2.11 NMAC of these rules and regulations. Each annual survey and wage determination shall be and remain valid and the director shall issue to requesting agencies wage decisions based thereon until such survey and wage determination is superseded by an effective new survey and wage determination. A wage determination based upon a new survey shall not go into effect pending a final disposition of any appeal to the labor and industrial commission, sitting as the appeals board. If no appeal is timely filed pursuant to properly preserved objection as provided in Subsection D of 11.1.2.11 NMAC, *infra*, such survey and determination shall become effective on the applicable date specified in Paragraph (2) of Subsection C of 11.1.2.11 NMAC, *above*.

(3) Surveys and wage rate determination shall be on a statewide basis.

(4) Wage rate surveys prepared by the director for the street, highway, utility and light engineering construction classification (type "A"), and for the general building (type "B") and for the residential building construction classification (type "C"), and for heavy engineering construction classification (type "H") shall be compiled from certified weekly payrolls and verified wage information submitted and prepared in accordance with Subsection C of 11.1.2.10 NMAC of these rules and regulations and shall be utilized by the director in making wage rate determinations; provided, the director shall encourage the voluntary submission of wage data by contractors, contractors' associations, labor organizations and public officers. He shall give due regard to such information, voluntarily submitted, together with information obtained from field surveys, conducted in accordance with Section 13-4-11, NMSA 1978, in evaluating the validity and accuracy of certified payrolls and verified wage information incorporated in the director's survey.

(a) Certified weekly payrolls and verified wage information: The director shall compile his survey from the information contained in the certified payrolls and verified information submitted for the survey period prepared in accordance with Subsection C of 11.1.2.10 NMAC of these rules and regulations. Not less than twenty-five (25) days prior to the time scheduled for the hearing specified in Subsection D of 11.1.2.11 NMAC *infra*, the director shall prepare a detailed statement of the information, if any, which he has excluded from said certified payrolls or verified wage information in preparing his survey. Said statement, together with all certified payrolls and verified wage information, shall be available for inspection by any interested party in the offices of the director, subject to limitations imposed by Subsection F of 11.1.2.10 NMAC, *supra*. To the extent the director fails to object in said detailed

statement, the information contained in said certified payrolls or verified wage information shall be incorporated by the director directly into the survey for the period concerned and the director shall be barred from raising any objection to said information in any subsequent proceeding before the labor and industrial commission, sitting as the appeals board, or otherwise. The information contained in said certified payrolls or verified wage information shall be conclusive upon him as to its validity, accuracy and completeness. This provision shall not prevent any interested party from objecting to information contained in such certified payrolls or verified wage information.

(b) Within the time limits specified in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, *supra*, the director may object to the information contained in certified weekly payrolls or verified wage information timely submitted to him and refuse to incorporate it in his survey only on the ground that information contained therein does not accurately state the wages being paid mechanics or laborers employed under said contract or is not in accordance with the wage rates contained in the contract specifications, if any.

(c) The director may omit from his survey information contained in certified payrolls or in properly prepared and submitted verified wage information only to the extent he has a specific objection as enumerated in Subparagraph (a) of Paragraph (4) of Subsection C of 11.1.2.11 NMAC, *supra*, thereto.

D. Review of survey results after notice to all interested parties: Survey results shall be reviewed at a meeting with all known interested parties. The time, date and place of said meeting will be established at the discretion of the director. Notice of the subject matter, the time, date and place of the meeting, the manner in which interested persons may present their views, and the method by which copies of the survey results (including lists of contractors and projects covered by the survey) and copies of the director's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, *supra*, may be obtained, shall be published once at least thirty (30) days prior to the meeting date in a newspaper of general circulation. Such notice shall also be mailed by the director to all known interested parties at least thirty (30) days prior to the meeting date along with a copy of the survey results (including lists of contractors and projects covered by the survey) and a copy of the labor commissioner's statement of information excluded from the survey pursuant to Paragraph (4) of Subsection C of 11.1.2.11 NMAC, *supra*. Any objections to the survey results may be communicated to the director

by an interested party either orally at such meeting or in writing delivered to the director on or before the date of such meeting, and the director shall make a record of any and all objections and of his rulings thereon prior to making his determination of prevailing wage rates. The director shall notify the objecting party and all other parties in attendance at the meeting of his ruling(s) on objections simultaneously with the making of his wage determination. Objections to the survey results not made by any interested party receiving proper and timely notice of such meeting shall be deemed waived and shall not constitute a ground for appeal unless the basis for such objection shall not have been reasonably discoverable by examination of the certified payrolls and verified wage information upon which the survey results are based, which data and all work papers and other material relating thereto shall be available at the office of the director, not less than thirty (30) days prior to such meeting, for inspection and copying by any interested party. For purposes of this Subsection D of 11.1.2.11 NMAC the term "all interested parties" shall include without limitation the state highway department, incorporated cities and Class A and B counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the Act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section.

E. Determination of prevailing wage rates: The director shall determine prevailing wage rates applicable in the state for the type of construction proposed based on the survey data assembled and compiled.

F. Addendum changes: Wage rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted.

G. Effectiveness of wage rate decisions: Wage rate decisions shall remain effective until superseded; provided that changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days notice before the date bids are to be submitted. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new survey and wage determination becomes effective pursuant to Subsection C of 11.1.2.11 NMAC, *supra*, provided, that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least ten (10) days prior to the date on which bids are to

be submitted. Notwithstanding anything in these regulations to the contrary or apparently to the contrary, the director shall not be required to issue a wage rate decision to a requesting agency unless such agency reasonably expects to advertise the contract for bids and to receive bids within 120 days from the date of its written request.]

A. The director has adopted the standard job classifications and descriptions as set forth in 11.1.2.17 NMAC. Existing job classifications and descriptions shall remain effective until superseded on the effective date of newly adopted standard job classifications and descriptions.

B. The director may seek the assistance of contractors, contractors' associations, labor organizations, interested parties, and public officers in establishing standard job classifications and descriptions.

(1) Any person wishing to add, delete or modify a standard job classification and description shall submit a written request containing the proposed classification and description.

(2) Any proposal for a standard job classification and description shall contain the following clearly defined information:

- (a) occupational title;
- (b) a description of the physical duties to be performed by a laborer or mechanic having such a classification;
- (c) evidence of existing prevailing rates of pay, including fringe benefits;
- (d) evidence that the proposed classification is used in the type of contract work for which the classification is proposed; and
- (e) such other justification as the director may deem advisable.

[5/31/72, 1/14/76, 6/4/79, 3/7/80, 1/29/81, 5/28/81, 11/4/88, 2/8/90, 2/14/94, 8/15/98; 11.1.2.11 NMAC - Rn & A, 11 NMAC 1.1.11, 12/31/09; A/E, 4/15/10; A, 3/15/12]

11.1.2.12 [ADOPTION OF STANDARD JOB CLASSIFICATIONS AND DESCRIPTIONS APPLICABLE ON PUBLIC WORKS IN NEW MEXICO SUBJECT TO THE PUBLIC WORKS MINIMUM WAGE ACT] PREDETERMINATION OF WAGE RATES: [Authority: Subsections A to C of 11.1.2.12 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.

A. Purpose and scope: The regulations in this part set forth the procedures for establishment of standard job classifications and descriptions for various classifications of laborers and mechanics employed on contract work of a similar nature and as defined in the several Paragraphs of Subsection B of 11.1.2.9 NMAC, of these rules and regulations. These are adopted in order to permit the director to administer the Public Works

Minimum Wage Act uniformly:

B. Adoption of standard job classifications and descriptions:

(1) The director may seek the assistance of contractors, contractors' associations, labor organizations, interested parties, and public officers in establishing standard job classifications and descriptions for work to be performed in the state subject to the Public Works Minimum Wage Act. Separate standard job classifications and descriptions shall be established for each of the separate types of construction projects as defined in the several Paragraphs of Subsection B of 11.1.2.9 NMAC, of these rules and regulations in order to reflect the various classifications of laborers and mechanics employed on contract work of a similar nature:

(2) Standard job classifications and descriptions shall be adopted as regulations by the director pursuant to Section 13-4-11; NMSA 1978, and in accordance with the procedures set out in Section 15 of these rules and regulations. Existing job classifications and descriptions shall remain effective until superseded on the effective date of newly adopted standard job classifications and descriptions as provided in Section 15 of these rules and regulations. Upon issuance by the director of new standard job classifications and descriptions pursuant to Subsection B of 11.1.2.15 NMAC infra, the director shall mail copies of the said job classifications and descriptions pursuant to Paragraph (3) of Subsection B of 11.1.2.14 NMAC, infra:

C. Addition, deletion, or modification of job classifications:

(1) Any person wishing to add, delete, or modify a standard job classification and description shall submit a written request containing the proposed classification and description:

(2) Any proposal for a standard job classification and description shall contain the following clearly defined information:

- (a) occupational title;
- (b) a description of the physical duties to be performed by a laborer or mechanic having such a classification;
- (c) evidence of existing prevailing rates of pay, including fringe benefits;
- (d) evidence that the proposed classification is used in the type of contract work for which the classification is proposed; and
- (e) Such other justification as the director may deem advisable in the circumstances.]

A. Not later than July 30 of each year, interested parties may submit to the director for consideration collective bargaining agreements and other data collected during the preceding twelve-month period. Submissions must be made as provided in the following subparagraphs:

(1) Collective bargaining agreements filed with the division must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury, and which:

(a) certifies that the agreement filed is fully executed and in effect, unless it is a signed original agreement or photocopy thereof, or a printed copy of a fully executed agreement showing the names of the signatory parties or associations, except in the case of a printed agreement the director may require certification;

(b) names or otherwise identifies all New Mexico counties within the jurisdiction of the local union or unions signatory to the agreement;

(c) along with the collective bargaining agreement, the following information must be provided to the division on a form to be furnished by the director: name and address of the signatory employer association or, if there be no signatory employer association, the names and addresses of all contractors signatory to the agreement, unless such information is contained in the agreement, the number of hours worked by workers in each classification under the terms of the agreement, the classification of each worker, the hourly rate actually paid each worker, the project type, the fringe benefit rate actually paid each worker, and, if practical, the counties in which work was performed.; the director shall consider any information provided during the twelve-month period preceding June 30 of each year.

(2) Interested parties wishing submit information for employees not covered by a collective bargaining agreement must provide the following information to the division on a form to be furnished by the director: name and address of the employer or interested party, the number of hours worked by workers in each classification, the classification of each worker, the hourly rate actually paid each worker, the project type, the fringe benefit rate actually paid each worker, and, if practical, the counties in which work was performed. The information filed with the division must be accompanied by a signed statement which is certified as true and correct to the best of the knowledge and belief of the person preparing the statement, under penalty of perjury. The director shall consider any information provided during the twelve-month period preceding June 30 of each year.

B. The director may, consistent with the methodology set forth in Subsection D of 11.1.2.12 NMAC, determine that the rate established by a collective bargaining agreement is the general prevailing wage rate for each craft, classification or type of worker for any

project in which a collective bargaining agreement has been filed with the division in accordance with 11.1.2.12 NMAC and that collective bargaining agreement covers the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.17 NMAC.

C. In setting the general prevailing wage rate, the director shall give due regard to information obtained during the director's determination of the prevailing wage rates and the prevailing fringe benefit rates and may consider the written data, personal opinions and arguments of interested parties pursuant to the methodology set forth in Subsection D of 11.1.2.12 NMAC.

D. The prevailing wage rate for laborers and mechanics for all job classifications shall be computed on a statewide basis without regard to zone, incentive, or subsistence pay. Working foreman hours shall be included in the determination of the prevailing wage for that particular craft by surveying hours worked with the majority of the mechanics in that classification paid by that contractor/subcontractor. Where working foremen are the only mechanics on that project, those hours will be surveyed at the predetermined rate issued on that project. Working foremen in groupings for truck drivers, operators, and laborers shall not be included. For each classification the general prevailing wage rate shall be determined as follows:

(1) If a collective bargaining agreement covering the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.17 NMAC has been filed with the division in accordance with 11.1.2.12 NMAC, then the collective bargaining agreement is the general prevailing wage rate except as provided in Paragraphs (2) through (3) of Subsection D of 11.1.2.12 NMAC.

(2) If the data submitted pursuant to Subsection A of 11.1.2.12 NMAC for employees not covered by a collective bargaining agreement constitute thirty per cent (30%) or more of the man hours worked for a given classification, the director shall establish the prevailing wage rate for the classification as the weighted average of the total man hours, as determined using the methodology described in Paragraph (4) of Subsection D of 11.1.2.12 NMAC. The Total man hours for purposes of this subsection shall mean the number of hours worked in a classification by employees covered by a collective bargaining agreement plus the number of hours worked by employees not covered by a collective bargaining agreement, as reported to the division.

(3) In the event that no collective bargaining agreement covering the same or most similar class or classification of laborer or mechanic as set forth in 11.1.2.17 NMAC

has been filed with the division in accordance with 11.1.2.12 NMAC then the director shall establish the prevailing wage rate based upon information through voluntary submissions and pursuant to a survey consistent with Subsection E of 11.1.2.12 NMAC.

(4) The base wage rate paid in each work classification shall be grouped in ten cent (\$.10) numerically consecutive intervals, beginning with \$.01 and including \$.105, from which a weighted average of each group shall be taken. (see the following example).

Example:

Rates paid as follows would be grouped in this manner:

256 man hours at \$10.01 =	\$2,562.56
340 man hours at \$10.05 =	\$3,417.00
204 man hours at \$10.10 =	\$2,060.40
800 man hours (for group) into	\$8,039.96 = \$10.05 base wage for group
2,011 man hours at \$10.11 =	\$20,331.21
722 man hours at \$10.16 =	\$7,335.52
1,067 man hours at \$10.20 =	\$10,883.40
3,800 man hours (for group) into	\$38,550.13 = \$10.14 base wage for group

and so forth

(5) Fringe benefits as part of wages shall be determined by applying Subparagraph (a) of Paragraph (2) of Subsection D of 11.1.2.12 NMAC to the total dollar amount of fringe benefits paid by each contractor multiplied by the number of hours for which the total was paid. The fringe benefit figure so determined shall be expressed by a single dollar figure representing the total dollar amount of fringe benefits prevailing as a lump sum, rather than by separate dollar amounts representing each individual category of fringe benefits found to be prevailing.

E. The director shall determine the prevailing wage rates and prevailing fringe benefit rates for job classifications based upon collective bargaining agreements after giving due regard to information obtained from all sources and the substantial evidence of industry practice gathered from surveys conducted employing the following procedures:

(1) Surveys and wage rate determinations shall be on a statewide basis.

(2) Separate surveys shall be prepared for the categories within the various crafts employed on contract work of a similar nature and wage rate differentials within each such craft as set forth in 11.1.2.18 NMAC; wage and fringe benefit determinations shall be issued on the basis thereof.

(3) The annual survey period shall be based upon data for the twelve-month period beginning July first and ending on June thirtieth of each year. The annual prevailing wage rates and prevailing fringe benefit rates determinations shall be and remain valid and the director shall issue to requesting agencies wage decisions based thereon until such prevailing wage rates and prevailing fringe benefit rates determinations are superseded by an effective new prevailing wage rates and prevailing fringe benefit rates determinations.

(4) Wage rate surveys prepared by the director shall be compiled from certified weekly payrolls and verified wage information submitted and prepared in accordance with Paragraph (9) of Subsection B of 11.1.2.9 NMAC.

(5) Wage and fringe benefit information on contract work of a similar nature but not subject to the terms of the New Mexico Public Works Minimum Wage Act shall be incorporated into the survey only so long as it is prepared and submitted in accordance with Paragraph (9) of Subsection B of 11.1.2.9 NMAC.

F. The director shall determine the employers' contribution requirements under the provisions of the Public Works Apprentice and Training Act, and that information shall be part of all public works construction projects.

G. In order to encourage the voluntary submission of wage information (whether in the form of verified wage information or certified payrolls) in connection with the director's wage rate surveys and in order to protect the privacy of employees with respect to whom such wage information pertains, except pursuant to lawful process or to the exercise of the director's enforcement obligations under the Public Works Minimum Wage Act, neither the labor and industrial commission nor the director, or any member of the director's staff, shall disclose to any person the employee's name, address, social security number or any other information clearly personal to any employee with respect to whom wage information is received, submitted or otherwise in the possession of the director without having received the prior written consent of the employee.

[5/31/72, 1/14/76, 6/4/79, 11/4/88; 11.1.2.12 NMAC - Rn& A, 11 NMAC 1.1.12, 12/31/09; A/E, 4/15/10; A, 3/15/12]

11.1.2.13 [SURVEY CATEGORIES AND WAGE DIFFERENTIALS WITHIN EACH CRAFT CLASSIFICATION, APPLIED ON PUBLIC WORKS PROJECTS IN NEW MEXICO] PROCEDURE FOR ADOPTION OF WAGE RATES:
[Authority: Subsections A to E of 11.1.2.13 NMAC adopted pursuant to Section 13-4-11, New Mexico Statutes Annotated, 1978 Compilation.]

A. Purpose and scope: The regulations in this part set forth the establishment of survey categories within the various crafts employed on contract work of a similar nature, and of wage rate differentials within each such craft which will remain constant and reflect the skill differential of each classification within the craft, provided that changes may be made if future surveys clearly substantiate such change.

B. Survey categories for type A construction: The following classifications within the various crafts shall be surveyed by the director in his survey:

- (1) bricklayer, blocklayer, stonemason;
- (2) carpenters;
- (3) cement masons;
- (4) electricians—lineman/wireman or technician (outside);
- (5) ironworkers;
- (6) *group iv operators;
- (7) *group ii truck drivers;
- (8) brush painters;
- (9) spray painters;
- (10) plumbers, pipe fitters, steam fitters;
- (11) *group II laborers (semi-skilled);
- (12) Each of the above asterisked categories shall constitute the basis for wage rate differentials for the respective crafts which each represents. When appropriate wage requests are made for crafts which are not listed above, the director shall utilize the same survey procedures and base periods to determine the prevailing rate as he uses for the other crafts.

C. Survey categories for type "B" and Type "C" construction: The following classifications within the various crafts shall be surveyed by the director in his survey:

- (1) asbestos worker/heat and frost insulator;
- (2) boilermaker;
- (3) bricklayer, blocklayer, stonemason;
- (4) carpenter/lather - building; residential;
- (5) carpenter/lather - heavy engineering;
- (6) cement mason (composition or mastic - finishing machine operator) - building, residential, and heavy engineering;
- (7) electricians: *wireman or technician (inside); *lineman or technician (outside); *installer (sound);
- (8) elevator constructor;
- (9) helper;
- (10) glazier;
- (11) ironworker;
- (12) *painters;
- (13) plasterer;
- (14) plumbers and pipefitters, lead burner;
- (15) roofer;
- (16) sheet metal worker;
- (17) soft floor layer (carpet, asph. tile, linoleum);
- (18) sprinkler fitter;
- (19) tile setter, helper;
- (20) *group VIII operators - building ; residential;
- (21) semi - skilled laborers: cement mason tenders; hodcarriers; plaster spreader opr.; plaster tenders; gunite nozzlemen; pumpcrete nozzlemen - building; residential;
- (22) tenders (to cement mason and plasterer); hodcarriers - heavy engineering;
- (23) *group II truck drivers - building; residential;
- (24) *group IV operators - heavy engineering;
- (25) *group II truck drivers - heavy engineering;
- (26) Each of the above asterisked categories shall constitute the basis for wage rate differentials for the respective crafts which each represents. When appropriate wage requests are made for crafts which are not listed above, the director shall utilize the same survey procedures and base periods to determine the prevailing rate as he uses for other crafts.

D. Wage rate differentials in craft classifications:

- (1) The director may seek the assistance of contractors, contractors' associations, labor organizations, other interested parties and public officers in setting appropriate wage differentials within each craft employed on contract work of a similar nature.
- (2) Informational data pertaining to wage rate differentials within a craft employed on contract work of a similar nature may be presented to the director by any of the above-named interested parties.

E. Changes in wage spreads:

- (1) Wage rate investigations shall be conducted to ascertain the propriety of wage differentials within craft classifications employed on contract work of a similar nature.
- (2) When a change in wage rate differential is indicated by substantial evidence, all known interested parties shall be notified and given a reasonable time in which to present their views before a permanent change in a wage differential is made by the director.

F. Appendix A: Electrician classifications and wage spreads for type "A" construction:

- | | |
|--|----------|
| (1) Groundman (outside) | -\$3.41; |
| (2) Equipment operator (outside) | -\$0.59; |
| (3) Lineman/wireman or technician(outside) | (Base); |
| (4) Cable splicer (outside) | +\$1.18. |

G. Appendix B: Laborer classification groups and wage spreads for type "A" construction:

- (1) Group I (unskilled): -\$0.30: building and common laborer; carpenter tender chainman; rodman; stakedriver; concrete buggy

operator (hand); concrete workers; flagman; soil sample tester;

————— (2) Group II (semiskilled): (base): wagon, air tract, drill and diamond drillers' tender (outside); air and power tool man (not a carpenter's tool); asphalt heaterman; asphalt jointman; asphalt raker; batching plant scaleman; tenderers (to cement mason and plasterer); chain sawman; concrete power buggyman; concrete touch-up man; concrete sawman - coring mach.; curbing machine, asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman or blaster helper; sandblaster; scaler; vibratorman (hand type); vibratory compactor (hand type); window washer; nurseryman-gardener; wagon, air tract, drill and diamond driller (outside); roadway hardware worker;

————— (3) Group III (miscellaneous): +\$0.40: gunitite pumperceman and nozzleman; multi-plate setter; manhole builder; pipelayer; powderman-blaster-makeup; landscaper; traffic control technician; laboratory technician.

H. Appendix C: Equipment operator classification groups and wage spreads for type "A" construction:

————— (1) Group I: -\$0.80: concr. paving curing machine;

————— (2) Group II: -\$0.60: belt type conveyors (material and concrete); broom (self prop.); fork lift; grease truck oper.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attach.); indus. loco. brakeman; front end loader (2CY or less); fireman; oiler; screedman; roller (pull type); mulching machine, roller (self propelled);

————— (3) Group III: -\$0.02: concr. paving form grader; concr. paving gang vibrator; concr. paving joint or saw mach.; concr. paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (elec. gen. or welding mach.);

————— (4) Group IV: (base): bulldozer (including self-propelled roller with dozer attachment); batch or continuous mix plant (concr., soil cement, or asph.); roller (steel wheel); front end loader (2 through 10CY); scraper oper., motor grader;

————— (5) Group V: +\$0.00: asph. distr.; asph. paving or laydown mach.; asph. retort heater; mixer, heavy duty, asph. or soil cement; trenching mach.; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM and over); crushing screening and washing plants; drlg. mach. (cable core or rotary); mixer, concr. (1 CY and less); pump (6 in. intake or over); winch truck; hoist (1 drum); indus. loco. motorman; lumber stacker; tractor (50 drawbar HP or over);

————— (6) Group VI: +\$0.15: concr.

paver mixer; hoist (2 drums and over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer, concr. (over 1 CY); mechanic and/or welder;

————— (7) Group VII: +\$0.20: concr. slip-form paving mach.; concr. paving finishing mach.; concr. paving longitudinal float; gunitite mach.; refrig.; jumbo form or drlg.; stage; slusher; concr. paving spreader; pumpercrete mach.; grout pump oper.;

————— (8) Group VIII: +\$0.35: mine hoist; bulldozer (multiple units); scraper (multiple units); mucking mach.; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile) over 40 tons;

————— (9) Group IX: +\$0.85: belt loader (CMI type) oper.; pipemobile oper. assistant; derrick, cableway;

————— (10) Group X: +\$1.65: pipemobile operator; mole operator.

I. Appendix D: Truck driver classification groups and wage spreads for type "A" construction:

————— (1) Group I: -\$0.20: pick-up truck 3/4 ton or under; warehouseman; dump truck, under 8 cubic yards; flatbed, 1 1/2 ton or under;

————— (2) Group II: (BASE): dump truck, 8 to 16 cubic yards; tank truck, under 6,000 gallons; flatbed, over 1 1/2 ton;

————— (3) Group III: +\$0.20: spreader box (self-propelled); distributor (asphalt) transit mix; lowboy, light equipment; off-highway hauler; tank truck, over 6,000 gallons; dump truck, over 16 cubic yards; trailer semi-trailer dump;

————— (4) Group IV: +\$0.40: diesel-powered transport; lowboy, heavy equipment.

J. Appendix E: Electrician classifications and wage spreads for type "H" heavy engineering construction:

————— (1) Outside classifications:

————— (a) Groundman (outside) —————-\$3.41;

————— (b) Equipment operator (outside) —————-\$0.59;

————— (c) Lineman or technician (outside) —————(base);

————— (d) Cable splicer (outside) —————+\$1.18.

————— (2) Inside classifications:

————— (a) Wireman or technician (inside) —————(base);

————— (b) Cable splicer (inside) —————+\$1.73.

————— (3) Sound classifications:

————— (a) Installer (sound) —————(base);

————— (b) Technician (sound) —————+\$1.55;

————— (c) Soundman —————+\$3.62.

K. Appendix F: Laborer classification groups and wage spreads for type "H" heavy engineering construction:

————— (1) Group I (unskilled): -\$0.30: building and common laborer; carpenter tender; chainman; rodman; stakedriver; concr. buggy opr. (hand); concr. workers; flagmen; soil sample tester;

————— (2) Group II (semi-skilled): (base): wagon, air tract, drill and diamond drillers' tender (outside); air and power tool opr. (not a carpenter's tool); asbestos remover; asph. heaterman; asph. jointman; asph. raker; batching plant scaleman; tenderers (to cement mason and plasterer); chain sawman; concr. powerbuggyman opr.; concr. touch-up man; concr. sawman - coring mach.; curbing mach., asph. or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman or blaster helper; sandblaster; scaler; vibratorman (hand type); vibratory compactor (hand type); window washer; nurseryman-gardener; wagon, air tract, drill and diamond driller (outside); roadway hardware worker;

————— (3) Group III (miscellaneous): +\$0.30: gunitite pumperceman and nozzleman; multi-plate setter; manhole builder; pipelayer; powderman - blaster - makeup; landscaper; traffic control technician; laboratory technician;

————— (4) Group IV (shaft workers): +\$0.87: air tugger opr.; concr. workers (incl. all cement chipping and finish, underground); drillers; form setters and handlers; hand muckers; miners; powdermen; timbermen (wood or steel); reinforcing steel setters; tunnel liner; plate setters, all cutting and welding incidental to miner's work; toplanders; bottomlanders;

————— (5) Group V (shaft workers): +\$1.12: shifters;

————— (6) Group VI (tunnel workers): -\$0.15: laborers and handmuckers;

————— (7) Group VII (tunnel workers): +\$0.00: groutmen; nippers; trackmen;

————— (8) Group VIII (tunnel workers): +\$0.25: drillers; form setters and handlers; scalers; miners; timbermen; brakemen; concr. workers (incl. all cement chipping and finishing underground); reinforcing steel setters; timbermen (wood or steel); tunnel liner plate setters; all cutting and welding incidental to miner's work;

————— (9) Group IX (tunnel workers): +\$0.45: powdermen;

————— (10) Group X (tunnel workers): +\$1.12: shifters.

L. Appendix G: Equipment operator classification groups and wage spreads

for type "H" - heavy engineering construction:

— (1) Group I: -\$0.80: concr. paving curing machine;
 — (2) Group II: -\$0.60: belt type conveyors (material and concr.); broom (self prop.); forklift; greases truck oper.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attach.); indus. loco. brakeman; front end loader (2 CY or less); fireman; oiler; screedman; roller (pull type); mulching machine, roller (self propelled);

— (3) Group III: -\$0.02: concr. paving form grader; concr. paving gang vibrator; concr. paving joint or saw mach.; concr. paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (elec. gen. or welding mach.);

— (4) Group IV: (base): bulldozer (including self-propelled roller with dozer attachment); batch or continuous mix plant (concr., soil-cement, or asph.); roller (steel wheel); front end loader (2 through 10 CY); scraper oper.; motor grader;

— (5) Group V: +\$0.00: asph. distr.; paving or laydown mach.; asph. retort heater; mixer, heavy duty, asph. or soil cement; trenching mach.; clam type shaftmucker; backhoe; clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM and over); crushing screening and washing plants; drlg. mach. (cable core or rotary); mixer, concr. (1 CY and less); pump (6 in. intake or over); winch truck; hoist (1 drum); indus. loco. motorman; lumber stacker; tractor (50 drawbar HP or over);

— (6) Group VI: +\$0.15: concr. paver mixer; hoist (2 drums and over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer, concr. (over 1 CY); mechanic and/or welder;

— (7) Group VII: +\$0.20: concr. slip-form paving mach.; concr. paving finishing mach.; concr. paving longitudinal float; guniting mach.; refrig.; jumbo form or drlg.; stage; slusher; concr. paving spreader; pumcrete mach.; grout pump oper.;

— (8) Group VIII: +\$0.35: mine hoist; bulldozer (multiple units); scraper (multiple units); mucking mach.; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile) over 40 tons;

— (9) Group IX: +\$0.85: belt loader (CMI type) oper.; pipemobile oper. assistant; derrick, cableway;

— (10) Group X: +\$1.65: pipemobile operator; mole operator;

M. Appendix H: Truck driver classification groups and wage spreads for type "H" - heavy engineering construction:

— (1) Group I: -\$0.20: pick-up truck 3/4 ton or under; warehouseman; dump truck, under 8 cubic yards; flatbed, 1 1/2 ton or under;

— (2) Group II: (base): dump truck, 8 to 16 cubic yards; tank truck, under 6,000 gallons; flatbed, over 1 1/2 ton;

— (3) Group III: +\$0.20: spreader box (self-propelled); distributor (asphalt) transit mix; lowboy, light equipment; off-highway hauler; tank truck, over 6,000 gallons; dump truck, over 16 cubic yards; trailer semi-trailer dump;

— (4) Group IV: +\$0.40: diesel-powered transport; lowboy, heavy equipment;

N. Appendix I: Electrician classifications and wage spreads for type "B" building construction and type "A" residential construction:

— (1) Outside classifications:

— (a) Groundman (outside) —————-\$3.41;

— (b) Equipment operator (outside) —————-\$0.59;

— (c) Lineman or technician (outside) —————(base);

— (d) Cable splicer (outside) —————+\$1.18.

— (2) Inside classifications:

— (a) Wireman or technician (inside) —————(base);

— (b) Cable splicer (inside) —————+\$1.73.

— (3) Sound classifications:

— (a) Installer (sound) —————(base);

— (b) Technician (sound) —————+\$1.55;

— (c) Soundman —————+\$3.62.

O. Appendix J: Laborer classification groups and wage spreads for type "B" building and type "C" residential construction:

— (1) Group I: -\$0.87: watchmen;

— (2) Group II (unskilled): -\$0.30: building and common laborers; carpenter tenders; concr. workers; stakedrivers; concr. buggy opr. (hand); flagmen; soil sample tester;

— (3) Group III (semi-skilled): (base): air and power tool opr. (not a carpenter's tool); asbestos remover; asph. heaterman; asph. jointman; asph. raker; batching plant scaleman; chain sawman; concr. touch-up man; concr. sawman - coring mach.; curbing mach. asph. or cement; cutting torchman; metal form setter-road; grade setter; guniting boundmen; rod and chainmen; concrete power buggy opr.; powderman or blaster helper; sandblaster (pot men); nozzlemen; scaler; vibratorman (handtype); vibratory compactor (hand type); wagon core and

diamond drillers' tenders (outside); window washers; fog mach. opr.; nurseryman-gardener; multi-plate setter; conc. burner; cement mason tenders; hodcarriers; mortar mixers; plaster spreader opr.; plaster tenders; guniting nozzlemen; pipelayer; pumcrete nozzlemen; manhole builder; roadway hardware worker;

— (4) Group IV: +\$0.10: wagon, core, diamond drillers;

— (5) Group V: (miscellaneous): +\$0.30: landscaper; traffic control technician; laboratory technician;

— (6) Group VI: +\$0.45: powdermen and blasters;

P. Appendix K: Equipment operator classification groups and wage spreads for type "B" building construction and type "C" residential construction:

— (1) Group I: -\$2.52: fireman; oiler; helpers: mechanic, welder, grease truck; screedman; scale oper. such as (bin-a-batch) rubber tired farmtype tractor; tractors under 50 H.P. w/o attachments; brakeman; concr. paving curing mach. (bridge type);

— (2) Group II: -\$1.48: rollers; sheepsfoot or pneumatic self propelled w/o dozer; concr. conveyor; service truck opr. (head oiler); air compressor (300 CFM and over); pumps (6" and over); screening plants: concr. mixers (under 1 CY); concr. saw or grinder-span type; hoists, 1 drum; air tugger; elevating belt type loaders; fork-lift lumber stacker; tractor-farm type (under 50 H.P. w/attachments); motorman and industrial locomotive opr.; winch trucks; front end loader (under 2 CY). power plants which generate over 15 KW; welding machines;

— (3) Group III: -\$1.40: bituminous distributors; boilers, retort and hot oil heaters; concr. mixers (1 CY and over). concr. paver (single drum); drlg. equip.; motor graders (rough); shaft and tunnel equip.; refrig.; slusher, jumbo form; trenching mach. (all types); pumcrete and guniting mach.; slipform paver; mech. bull-floats; concr. slab spreading mach.; concr. slab finish mach.; asph. plants; bitum. finish mach.; crushing plants;

— (4) Group IV: -\$1.34: front end loader (2 thru 10 CY); rollers steel wheeled (all types); bulldozers: scrapers (motor or towed); elevating graders; concr. batching plants; self-propelled rollers, (equipped w/ dozer); twin-bowl scrapers and quad 8 or 9 pushers; three bowl scrapers; tractor (farm type) w/hydraulic backhoes;

— (5) Group V: -\$1.28: concr. paver, double drum; cat cranes; hysters; side and swingboom cats; hoist (2 drum); auto fine grader;

— (6) Group VI: -\$1.18: mucking mach. (all types); motor grader-finish;

— (7) Group VII: -\$1.08: hydraulic cranes (with less than 50' of boom - 20 tons and under); steam engineers; loader (front end and over 10 CY); concr. pump (snorkel

type); mechanic welder;

(8) Group VIII: (base): all shovel type equip.: cranes; draglines; backhoes; derricks; guy and stiff leg; pipemobile (#2 opr.); piledriver; hydraulic cranes (20 tons and over); mine hoist (belt loader "CMF" type); cranes, draglines (w/booms and jib over 150'); shovel (wheel type); boring mach. (tunnel or shaft mole); pipemobile.

Q. Appendix L: Truck driver classification groups and wage spreads for type "B" building construction and type "C" residential construction:

(1) Group I: +\$0.12: pick-up 3/4 ton and under; service station; lubrication; light tire repair or washer; swamper or riding helper; teamster 2 or 4 up; ambulance driver;

(2) Group II: (base): bus or taxi driver; dump or batch truck, under 8 CY WLC; flatbed (bobtail) 2 ton and under; mechanic and welder helper; forklift under 5 ton MRC;

(3) Group III: +\$0.08: dump trucks (incl. all hwy. and off-hwy.) 8 up to 16 CY WLC; water, fuel or oil trucks less than 3,000 gal.; flatbed (bobtail) over 2 tons;

(4) Group IV: +\$0.20: distributor driver; hvy. tire repair; lumber carrier driver; young buggy or similar equip.; transit mix or agitator 2 or 3 axle bobtail equip.; scissor truck; bulk cement bobtail 2 or 3 axles; semi-trailer driver (flatbed or van single axle); forklift 5 ton and over MRC; field equip. servicemen;

(5) Group V: +\$0.25: dumpster and dumpercrete driver; water, fuel or oil truck (3,000 to 6,000 gal. capacity); lowboy; light equip. driver; euclid type tank wagon (under 6,000 gal.);

(6) Group VI: +\$0.35: vacuum truck; dump trucks (incl. all hwy. and off-hwy.) 16 up to 22 CY WLC;

(7) Group VII: +\$0.45: transit mix or agitator semi or 4 axle equip. driver; flaherty truck type spreader box driver; slurry truck driver; bulk cement driver; semi-doubles: 4 axle bobtail; winch truck and "A" frame; dump trucks (incl. all hwy. and off-hwy.) 22 CY up to 35 CY WLC head field equip. serviceman;

(8) Group VIII: +\$0.59: euclid diesel powered turnarocker; terra cobra; DW 10; DW 20; letourneau pulls and similar diesel powered equip.; lowboy heavy equip. driver; water, fuel or oil trucks (6,000 gal. and over incl. tank wagon drivers); semi-trailer driver (flatbed or van tandems); light equip. mechanic; dump trucks (incl. all hwy. and off-hwy.) 35 CY WLC and over; truck and trailer or semi-trailer (flatbed); eject all driver;

(9) Group IX: +\$0.74: lowboy (heavy equip., double gooseneck); heavy equip. mechanic; welder (body and fender man); warehouseman; material checker-cardexman; expeditor.]

A. When the director has

determined the proposed prevailing wage and fringe benefit rates applicable in the state for public works projects in accordance with Subsection D of 11.1.2.12 NMAC, the proposed prevailing wage and fringe benefit rates shall be subject to a public hearing before the secretary or a hearing officer designated by the secretary.

B. The time, date and place of said public hearing will be established at the discretion of the secretary. Notice of the subject matter, the action proposed to be taken, the time, date and place of the public hearing, the manner in which interested persons may present their views, and the method by which copies of the proposed rates may be obtained, shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation. Such notice shall also be mailed by the director to all known interested parties at least thirty (30) days prior to the hearing date along with a copy of the proposed rates. Interested parties shall include without limitation the state highway department, incorporated cities and counties and their respective school boards or authorities, state institutions of higher learning and other contracting agencies which with regular frequency undertake public works projects subject to the Act, and all other persons (including labor organizations, contractors and contractor associations) who make written request to the director to receive notice as provided in this section. Any objections to the proposed prevailing wage rates may be communicated to the director by an interested party either orally at such public hearing or in writing delivered to the director on or before the date of such public hearing.

C. The secretary shall consider fully all data, views, or arguments submitted in support of or in opposition to the proposed prevailing wage and fringe benefit rates before deciding to approve, modify or reject the prevailing wage and fringe benefit rates proposed by the director for public works projects.

D. The adoption of wage and fringe benefit rates by the secretary shall constitute an "action" which shall be appealable to the labor and industrial commission, sitting as the appeals board, pursuant to Section 13-4-15(A), NMSA 1978, and as described in 11.1.2.16 NMAC.

(1) Consistent with the right of appeal granted to any interested person by Section 13-4-15, NMSA 1978, the secretary shall not adopt the issued wage and fringe benefit rates for fifteen (15) days following their issuance, while an appeal, if any, to the labor and industrial commission, sitting as the appeals board, is pending, or before the effective date of the decision by the labor and industrial commission pursuant to Subsection D of 11.1.2.16 NMAC.

(2) The labor and industrial commission is designated, pursuant to Section 9-26-6, NMSA 1978, to hear appeals of the adoption of wage rates and shall conduct such appeals and render its decision pursuant to the procedures described in 11.1.2.16 NMAC.

The adopted prevailing wage rates shall not be effective until they have been filed in accordance with the State Rules Act.

E. The adopted prevailing wage rates shall not be effective until they have been filed in accordance with the State Rules Act.

[5/31/72, 1/14/76, 6/4/76, 6/4/79, 1/29/81, 5/28/81, 3/25/85, 8/29/85, 12/16/85, 11/4/88, 9/25/89, 1/14/92, 2/14/94, 5/31/94, 8/15/98; 11.1.2.13 NMAC - Rn& A, 11 NMAC 1.1.13, 12/31/09; A/E, 4/15/10; A, 3/15/12]

11.1.2.14 [REGULATIONS PERTAINING TO APPRENTICES AND TRAINEES] EFFECTIVE DATE OF WAGE RATES:

[A. Purpose and scope: The regulations in this part are to provide for an appropriate wage rate for all apprentices and trainees employed on public works projects located in the state of New Mexico;

B. Requirements of apprentices:

(1) All apprentices shall be properly indentured.

(2) Apprentices used on public works projects shall be in training and in compliance under registered apprenticeship standards and written apprenticeship agreements, and their employment shall be in accordance with the provisions of such apprenticeship standards and apprenticeship agreements.

(3) Every apprentice shall be employed only at the work of the trade to which he is indentured.

(4) Certification showing registration status of apprentices must accompany the first full payroll on which each apprentice first appears. Certification on any registered apprentice shall be made by the contractor, and verification may be obtained from the office of the New Mexico apprenticeship council.

C. Requirements of trainees:

(1) All trainees must be properly enrolled in a bona fide training program approved for application on public works construction projects by the appropriate state and/or federal agency(ies) if and as required by law and applicable federal regulation.

(2) Trainees used on public works projects shall be in training and in compliance with the standards and trainee agreements approved for the public works construction project on which the trainee is employed by the appropriate state and or federal agency(ies) if and as required by law

and applicable federal regulation.

(3) Certification showing enrollment status of trainees must accompany the first full payroll on which each trainee first appears. Certification on any enrolled trainee shall be made by the contractor and may be verified by the public agency approving the training program.

D. Method of establishing apprentice and trainee wage rates: Every apprentice and trainee shall be paid a wage rate applicable to his craft and classification in accord with the wage rates established by the approved apprenticeship or training program.]

A. The wage and fringe benefit rates become effective once they are adopted and published, in accordance with 11.1.2.13 NMAC.

B. If an appeal is filed pursuant to Subsection E of 11.1.2.13 NMAC, then the secretary shall adopt the wage and fringe rates, as modified by the labor and industrial commission, following expiration of the stays provided by Paragraph (2) of Subsection E of 11.1.2.13 NMAC.

C. Wage and fringe rate decisions shall remain effective until superseded; provided that changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days' notice before the date bids are to be submitted. New wage rate decisions shall be issued for all contracts on which bids have not been submitted before the date on which a new wage determination becomes effective provided that any such new decision shall not supersede any previously issued decision unless such new decision is received by the contracting agency at least ten (10) days prior to the date on which bids are to be submitted.

D. Wage and fringe rate corrections or changes to decisions rendered shall not be issued without allowing the requesting agency at least ten (10) days' notice before the date bids are to be submitted.

E. All determinations will remain in effect until their expiration date or until modified, corrected, rescinded or superseded by the director.

[5/31/72, 6/4/79, 1/29/81, 10/1/97; 11.1.2.14 NMAC - Rn, 11 NMAC 1.1.14, 12/31/09; A, 3/15/12]

11.1.2.15 [PROCEDURE FOR ADOPTION OF RULES AND REGULATIONS] PROCEDURE FOR INVESTIGATION OF VIOLATIONS:

[Authority: Subsections A to D of 11.1.2.15 NMAC adopted pursuant to Sections 13-4-11 and 13-4-15, New Mexico Statutes Annotated, 1978 Compilation.

A. Purpose and scope: The regulations in this part set forth the procedure for the adoption, amendment,

or repeal of these rules and regulations.

The regulations in this part are intended to clarify the responsibilities and rights of all interested parties as set out in the Public Works Minimum Wage Act, Sections 13-4-11 through 13-4-17 NMSA 1978

B. Notice and public hearing:

(1) Prior to the issuance of rules and regulations under 13-4-11(C), NMSA 1978, the director shall hold a public hearing on the proposed regulations, proposed amendments or repeal of an existing regulation.

(2) Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested persons may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published once at least thirty (30) days prior to the hearing date in a newspaper of general circulation and mailed at least thirty (30) days prior to the hearing date to all persons who have made a written request for advance notice of hearing:

(3) The director shall consider fully all data, views, or arguments submitted in accordance with these Rules. If the director issues rules or regulations pursuant to his authority under Section 13-4-11 (C), NMSA 1978, he shall prepare appropriate findings in support of the rules and regulations issued. The findings of the director shall consist of a concise statement of the principal reasons for and against adoption of the issued rule or regulation, and the reasons for his rejection of the considerations urged against its adoption. The director shall mail a copy of the rules and regulations issued and his findings to any person requesting, in writing, such information either (1) upon the day of issuance, if such request was made prior to issuance, or (2) within five (5) days after receipt of such request, if such request was made after issuance.

C. Appeal to the labor and industrial commission:

(1) The issuance of a rule or regulation by the director shall constitute an "action" which shall be appealable to the labor and industrial commission, sitting as the appeals board, pursuant to Section 13-4-15(A), NMSA 1978, and as described in Section 16 of these rules and regulations.

(2) Consistent with the right of appeal granted to any interested person by Section 13-4-15, NMSA 1978, the director shall not adopt the issued rules and regulations for fifteen (15) days following their issuance, while an appeal, if any, to the labor and industrial commission, sitting as the appeals board, is pending, or before the effective date of the decision by the labor and industrial commission pursuant to Subsection D of 11.1.2.16 NMAC of these

rules and regulations:

(3) The labor and industrial commission, sitting as the appeals board, shall conduct the appeal and render its decision pursuant to the procedures described in Section 16 of these rules and regulations.]

D. Effective date of adoption by the director:

(1) The director shall adopt the issued rules and regulations, as modified by the labor and industrial commission, following expiration of the stays provided by Paragraph (2) of Subsection C of 11.1.2.15 NMAC, of these rules and regulations:

(2) Upon adoption of any rules and regulations by the director, the adopted rules and regulations shall not be effective until they have been filed by the director in accordance with the State Rules Act.]

A. When a violation is reported or detected, the director shall convey that information to the contracting agency. The director has a non-discretionary duty to request all payroll records in question from either the subcontractor or the prime contractor no later than thirty business days after receiving the information pertaining to the alleged violation. The contractor or subcontractor shall provide legible copies of the certified payroll records within ten (10) business days, when requested by either the director or an interested party through the director.

(1) The director shall investigate a complaint filed in writing by an interested party for violations of the Public Works Minimum Wage Act, as long as the complaint is filed before the contract is closed out between the contracting agency and the prime contractor on any public works project. (Closed out is defined as: when the contracting agency has made final payment on the project).

(2) The provisions of this subsection do not affect any worker's right to make a claim through the wage and hour bureau or appropriate court for payment of prevailing wages and does not diminish the prime's or subcontractor's duty to cooperate with the wage and hour bureau.

(3) If the contractor or subcontractor has not complied with the request for certified payroll records or if the director determines that a violation of the Public Works Minimum Wage Act has occurred and not been rectified, payment to the contractor in proportion to that owed to the non-compliant contractor or subcontractor, shall be withheld by the contracting agency until compliance has been secured pursuant to the certification procedure outlined in Section 13-4-14(A) & (B) NMSA 1978. The contractor or subcontractor that does not comply with the act or the provision of these regulations can also be subject to debarment. The contracting agency may, if necessary,

request the attorney general, through the director to take legal action to ensure compliance with the act and the regulations contained herein.

B. In the event voluntary compliance by the contractor cannot be achieved, enforcement action shall be undertaken by the director and the contracting agency as provided in the Public Works Minimum Wage Act.

C. Any contractor or subcontractor may appeal any determination, finding or action of the director to the labor and industrial commission pursuant to the procedures set forth in 11.1.2.16 NMAC. [5/31/72, 6/4/79, 11/4/88, 9/25/89; 11.1.2.15 NMAC - Rn, 11 NMAC 1.1.15, 12/31/09; A, 3/15/12]

11.1.2.16 PROCEDURE FOR DISPOSITION OF APPEALS [UNDER THE PUBLIC WORKS MINIMUM WAGE ACT]: Authority: Subsections A to D of 11.1.2.16 NMAC, adopted pursuant to Sections 13-4-11 and 13-4-15, New Mexico Statutes Annotated 1978 Compilation.

A. Purpose and scope: The regulations contained in this part set out the procedures by which appeals may be filed, and by which the labor and industrial commission, sitting as the appeals board, hears and decides appeals pursuant to Section 13-4-15 NMSA 1978. The intent of this part is to clarify and implement the responsibilities and rights of all interested parties as set out in the Public Works Minimum Wage Act, Sections 13-4-11 through 13-4-17 NMSA 1978

B. Filing the appeal:

(1) The notice of appeal shall, consist with Section 13-4-15 (A) NMSA 1978, be filed with the director within fifteen (15) days after a determination, finding, rule, or regulation has been issued or any other action taken, and notice of the action has been given pursuant to Subsection D of 11.1.2.11 NMAC or Subsection B of 11.1.2.15 NMAC of these rules and regulations or otherwise. The filing of the notice of appeal shall immediately stay the effectiveness of the determination, finding or action appealed from.

(2) The appellant shall, within ten (10) days after filing the appeal, file with the labor and industrial commission, sitting as the appeals board, in care of the office of the director in Santa Fe, New Mexico, a concise statement of all determinations, findings or actions of the director with which he disagrees and from which the appeal is taken, and a brief setting forth the reasons and authorities on which the appeal is based. Five (5) copies of the said statement and brief shall be filed with the labor and industrial commission, sitting as the appeals board.

(3) Within ten (10) days after the

filing of the statement and brief described in Subsection B of 11.1.2.16 NMAC supra, the director shall file by way of an answer, with the labor and industrial commission, sitting as the appeals board, his justification and authorities relied upon for the determination, findings, or action being appealed from. Five (5) copies of the said answer shall be filed with the labor and industrial commission, sitting as the appeals board, and one (1) copy shall be served upon the appellant.

(4) Any interested person other than the appellant, directly affected by the determination, finding or action of the director, such as, contractors, contracting agencies, labor organizations and contractors' associations, may intervene and file a statement and a brief in support of his position, in the manner provided in Paragraph (2) of Subsection B of 11.1.2.16 NMAC supra, and may participate in the hearing conducted by the labor and industrial commission, sitting as the appeals board, as described in Subsection C of 11.1.2.16 NMAC infra.

(5) The labor and industrial commission, sitting as the appeals board, shall furnish copies of the statements, briefs, and answers filed in the appeal to the attorney general, and may request the attorney general to appoint independent counsel to represent it at the hearing

C. Conducting the hearing:

(1) The hearing shall, consistent with Section 13-4-15 (C) NMSA 1978, be conducted by the labor and industrial commission, sitting as the appeals board, within forty (40) days after the filing of the appeal.

(2) The labor and industrial commission, sitting as the appeals board, shall decide all matters brought before it by a quorum which shall consist of two members. Prior to a hearing, the commission shall designate a chairman who shall conduct the meetings and rule on the admissibility of all evidence submitted by and objections of any participant.

(3) The labor and industrial commission, sitting as the appeals board, shall not be required to follow strict rules of evidence and shall have authority to admit any evidence which it concludes has probative value, but irrelevant, immaterial, or unduly repetitious evidence shall be excluded.

(4) The labor and industrial commission, sitting as the appeals board, shall make its decision as to the validity or invalidity of the determination, finding, or action of the director based on substantial evidence on the whole record made before it. The appellant shall present his case first, subject to opportunity to present evidence in rebuttal.

D. Decision by the labor and industrial commission:

(1) The labor and industrial commission, sitting as the appeals board, shall, pursuant to Section 13-4-15 (C) NMSA 1978, within ten (10) days after the close of the hearing, enter its decision and produce a concise statement of the principal reasons upon which the decision is based and promptly mail copies of the decision and statement to the participants at the hearing.

(2) The effective date of the decision by the labor and industrial commission, sitting as the appeals board, shall be stayed until thirty (30) days after mailing the decision and statement, and may be further stayed pending review in a district court pursuant to Section 13-4-15 (D) NMSA 1978, if and as determined by the court.

E. Decisions of the labor and industrial commission may be appealed pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[6/4/79, 11/4/88, 8/15/98; 11.1.2.16 NMAC - Rn, 11 NMAC 1.1.16, 12/31/09; A, 3/15/12]

11.1.2.17 [PERMANENT] JOB CLASSIFICATIONS AND DESCRIPTIONS [FOR PUBLIC WORKS IN NEW MEXICO]: The job classifications and descriptions for public works projects shall be as follows:

A. Asbestos worker/heat and frost insulator: The preparation, alteration, application, erection, assembling, molding, spraying, pouring, mixing, hanging, adjusting, repairing, reconditioning, maintenance, finishing [and/or] or weatherproofing of cold or hot thermal insulations with such materials as may be specified when those materials are to be installed for thermal purpose in voids, or to create voids, on piping, fittings, valves, boilers, ducts, flues, tanks, vats and equipment, or on any hot or cold surfaces for the purpose of thermal control, or for the purpose of sound control on mechanical devices; equipment; piping, and surfaces related in an integral way to the thermal insulation of such mechanical devices, except for materials applied inside sheet metal ducts and fittings. This work also includes all labor connected with:

(1) insulation for: temperature control (excluding batt, blown-in and sprayed-on insulation); personnel protection/safety; prevention of condensation; fire proofing of building penetrations.

(2) distribution of, cleanup of, and removal from surfaces as described above, which surfaces will be reinsulated with (excluding demolition which is covered under the laborers classification) the materials they apply.

B. Asbestos worker-improver: One who works on the job learning the trade of asbestos worker.

C. Boilermaker: Assembles prefabricated boiler parts and fittings to

build steam boilers, tanks, vats and other vessels made of ten gauge or heavier metal. Installs catwalks, platforms, stairways and ladders which are erected on, and supported by storage tanks for liquid or gas when such tanks were erected by boilermakers, and installs all catwalks, platforms, stairways and ladders which are erected on and exclusively supported by a pressure vessel.

D. Bricklayer, blocklayer, stonemason: Constructs partitions, fences, walks, fireplaces, chimneys, smokestacks, etc., using brick, structural tile, concrete and other types of structural block. This classification shall include the setting of stone, marble, slate, and artificial stone. Cutting, grouting and pointing of materials listed above which is necessary shall be a part of this classification. May also build or repair brick, block or stone retaining walls, cutting or placing of brick in mortar or other similar material.

E. Carpenter/lather: Sets batterboards, builds and sets forms for concrete, or structural stud except as provided elsewhere. Builds and erects wood and metal products for the framing of structure or building, including bearing and non-bearing walls, framework in buildings, including partitions, floor and ceiling joists, studding, and rafters. Installs wood subflooring and hardwood flooring. Builds wood stairways, cabinets, steps, etc. Installs wood or premanufactured molding, paneling, doors, windows, etc., products and components related to office interiors - partitions, draperies, shelving, panels, doors, (metal, wood, etc.); including hardware; insulation around concrete slabs. Install pin metal or red iron (steel studs) and wood furring (except on roofs). Carpenters may shoot grades for surveying. Attaches "sheetrock" and similar wallboard materials to walls and ceilings. Installs insulation material in walls, ceilings, and under floors of buildings where such insulation is not laid in cement or other plastic materials. Sets all woodworking equipment and operates same. Builds forms for pre-cast and prestressed concrete of all types and shapes on project site. Releases forms from concrete work when forms are to be reused, except as provided elsewhere. Erects wood, self-supporting scaffolding. Installs light iron and metal furring such as rods, channels and other bars or systems to which metal lath, rock lath or other materials used as a substitute for lath are to be attached. Installs metal lath, rock lath, and other materials used as a substitute for lath. Installs metal plastering accessories such as corner beads, door and window casing beads, metal picture mold, chair rails and other metal plastering accessories which are covered [and/or] and serve as a ground or guard, except that metallic corner beads, when installed by using plastic material, shall be installed

under the "plasterer" classification. May perform other related duties.

F. Carpenter (power saw operator): Cuts wood materials using a stationary or portable power saw of one or more horsepower.

G. Carpenter (saw filer): Sharpens, by use of files, all types of saws and saw blades used for the cutting of wood materials.

H. Carpenter (millwright): Performs work necessary to level, align, and secure permanent stationary pumps, motor, [and/or] or compressor which require precision leveling and alignment of such equipment. Installs reduction gear boxes, fluid drives, speed increasers, including the connection of same to pump or compressor coupling. May align and secure other direct drive motors and machines requiring precision alignment. May perform other related duties.

I. Carpenter (piledriver): Rigs piledriving equipment, signals pile rig and guides pile and leads to point pile is driven, aligns and plumbs pile using tape and level during driving; splices piles before, during and after driving, cuts off piles, realigns piles after driving. In "piledriving" operations, handles wood, metal, sheetpiling, steel H-beams, concrete, or pipe, fastens them to cable of wench or piledriver, shifts timber piles with cant hook, cleans and points pile with axe or shovel. May drill pilot holes. May perform other related duties.

J. Cement mason (composition or mastic - finishing machine operator): Finishes concrete to a specified finish and grade on footings, floors, walks, steps and all concrete surfaces by using tools of the trade such as trowels, floats, screeds, etc. Sets to grade and aligns screeds one board high. Sets to grade and aligns forms for sidewalk, curbs and gutters. Patching, filling of voids and rubbing of concrete to a specified finish, which requires the use of power tools and tools of the trade. Bushammer and related finish procedure. Concrete saw operation when used on new construction to saw control joints. Vibrating screeds and rollers to achieve final level of concrete. Guniting, in cement mason operation, when it is less than one and one-half inches in thickness, the handling and control of the nozzle shall be the work of the "cement mason." All work involving the laser screed including the ride-on, laser-guided, vibratory screeding machine that establishes grades by laser which disperses concrete by auger and thoroughly vibrates and consolidates the concrete. Applies coloring material to concrete, also uses mastic to level [and/or] and waterproof concrete, where tools of the trade are involved. Operates troweling and floating machines which are used in the finishing of concrete. Cementitious

insulation, screed wet material to required thickness and darby joints to leave a surface suitable for roofing. May perform other related duties pertaining to concrete construction.

K. Electrician classifications and description type A construction:

(1) Groundman (outside): Assists "lineman" and "equipment operator" in their tasks except that the "groundman" does not climb poles or towers.

(2) Equipment operator (outside): Operates power driven equipment used in the erection and installation of materials and apparatus outlined under the "lineman" classification.

(3) Lineman or technician (outside):

(a) Performs all electrical construction work outside of isolated plants and the property lines of any given property, but not electric signs, and not street electrical decorations, except when messenger or guy wire is necessary for support and when fed and controlled from the street.

(b) Street lighting and wiring when fed and controlled from the street. All line work consisting of wood, concrete or metal (or substitutes therefore), poles or towers, including wires, cables or other apparatus supported therefrom. Line work in public, private or amusement parks.

(c) All work necessary to the assembling, installation, erection, operation, maintenance, repair, control, inspection and supervision of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts and raceways when part of distributing systems outside of buildings, railroads and outside and directly related railroad property and yards. Installing and maintaining the catenary and trolley work on railroad property, and bonding of rails. All underground ducts and cables when they are installed by and are part of the system of a distributing company, except in power stations during new construction, including ducts and cables to adjacent switch racks or substations. All outdoor substations and electrical connections up to and including the setting of transformers and all connecting of the secondary buses thereto, and all other related work.

(4) Cable splicer (outside): Splices [and/or] or terminates power cables which are designed to be used for voltages above 2,000. Splices [and/or] or terminate gas or liquid filled power cables, when part of a distribution system outside of buildings.

L. Type H construction - heavy engineering and building outside classifications:

(1) Groundman (outside): Assists lineman and equipment operator in their tasks except that the groundman does not climb poles or towers.

(2) Equipment operator (outside): Operates power driven equipment used in the erection and installation of materials and apparatus outlined under the "lineman" classification.

(3) Lineman or technician (outside):

(a) Performs all electrical construction work outside of isolated plants and the property lines of any given property, but not electric signs, and not street electrical decorations, except when messenger or guy wire is necessary for support and when fed and controlled from the street.

(b) Street lighting and wiring when fed and controlled from the street. All line work consisting of wood, concrete or metal (or substitutes therefore), poles or towers, including wires, cables or other apparatus supported therefrom. Line work in public, private or amusement parks.

(c) All work necessary to the assembling, installation, erection, operation, maintenance, repair, control, inspection and supervision of all electrical apparatus, devices, wires, cables, supports, insulators, conductors, ducts and raceways when part of distributing systems outside of buildings, railroads and outside and directly related railroad property and yards. Installing and maintaining the catenary and trolley work on railroad property, and bonding of rails. All underground ducts and cables when they are installed by and are part of the system of a distributing company, except in power stations during new construction, including ducts and cables to adjacent switch racks or substations. All outdoor substations and electrical connections up to and including the setting of transformers and all connecting of the secondary buses thereto, and all other related work.

(4) Cable splicer (outside): Splices [and/or] or terminates power cables which are designed to be used for voltages above 2,000. Splices [and/or] or terminates gas or liquid filled power cables, when part of a distribution system outside of buildings.

M. Inside classifications:

(1) Wireman or technician (inside): Installs wiring for automatic doors. Plans and executes the layout and installation of electrical conduit, switch panels, buss bars, outlet boxes, electrical wires and cables, lighting standards, lighting fixtures, receptacles, switches, and other electrical devices and apparatus necessary for the complete installation of wiring systems on commercial, industrial, and residential jobs, except electrical work which is incidental to the installation of elevators and escalators and is described under "elevator constructor". Lays out the following operations on PBX, PABX and key system: erection and alignment of equipment; distribution frame construction; cable and wire running, wiring (fanning, forming, connecting); connecting

and cross connecting of predetermined circuit and line assignments, and assignment of individual station instruments. Analyzes proposed telephone and communication systems during the pre-installation stage to detect any basic conflicts in either equipment arrangements or plant facilities. Isolates trouble conditions in inoperable telephone communications systems. Analyzes the operation of a customer's telephone system and its association with his total communications requirements. Installs a variety of equipment relating to telephone interconnect communication systems and devices including private branch exchange (PBX-PABX), key equipment and associated devices.

(2) Cable splicer (inside): Splices [and/or] or terminates power cables which are designed to be used for voltages above 2,000. Splices [and/or] or terminates gas or liquid filled power cables.

N. Sound classifications:

(1) Installer (sound): Installs, repairs and services inter-communications systems, electronic signal systems, sound and public address equipment, music and television distribution systems, i.e., speakers, buzzers, microphones, signal lights or other units or component that are an integral part of such system. Also including all wires [and/or] or cables in connection with the work outlined above.

(2) Technician (sound): Lays out all phases of work to be done on inter-communications systems, electronic signal systems, sound and public address systems, and music and television distribution systems. Installs, repairs and services the above systems.

(3) Soundman: Analyzes proposed inter-communication, electronic signal, sound and public address, and music and television distribution systems prior to installation to detect any basic conflict in either equipment arrangements or plant facilities. Isolates trouble conditions in the above equipment when inoperable. Supervises the installation, repair and servicing of the previously described system.

O. Elevator constructor: Assembles and installs machinery and devices incidental to a complete elevator or escalator installation, including elevator cars, cables, counterweights, guide rails, hoisting machinery, etc. Installs all electrical wiring which is incidental to the installation of automatic elevators and escalators with the exception of power feed wires to the controller, which shall be classified as a task of "electricians". Steel trusses, girders, and supports for escalators, where riveted or welded and metal frames and bucks for elevator door openings shall be installed under the "ironworker" classification.

P. Elevator constructor helper: Assist elevator constructor in the

performance of all phases of their work.

Q. Glazier: Installs metal window and door frames without glass when not welded to frame structures. Installs glass, including plate and window glass, mirrors, beveled plate, rough, ribbed, wire, figured, colored, art and other type glass when set in sash, frames, doors, skylights, etc., when set with putty, molding or other methods which are common to the glazing trade.

R. Ironworker: Installs reinforcing iron and steel for concrete structures. Installs fabricated steel members such as girders, columns, beams, and bracing in structures to form the steel framework. Installs metal stairways, catwalks, ladders, and decking. Installs ornamental iron and steel. Erects structural steel radio and television towers. Sets wall bearing steel bar joists in building structures. Installs chain link security fencing over 4" high and other metal security fencing which may have barb wire or razor wire attached thereto including aligning and stretching the wire; installs gates. Removal of reusable chain link fencing, gates, etc. This security fencing excludes common barb wire as defined elsewhere. Erects prefabricated metal building and prefabricated metal roofs. Performs layout work for rods within project area. Fastens rods in place with wire or fasteners; bends or adjusts as required. Selects and places steel bars or spirals in concrete forms to reinforce concrete; fastens rods together with wire or patented fasteners; may cut rods with hack-saw or oxyacetylene torch. May bend rod, using rod bending machine, performs layout work and proper placing of steel in the concrete forms. May prefabricate reinforcement assembly for placement complete in forms. Works as a member of a group that raises and places fabricated or precast concrete beams or structural steel members, such as girders, plates, columns, and units them permanently to form a completed structural steel framework. Heats rivets, signals erection crane, splices cables, rigs equipment. May include dismantling and erecting large units of equipment. May spin suspension bridge cables. Erects, trims, and fits together by means of bolts and clamps, iron grills, grating, and special stairways. Erects ornamental enclosures and other ironwork not included in structural ironwork. Fastens ironwork to walls of buildings by means of bolts, brackets or anchors. Fastens newel posts, baluster, and other parts of stairways by fastening to supports or embedding them in sockets. Forges, welds, drills, and cuts as needed. May perform other related ironwork duties.

S. Painter (brush): Applies paint, stain, lacquer, varnish, etc., to surfaces in, on or around building structures, using appropriate brushes. Prepares surfaces to receive paint, including minor sandpapering

and spackling. Mixes paints when necessary to achieve proper color. Seals, sands, and varnishes hardwood flooring. Paints structural steel framework of bridges; guard rails and cables of bridges; and all other surfaces requiring paint. May perform other related duties.

T. Painter (paperhanger): Applies wallpaper, fabric, or other materials used in the same manner as wallpaper, to the interior of rooms when such material is applied with paste or adhesive. Performs work necessary to prepare surfaces to receive wallpaper or other similar material.

U. Painter (riggers): May erect and rig stages and platforms from which painters are to work, including swing stage scaffolding, bosun's chairs, mechanical staging, cornice or roof hooks, scaffolding, and other devices and apparatus necessary to provide safe working conditions for painters.

V. Painter (roller): Performs painting tasks as outlined under "painter brush", when paint or other finish is applied by using rollers.

W. Painter (shop or color man): Mixes and prepares paints and other materials which are to be applied by painters.

X. Painter sprayman: Sandblasting to receive paint. Gasoline-powered compressor operating a striping machine, walking type sprayer for striping parking lots, etc. Performs painting tasks as outlined under "painter brush," when spray equipment is used.

Y. Painter drywall finishers and taper: Prepares drywall type construction to receive paint, texture, etc. by pointing, taping, and finishing.

Z. Plasterer: Applies interior and exterior plastering of cement, stucco and stone imitation or any patented materials when cast. Applies acoustical plaster or materials used as substitutes for acoustical plaster, as well as the preparatory pointing and taping of drywall surfaces to receive these finishes. Applies scratch and brown coats on walls and ceilings where tile, mosaic or terrazzo is to be applied. Molds and sets ornamental plaster and trim and runs ornamental plaster cornice and molding. Install metal corner beads when stuck by using plastic materials. Applies gunite, in plastering operations, when it is one and one-half inches in thickness, the handling and control of the nozzle should be the work of the plasterer. Spray fire proofing material on steel beams/columns. Trowel or sprayed on foam insulation on walls before stucco, etc. Patching outside concrete walls. May perform other related duties.

AA. Plumbers and pipefitters: Fabricates and installs piping, and tubing systems, including installation of all necessary hangers and supports, which are to conduct water, steam, air, and other fluids or gases in and around buildings. Also

installs vacuum piping systems. Installs drainage and sewage lines (laterals) from buildings to the point of attachment to mains. Installs plumbing fixtures, such as sinks, faucets, drinking fountains, commodes, etc. Installs refrigeration equipment. Performs cutting, welding and burning which is incidental to the work of plumbing or pipefitting, except as is described under "lead burner". May do other work in connection with the installation and testing of heating and cooling apparatus and control devices.

AB. Plumbers and pipefitters (lead burner): Performs cutting, burning and welding operations on lead pipes, tanks, reservoirs, etc.

AC. Roofer: Installs materials on roofs of buildings to prevent leakage. Installs tile, asbestos, slate, and composition shingles, including flashing, canales, roofing insulation, and other necessary waterproofing and damp proofing on walls and floors below ground. Installs built-up roofs by using roofing paper and asphalt or pitch tar and gravel, slate, plastics, or other materials. Operates kettle and transports hot material to roof. May perform other waterproofing operations using methods which are common to the roofing trade. Prepares roofing area, handles all roofing materials at job site and performs all roofing clean-up. Tears off old roof when roof is to be replaced. May perform other related duties.

AD. Sheet metal worker: Fabricates and installs heating and air conditioning ducts and other ductwork. Fabricates and installs hangers, brackets, etc., used in the installation of sheet metal, and installs grills, registers, etc., which are part of duct systems. Fabricates [and/or] or installs architectural sheet metal in and around buildings, including metal flashings, gutters, canopies, soffits, and custom metal roofs. Installs warm air furnaces except where necessary piping for gas or oil is performed under the plumbing and pipefitting classification. May install other heating and cooling devices which are in connection with duct systems.

AE. Soft floor layer: Cleans and prepares floors and other surfaces to which linoleum and floor tile is to be applied. Lays carpets. Applies appropriate cement to floors and surfaces and installs materials such as rubber tile, asphalt tile, cork tile, linoleum, and other resilient floor coverings. Rolls finished floors and surfaces to smooth and press down coverings which have been applied. Mixes and pours liquid seamless floor covering on floor, gyms, etc.

AF. Sprinkler fitter: Installs all piping and auxiliary devices which are necessary for the complete installation of sprinkling systems for fire protection in buildings.

AG. Tile setter: Applies glazed, unglazed, mosaic, and other ceramic tiles which are used as a surface on floors, walls, ceilings and other surfaces and which must be set to a specified grade. Applies and floats all setting beds which these tiles are set into. Levels and plumbs these tiles to the specified grade.

AH. Tile setter helper: Handles and mixes materials to be used in floating beds, generally assists tile setter by delivering materials, cleaning and caring for tools, and such other tasks or may be directed by the "tile setter".

AI. Power equipment operators:

(1) Air compressor (300 c.f.m. and over): Keeps compressor fueled, oiled, clean and ready for service. Keeps oilers and air lines working properly, full of proper oil, sets and checks valves on oiler, sets and checks air pressure, cut off valve and gauges, checks and maintains air tools, keeps moisture drained from air tanks, checks governor, sets throttle to avoid compressor damage. Checks and repairs air brakes on compressor and repairs air hose. May perform other related duties.

(2) Asphalt distributor: Sets spray bar and operates valves and levers of distributor to control distribution of oil or bituminous liquid, also may drive truck on one-man operated distributor. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(3) Asphalt paving or laydown machine: Manipulates controls of paving machine that spreads and levels asphaltic concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(4) Asphalt retort heater: Operates a stationary or portable piece of equipment designed to apply heat to a tank, tank car or tank truck containing asphalt. Starts fire, controls heat applied to tank by regulating burners. Starts, stops and controls flow of recirculating pumps. Maintains desired temperature in asphalt, regulates valves for discharge of asphalt from tank. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(5) Backhoe, clamshell, dragline, gradall, shovel, "scooper": Operates boom shovel type equipment to hoist and move materials and perform other related operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

TYPE "A"
under 3/4 cu. yd.
3/4 cu. yd. to 3 cu. yd.
over 3 cu. yd.

TYPE "B"
3/4 cu. yd. and over
(manufacturers' rating)

(6) Batch or continuous mix plant (concrete, soil, cement or asphalt): Sets up and

operates a large portable or stationary plant for batching concrete, soil-cement or asphaltic materials and aggregates; responsible for control of mixture and plant. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(7) Belt type conveyors (material and concrete): Operates an endless belt-type conveyor that is a machine designed so the belt operates between a head pulley and tail pulley which are located on the opposite ends of the conveyor frame. The belt rides on carrier rollers so formed in shape and positioned that the belt forms a trough to carry the loose material. The operator starts and stops the belt as necessary, maintains the carrier rollers and belt splices, regulates belt speed for correct loading for efficient operation and belt life, maintains belt alignment to insure the belt is not loaded on one side which results in excessive belt wear. Conveyors are used efficiently in confined areas particularly in the placement of concrete with portable type conveyors. (Conveyor systems which are part of a plant shall be operated by the plant operator). May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

(8) Broom (self-propelled): Operates a self-propelled broom for sweeping loose materials from roadbeds, parking lots, air strips, etc. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(9) Bulldozer: Operates a tractor with a concave steel scraper blade mounted in front of the chassis to level, distribute and push earth; regulates height of blade. Uses tractor as a pusher in loading earth carrying equipment. May oil, grease or otherwise service and make minor repairs to equipment as needed. May perform other related duties.

(10) Bulldozer (multiple units): Operates a multiple tractor with a single control center which has a concave steel scraper blade mounted in front of the chassis to level, distribute and push earth; regulates height of blade. Uses tractor as a pusher in loading earth carrying equipment. May oil, grease or otherwise service and make minor repairs to equipment as needed. May perform other related duties.

(11) Concrete paver mixer: Operates a paving machine that mixes and dumps concrete, the machine consisting primarily of a skip, concrete mixer and a boom equipped with a traveling bucket and a power plant, all mounted upon a crawler or wheel unit. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(12) Concrete paving curing machine: Operates a self-propelled machine

and operates pump on the machine which sprays curing compound on freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(13) Concrete paving finishing machine: Operates self-propelled machine which travels on subgrade or paving forms and levels fresh concrete to approximate grade and contour by pushing and pulling screeds over the surface. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(14) Concrete paving form grader: Operates a machine that controls subgrade under forms used in concrete paving and is equipped with knives or blades to loosen dirt and eject same from the form line grade. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(15) Concrete paving gang vibrator: Operates a self-propelled machine which travels on paving forms and operates levers to lower multiple vibrator heads into freshly poured concrete. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(16) Concrete paving joint or saw machine: Operates a self-propelled machine which travels on paving form or pavement and cuts grooves for expansion and contraction joints in freshly poured concrete or cured pavement. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(17) Concrete paving longitudinal float: Operates a self-propelled machine which travels on paving forms and moves levers to strike off the concrete to correct elevation. Machine has one or more screeds traveling longitudinally. Operates milling machine (makes ridges). May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(18) Concrete paving spreader: Operates a self-propelled machine that rides on the paving forms. Operates controls to spread fresh concrete evenly over subgrade or in concrete forms. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(19) Concrete slip-form paving machine: Operates a self-propelled machine with long forms attached which move along with the machine. Machine vibrates, screeds, spreads and finishes the surface. Operates a roto mill machine (machine with plane to smooth). May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(20) Concrete paving sub grader: Operates a machine that finishes subgrade. Machine runs on concrete paving forms or subgrade and is equipped with knives or blades to loosen material and eject same from subgrade. May oil, grease or otherwise service equipment as needed. May perform other related duties.

(21) Winch truck: Drives a heavy duty gasoline or diesel truck equipped with a winch and gin poles or other hoisting devices. Shifts winch gears in accordance with signals from helper on ground. May service and make necessary adjustments for proper operation of equipment. May perform other related duties.

AJ. Crane type equipment:

(1) Crane (crawler or mobile): Operates crane type equipment to hoist and move materials and perform other related operations. Such equipment is used for pouring concrete, setting steel or other miscellaneous tasks for which crane type equipment is required. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

TYPE "A"

under 20 ton
20 ton to 40 ton
over 40 ton

TYPE "B"

under 20 ton with less than 50' boom
20 ton and over with 50' boom and over
(manufacturers' rating)

(2) Traveling crane: Operates overhead, bridge, gantry, tower and traveling cranes (the principal types). These cranes are capable of movement on fixed tracks or a unit suspended by trolley to a beam and are designed to pick up a load, move it a distance, and land it again. Hoist, travel and swing mechanism vary with the different designs of crane and such equipment is used for pouring concrete, setting steel or other miscellaneous tasks for which equipment is required. May oil, grease or otherwise service and make necessary adjustments.

(3) Derrick, cableway: Operates guy, stiff leg or other derrick, cableway. (Derricks are distinguished from cranes by being stationary and being supported by cables, or structural member, but may be repositioned to higher levels as construction progresses). Derricks use a hoist as described in building hoists, 2 drums and up, but may vary with different designs, as the source of power for line pull, hold or release through sheaves on the particular derrick or cableway for lifting and moving materials to higher, lower, or the same levels in construction. The operator controls in accordance with signals received by sight, hearing or other signaling devices. If necessary may oil, grease or otherwise service and make necessary adjustments.

AK. Piledriver: Operates the basic machine, and applicable hammer controls

to which pile driving attachments are attached. Pile driving attachments normally consists of leads, to service as a guide for the weight, hammer or extractor. The drop hammer is a weight hoisted by cable along the leads and released to fall by gravity onto the pile. Steam, compressed air, hydraulic, sonic and diesel hammers ride along the leads resting on top of pile or pile cap striking blows on the down stroke of the hammer, from its power source, onto the pile being driven. The extractor is a steam or air hammer that strikes its blows on the upstroke of the hammer equipped with devices for attachment onto the piling to be pulled. May drill or jet pilot holes. May oil, grease or otherwise service and make necessary adjustments.

AL. Crushing, screening and washing plants: Operates a crusher, screening or washing plant to control flow of materials through plant. Regulates flow of rock through chute to crusher. May perform other related work. May oil, grease, or otherwise service and make necessary adjustments or repairs to equipment as needed.

AM. Drilling machine (cable, core or rotary): Sets up and operates a portable cable, core, diamond or rotary drill for the purpose of drilling water wells or exploratory drilling. May drill pilot holes for piling. May oil, grease, or otherwise service and make necessary adjustments. May perform other related duties.

AN. Elevating grader or belt loader: Operates a self-propelled or tractor-drawn elevating grader, bucket, or belt loader. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

AO. Fireman: Hand strokes or fires by gas or oil, a portable or semi-portable steam boiler, such as is used on steam shovels, pile drivers, cranes, dredges, hoisting equipment and asphalt plants. May perform other related duties.

AP. Front end loader: Operates a rubber-tired or crawler-type tractor with an attached bucket on front end. Machine is used to load materials from stockpiles, excavation, charging batch plants, loading trucks. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

TYPE "A"

1 1/2 cu. yd. or less

over 1 1/2 cu. yd. to 6 cu. yd.

over 6 cu. yd.

(manufacturers' rating)

TYPE "B"

under 2 yds.

2 yds. to 7 yds.

over 7 yds.

AQ. Fork lift: Operates a machine powered by gasoline, diesel or electric power that is equipped with a vertical hoisting and lowering device that may be canted forward and reverse of vertical center by means of control devices. Machine is equipped with fork lifting and designed to slide under loads, machine is used for lifting and transporting loads. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

AR. Grease truck operator, head oiler: An operator of a truck equipped with high pressure grease and oil dispensing equipment, which may have gasoline and diesel fuel tanks, who lubricates, changes oil and filters and refuels equipment. Maintains service records and performs preventative maintenance and visual inspection. Reports vehicle discrepancies to foreman or mechanic. May perform other related duties.

AS. Hoist (1 drum or 2 drums and over): Operates a single drum or multi-drum machine powered by air, electric, gasoline or diesel. Actuates valves, levers, brakes or other control devices which regulates linepull, hold or line release in accordance with signals received by sight, hearing or other signaling devices as necessary. Machines are used for various pulling and hoisting operations on construction work such as: to hoist and lower material in various elevations; to hoist and lower material in construction and assembly. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

hoist 1 drum

hoist 2 drums and over (manufacturers' rating)

AT. Hydro lift: Operates a machine mounted on a truck that is capable of lowering, raising, (extending if applicable) boom, swinging boom to a limited degree, right and left of center (less than 180 degrees). Raising and lowering load line, truck may be equipped with outriggers, shifts winch gears on hydraulic control valves to perform the above operations. Operates from inside truck cab or outside control center. May drive truck. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

AU. Industrial locomotive brakeman: A semi-skilled operator who hooks and unhooks various cars. throws switches, operates car dumps, signals locomotive operator, manipulates controls of loading devices (hopper conveyors, etc.) and assists locomotive operator. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

AV. Industrial locomotive motorman: An operator of gasoline, diesel or electric powered railroad locomotive used to push, pull or switch railroad cars of various

designs loaded with muck, concrete, aggregate, or other applications suitable for rail transport. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

AW. Lumber stacker:

Operates machine designed to straddle bundles or stacks of lumber or other objects suitable to be handled by this specialized machine, hoists and moves materials to various locations. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

AX. Mechanic [and/or]

and welder: Assembles, sets up, adjust and maintains and repairs all types of construction equipment, such as internal combustion engines, air compressors, pumps, concrete mixers, heavy earth moving equipment, rock crushers, paving equipment. May perform other related duties.

AY. Mixer, concrete (1 c.y.

and less): Operates a small, portable concrete mixing machine to mix sand, gravel, cement and water to make concrete. Starts power unit and does or oversees loading of materials. Controls the mixing by levers to discharge concrete from drum. This small machine is sometimes charged by shoveling in the proportions of materials directly into the mixing drum and some others have a skip into which materials are shoveled before being hoisted into the mixing drum. Rinses drum with water to remove adhering concrete. May oil, grease or otherwise service and make necessary adjustments as needed. May perform other related duties.

AZ. Mixer, concrete (over 1

c.y.): Operates a large, portable or sometimes stationary concrete mixing machines to mix sand, gravel, cement and water to make concrete. Starts power unit and oversees the loading of proper proportions of materials into the skip and then manipulates levers that control feeding of material into mixing drum. Starts drum rotating to mix materials; manipulates lever to discharge concrete from drum, either by tilting drum forward or by opening a discharge chute. Rinses drum with water to remove adhering concrete. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BA. Mixer, heavy duty,

asphalt or soil cement: Operates machine which picks up, mixes and spreads aggregate and asphalt or cement with water to stabilize base, subbase or surfacing materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BB. Motor grader: Operates

motor grader. Blade is mounted on a carrying and turning circle under the frame of the machine. Equipment is used in leveling dirt to grade and in laying asphalt and flexible

base materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BC. Mulching machine: Operates a power driven machine that shreds mulch material and discharges it to various areas. Also may control the addition of liquids and seed. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BD. Oiler: A serviceman who lubricates mechanical equipment, gives signals to operator when applicable, changes oil, greases and filters, refuels equipment. May assist mechanic, head oiler [and/or] operator in assembling, setting up, adjusting, maintaining (including operation of steam cleaners) and repairing all types of construction equipment. May, when servicing equipment, drive a truck which carries fuels, oils and greases. May use the tools of the trade at and under the direction of a mechanic, head oiler [and/or] operator. May perform other related duties.

BE. Pumpcrete machine: Operates a concrete pumping machine that pumps fresh concrete from mixer to forms that mold fresh that mold fresh concrete. Sets up pump, operates power unit of pump and allows fresh concrete to flow into hopper or pump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BF. Pump (six inch intake or over): Operates water pump which pumps water for roadway prewetting, pumping by transmission line from water source to job area or other use. May oil, grease, prime or otherwise service and make necessary adjustment to equipment as needed. May perform other related duties.

BG. Guniting machine: Operates a machine designed to pump dry sand and cement mixture forced under high air pressure to various areas specified for guniting treatment. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

BH. Grout pump operator: Operates machine designed to pump cement, sand and water mixture forced under high pump pressure used to seal various cracks, fissures, voids, etc., under special applications. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BI. Power plant (electric generator or welding machine): Operates a diesel or gasoline driven machine that generates A.C. or D.C. current of 15 K.W. or more used for lighting and electrical power. Keeps cycle and synchronization

control board in adjustment adhering to manufacturers specifications. Keeps governor relay in adjustment. Operates welding machine in bank, for arc-welding, uses armature dressing stone as required and resets welding heats as required. May oil, grease or otherwise service and make necessary adjustment. May perform other related duties. (Electric power plants, when the principal use is to furnish electric power for camp sites, shall be excluded).

BJ. Roller (pull type): Operates a tractor, with no other attachments to pull a roller which is used for compaction. May oil, grease, or otherwise service equipment as needed. May perform other related duties.

BK. Roller (self-propelled): Operates a diesel or gasoline driven self-propelled machine used for compaction. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BL. Roller (steel wheel): Operates a self propelled machine with either 2 or 3 steel flat wheels which is used to compact and smooth earth fills, flexible bases, bituminous roads surfaces. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BM. Scraper operator: Operates a tractor or self-propelled machine to pull a steel bowl-like scoop (Scraper) mounted on wheels that scrapes up earth and transports it to a designated place; manipulates necessary scraper controls. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BN. Scraper (multiple units): Operates a tractor or self-propelled machine to pull multiple steel bowl-like scoop (scraper) mounted on wheels that scrapes up earth and transports it to a designated place; manipulates necessary scraper controls. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BO. S c r e e d m a n : Manipulates handwheels or other devices to raise or lower screeds of asphalt machine. Regulates width of screed and depth of material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BP. Side boom: Operates a diesel or gasoline powered rubber-tired or crawler-tractor on which is mounted a side boom attachment with necessary hoisting devices. Positions tractor, manipulates control levers, clutches, brakes, and other controls to raise or lower boom, raise or lower load. By tractor motivation, loads may be transported to desired location. May oil, grease or otherwise service and make

necessary adjustments. May perform other related duties.

BQ. Subgrade or base finisher: Sets and adjusts machine to grade or string line. Operates necessary controls for grading, cutting and finishing subgrade or treated and untreated base material. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BR. Tractor (under 50 drawbar h.p. without attachments): Operates a small diesel or gasoline powered rubber-tired, farm-type tractor, with no attachments, to pull by drawbar, seed drills, etc. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

BS. Tractor (under 50 drawbar h.p. with attachments): Operates a small diesel or gasoline powered rubber-tired or crawler tractor. May be used with attachments such as dozer, tampers, post hole diggers, post drivers etc. May be used to pull brooms, sleds, trailers, etc. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BT. Tractor with backhoe attachment: Operates a small diesel or gasoline powered rubber-tired or crawler tractor with attached backhoe, 5/8 cubic yards and under capacity. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BU. Tractor (50 drawbar h.p. or over): Operates a large diesel or gasoline powered, rubber-tired or crawler tractor. May be used to pull graders, rock wagons, rippers, push or pull self-loading scraper, pull rollers or discs, push material spreader box and other miscellaneous operations. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BV. Trenching machine: Operates a power-driven machine that digs trenches for sewer, water, drainage, oil and gas pipelines, footings, etc. The trenching machine is mounted on crawler treads or rubber tires with the digging equipment usually consisting of an endless chain or wheel or edged buckets that excavate and deposit the material on a conveyor belt which in turn discharges the material at the side of the trench. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

BW. Welder-a tool of the trade: Is capable of operating one or both electric welding apparatus and acetylene welding apparatus. Fuses metal parts together using either arc welding process or oxyacetylene method. Cuts, lays out, fits and welds sheet metal, cast iron, and other

metal or alloyed metal parts to fabricate or repair equipment. Welds together the joints between lengths of pipe for oil, gas or other types of pipelines. May perform other related duties.

BX. Shaft and tunnel type equipment:

(1) Refrigeration: Operates a plant designed to circulate brine or other refrigerant through piping system to freeze specified areas for purpose of drilling, trenching, boring, blasting and stabilizing formations to permit such operations. Maintains pressures, vacuum, intercooling and other related functions. May keep brine or other refrigerants at proper levels in supply tanks. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

(2) Clam type shaft mucker: Operates a machine, suspended by cables, that is attached to a guide rail, vertically, that by the use of double action air rams, will swing the boom to which the clamshell is attached up to 180 degrees, extended or retract boom to which the clamshell is attached, open and close clamshell bucket. The operator swings boom to desired location, extends boom with clamshell open forcing it into muck, closes clamshell, retracts boom, swings it over muck, bucket or skip opens clamshell releasing muck and repeats operations. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

(3) Mucking machine: Operates a machine designed especially to work in confined spaces, generally operated by air or electric power to minimize air pollution, under ground. Rocker shovel types have front-mounted buckets that are loaded by being pushed into the material and lifted over the machine and dumped into an attached car, or lifted to a point that gravity dumps the material from the back of the loaded bucket onto a conveyor belt that runs over the machine to a dumping point or into attached car. This type mucking machine usually operates on tracks or are crawler mounted. The bucket is hinged to a boom which in turn is hinged to a turntable on the main frame which allows the main frame to travel in one direction while the swinging action of the bucket can reach out to the sides to remove such loose material generally called muck. These machines are especially suited for underground, emptying into conveyors or into cars. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

(4) Mine hoists: Operates hoists used in mining operations and in compliance with the department of mines regulations. Hoists and lowers men and materials in shafts and inclines in accordance to authorized signals. May oil, grease or otherwise service and make necessary adjustments. May

perform other related duties.

(5) Mole operator: Operates a horizontal boring machine which is the vertical rotating cutter head which deposits muck onto conveyor that passes over the machine to a dump point. The operator controls the elevation and direction and travel by hydraulic rams. The machine is a specialized piece of machinery for tunnel boring. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

(6) Jumbo form or drilling stage: Operates a specialized machine usually mounted on rails or rubber-tired wheels which has surrounding it, expandable, retractable forms. Drilling stage consists of one or more drilling stages from which drilling operations at the phase are performed for blasting. The operator positions machine for drilling, removes it for blasting, connects and disconnects air and water lines from the source as needed. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

(7) Slusher operator: Operates hoist as described under 1 or 2 drum hoist to raise and lower, drag and release a bucket similar to dragline bucket without a bottom in it. To move loose material into dump chute or other purposes. Sheaves to control line direction are usually secured to roof, side or face of excavation by rock bolts. May oil, grease or otherwise service and make necessary adjustments. May perform other related duties.

BY. Truck drivers:

(1) Bus or taxi: Drives a bus or taxi to transport employees to and from construction project. May oil, grease, or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(2) Distributor (asphalt): Drives truck equipped with tank and controls for regulating distribution of bituminous materials. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(3) Dumpster or dumptor: Operator of a self-propelled, 4-wheeled, rubber-tired truck type machine which is used in hauling of materials. Machine is normally used off the highway, working around rock crushers or excavation. Being reverse steer, the operator rides facing the dump-bed which is dumped by release of safety lock and sudden stop of machine, which causes off center loading of truck bed to dump. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(4) Dump or batch truck: Drives a truck for transporting loads of construction material. May service and make necessary adjustments for proper operation of equipment. May perform other related duties.

under 8 C.Y.

8 C.Y. and under 16 C.Y.

(manufacturers' rating)

16 C.Y. and under 20 C.Y.

20 C.Y. and over

(5) Diesel-powered transport (non self-loading) 10 yds. and over: Drives diesel powered Euclid Turnarocker, Terra Cobra, D.W.-10, D.W.-20 Le Tourneau pulls and similar diesel powered equipment when used to haul material and assigned to a "teamster".

(6) Flatbed: Drives a truck for transporting loads of construction materials or equipment. May load and unload truck. May service and make necessary adjustments for proper operation of equipment. May perform other related duties.

1 1/2 ton or under (manufacturers' rating)

over 1 1/2 ton

(7) Lumber carrier: Drives truck that hauls logs and lumber with truck trailer or bobtail.

(8) Lowboy, heavy equipment: Drives a truck to which is attached a trailer with a low frame or bed upon which heavy equipment or material is hauled. May service and make necessary adjustments for proper operation of equipment. May perform other related duties.

(9) Lowboy, light equipment: Performs duties of the same nature as described under "lowboy, heavy equipment".

(10) Off-highway hauler: Drives equipment powered by a tractor exclusively for transporting loads of construction materials. Equipment must not be used as self-loading. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

(11) Pickup truck 3/4 ton or under: Drives a light truck for transporting small loads of construction materials, tools or equipment. May service and make necessary adjustments for proper operation of equipment. May perform other related duties.

(12) Service station attendant: Maintains service station. Washes, lubricates, fuels and otherwise services vehicles and equipment. Changes and repairs tires and tubes. Operates and maintains service station equipment. May perform other related duties.

(13) Spreader box: Hooks spreader box to tailgate of truck, adjusts hopper and strike-off blade so that gravel, stone or other material may be spread to a specific depth on road surface. Controls flow of materials when spreading. May perform other related duties.

(14) Spreader box (self-propelled): Drives a self-propelled vehicle, consisting primarily of a hopper mounted on pneumatic-tired wheels, used to spread crushed aggregate on bituminous roadway material. May service and make necessary adjustments for proper operation of equipment. May perform other related duties.

(15) Swamper or rider helper: Assists truck driver. Shares with a driver the duties of loading and unloading a truck, shifting articles about on truck, handling cumbersome articles and may drive to relieve driver. May perform other related duties.

(16) Tank truck: Drives a truck or truck with trailer or semi-trailer on which is mounted a tank, for transporting loads of liquid products or construction material. May oil, grease or otherwise service and make necessary adjustments to equipment as needed. May perform other related duties.

3,000 gal. or under
3,001 gal. to 6,000 gal.
6,001 gal. and over

(17) Teamster, 2 or 4 or more: Drives teams of horses or mules to move earth or other construction material. May perform other related duties.

(18) Trailer or semi-trailer dump: Drives a truck to which is attached a trailer or semi-trailer dump used in transporting construction materials. May perform other related duties.

(19) Transit mix: Drives a truck upon which is mounted a concrete mixer. Drives truck under loading hopper to receive sand, gravel and cement. Fills water tank and starts and stops mixer. Drives truck to location for unloading. Dumps concrete into chute leading to forms. Cleans mixer drum. May service and make necessary adjustments for proper operation of equipment. May perform other related duties.

(20) Warehouseman: Maintains warehouse for construction supplies and materials. May operate necessary equipment and machinery within warehouse area. May perform other related duties.

BZ. Semi-skilled laborers:

(1) Air and power tool man (not a carpenter's tool): A worker who uses a tool driven by compressed air, gas or electric power to perform such work as breaking old pavement, loosening or digging hard earth, trimming bottom and sides of trenches, breaking large rocks, driving sheeting, chipping concrete, trimming or cutting stone, calking steel plates, or compaction of earthen backfill. Install plastic and PVC linings on ponds. Rotary man operates a hand-held device to make cuts on road with a person holding a nozzle to fill cuts with oil. May perform other related semi-skilled duties.

(2) Asbestos remover: A person

who removes asbestos from pipes, ceiling and other parts of existing buildings, either by scraping or by using pressure by water. In addition, this definition includes a person who cleans up and disposes of asbestos after it has been removed.

(3) Asphalt heaterman: Tends a stationary or portable liquid asphalt kettle, starts fires (usually fuel oil) under the kettle, controls heat applied to the kettle by regulating dials or burners, maintains desired temperature in asphalt, regulates valves for discharge of asphalt from kettle. May perform other related semi-skilled duties.

(4) Asphalt jointman: Cleans and pours asphalt joints in concrete paving with nozzle or can. Takes care of asphalt kettle heaters. May perform other related semi-skilled duties.

(5) Asphalt raker: Distributes asphaltic road-building materials evenly over road surface by raking and brushing materials to correct thickness; may control straight edge to regulate width and depth of materials; directs "asphalt shovelers" when to add or take away material to fill low spots or to reduce high spots. Applies color to tennis courts, etc. by using a squeegee. Applies epoxy on concrete floors to seal. May perform other related semi-skilled duties.

(6) Batching plant scaleman: Manually operates a stationary or portable batching scale that weighs out concrete materials. Adjusts scales for required weight of the materials. Operates controls that admit materials separately from storage hoppers to weighing bins. Observes scales or indicators that show when proper amount of materials have been made. Discharges materials from weighing bin into truck or other carrier or mixer. He may measure materials by volume instead of weight. May perform other related semi-skilled duties.

(7) Tenderers (to cement mason and plasterer): Assists in the pouring of concrete by spreading concrete, cleaning and caring of cement mason's tools, mixes mortar used in the patching of concrete, and performs other tasks as may be directed by cement masons or plasterer. Mixes mortar for plasterers and delivers same to location where plasterers are working. Sets up scaffolding as directed by foreman where necessary, and cleans and cares for tools and equipment used in the preparation and application of plaster.

(8) Chain sawman: Operates a power driven chain saw to clear areas of timber. Fells trees, and sometimes cuts the fallen trees into short Sections to facilitate their removal.

(9) Concrete burner: Operates a device used to burn holes, etc., through concrete. This device consists of a consumable aluminum-magnesium rod inside a small iron pipe. Oxygen is forced

through the pipe under pressure, and the end of the assembly is lighted. The concrete is melted by the intense heat of the device.

(10) Concrete power buggyman: Drives self-propelled buggy to transport concrete from mixer or source of supply to place of deposit. Operates levers to dump load. May perform other related semi-skilled duties.

(11) Concrete touch-up man: Prepares the surfaces of concrete masonry which is not to be finished (using tools other than those normally used by "cement masons") by patching holes and broken corners, and removing high spots and defective concrete.

(12) Concrete sawman - coring machine: Operates a power driven, hand guided, water cooled saw or diamond driller which is used to cut through slabs of concrete, except as otherwise provided elsewhere.

(13) Curbing machine, asphalt or cement: Operates a machine which applies asphalt or concrete along the edge of highways or parking aprons to form a small curb.

(14) Cutting torchman: Uses cutting torch only for demolition work on steel or other metal structures. May perform other related semi-skilled duties.

(15) Metal form setter-road: Fits together, aligns and grades metal road forms for holding concrete in place on road and street surfaces. Dismantles, moves and cleans forms after concrete hardens. May perform other related semi-skilled duties.

(16) Grade setter: Keeps stakes and stringline set in place out in front of trenching machine so that machine will cut ditch in correct location. Sets stakes so that pipelayers can fine-grade ditch and measure from the batter board down to correct depth of ditch. May perform other related semi-skilled duties.

(17) Guniting, pumpcrete man and nozzle man: Assists operator and handles the equipment and directs the placing of concrete or mortar that is moved by pressures or pneumatic equipment, such as guniting. May fine-grade and place wire mesh at times. May perform other related semi-skilled duties.

(18) Hod carrier: Assists brickmasons, stonemasons and blockmasons by preparing mortar mix, either by hand or machine, delivers material to masons on scaffold, operates small material moving equipment such as power buggy, hoists, mortar mix pumps and other similar equipment. May erect and dismantle bricklayer scaffolds.

(19) Manhole builder: Constructs a means of permanent access to water and sewer lines for maintenance purposes. This work consists of laying brick or concrete block starting from a concrete slab at bottom

of ditch up to an approximate grade line near the surface of the ground. Brick or block is laid in by eyesight and is normally not to a plumb line. Chipped or culled brick can be used and quite often is. No effort may be made to keep mortar off the face of the brick and joints are not pointed. May apply coating of concrete to interior and exterior surface, except where tools of the trade are involved. May perform other related duties.

(20) Mortar mixer and mason tender: Mechanically mixes mortar ingredients to proper consistency and delivers to mason on scaffold or at site of work. Keeps materials supplied to mason and assists according to directions of mason.

(21) Multi-plate setter: Assembles large diameter metal culverts by bolting together semi-circular pieces of metal to form a complete circle, and bolts each section of this circle to similar sections which are placed adjacently, repeating these processes until the required length of culvert is formed.

(22) Nurseryman-gardener: Performs tasks related to the development and cultivation of plants, trees and shrubs both before and after such plants, etc., are planted.

(23) Pipelayer: On utility projects lays tile, concrete, corrugated metal pipe. Receives pipe lowered from top of trench; inserts spigot end of pipe into bell end of last laid pipe; adjusts pipe to line and grade; seals joints with cement or other sealing compound. May perform other related semi-skilled duties.

(24) Plaster spreader operator: Mixes plaster to be used in a machine which is designed to apply plaster to surfaces by means of a hose. Handles and maintains hose, places and moves machine, and services and maintains machine. May perform other related duties.

(25) Potman: Cleans, screens and feeds sand to hopper or pot of sandblasting machine.

(26) Powderman-blaster-makeup: Supervises and assists in locating, loading and firing blast holes for breaking up hard materials; enlarges bottom of drilled holes by discharging small quantities of explosives; inserts detonator in charge of explosive, attaching fuse or electric wires, the stick and detonator forming a primer, the discharge of which effects the discharge of the remainder of the explosive; charges hole by placing explosive, including stick that contains detonator, in hole and tamping with a pole; depresses handle of blasting machine or lights fuse to fire explosive. May use prima-cord or delay caps. May perform other related semi-skilled duties.

(27) Powderman or blaster helper: Carries powder or other explosive to blaster or powderman and assists by placing prepared explosive in hole, connecting lead

wire to blasting machine, and performing other duties as directed. May perform other related semi-skilled duties as directed by powderman or blaster.

(28) Roadway hardware worker: Attaches and assists in the installation of guardrails, (other than guardrails on bridges) guardrail posts, informational signs and metal fencing; including barb wire, woven wire, and chain link which is used to define right of way, medians or driving lanes or provide safety for such areas, excludes security fencing as defined elsewhere. Assists Ironworker in the installation of chain link fencing by installing posts (digging, placing concrete, etc.). May require the use of small hand tools such as hammer and spud wrench. May perform other related duties.

(29) Sandblaster: Cleans and prepares surfaces by the use of sandblasting equipment other than preparation for painting (see painter sprayman). May perform other related semi-skilled duties.

(30) Scaler: Cleans and dresses the slopes of roadway cuts and embankments while suspended by ropes or cables. Uses hand tools as required. May perform other related semi-skilled duties.

(31) Vibratorman (hand type): Lowers hose-like flexible shaft of vibrator into newly poured concrete. Starts power unit and holds shaft, allowing hammerhead on shaft to vibrate, thus compacting the concrete. Air, electric or gasoline operated vibrators are used. May perform other related semi-skilled duties.

(32) Vibratory compactor (hand type): Operates hand guided vibratory or impact compactor. Adjusts levers, throttles and other devices necessary for operation.

(33) Wagon, air track, drill and diamond driller (outside): Sets up and operates drilling mechanism that drills holes into concrete or rock. Levels machine by placing timbers under wheels. Inserts and fastens drill steel in chuck. Adjusts angle of drill tower and bolts into position. Controls drilling and speed of drill by moving levers. May make other adjustments to equipment as needed. May perform other related semi-skilled duties.

(34) Wagon, air track, drill and diamond drillers' tender (outside): Assists in setting up drill, assorting drill steels, and inserting drill steel into drill chuck. Lubricates drill and performs other duties as directed. May perform other related semi-skilled duties.

(35) Window washer: Cleans and washes windows. May perform other related tasks.

(36) Caulker: A tool of the trade except when specifically the specialty of a contractor, semi-skilled laborer.

CA. Miscellaneous laborers:

(1) Gunite nozzleman: Handles the equipment and directs the placing of

concrete or mortar 1 1/2" thickness or over that is moved by pneumatic equipment such as gunite. May fine-grade and place wire mesh at times. May perform other related semi-skilled duties.

(2) Laboratory technician: Conducts gradation testing, collects samples by extraction, and submits test results. May perform other related duties.

(3) Landscaper: The duties of the landscaper include site development, soil preparation, fertilizing, the building of garden accessories, preparation for the installation of garden sprinkler systems, and other related duties. The landscaper may operate small walking type farm equipment and perform other related duties. Duties of the landscaper shall not include electrical work, fencing, concrete retaining walls, or other work which is generally performed by skilled craftsmen.

(4) Pumpcrete nozzleman: Handles the hose or nozzle equipment and directs the placing of concrete or mortar that is moved by pneumatic equipment such as gunite. May fine-grade and place wire mesh at times. May perform other related semi-skilled duties.

(5) Traffic control technician: Manages, supervises, inspects and coordinates all traffic control at the project site. Supervises flag and signing personnel. Prepares revisions to the traffic control plan. Coordinates all traffic control with emergency agencies. Prepares and submits statements concerning road closures, delays and other project activities to the news media. May perform other related duties.

CB. Unskilled laborers:

(1) Carpenter tender: Performs unskilled labor such as hand handling of materials used by carpenters. Assists in erecting and removing of forms, removes nails and clears lumber. May perform other related unskilled duties.

(2) Chainman, rodman, stakedriver: Carries supplies, drags chain, holds survey rod, drives stakes and assists surveyor in other related duties.

(3) Building and common laborer: A general term used on construction work covering many unskilled occupations. A laborer works with all crews doing everything from pick and shovel work to cleaning up lumber with hammer; shoveling and placing concrete; applying coats of oil to inside face of forms; stripping forms; working on rock crusher to feed trap; opening cement sacks at batch plant; lowering pipe into ditch for pipelayers; working with dirt crew to move construction layout stakes; working as flagman, signalman or spotter to control traffic; serving as dumpman; spreading hot asphaltic material over roadbed with shovel; operating hand concrete buggy or wheelbarrow; helping painter to prepare surfaces for painting and cleaning paint

equipment; may perform other related duties.

(4) Concrete buggy operator (hand): Operating buggy by pushing or pulling by hand between mixer or other source to site of work.

(5) Concrete workers: Pours, finishes and performs other work in relation to the lining with concrete.

(6) Flagman: Flagman is stationed at strategic locations to control flow of traffic by hand held flags or other hand held warning device.

(7) Soil sample tester (unskilled laborer): Takes soil for test sample for approximately a quart of soil by digging shallow hole with a small hand shovel. May perform other related duties.

CC. Shaft workers (laborer):

(1) Concrete workers: Pours, finishes and perform other work in relation to the lining of shafts with concrete.

(2) Drillers: Operates drilling equipment to drill holes into material through which shaft is being sunk in order to allow blasting powder to be used to loosen earth materials.

(3) Form handlers: Sets prefabricated steel forms for concrete by bolting forms together. Removes these forms after concrete has set.

(4) Hand muckers: Removes debris which has been loosened in shaft by blasting, using hand tools. Loads such debris into hoisting bucket for removal to the surface.

(5) Miners: A general term used to describe all classifications of laborers engaged in sinking shafts.

(6) Powderman: Prepares blasting material, inserts this material into predrilled holes. Performs electrical wiring necessary for detonation, and assures that all charges have detonated before other workmen resume work in the shaft.

(7) Shifters: Supervises drillers, powdermen and other laborers who are engaged in work related to sinking and lining a shaft.

(8) Toplanders: Works on the surface to assemble, rig and otherwise handle materials to be lowered into the shaft and by standard signals given appropriately, signals to hoistman. Unloads materials being brought out of the shaft.

CD. Tunnel workers (laborer):

(1) Chuck tenders: Assists the driller by tightening or loosening drill bar. Changing drill bars and other related tasks as directed by the driller.

(2) Drillers: Operates drilling equipment to drill holes into material through which tunnel is being built in order to allow blasting powder to be used to loosen earth material. Also operates drilling equipment used for the insertion of bolt and plate

assemblies for support of tunnel surfaces.

(3) Form men: Sets retractable and expandable prefabricated forms except placement and extraction of jumbo forms, used in the pouring of concrete to line tunnel surfaces. Removes these forms after concrete has set.

(4) Groutman: Operates guniting or concrete nozzle to fill minor cracks and faults in surface of tunnel, and to stop water leaks as digging of tunnel progresses.

(5) Laborers and hand muckers: Generally assists other tunnel workers by handling material, loading accumulated debris onto rail cars for removal, driving rail spikes and other related tasks.

(6) Miners: A general term used to describe all classifications of laborers engaged in the digging and building of tunnels.

(7) Nippers: Changes drill heads on drilling bars as directed by drillers. May also perform other tasks as directed by drillers.

(8) Powderman: Prepares blasting material, and inserts this material into predrilled holes. Performs electrical wiring necessary for detonation and assures that all charges have detonated before other workmen resume work in the area made hazardous by the charges.

(9) Scaler: Removes loose rock from top and sides of tunnel. Probes for and removes pieces of rock which have become partially loosened.

(10) Timberman: Installs wood or steel shoring for the support of tunnel surfaces.

(11) Trackman: Performs work which is related to the laying of track inside a tunnel, and maintenance of such track. May supervise "Laborers" who are assisting in the laying and maintenance of track.

CE. Post script: All laborers or mechanics may work from blueprints and do layout.

[7/23/69, 8/4/69, 9/10/69, 9/30/69, 6/5/79, 3/25/85, 8/29/85, 9/3/85, 12/16/85, 11/4/88, 7/14/92, 2/14/92, 2/14/94, 3/3/94; 11.1.2.17 NMAC - Rn, 11 NMAC 1.1.17, 12/31/09; A, 3/15/12]

11.1.2.18 S U R V E Y CATEGORIES AND WAGE DIFFERENTIALS: Survey categories are described and wage differentials are determined as follows:

A. Survey categories for type A construction: The following classifications within the various crafts shall be surveyed by the director in his survey:

(1) bricklayer, blocklayer, stonemason;

(2) carpenters;

(3) cement masons;

(4) electricians-lineman/wireman or technician (outside);

(5) ironworkers;

(6) *group iv operators;

(7) *group ii truck drivers;

(8) brush painters;

(9) spray painters;

(10) plumbers, pipe fitters, steam fitters;

(11) *group II laborers (semi-skilled);

(12) each of the above asterisked categories shall constitute the basis for wage rate differentials for the respective crafts which each represents; when appropriate wage requests are made for crafts which are not listed above, the director shall utilize the same survey procedures and base periods to determine the prevailing rate as he uses for the other crafts.

B. Survey categories for type "B" and Type "C" construction: The following classifications within the various crafts shall be surveyed by the director in his survey:

(1) asbestos worker/heat and frost insulator;

(2) boilermaker;

(3) bricklayer, blocklayer, stonemason;

(4) carpenter/lather - building; residential;

(5) carpenter/lather - heavy engineering;

(6) cement mason (composition or mastic - finishing machine operator) - building, residential, and heavy engineering;

(7) electricians: *wireman or technician (inside), *lineman or technician (outside); *installer (sound);

(8) elevator constructor;

(9) helper;

(10) glazier;

(11) ironworker;

(12) *painters;

(13) plasterer;

(14) plumbers and pipefitters, lead burner;

(15) roofer;

(16) sheet metal worker;

(17) soft floor layer (carpet, asph. tile, linoleum);

(18) sprinkler fitter;

(19) tile setter, helper;

(20) *group VIII operators - building; residential;

(21) semi-skilled laborers: cement mason tenders; hodcarriers; plaster spreader opr.; plaster tenders; gunitenozzlemen; pumceterenozzlemen - building; residential;

(22) tenders (to cement mason and plasterer); hodcarriers - heavy engineering;

(23) *group II truck drivers - building; residential;

(24) *group IV operators - heavy engineering;

(25) *group II truck drivers - heavy engineering;

(26) each of the above asterisked

categories shall constitute the basis for wage rate differentials for the respective crafts which each represents; when appropriate wage requests are made for crafts which are not listed above, the director shall utilize the same survey procedures and base periods to determine the prevailing rate as he uses for other crafts.

C. Wage rate differentials in craft classifications:

(1) The director may seek the assistance of contractors, contractors' associations, labor organizations, other interested parties and public officers in setting appropriate wage differentials within each craft employed on contract work of a similar nature.

(2) Informational data pertaining to wage rate differentials within a craft employed on contract work of a similar nature may be presented to the director by any of the above-named interested parties.

D. Changes in wage spreads:

(1) Wage rate investigations shall be conducted to ascertain the propriety of wage differentials within craft classifications employed on contract work of a similar nature.

(2) When a change in wage rate differential is indicated by substantial evidence, all known interested parties shall be notified and given a reasonable time in which to present their views before a permanent change in a wage differential is made by the director.

E. Appendix A: Electrician classifications and wage spreads for type "A" construction:

(1) Groundman (outside) -\$3.41;

(2) Equipment operator (outside) -\$0.59;

(3) Lineman/wireman or technician (outside) (Base);

(4) Cable splicer (outside) +\$1.18.

F. Appendix B: Laborer classification groups and wage spreads for type "A" construction:

(1) Group I (unskilled): -\$0.30: building and common laborer; carpenter tender chainman; rodman; stakedriver; concrete buggy operator (hand); concrete workers; flagman; soil sample tester;

(2) Group II (semiskilled): (base): wagon, air tract, drill and diamond drillers' tender (outside); air and power tool man (not a carpenter's tool); asphalt heaterman; asphalt jointman; asphalt raker; batching plant scaleman; tenderers (to cement mason and plasterer); chain sawman; concrete power buggyman; concrete touch-up man; concrete sawman - coring mach.; curbing machine, asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman or blaster helper; sandblaster; scaler; vibratorman (hand type); vibratory compactor (hand type); window washer; nurseryman-gardener; wagon, air tract, drill and diamond driller (outside); roadway hardware worker;

(3) Group III (miscellaneous): +\$0.40: gunitepumpcreteman and nozzleleman; multi-plate setter; manhole builder; pipelayer; powderman-blaster-makeup; landscaper; traffic control technician; laboratory technician.

G. Appendix C: Equipment operator classification groups and wage spreads for type "A" construction:

(1) Group I: -\$0.80: concr. paving curing machine;

(2) Group II: -\$0.60: belt type conveyors (material and concrete); broom (self-prop.); fork lift; grease truck oper.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attach.); indus. loco. brakeman; front end loader (2CY or less); fireman; oiler; screedman; roller (pull type); mulching machine, roller (self-propelled);

(3) Group III: -\$0.02: concr. paving form grader; concr. paving gang vibrator; concr. paving joint or saw mach.; concr. paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (elec. gen. or welding mach.);

(4) Group IV: (base): bulldozer (including self-propelled roller with dozer attachment); batch or continuous mix plant (concr., soil cement, or asph.); roller (steel wheel); front end loader (2 through 10CY); scraper oper., motor grader;

(5) Group V: +\$0.00: asph. distr.; asph. paving or laydown mach.; asph. retort heater; mixer, heavy duty, asph. or soil cement; trenching mach.; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM and over); crushing screening and washing plants; drlg. mach. (cable core or rotary); mixer, concr. (1 CY and less); pump (6 in. intake or over); winch truck; hoist (1 drum); indus. loco. motorman; lumber stacker; tractor (50 drawbar HP or over);

(6) Group VI: +\$0.15: concr. paver mixer; hoist (2 drums and over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer, concr. (over 1 CY); mechanic or welder;

(7) Group VII: +\$0.20: concr. slip-form paving mach.; concr. paving finishing mach.; concr. paving longitudinal float; gunit mach.; refrig.; jumbo form or drlg.; stage; slusher; concr. paving spreader; pumpcrete mach.; grout pump oper;

(8) Group VIII: +\$0.35: mine hoist; bulldozer (multiple units); scraper (multiple units); mucking mach.; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile) over 40 tons;

(9) Group IX: +\$0.85: belt loader (CMI type) oper. pipemobileoper. assistant; derrick, cableway;

(10) Group X: +\$1.65: pipemobile operator; mole operator.

H. Appendix D: Truck driver classification groups and wage spreads for type "A" construction:

(1) Group I: -\$0.20: pick-up truck 3/4 ton or under; warehouseman; dump truck, under 8 cubic yards; flatbed, 1 1/2 ton or under;

(2) Group II: (BASE): dump truck, 8 to 16 cubic yards; tank truck, under 6,000 gallons; flatbed, over 1 1/2 ton;

(3) Group III: +\$0.20: spreader box (self-propelled); distributor (asphalt) transit mix; lowboy, light equipment; off-highway hauler; tank truck, over 6,000 gallons; dump truck, over 16 cubic yards; trailer semi-trailer dump;

(4) Group IV: +\$0.40: diesel-powered transport; lowboy, heavy equipment.

I. Appendix E: Electrician classifications and wage spreads for type "H" heavy engineering construction:

(1) Outside classifications:

(a) Groundman (outside) -\$3.41;

(b) Equipment operator (outside) -\$0.59;

(c) Lineman or technician (outside) (base);

(d) Cable splicer (outside) +\$1.18.

(2) Inside classifications:

(a) Wireman or technician (inside) (base);

(b) Cable splicer (inside) +\$1.73.

(3) Sound classifications:	
(a) Installer (sound)	(base);
(b) Technician (sound)	+\$1.55;
(c) Soundman	+\$3.62.
J. Appendix F: Laborer classification groups and wage spreads for type "H" heavy engineering construction:	
(1) Group I (unskilled): -\$0.30: building and common laborer; carpenter tender; chainman; rodman; stakedriver; concr. buggyopr. (hand); concr. workers; flagmen; soil sample tester;	
(2) Group II (semi-skilled): (base): wagon, air tract, drill and diamond drillers' tender (outside); air and power tool opr. (not a carpenter's tool); asbestos remover; asph. heaterman; asph. jointman; asph.raker; batching plant scaleman; tenderers (to cement mason and plasterer); chain sawman; concr. powerbuggymanopr. concr. touch-up man; concr. sawman - coring mach.; curbing mach., asph. or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman or blaster helper; sandblaster; scaler; vibratorman (hand type); vibratory compactor (hand type); window washer; nurseryman-gardener; wagon, air tract, drill and diamond driller (outside); roadway hardware worker;	
(3) Group III (miscellaneous): +\$0.30: gunitepumpcreteman and nozzleleman; multi-plate setter; manhole builder; pipelayer; powderman - blaster - makeup; landscaper; traffic control technician; laboratory technician;	
(4) Group IV (shaft workers): +\$0.87: air tuggeropr. concr. workers (incl. all cement chipping and finish, underground); drillers; form setters and handlers; hand muckers; miners; powdermen; timbermen (wood or steel); reinforcing steel setters; tunnel liner; plate setters, all cutting and welding incidental to miner's work; toplanders; bottomlanders;	
(5) Group V (shaft workers): +\$1.12: shifters;	
(6) Group VI (tunnel workers): -\$0.15: laborers and handmuckers;	
(7) Group VII (tunnel workers): +\$0.00: groutmen; nippers; trackmen;	
(8) Group VIII (tunnel workers): +\$0.25: drillers; form setters and handlers; scalers; miners; timbermen; brakemen; concr. workers (incl. all cement chipping and finishing underground); reinforcing steel setters; timbermen (wood or steel); tunnel liner plate setters; all cutting and welding incidental to miner's work;	
(9) Group IX (tunnel workers): +\$0.45: powdermen;	
(10) Group X (tunnel workers): +\$1.12: shifters.	
K. Appendix G: Equipment operator classification groups and wage spreads for type "H" - heavy engineering construction:	
(1) Group I: -\$0.80: concr. paving curing machine;	
(2) Group II: -\$0.60: belt type conveyors (material and concr.); broom (self-prop.); forklift; greases truck oper.; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attach.); indus. loco. brakeman; front end loader (2 CY or less); fireman; oiler; screedman; roller (pull type); mulching machine, roller (self-propelled);	
(3) Group III: -\$0.02: concr. paving form grader; concr. paving gang vibrator; concr. paving joint or saw mach.; concr. paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (elec. gen. or welding mach.);	
(4) Group IV: (base): bulldozer (including self-propelled roller with dozer attachment); batch or continuous mix plant (concr. soil-cement, or asph.); roller (steel wheel); front end loader (2 through 10 CY); scraper oper.; motor grader;	
(5) Group V: +\$0.00: asph. distr.; paving or laydown mach.; asph.retort heater; mixer, heavy duty, asph. or soil cement; trenching mach.; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel (under 3/4 CY); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM and over); crushing screening and washing plants; drlg. mach. (cable core or rotary); mixer, concr. (1 CY and less); pump (6 in. intake or over); winch truck; hoist (1 drum); indus. loco. motorman; lumber stacker; tractor (50 drawbar HP or over);	
(6) Group VI: +\$0.15: concr. paver mixer; hoist (2 drums and over); side boom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 CY to 3 CY); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 CY); mixer, concr. (over 1 CY); mechanic or welder;	
(7) Group VII: +\$0.20: concr. slip-form paving mach.; concr. paving finishing mach.; concr. paving longitudinal float; gunité mach.; refrig. jumbo form or drlg.; stage; slusher; concr. paving spreader; pumpcrete mach.; grout pump oper;	
(8) Group VIII: +\$0.35: mine hoist; bulldozer (multiple units); scraper (multiple units); mucking mach.; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile) over 40 tons;	
(9) Group IX: +\$0.85: belt loader (CMI type) oper.; pipemobileoper. assistant; derrick, cableway;	
(10) Group X: +\$1.65: pipemobile operator; mole operator.	
L. Appendix H: Truck driver classification groups and wage spreads for type "H" - heavy engineering construction:	
(1) Group I: -\$0.20: pick-up truck 3/4 ton or under; warehouseman; dump truck, under 8 cubic yards; flatbed, 1 1/2 ton or under;	
(2) Group II: (base): dump truck, 8 to 16 cubic yards; tank truck, under 6,000 gallons; flatbed, over 1 1/2 ton;	
(3) Group III: +\$0.20: spreader box (self-propelled); distributor (asphalt) transit mix; lowboy, light equipment; off-highway hauler; tank truck, over 6,000 gallons; dump truck, over 16 cubic yards; trailer semi-trailer dump;	
(4) Group IV: +\$0.40: diesel-powered transport; lowboy, heavy equipment.	
M. Appendix I: Electrician classifications and wage spreads for type "B" building construction and type "A" residential construction:	
(1) Outside classifications:	
(a) Groundman (outside)	-\$3.41;
(b) Equipment operator (outside)	-\$0.59;
(c) Lineman or technician (outside)	(base);
(d) Cable splicer (outside)	+\$1.18.
(2) Inside classifications:	
(a) Wireman or technician (inside)	(base);
(b) Cable splicer (inside)	+1.73.
(3) Sound classifications:	
(a) Installer (sound)	(base);

(b) Technician (sound) +\$1.55;

(c) Soundman +\$3.62.

N. Appendix J: Laborer classification groups and wage spreads for type "B" building and type "C" residential construction:

(1) Group I: -\$0.87: watchmen;

(2) Group II (unskilled): -\$0.30: building and common laborers; carpenter tenders; concr. workers; stakedrivers; concr. buggyopr. (hand); flagmen; soil sample tester;

(3) Group III (semi-skilled): (base): air and power tool opr. (not a carpenter's tool); asbestos remover; asph. heaterman; asph. jointman; asph. raker; batching plant scaleman; chain sawman; concr. touch-up man; concr. sawman - coring mach.; curbing mach. asph. or cement; cutting torchman; metal form setter-road; grade setter; gunitereboundmen; rod and chainmen; concrete power buggy opr.; powderman or blaster helper; sandblaster (pot men); nozzlemen; scaler; vibratorman (handtype); vibratory compactor (hand type); wagon core and diamond drillers' tenders (outside); window washers; fog mach. opr.; nurseryman-gardener; multi-plate setter; conc. burner; cement mason tenders; hodcarriers; mortar mixers; plaster spreader opr.; plaster tenders; gunitenozzlemen; pipelayer; pumpcretenozzlemen; manhole builder; roadway hardware worker;

(4) Group IV: +\$0.10: wagon, core, diamond drillers;

(5) Group V: (miscellaneous): +\$0.30: landscaper; traffic control technician; laboratory technician;

(6) Group VI: +\$0.45: powdermen and blasters.

O. Appendix K: Equipment operator classification groups and wage spreads for type "B" building construction and type "C" residential construction:

(1) Group I: -\$2.52: fireman; oiler; helpers; mechanic, welder, grease truck; screedman; scale oper. such as (bin-a-batch) rubber tired farmtype tractor; tractors under 50 H.P w/o attachments; brakeman; concr. paving curing mach. (bridge type);

(2) Group II: -\$1.48: rollers; sheepsfoot or pneumatic self-propelled w/o dozer; concr. conveyor; service truck opr. (head oiler); air compressor (300 CFM and over); pumps (6" and over); screening plants; concr. mixers (under 1 CY); concr. saw or grinder-span type; hoists, 1 drum; air tugger; elevating belt type loaders; fork-lift lumber stacker; tractor-farm type (under 50 H.P. w/attachments); motorman and industrial locomotive opr.; winch trucks; front end loader (under 2 CY). power plants which generate over 15 KW; welding machines;

(3) Group III: -\$1.40: bituminous distributors; boilers, retort and hot oil heaters; concr. mixers (1 CY and over). concr. paver (single drum); drlg. equip.; motor graders (rough); shaft and tunnel equip.; refrig.,slusher, jumbo form; trenching mach. (all types); pumpcrete and gunit mach.; slipform paver; mech. bull-floats; concr. slab spreading mach.; concr. slab finish. mach.; asph.plants; bitum. finish mach.; crushing plants;

(4) Group IV: -\$1.34: front end loader (2 thru 10 CY); rollers steel wheeled (all types); bulldozers; scrapers (motor or towed); elevating graders; concr. batching plants; self-propelled rollers, (equipped w/dozer); twin-bowl scrapers and quad 8 or 9 pushers; three bowl scrapers; tractor (farm type) w/hydraulic backhoes;

(5) Group V: -\$1.28: concr. paver, double drum; cat cranes; hysters; side and swingboom cats; hoist (2 drum); auto fine grader;

(6) Group VI: -\$1.18: mucking mach. (all types); motor grader-finish;

(7) GroupVII: -\$1.08: hydraulic cranes (with less than 50' of boom - 20 tons and under); steam engineers; loader (front end and over 10 CY); concr. pump (snorkel type); mechanic welder;

(8) Group VIII: (base): all shovel type equip.; cranes; draglines; backhoes; derricks; guy and stiff leg; pipemobile (#2 opr.); piledriver; hydraulic cranes (20 tons and over); mine hoist (belt loader "CMI" type); cranes, draglines (w/booms and jib over 150'). shovel (wheel type); boring mach. (tunnel or shaft mole); pipemobile.

P. Appendix L: Truck driver classification groups and wage spreads for type "B" building construction and type "C" residential construction:

(1) Group I: -\$0.12: pick-up 3/4 ton and under; service station; lubrication; light tire repair or washer; swamper or riding helper; teamster 2 or 4 up; ambulance driver;

(2) Group II: (base): bus or taxi driver; dump or batch truck, under 8 CY WLC; flatbed (bobtail) 2 ton and under; mechanic and welder helper; forklift under 5 ton MRC;

(3) Group III: +\$0.08: dump trucks (incl. all hwy. and off-hwy.) 8 up to 16 CY WLC; water, fuel or oil trucks less than 3,000 gal.; flatbed (bobtail) over 2 tons;

(4) Group IV: +\$0.20: distributor driver; hvy. tire repair; lumber carrier driver; young buggy or similar equip.; transit mix or agitator 2 or 3 axle bobtail equip.; scissor truck; bulk cement bobtail 2 or 3 axles; semi-trailer driver (flatbed or van single axle); forklift 5 ton and over MRC; field equip. servicemen;

(5) Group V: +\$0.25: dumpster and dumpcrete driver; water, fuel or oil truck (3,000 to 6,000 gal. capacity); lowboy, light equip. driver; euclid type tank wagon (under 6,000 gal.);

(6) Group VI: +\$0.35: vacuum truck; dump trucks (incl. all hwy. and off-hwy.) 16 up to 22 CY WLC;

(7) Group VII: +\$0.45: transit mix or agitator semi or 4 axle equip. driver; flaherty truck type spreader box driver; slurry truck driver; bulk cement driver; semi-doubles: 4 axle bobtail; winch truck and "A" frame; dump trucks (incl. all hwy. and off-hwy.) 22 CY up to 35 CY WLC head field equip. serviceman;

(8) Group VIII: +\$0.59: euclid diesel powered turnarocker; terra cobra; DW 10; DW 20; letourneau pulls and similar diesel powered equip.; lowboy heavy equip. driver; water, fuel or oil trucks (6,000 gal. and over incl. tank wagon drivers); semi-trailer driver (flatbed or van tandems); light equip. mechanic; dump trucks (incl. all hwy. and off-hwy.) 35 CY WLC and over; truck and trailer or semi-trailer (flatbed); eject all driver;

(9) Group IX: +\$0.74: lowboy (heavy equip., double gooseneck); heavy equip. mechanic; welder (body and fender man); warehouseman; material checker-cardexman; expeditor.

[11.1.2.18 NMAC - N, 3/15/12]

11.1.2.19 APPRENTICES AND TRAINEES:

A. Requirements of apprentices:

(1) All apprentices shall be properly indentured.

(2) Apprentices used on public works projects shall be in training and in compliance under registered apprenticeship standards and written apprenticeship agreements, and their employment shall be in accordance with the provisions of such apprenticeship standards and apprenticeship agreements.

(3) Every apprentice shall be employed only at the work of the trade to which he is indentured.

(4) Certification showing registration status of apprentices must accompany the first full payroll on which each apprentice first appears. Certification on any registered apprentice shall be made by the contractor, and verification may be obtained from the office of the New Mexico apprenticeship council.

B. Requirements of trainees:

(1) All trainees must be properly enrolled in a bona fide training program approved for application on public works construction projects by the appropriate state or federal agency(ies) if and as required by law and applicable federal regulation.

(2) Trainees used on public works projects shall be in training and in compliance with the standards and trainee agreements approved for the public works construction project on which the trainee is

employed by the appropriate state and or federal agency(ies) if and as required by law and applicable federal regulation.

(3) Certification showing enrollment status of trainees must accompany the first full payroll on which each trainee first appears. Certification on any enrolled trainee shall be made by the contractor and may be verified by the public agency approving the training program.

C. Method of establishing apprentice and trainee wage rates: Every apprentice and trainee shall be paid a wage rate applicable to his craft and classification in accord with the wage rates established by the approved apprenticeship or training program.

[11.1.2.19 NMAC - N, 3/15/12]

End of Adopted Rules Section

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Other Material Related to Administrative Law

**NEW MEXICO
DEPARTMENT OF PUBLIC
SAFETY**
TRAINING AND RECRUITING
DIVISION
Law Enforcement Academy

Notice

**NEW MEXICO DEPARTMENT OF
PUBLIC SAFETY
NM LAW ENFORCEMENT ACADEMY
BOARD MEETING**

On Tuesday April 17, 2012 at 9:00 a.m., the New Mexico Law Enforcement Academy Board will hold a Regular Board Meeting.

The NMLEA Board Meeting will be held at the Dona Ana Government Building 845 N. Motel Blvd. Las Cruces, NM 88007

Copies of the Regular Board Meeting Agenda's may be obtained by accessing our website at www.dps.nm.org/training or by calling Monique Lopez at (505) 827-9255.

**End of Other Related Material
Section**

Submittal Deadlines and Publication Dates 2012

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Issue Number 2	January 18	January 31
Issue Number 3	February 1	February 15
Issue Number 4	February 16	February 29
Issue Number 5	March 1	March 15
Issue Number 6	March 16	March 30
Issue Number 7	April 2	April 16
Issue Number 8	April 17	April 30
Issue Number 9	May 1	May 15
Issue Number 10	May 16	May 31
Issue Number 11	June 1	June 14
Issue Number 12	June 15	June 29
Issue Number 13	July 2	July 16
Issue Number 14	July 17	July 31
Issue Number 15	August 1	August 15
Issue Number 16	August 16	August 30
Issue Number 17	August 31	September 14
Issue Number 18	September 17	September 28
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 30
Issue Number 21	November 1	November 15
Issue Number 22	November 16	November 30
Issue Number 23	December 3	December 14
Issue Number 24	December 17	December 31

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