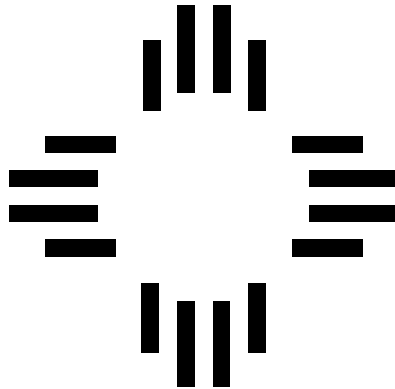


# **New Mexico Register**

**Volume XIII, Issue Number 23**  
**December 13, 2002**



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  
2002

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# New Mexico Register

Volume XIII, Number 23

December 13, 2002

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#### Effective Date and Validity of Rule Filings

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

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

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Telephone: (505) 476-7907; Fax (505) 476-7910; E-mail [rules@rain.state.nm.us](mailto:rules@rain.state.nm.us).

## Notices of Rulemaking and Proposed Rules

### NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

#### NOTICE

The New Mexico Human Services Department (HSD) will hold a public hearing at 9:00 a.m., on January 13, 2003, at the Harold Runnels Auditorium, 1190 St. Francis Drive, Santa Fe, New Mexico. The subject of the hearing will be Personal Care Option Program.

The Medical Assistance Division (MAD) is proposing amendments to the Personal Care Option program regulations issued on September 1, 1999. The proposed regulations would replace the Service Standards issued on March 15, 2002 and address the maximum amount of monthly hours available to consumers based on the consumers' level of care. The proposed regulations would also include quality assurance provisions and additional incident reporting requirements for personal care agencies, attendants and consumers.

Interested persons may submit written comments no later than 5:00 p.m., January 13, 2003, to Robin Dozier Otten, Secretary-Designate, Human Services Department, P.O. Box 2348, Santa Fe, New Mexico 87504-2348. All written and oral testimony will be considered prior to issuance of the final regulation.

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

Copies of the Human Services Register are available for review on our Website at [www.state.nm.us/hsd/mad.html](http://www.state.nm.us/hsd/mad.html). or by sending a self-addressed stamped envelope to Medical Assistance Division, Planning & Program Operations Bureau, P.O. Box 2348, Santa Fe, NM. 87504-2348.

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

#### STATE OF NEW MEXICO REGULATION AND LICENSING DEPARTMENT CONSTRUCTION INDUSTRIES DIVISION NOTICE OF PUBLIC HEARING

Public Hearing to receive comments regarding the expansion of the MS3 license classification to include the installation of low voltage mechanical systems.

**Santa Fe, NM** – January 15,  
2003, 9:00 a.m. – 12:00 Noon  
At the Pharmacy Board  
Conference Room, 4th Floor  
1650 University Boulevard NE,  
Albuquerque, New Mexico 87102

You are invited to attend and express your opinion on the adoption of the above-referenced draft regulation changes. If you cannot attend the meeting, you may send your written comments to the Mechanical Bureau, Construction Industries Division, 725 St. Michael's Drive, P.O. Box 25101, Santa Fe, New Mexico 87504. Telephone (505) 827-7030. FAX (505) 827-7045. All comments must be received no later than 5:00 p.m., January 13, 2003.

Copies of the draft regulation changes are available at all the Construction Industries Division Offices.

**If you require special accommodations, please notify the Division of such needs no later than January 6, 2003.**

---

**End of Notices and  
Proposed Rules Section**

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## Adopted Rules and Regulations

### NEW MEXICO DEPARTMENT OF AGRICULTURE

This is an amendment to 21.17.32 NMAC, Sections 2, 6, 7 & 8. This rule was also reformatted and renumbered to comply with current NMAC requirements.

#### **PART 32 ~~COTTON BOLL WEEVIL~~ COTTON PEST EMERGENCY ACTION**

**21.17.32.2 SCOPE:** Any person producing cotton or owning land on which cotton is grown in areas with ~~[cotton boll weevil]~~ cotton pest control districts established by referendum in New Mexico.

[08-14-98, A, 06-15-99; 21.17.32.2 NMAC - Rn & A, 21 NMAC 17.32.2, 12-13-02]

**21.17.32.6 OBJECTIVE:** The objective of Part 32, Chapter 17 is to prevent the further spread of ~~[the cotton boll weevil]~~ cotton pests in the designated ~~[cotton boll weevil]~~ control districts.

[08-14-98; 21.17.32.6 NMAC - Rn & A, 21 NMAC 17.32.6, 12-13-02]

**21.17.32.7 DEFINITIONS:**

A. "Control Districts" means the designated areas duly established under ~~[the Cotton Boll Weevil Control Act]~~ New Mexico Statute wherein a program to suppress or eradicate ~~[the cotton boll weevil]~~ cotton pests is administered.

B. "Control Committee" means persons elected by the cotton producers in a designated ~~[cotton boll weevil]~~ control district to carry out an eradication program.

~~[C. "Cotton Boll Weevil" means any life stage of the cotton insect *Anthonomus grandis* Boheman.]~~

~~[D.]~~ C. "Department" means the New Mexico Department of Agriculture.

~~[E.]~~ D. "Director" means the Director of the New Mexico Department of Agriculture.

~~[F.]~~ E. "Producer" means any person producing cotton plants.

[08-14-98, A, 06-15-99; 21.17.32.7 NMAC - Rn & A, 21 NMAC 17.32.7, 12-13-02]

**21.17.32.8 EMERGENCY ACTION:** In order to prevent the spread of ~~[the cotton boll weevil in the cotton boll weevil]~~ regulated cotton pests in the control districts, the director will take emergency action. As a response to a request from the control committee for assistance, when a

producer and/or owner refuses to allow trapping or treatment of a cotton field by the control district, to treat the crop with an efficacious pesticide, or to destroy the host crop in accordance with the Pest Control Act and the ~~[Cotton Boll Weevil Control Act, Chapter 76, Article 6A Sections 1 through 16]~~ regulating State Statute, the director will act in accordance with the provisions of the Pest Control Act and shall:

A. Make reasonable inspection of the field with the consent of the owner/producer or by court order.

B. If the field is found to be infested by ~~[cotton boll weevil]~~ a regulated cotton pest, give notice to the owner/producer that the host crop will be plowed within three days, if abatement action is not taken by the producer.

[08-14-98; 21.17.32.8 NMAC - Rn & A, 21 NMAC 17.32.8, 12-13-02]

### NEW MEXICO DEPARTMENT OF GAME AND FISH

This is an amendment to 19.31.8 NMAC, section 20

#### **19.31.8.20 DEER (2002-2003):**

A. Over-the-counter Deer hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

- |      |                 |            |            |      |   |
|------|-----------------|------------|------------|------|---|
| (1)  | Oct. 26-27,     | DER-1-001, | unlimited, | FAD, | 18.   |
| (2)  | Oct. 28-30,     | DER-1-002, | unlimited, | FAD, | 8 (except Sandia Ranger District of the Cibola National Forest).  |
| (3)  | Oct. 30-Nov. 3, | DER-1-003, | unlimited, | FAD, | 18.   |
| (4)  | Nov 1-3,        | DER-1-004, | unlimited, | FAD, | 8 (except Sandia Ranger District of the Cibola National Forest), 29, 30, 34.  |
| (5)  | Nov. 2-3,       | DER-1-005, | unlimited, | FAD, | 39, 41, 42, 43, 46, 47, 54, 55, 56 (except Sierra Grande Hunt Area), 57, 58.  |
| (6)  | Nov. 4- 6,      | DER-1-006, | unlimited, | FAD, | 16, 20, 21, 22, 23 (except the Burro Mountain Hunt Area), 24, 25, 26.   |
| (7)  | Nov. 6-8,       | DER-1-007, | unlimited, | FAD, | 39, 41, 42, 43, 47.   |
| (8)  | Nov. 6-10,      | DER-1-008, | unlimited, | FAD, | 12, 13, 31 (including Brantley WMA, excluding the Seven Rivers Waterfowl MA portion), 32, 33 (excluding the W. S. Huey WMA), 36, 37, 38, 40, 46, 54, 55, 56 (Except Sierra Grande Hunt Area), 57, 58. |
| (9)  | Nov. 8-10,      | DER-1-009, | unlimited, | FAD, | 16, 20, 21, 22, 23 (except the Burro Mountain Hunt Area), 24, 25, 26.   |
| (10) | Nov. 13-17,     | DER-1-010, | unlimited, | FAD, | 16, 20, 21, 22, 23 (except the Burro Mountain Hunt Area), 24, 25, 26, 29, 30, 34.   |
| (11) | Nov. 13- 9,     | DER-1-011, | unlimited, | FAD, | 54, 55, 56 (except the Sierra Grande Hunt Area), 57, 58.  |
| (12) | Nov. 25-Dec. 1, | DER-1-012, | unlimited, | FAD, | 31(including Brantley WMA, excluding the Seven Rivers Waterfowl MA portion), 32, 33 (excluding the W. S. Huey WMA), 36, 37, 38, 40.   |

B. Over-the-counter Deer hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

- |     |                                |            |            |      |   |
|-----|--------------------------------|------------|------------|------|---|
| (1) | Sept 1-20 and Jan. 1-15, 2003, | DER-2-001, | unlimited, | FAD, | 12, 13, 15, 16, 18, 20, 21, 22, 23 (except Burro Mountain Hunt Area), 24, 25, 26, 29, 30, 31 (including Brantley WMA, excluding Seven Rivers Waterfowl MA portion), 32, 33 (excluding the W. S. Huey WMA), 34, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 54, 55, 56 (except Sierra Grande Hunt Area), 57 (except Sugarite Canyon State Park), 58. |
| (2) | Sept. 1-20,                    | DER-2-002, | unlimited, | FAD, | 48, 49, 50, 51, 52, 53.   |

C. Over-the-counter Deer hunts for muzzle-loaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:

- |     |             |            |            |      |  |
|-----|-------------|------------|------------|------|--|
| (1) | Sept 21-30, | DER-3-001, | unlimited, | FAD, | 12, 18, 39, 41, 42, 43, 46, 47, 54, 55, 56 (except Sierra Grande Hunt Area), 57 (except Sugarite Canyon State Park), 58. |
|-----|-------------|------------|------------|------|--|

- (2) Sept. 25-Oct.3, DER-3-002, unlimited, FAD, 15, 16, 20, 21, 22, 23 (except the Burro Mountain Hunt Area), 24, 25, 26.
- (3) Oct. 23-27, DER-3-003, unlimited, FAD, 29, 30, 31(including Brantley WMA, excluding Seven Rivers Waterfowl MA portion), 32, 33 (excluding the W. S. Huey WMA), 34, 36, 37, 38, 40.
- (4) Sept. 25-30, DER-3-004, unlimited, FAD, 13.
- D.** Deer entry hunts for any legal weapon, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:
- (1) Sept. 21-23, DER-1-101, 100, FAD, 48.
- (2) Sept. 21-23, DER-1-102, 100, FAD, 49.
- (3) Sept. 21-23, DER-1-103, 100, FAD, 50.
- (4) Sept. 21-23, DER-1-104, 100, FAD, 51.
- (5) Sept. 21-23, DER-1-105, 100, FAD, 52.
- (6) Sept. 21-23, DER-1-106, 100, FAD, 53.
- (7) Sept. 27-29, DER-1-107, 100, FAD, 48.
- (8) Sept. 27-29, DER-1-108, 100, FAD, 49.
- (9) Sept. 27-29, DER-1-109, 100, FAD, 50.
- (10) Sept. 27-29, DER-1-110, 100, FAD, 51.
- (11) Sept. 27-29, DER-1-111, 100, FAD, 52.
- (12) Sept. 27-29, DER-1-112, 100, FAD, 53.
- (13) Oct. 5-6, DER-1-113, 25, FAD, 17 (Youth only, must provide hunter education certification number on application.).
- (14) Oct. 19-20, DER-1-114, 50, FAD, 7.
- (15) Oct. 19-20, DER-1-115, 50, FAD, McGregor Range in 28.
- (16) Oct. 19-20, DER-1-116, 15, FAD, McGregor Range in 28 (Youth only, must provide hunter education certification number on application.).
- (17) Oct. 19-20, DER-1-117, 20, FAD, McGregor Range in 28 (Military only, must be full time active military and proof of military status must accompany application.).
- (18) Oct. 19-23, DER-1-118, 400, FAD, 17.
- (19) Oct. 26-27, DER-1-119, 620, FAD, 2B.
- (20) Oct. 26-27, DER-1-120, 50, FAD, 2B (Youth only, must provide hunter education certification number on application.).
- (21) Oct. 26-27, DER-1-121, 90, FAD, 10.
- (22) Oct. 26-30, DER-1-122, 125, FAD, 4 (Private land only, application must be accompanied by the Access Courtesy Form or written permission from a landowner.).
- (23) Oct. 26-30, DER-1-123, 20, FAD, Humphries-Rio Chama WMA's in 4.
- (24) Oct. 26-30, DER-1-124, 5, FAD, Humphries-Rio Chama WMA's in 4 (Youth only, must provide hunter education certification number on application.).
- (25) Oct. 30-Nov. 3, DER-1-125, 665, FAD, 2B.
- (26) Oct. 30-Nov. 3, DER-1-126, 90, FAD, 10.
- (27) Oct. 30-Nov. 3, DER-1-127, 500, FAD, 14.
- (28) Nov. 2-3, DER-1-128, 450, FAD, 2A.
- (29) Nov. 2-3, DER-1-129, 50, FAD, 2A (Youth only, must provide hunter education certification number on application.).
- (30) Nov. 2-3, DER-1-130, 10, FAD, Urraca WMA in 55.
- (31) Nov. 2-3, DER-1-131, 5, FAD, E. S. Barker WMA in 55.
- (32) Nov. 2-3, DER-1-132, 30, FAD, Colin Neblett WMA in 54 and 55.
- (33) Nov. 2-3, DER-1-133, 10, FAD, Sierra Grande Hunt Area in 56.
- (34) Nov. 2-6, DER-1-134, 20, FAD, Humphries/Rio Chama WMA's in 4.
- (35) Nov. 2-6, DER-1-135, 125, FAD, 4 (Private land only, application must be accompanied by the Access Courtesy Form or written permission from a landowner.).
- (36) Nov. 2-6, DER-1-136, 5, FAD, Humphries/Rio Chama WMA's in 4 (Youth only, must provide hunter education certification number on application.).
- (37) Nov. 2-6, DER-1-137, 300, FAD, 6A and 6C.
- (38) Nov. 4-6, DER-1-138, 750, FAD, 44/45.
- (39) Nov. 6-10, DER-1-139, 90, FAD, 10.
- (40) Nov. 6-10, DER-1-140, 10, FAD, Urraca WMA in 55.
- (41) Nov. 6-10, DER-1-141, 30, FAD, Colin Neblett WMA in 54 and 55.
- (42) Nov. 6-10, DER-1-142, 5, FAD, E.S. Barker WMA in 55 (Youth only, must provide hunter education certification number on application.).
- (43) Nov. 6-10, DER-1-143, 10, FAD, Sierra Grande Hunt Area in 56.
- (44) Nov. 6-12, DER-1-144, 665, FAD, 2B.
- (45) Nov. 8-10, DER-1-145, 750, FAD, 44/45.
- (46) Nov. 13-19, DER-1-146, 10, FAD, Urraca WMA in 55.
- (47) Nov. 13-19, DER-1-147, 30, FAD, Colin Neblett WMA in 54 and 55.
- (48) Nov. 13-19, DER-1-148, 5, FAD, E.S. Barker WMA in 55.



- (49) Nov. 13-19, DER-1-149, 10, FAD, Sierra Grande Hunt Area in 56.  
 (50) Nov. 12-18, DER-1-150, 30, FAD, 5A (Public land only).  
 (51) Nov. 12-18, DER-1-151, 220, FAD, 5A (Private land only, application must be accompanied by the Access Courtesy Form or written permission from a landowner.).  
 (52) Dec. 7-9, DER-1-152, 75, FAD, 27.  
**E.** Deer entry hunts for bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:  
 (1) Sept. 1-20, DER-2-101, 200, FAD, 2.  
 (2) Sept. 1-20, DER-2-102, 150, FAD, 4 (Private land only, application must be accompanied by the Access Courtesy Form or written permission from a landowner.).  
 (3) Sept. 1-20, DER-2-103, 30, FAD, 5A (Public land only).  
 (4) Sept. 1-20, DER-2-104, 220, FAD, 5A (Private land only, application must be accompanied by the Access Courtesy Form or written permission from a landowner.).  
 (5) Sept. 1-20, DER-2-105, 500, FAD, 6A and 6C.  
 (6) Sept. 1-20, DER-2-106, 25, FAD, 7.  
 (7) Sept. 1-20, DER-2-107, 173, FAD, 8 (including Sandia Ranger District).  
 (8) Sept. 1-20, DER-2-108, 90, FAD, 10.  
 (9) Sept. 1-20, DER-2-109, 100, FAD, 14.  
 (10) Sept. 1-20, DER-2-110, 400, FAD, 17.  
 (11) Sept. 1-20, DER-2-111, 200, FAD, 44/45.  
 (12) Sept. 1-20, DER-2-112, 20, FAD, Sierra Grande Hunt Area in 56.  
 (13) Nov. 1-30, DER-2-113, 40, FAD, Sugarite Canyon State Park in 57.  
 (14) Nov. 9-30, DER-2-114, 173, FAD, 8 (including Sandia Ranger District).  
 (15) Dec. 1-31, DER-2-115, 100, FAD, 8 (including Sandia Ranger District, Youth only, must provide hunter education certification number on application.).  
 (16) Dec. 4-25, DER-2-116, 173, FAD, 8 (including Sandia Ranger District).  
 (17) Jan. 1-15, 2003, DER-2-117, 50, FAD, 2A.  
 (18) Jan. 1-15, 2003, DER-2-118, 150, FAD, 2B.  
 (19) Jan. 1-15, 2003, DER-2-119, 173, FAD, 8 (including Sandia Ranger District).  
 (20) Jan. 1-15, 2003, DER-2-120, 10, ES, Huey WMA in 33, Seven Rivers and Brantley WMA's in 31 (Youth only, must provide hunter education certification number on application.).  
**F.** Deer entry hunts for muzzle-loaders, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:  
 (1) Sept. 21-30, DER-3-101, 350, FAD, 2.  
 (2) Sept. 21-30, DER-3-102, 100, FAD, 4 (Private land only, application must be accompanied by the Access Courtesy Form or written permission from a landowner.).  
 (3) Sept. 21-30, DER-3-103, 200, FAD, 6A and 6C.  
 (4) Sept. 21-30, DER-3-104, 25, FAD, 7.  
 (5) Sept. 21-30, DER-3-105, 75, FAD, 8 (Except Sandia Ranger District).  
 (6) Sept. 21-30, DER-3-106, 90, FAD, 10.  
 (7) Sept. 21-30, DER-3-107, 50, FAD, 14.  
 (8) Sept. 25-30, DER-3-108, 400, FAD, 17.  
 (9) Sept. 21-30, DER-3-109, 150, FAD, 44/45.  
 (10) Sept. 21-30, DER-3-110, 10, FAD, Sierra Grande Hunt Area in 56.  
 (11) Nov. 22-24, DER-3-111, 30, ES, Huey WMA in 33, Seven Rivers and Brantley WMA's in 31 (Youth only, must provide hunter education certification number on application.).  
**G.** Deer entry hunts for muzzle-loaders or bows, listing the hunt date, hunt code, maximum number of licenses available, bag limit, and open GMU's or areas, shall be as indicated below:  
 (1) Nov. 30-Dec. 4, DER-8-101, 25, FAD, 27.  
 (2) Jan. 1-5, 2003, DER-8-102, 35, FAD, Organ Mountains in 19.  
**H.** Special conditions for units testing positive for chronic wasting disease.  
 (1) Hunters will be required to check in and check out at designated check stations.  
 (2) Successful hunters in that unit will be permitted to remove quarters or other portions of meat with no part of the spinal chord or head attached, meat that is boned out, hides with no heads attached, skull plates with antlers attached that have been cleaned of all meat and tissue, and antlers with no meat or tissue attached.  
 (3) All cleaned skull plates must be subjected to a chlorine bleach immersion before leaving the unit.  
The immersion bath must consist of at least 1 part chlorine bleach and 2 parts water by volume.  
 (4) Hunters will be required to submit heads of all harvested deer to designated check station within 24 hours of kill.

[4-1-95, A, 8-15-95; R 3-14-98; Re-pr, 3-15-99, A, 12-31-99; 19.31.8.20 NMAC – Rn & A, 19 NMAC 31.8.20, 3-14-2001; A, 12-28-01; A, 12-30-02]

**NEW MEXICO  
DEPARTMENT OF LABOR  
EMPLOYMENT SECURITY  
DIVISION**

11 NMAC 3.500 was repealed and rewritten in its entirety. It was replaced by 11.3.500 NMAC, effective January 1, 2003. The title and topic remain the same, but the organization of the material and the specific elements have been extensively altered.

**NEW MEXICO  
DEPARTMENT OF LABOR  
EMPLOYMENT SECURITY  
DIVISION**

**TITLE 11            LABOR            AND  
CHAPTER 3        EMPLOYMENT  
SECURITY  
PART 500         ADJUDICATORY  
HEARINGS, FILING OF APPEALS  
AND NOTICE**

**11.3.500.1            ISSUING AGENCY:**  
New Mexico Department of Labor,  
Employment Security Division, P.O. Box  
1928, Albuquerque, NM 87103.  
[11.3.500.1 NMAC - Rp, 11 NMAC  
3.500.1, 01-01-2003]

**11.3.500.2            SCOPE:**        General  
Public  
[11.3.500.2 NMAC - Rp, 11 NMAC  
3.500.2, 01-01-2003]

**11.3.500.3            STATUTORY  
AUTHORITY:** NMSA 1978 Sections 51-  
1-1 to 51-1-59.  
[11.3.500.3 NMAC - Rp NMAC 3.500.3,  
01-01-2003]

**11.3.500.4            DURATION:**  
Permanent  
[11.3.500.4 NMAC - Rp, 11 NMAC  
3.500.4, 01-01-2003]

**11.3.500.5            EFFECTIVE DATE:**  
January 1, 2003, unless a later date is cited  
at the end of a section.  
[11.3.500.5 NMAC - Rp, 11 NMAC  
3.500.5, 01-01-2003]

**11.3.500.6            OBJECTIVE:**    To  
Provide Procedures Governing  
Unemployment Appeals and Hearings.  
[11.3.500.6 NMAC - Rp, 11 NMAC  
3.500.6, 01-01-2003]

**11.3.500.7            DEFINITIONS:**  
A. "Adjudicatory hearing"  
means a judicial or quasi-judicial hearing  
upon either the law or the evidence or both.

B. "Adjudicatory body"  
means the appeal tribunal, the board of  
review or other commissions or body with-  
in the department holding an adjudicatory  
hearing.

C. "Authorized represen-  
tative" means an individual who, by virtue  
of his position within the department, is  
designated by the secretary to perform cer-  
tain specific tasks on behalf of the depart-  
ment.

D. "Double affirmation"  
means if a prior determination or decision  
allowing benefits is affirmed by a decision  
of the department, including the board of  
review or a reviewing court, no action to  
recover benefits paid to a claimant shall be  
taken if there is a subsequent disqualifica-  
tion. NMSA 1978 Section 51-1-8J. A  
remand by the secretary or the board of  
review due to a failure to appear does not  
constitute a ruling in favor of the claimant  
for the purpose of the double affirmation  
rule.

E. "Good Cause" means a  
substantial reason, one that affords a legal  
excuse, a legally sufficient ground or rea-  
son.

F. "Precedent manual"  
means a compilation of decisions of the  
appeal tribunal and board of review desig-  
nated significant by the department, but  
with the parties' names and identifying  
information redacted and removed.  
[11.3.500.7 NMAC - N, 01-01-2003]

**11.3.500.8            PRESENTATION OF  
APPEALS OF INITIAL DETERMINA-  
TIONS:**

A. Claims: Any interested  
party aggrieved by a determination of the  
claims section is entitled to file an appeal.  
Any written communication clearly demon-  
strating a desire to appeal a determination of  
the claims section will be regarded as an  
appeal. All appeals should be transmitted to  
the department in a format indicating the  
interested party's desire to appeal. For any  
issues of timeliness, the time and date  
affixed on the cover page by the recipient's  
transmitting device will be presumptively  
the date and time of submission.

B. Tax: In any case where  
a party is dissatisfied with the decision of  
the assistant unemployment insurance  
bureau chief for the tax section as provided  
in Section C of 11.3.400.425 NMAC, the  
party may, within fifteen calendar days  
from the date of transmission of the assis-  
tant unemployment insurance bureau chief's  
decision, file an appeal with the appeal tri-  
bunal for the department. Except that, in  
any case where no facts are in dispute and  
further hearing will serve no useful purpose,  
the assistant unemployment insurance

bureau chief for the tax section may trans-  
mit the matter directly to the appeal tribunal  
for an administrative decision stating that  
there are no facts in dispute and the parties  
have agreed that the case is to be submitted  
to the board of review for issuance of a final  
administrative decision. All interested par-  
ties will be given notice of any hearing or  
review before the appeal tribunal or board  
of review as provided more fully elsewhere  
in Part 500 of 11.3. NMAC.

C. Unless otherwise pro-  
vided by statute or a specific rule of the  
department, the time for the appeal of any  
determination from one level to another  
within the department is fifteen days from  
the date of the transmission of the decision  
or determination, with the first day com-  
mencing on the calendar date after the date  
of transmission.

D. The time for filing any  
appeal within the department may be  
extended only upon a showing of good  
cause.

[11.3.500.8, NMAC - N, 01-01-2003]

**11.3.500.9            ADJUDICATORY  
PROCEEDINGS GENERALLY:**

A. Right To  
Representation: In any adjudicatory hear-  
ing before the department:

(1) Any party may represent him-  
self or be represented by an attorney at law  
or by any other person qualified to represent  
the party in the matters under consideration.  
The secretary may bar attorneys and author-  
ized representatives from appearing on  
behalf of others in proceedings before the  
department if, in the attorney or authorized  
representative's previous conduct has  
established to the department's satisfaction  
that the attorney or authorized representa-  
tive is unlikely to provide competent repre-  
sentation in future proceedings.

(2) A partnership may be repre-  
sented by any of its employees, members or  
duly authorized representative. A corpora-  
tion or association may be represented by an  
officer, employee or any duly authorized  
representative. Any governmental entity  
may be represented by an officer or employ-  
ee or any other authorized person.

(3) The presiding officer, includ-  
ing the secretary, may, for lack of qualifica-  
tions or other sufficient cause, bar any per-  
son from representing any party, in which  
event, the reasons for such bar shall be set  
out in the record of proceedings.

B. The Unauthorized  
Practice of Law: Any party may be repre-  
sented by an attorney at law licensed to  
practice in the courts of this state. A repre-  
sentative or agent other than licensed attor-  
neys may represent any party only to the  
extent that such participation does not con-

stitute unauthorized practice of law under the statute and rules of the courts of the state of New Mexico.

C. Copies: Consistent with the provisions of NMSA 1978 Section 51-1-32 and 11.3.100.109 NMAC, while any proceeding before the department is ongoing or within the period for appeal, a party to such proceeding may request and receive from the department, without charge, one set of copies of the department files and records, including but not limited to investigation reports, statements, memoranda, correspondence, tape recordings or transcripts of hearings or other data, pertaining to matters under consideration or scheduled for hearing or other proceeding. Thereafter, copies shall be charged at the department's usual rate for copying.

D. Notice Of Hearing: Upon the scheduling of an adjudicatory hearing before the appeal tribunal on any appeal, a notice of the hearing shall be transmitted to all interested parties at least ten calendar days prior to the date of the adjudicatory hearing and shall include:

(1) A statement of the time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A short and plain statement of the foreseeable issues so that all parties have sufficient notice to afford each party reasonable opportunity to prepare. If any issue cannot be stated in advance of the hearing, it shall be stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed after statement or amendment to afford all parties reasonable opportunity to prepare.

E. Pre-Hearing Procedure Generally:

(1) Stipulations: The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing to any or all facts involved. The appeal tribunal may decide the appeal on the basis of such stipulation, or, in its discretion, may set the appeal down for hearing and take such further evidence, as it deems necessary, to enable it to determine the appeal.

(2) Authority of Authorized Representatives Regarding the Gathering of Evidence, Issuing Subpoenas, Authorizing Depositions, and Administering Oaths and Affirmations: Authorized representatives of the department may issue subpoenas requiring, upon reasonable notice, the attendance and testimony of witnesses and the production of any evidence, including books, records, correspondence, documents, papers or other objects necessary and relevant to any proceeding before it or its authorized

representative. An authorized representative may administer oaths and affirmations, and certify to official acts. An authorized representative in any proceeding before him may authorize the taking of depositions of witnesses, including parties within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in the district court, and the deposition may be used in the same manner and to the same extent as permitted in the district court.

F. Subpoenas:

(1) "Subpoena" means an official directive or order by a hearing officer or quasi-judicial official directing the recipient to appear and testify as a witness. The subpoena may require the witness to bring documents with him when he comes to testify.

(2) The department's authority to issue subpoenas is found at NMSA 1978 §51-1-8(L) and 51-1-28. Department subpoenas can be served personally at least five days prior to the appearance or by certified mail posted at least 10 days prior to the appearance date.

(3) Issuance and Challenges to Subpoenas: The adjudicatory body or other authorized representative of the department may issue subpoenas to compel attendance of witnesses and production of records in connection with proceedings before the adjudicatory body or department. NMSA 1978 Sections 51-1-28 & 29.

(a) Who may request: Any party to an adjudicatory proceeding may make written application to the applicable adjudicatory body for the issuance of a subpoena.

(b) Contents of requests for subpoena: The party seeking the subpoena must reasonably identify and specify the evidence or documents sought and show the relevance of such evidence or documents to the issue under consideration. The proposed subpoena shall show upon its face the name and address of the party at whose request the subpoena was issued.

(c) Decision regarding issuance of subpoena: The adjudicatory body, at its discretion, may issue the subpoena upon the written application or may schedule a hearing or conference on the application to hear argument and objections from interested parties for the purpose of determining whether the subpoena should issue. If such a hearing is held, the adjudicatory body may make a ruling on the record during the hearing, or may, in its discretion, issue a written decision, informing the parties of their right to further appeal.

(d) Challenge to issued subpoena or a request to quash: Any witness summoned may petition the department to vacate or modify a subpoena served on the witness. The department shall give prompt

notice of such petition to all interested parties. After the investigation or hearing, whichever the department considers appropriate, it may grant the petition in whole or part, or it may deny the petition upon a finding that the testimony or the evidence required to be produced does not relate with reasonable directness to any matter in question, or that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested, or for any other reason that justice requires.

(e) Appeal of Disputes: The stated reason for the request for the subpoena and the stated reason for the opposition as well as the hearing officer's decision in regard to the subpoena shall be part of the record on appeal.

(f) Order of Protection: If the department denies the petition to quash the subpoena, the aggrieved party may petition the district court of either the county where he resides, or, in the case of a corporation, the county where it has its principal office, or the county where the hearing or proceeding will be held for an order of protection.

(g) Witness fees and mileage: If a written request to the secretary is made prior to appearing to testify or within 5 days after testifying, witnesses, other than parties to a proceeding or the parties' designated agents or representatives, subpoenaed for any appeal tribunal hearing or other department proceeding may be paid witness and mileage fees by the department. Mileage and witness fees may be permitted as is deemed reasonable by the secretary based on the specific witness' situation but in no event will a witness be paid more than the statutory amount allowed witnesses appearing in the district courts of this state.

(h) Sanctions to Compel Compliance with Subpoenas: In case of failure to comply with any subpoena issued and served under the department's statutory authority or for the refusal of any person to testify to any matter regarding which he may be interrogated lawfully in a proceeding before an adjudicatory body of the department, the department may apply to the district court either in the county of the person's residence or in the county where the hearing or proceeding is being held, for an order to compel compliance with the subpoena or the furnishing of information or the giving of testimony. The prevailing party is entitled to costs of the enforcement proceeding.

(i) Sanctions against Parties for Witnesses' Failure to Comply with Subpoenas: When a subpoenaed witness fails to attend or testify, if a party exercises substantial control or influence over the wit-

ness, such as an employee, friend or relative of a party employer or a friend or relative of a party claimant, the adjudicatory body can deem that, if the witness had appeared and testified, the testimony would have been unfavorable to the party controlling or influencing the witness.

(j) If a party or a subpoenaed witness fails or refuses to produce records or documentary evidence pursuant to an order or subpoena of the adjudicatory body, the adjudicatory body can deem that, if the records or documentary evidence had been produced, the evidence would have been unfavorable to the party failing or refusing to produce the records or documentary evidence or to the party controlling or influencing the witness who failed or refused to produce the records or documentary evidence.

**G. Disqualification Of Board of Review Members and Appeal Tribunal Hearing Officers:** An appeal tribunal hearing officer or board of review member shall withdraw from any proceeding in which he cannot accord a fair and impartial hearing or consideration and from any proceeding in which he has an interest. Any party may request a disqualification of an appeal tribunal hearing officer or board of review member on the grounds of the person's inability to be fair and impartial, by filing an affidavit or written statement or making a statement on the record with the appeal tribunal or board of review promptly upon the discovery of the alleged grounds for disqualification, stating with particularity the grounds upon which it is claimed that the person cannot be fair and impartial. The disqualification shall be mandatory if sufficient factual basis is set forth in the affidavit of disqualification. If a board of review member is disqualified pursuant to this regulation, the remaining board of review members may appoint an appeal tribunal hearing officer or other qualified department representative to sit on the board of review for the proceeding involved. The grant or denial of a requested disqualification can be considered in an appeal on the merits.

**H. Attorneys at Law and Authorized Representatives:** Prior to or at the commencement of any adjudicatory hearing, all attorneys at law or other authorized representatives shall file a written entry of appearance which shall be made a part of the record and a copy shall be furnished by the attorney or representative to the opposing party. The entry of appearance shall be signed by the attorney at law or authorized representative, whose mailing address, telephone number and other contact addresses shall be provided. An attorney or representative who has provided notice of representation

will be deemed to continue such representation until a written notification of the withdrawal of such representation is provided to all parties, the hearing officer or the board of review. Even if an attorney or authorized representative has entered his appearance on behalf of a party, the party may appear on his own behalf without the attorney or authorized representative.

**I. Ex Parte Communications:** No party or representative of a party or any other person shall communicate off the record about the merits of the case with the cabinet secretary, any hearing officer or board of review member who participates in making the decision for any adjudicatory hearing, unless the communication is written and a copy of the communication is transmitted to all interested parties to the proceeding. The cabinet secretary, any hearing officer, board of review member or their representatives shall not communicate off the record about the merits of an adjudicatory hearing with any party or representative of a party or any other person, unless a copy of the communication is sent to all interested parties in the proceeding.

**J. Requirements For Hearing Evidence Or Reviewing Record:** The cabinet secretary, board of review member or appeal tribunal hearing officer shall not participate in any decision for any adjudicatory hearing unless he has heard the evidence or reviewed the record.  
[11.3.500.9 NMAC - N, 01-01-2003]

### **11.3.500.10 HEARING PROCEDURE BEFORE ADJUDICATORY BODIES OF THE DEPARTMENT:**

**A. Continuance, Adjournment and Reopening of Adjudicatory Hearings:**

(1) An adjudicatory hearing before an appeal tribunal hearing officer or the board of review or a review before the board of review, for good cause shown, may be continued or adjourned upon the request of a party or upon the appeal tribunal's or board of review's own motion, at any time before the hearing is concluded. A claimant's right to a prompt determination of his eligibility and payment of benefits shall not be impaired by undue delay of proceedings.

(2) If the party appealing or any other party fails to appear at any scheduled adjudicatory hearing, the appeal tribunal or board of review in the absence of notice from such party, may, in its best judgment, either adjourn the hearing until a later date or proceed to render its decision on the record and the evidence then before it. Any decision shall be subject to rehearing before the tribunal or board of review upon a

showing within fifteen days after its date that there was good cause for the party's failure to appear.

(3) A reopening of any adjudicatory hearing shall be granted upon showing of good cause, including good cause for not appearing at the scheduled hearing, or may be ordered on the appeal tribunal's or board of review's own motion for good cause. A request for reopening shall be made as soon as reasonably possible but in no event later than fifteen days after the decision of the appeal tribunal or board of review was mailed. An untimely request for reopening shall be heard by the appeal tribunal on the reason for the untimely request for the rehearing. If the hearing officer finds good cause for the late request, the request to reopen shall be set for hearing. If the hearing officer finds good cause for failing to appear, the merits of the appeal shall be set for hearing. Either party may file an appeal of any written decision issued by the hearing officer to the secretary.

(4) A request for a continuance, adjournment or reopening shall be made to the appeal tribunal hearing officer or the board of review as identified on the notice of hearing or notice of review. Such requests shall be transmitted to the appeal tribunal or board of review respectively. Notice of the date, time and place of a reopened, postponed or adjourned hearing shall be given to the parties or their representatives and shall include a statement of the issues to be heard.

**B. Opportunity for Fair Hearing:** In conducting adjudicatory hearings, the board of review or appeal tribunal shall afford all parties an opportunity for a full and fair hearing including an opportunity to respond and present evidence and argument on all issues involved; provided that the term "adjudicatory hearing" as used in this rule does not apply to fact-finding interviews conducted by the department representative for purposes of making an initial determination of eligibility for benefits or liability for contributions, payments in lieu of contributions, interest or penalties under the Unemployment Compensation Law.

**C. Conduct Of Adjudicatory Hearings:**

(1) Adjudicatory hearings before the adjudicatory bodies of the department shall be conducted in such a manner that all parties are afforded basic rights of due process and that all pertinent facts necessary to the determination of the rights of the parties are obtained. All hearings and proceedings will be conducted informally in such a manner as to ascertain the substantial rights of the parties and will not be governed by common law or statutory rules as to the



admissibility of evidence or by technical rules of procedure, but the procedures shall afford the parties equally and impartially the right to:

(a) Call and examine witnesses, cross examine witnesses;

(b) Introduce exhibits and offer rebuttal evidence;

(c) Object to questions and to the introduction of improper or irrelevant testimony or evidence;

(d) Make closing statements; and

(e) Submit written expositions of the case, within the discretion of the hearing officer.

(2) The adjudicatory body, on its own initiative,

(a) May examine parties and witnesses;

(b) Require additional evidence as it finds necessary to the determination of the issues before it

(c) may exclude testimony and evidence which it finds to be incompetent, irrelevant or otherwise improper by standards of common reasonableness.

(d) If it deems appropriate, the adjudicatory body may permit opening statements.

**D. Authority Over Conduct Of Adjudicatory Hearings.** The adjudicatory body shall have and shall exercise full authority over the conduct and behavior of parties and witnesses appearing before it to insure a fair, orderly adjudicatory hearing and an expeditious conclusion of the proceedings.

**E. Mode of Hearings:**

(1) The adjudicatory body may conduct the adjudicatory hearing by telephone or in person at the discretion of the adjudicatory body. The mode of conducting the hearing will be as indicated in the notice setting the hearing.

(2) Notice of telephone hearing: If the hearing is to be by telephone, the notice shall so inform the parties and will include instructions for informing the hearing officer of the necessary telephone numbers. If the hearing is a telephonic hearing, no party or representative will be permitted to attend in person. If the hearing is an in-person hearing, at the discretion of the hearing officer, a party, witness or representative will be permitted to appear telephonically.

(3) Request for change in mode of hearing: Prior to the time that the hearing is scheduled, a party may request that a hearing be conducted by telephone or in person. A party shall state the reasons for the request on the record or in writing. If another party objects to the request, the hearing officer will grant or deny the request either on the record or in writing. Both the reason for the request and the ruling shall be part of

the record on appeal.

**F. Exhibits:**

(1) Exchange of Exhibits Prior to Hearings: At least 24 hours prior to any hearing, a party seeking to introduce exhibits shall submit to the hearing officer the documents or copies thereof that he may seek to introduce.

(a) A party seeking to introduce exhibits shall provide copies of all proposed exhibits to the other party. The copies shall be transmitted by the offering party in a manner to insure their receipt by the other party at least 48 hours prior to the date and time of the scheduled hearing.

(b) A party seeking to introduce exhibits shall provide copies of all proposed exhibits to the hearing officer. The copies shall be transmitted by the offering party in a manner to insure their receipt by the other party at least 24 hours prior to the date and time of the scheduled hearing.

(i) In no event shall the hearing officer be provided copies of exhibits not previously transmitted by the offering party to the opposing party.

(ii) The hearing officer may require the offering party to number the pages of a voluminous exhibit such as a personnel file or employment manual. Failure to sequentially number the pages of a voluminous exhibit will be grounds to deny the admission of the exhibit.

(c) Documents not submitted in accordance with this subsection shall be denied admission and denied consideration by the department

(i) Unless it is apparent that the particular document was previously seen by the party whose interest is affected, that party acknowledges having seen the document and has no objection to its admission or

(ii) The hearing officer, in his discretion, determines that fundamental fairness and the proper administration of the Unemployment Compensation Law requires the admission of the document.

(d) In any case where the hearing officer determines that documentary evidence will be admitted over the objection of a party that he has not had an opportunity to review and consider the evidence, a reasonable continuance shall be granted by the hearing officer to give the objecting party an opportunity to review the evidence.

(2) Marking Exhibits: All exhibits tendered to the hearing office shall be separately marked for identification. The employer's exhibits shall be denoted E-1, E-2, E-3 and so forth; the claimant's exhibits shall be denoted C-1, C-2, C-3 and so forth. A file, such as a personnel file, containing voluminous documents need not be separately marked, but the pages shall be

individually numbered by the offering party prior to admission.

(3) Exhibits admitted and considered by the hearing officer shall be individually identified on the record.

(4) Exhibits denied admission: The reason for the denial of admission of tendered exhibits shall be clearly stated on the record. Typical, but not exclusive, reasons for the denial of admission of an exhibit is lack of relevancy, immateriality, redundancy and voluminous unnumbered pages or documents. Solely for the purpose of appeal on the issue of improper denial of admission of exhibits, exhibits offered and denied admission shall be retained in the record, but shall not form the basis for the decision. The written decision shall reiterate the statement of exhibits denied admission and the basis for the denial.

**G. Record of Hearings:**

(1) Proper Record: The adjudicatory body shall ensure that all of the testimony, objections and motions or other matters in connection therewith are fully and accurately recorded, in such a manner that a complete and accurate transcript can be rendered therefrom as needed; provided only that the board of review need not prepare a record of its deliberations, but only of its actual decision.

(2) The Record In An Adjudicatory Hearing Shall Include:

(a) All documents in the claim or tax file, pleadings, motions and previous rulings;

(b) Documentary evidence received or considered;

(c) A statement of matters officially noticed;

(d) Questions, tenders of evidence, offers of proof, objections and rulings thereon in the form of a tape recording or transcript;

(e) Findings and conclusions; and

(f) Any decision, opinion or report by the cabinet secretary, board of review members or appeal tribunal hearing officer conducting the hearing.

(3) Tape recordings: The department deems that a tape recording of a proceeding made on the department's system is an adequate record.

(a) Inaudible tape: If the tape or a significant portion of it is demonstrated as inaudible or otherwise unusable, if the parties do not stipulate as to the matters which would have appeared on the tape if usable, the adjudicatory body may order a rehearing de novo of all matters or of only the matters which were on the unusable portions of tape.

(b) Official transcript: The department or either party, at the party's expense, may prepare a typed transcript of

any such tape recording for the use of the parties. Any typed transcript prepared by the department or under its supervision may be designated by the adjudicatory body as the official transcript. Typed transcripts prepared by a party shall not be deemed official transcripts unless such transcript was transcribed with the department's consent and prepared either in-person or from a department tape by an individual approved by the department.

(c) Availability of tapes: Upon written application, for good cause shown, a duplicate copy of the tape recording of all testimony, objections and motions or other matters will be supplied to any party to the proceeding. Unless the applicant is entitled to the a copy of the tape without charge or otherwise shows good cause as to why he should not be charged as provided in 11.3.100.109 NMAC, the applicant may be required to either pay for a copy of the tape or to furnish cassette tapes for the duplication.

(d) Other records of adjudicatory hearings: Except by agreement or stipulation by the parties or upon application showing good cause, no other record of an adjudicatory hearing shall be made in the sole interest of one party, by a reporter or recording device of any description. A finding of good cause and permission to a party to employ such means of making his own record shall include the party's certification that, in keeping with Section NMSA 1978 Section 51-1-32, no such record or any information therefrom shall be disclosed or open to public inspection or used for any other purpose in any manner revealing the identity of the parties or the nature of the issues.

H. Factual Information To Be Considered: All evidence, including any records, investigation reports and documents in the possession of the adjudicatory body which the department desires to avail itself as evidence in making a decision, shall be made a part of the record in the proceedings, and no other factual information or evidence shall be considered, except as provided in this section. Documentary evidence may be received in evidence in the form of copies or excerpts or by specific citation to page numbers in published documents.

I. Briefs or memoranda of law, requested findings of fact and conclusions of law: At any time during an adjudicatory hearing and prior to a decision, the parties may be afforded a reasonable opportunity to submit briefs or memoranda of law, proposed findings of fact and conclusions of law, together with supporting reasons including citations to the record and copies of case law, for the consideration of

the adjudicatory body.

J. Official Notice: Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the board of review or appeal tribunal hearing officer, but whenever any such member or officer takes official notice of a fact, the noticed fact and its source shall be stated at the earliest practicable time, before or during the adjudicatory hearing, but before the final decision, and any party shall, on timely request, be afforded an opportunity to show the contrary.

K. Specialized Knowledge Of Department: The experience, technical competence and specialized knowledge of the department and its staff may be utilized in the evaluation of the evidence by the adjudicatory bodies of the department.

L. Decision of the Adjudicatory Body:

(1) Decision in Writing: Following the conclusion of an adjudicatory hearing on an appeal, the adjudicatory body shall promptly announce its decision on the case. The decision shall be in writing, shall include findings of fact and conclusions of law, and shall be signed by the hearing officer or board of appeal members who heard the appeal.

(2) Findings of fact shall be based exclusively on the record, the evidence presented at the tribunal hearing and matters officially noted.

(3) The residuum rule shall apply in the issuance of all decisions. This rule requires that the decision of the department's adjudicatory body be supported by "substantial evidence", that is evidence which would support a verdict in a court of law. For example, controverted hearsay testimony does not qualify as substantial evidence. *Trujillo v. Employment Sec. Com'n of NM*, 94 N.M. 343, 610 P.2d 747 (1980).

(4) Where an appeal was not filed within the statutory appeal period, the adjudicatory body shall, after review of the record, enter an order dismissing the appeal or conduct an evidentiary hearing with notice to all interested parties to determine whether the appellant has good cause for failure to timely appeal from an initial determination. Any decision that includes an order of dismissal or denial of a request for reopening shall include the adjudicatory body's findings and conclusions for the dismissal or denial.

(5) Publication of decision: Copies of any decision issued by the adjudicatory body shall be promptly transmitted to all interested parties to the appeal.

M. Remand by Adjudicatory Body: The adjudicatory body may, in its discretion, remand any issue

developed from evidence presented at the hearing or apparent from the existing record to the claims examiner or tax representative or appeal tribunal with an order directing that a determination be made with regard to that issue or that additional procedures be taken to perfect a determination already issued or to make other disposition in the matter.

[11.3.500.10 NMAC - N, 01-01-2003]

**11.3.500.11 REMOVAL ACTIONS:** At the order of the secretary, any proceeding before the claims examiner, tax representative or the appeal tribunal may be removed to the board of review. Such removed actions shall be presented, heard and decided by the board of review in the manner prescribed for adjudicatory hearings.

[11.3.500.11 NMAC - N, 01-01-2003]

**11.3.500.12 PRESENTATION OF FURTHER APPEALS:**

A. An interested party aggrieved by a decision of the appeal tribunal is entitled to appeal to the cabinet secretary. A written communication clearly demonstrating a desire to appeal a determination to the cabinet secretary shall be filed with the department. The information submitted with the appeal shall include a clear statement of the relevant facts and a clear statement of the party's basis for appeal.

B. Secretary Decision: The secretary shall review the application and shall, within fifteen days after receipt of the application for appeal, either affirm the decision of the hearing officer, remand the matter to the adjudicatory body for an additional hearing or new decision, remand to the claims section or tax section for further investigation and determination, or refer the decision to the board of review for further review and decision on the merits of the appeal. Issues of timeliness shall be decided by the board of review.

(1) Decision in Writing: Following the conclusion of a review on an appeal, the cabinet secretary shall issue his decision. The decision shall be in writing, shall include findings of fact and conclusions of law, and shall be signed by cabinet secretary

(2) Findings of fact shall be based exclusively on the record and matters officially noted.

(3) Publication of decision: Copies of any decision issued by the secretary shall be promptly transmitted to all interested parties to the appeal.

C. If the secretary takes no action within fifteen days of receipt of the application for appeal and review, the decision will be promptly scheduled for review

by the board of review as though it had been referred by the secretary.

D. All appeals from a decision of the appeal tribunal filed more than fifteen days from the date of the appeal tribunal's decision shall be referred to the board of review. In addition to the information required by Subsection A of 11.3.500.12 NMAC, all late appeals shall contain a concise statement setting forth the reasons for the late appeal. The board of review may extend the time for filing any appeal from a decision of the appeal tribunal only upon showing of good cause.

E. Notice Of Review Before The Board Of Review: Notice of the scheduling of any appeal by the board of review shall be mailed to all interested parties at least ten calendar days before the date of review by the board. Such notice shall include the same information as specified in Section D of 11.3.500.9 NMAC.

F. Applications For Leave To Participate Or Intervene In An Appeal: An interested party, if aggrieved by a decision of the appeal tribunal, but not a party to the proceeding before the appeal tribunal, may apply for leave to participate or intervene in an appeal before the board of review. The party applying for leave to participate or intervene in an appeal before the board of review shall file with the board of review an application for leave to join an appeal setting forth his interest in the matter appealed. The board of review shall have the discretionary power to approve or reject any such application.

[11.3.500.12 NMAC - N, 01-01-2003]

### **11.3.500.13 THE BOARD OF REVIEW:**

A. The Board of Review's Authority: In every case referred to the board of review by the secretary from an appeal tribunal decision, in its discretion, the board of review may hear and decide the case upon the record; it may entertain oral or written arguments, or, after notice to all parties and in accordance with the department's rules governing the conduct of adjudicatory hearings, it may take additional evidence before it.

B. Review of the Record as an Appellate or Reviewing Body: As a general practice and unless the board of review gives specific notice to the contrary, the board sits in its capacity as an appellate or reviewing body. As such, it reviews the record; it does not receive new evidence.

C. Remand By Board Of Review To The Appeal Tribunal Or Claims Examiner Or Tax Section: With an order directing that a determination or decision be made with regard to that issue, or that additional procedures be taken to perfect a

determination or decision already issued, or to make other disposition in the matter, as the board of review, in its discretion, may deem necessary, the board of review may remand any claim or an issue involved in a claim; any issue developed from evidence presented at the hearing or apparent from the existing record:

(1) To the appeal tribunal for the taking of additional evidence or a hearing de novo. Hearings conducted by the appeal tribunal pursuant to a remand by the board of review shall be conducted after notice to all parties and in accordance with the department's rules governing the conduct of adjudicatory hearings.

Unless directed otherwise by the board of review, the appeal tribunal shall issue a decision based upon the entire record before it, including the record of all the prior hearings. Parties to any additional hearing shall have the right to review the appeal tribunal tape recording made at any prior evidentiary hearing.

(2) To the claims examiner or tax representative for fact-finding and issuance of an initial determination.

D. Appeals by the Secretary: Within fifteen days from the date of issuance of any decision by the appeal tribunal, the secretary, on his own motion, may request the board of review to review a decision of an appeal tribunal hearing officer which the secretary believes to be inconsistent with law or the applicable rules of interpretation or which is not supported by the evidence. In such situations, may in its discretion, the board of review take additional evidence, review the matter on the record or remand the matter to the appeal tribunal for an additional evidentiary hearing.

E. Decision by the Board of Review:

(1) Decision in Writing: Following the conclusion of a review on an appeal, the board of review may take the appeal under advisement, may order a transcript of proceedings for review, may afford the parties an opportunity to file memorandum briefs and proposed findings of fact and conclusions of law; or the board may issue its decision. The decision shall be in writing, shall include findings of fact and conclusions of law, and shall be signed the members of the board who heard or reviewed the appeal. If a decision of the board of review is not unanimous, the decision of the majority shall control. The minority may file a dissent from such decision.

(2) Findings of fact shall be based exclusively on the record, the evidence presented at the tribunal hearing and matters officially noted.

(3) Where an appeal was not filed within the statutory appeal period, the board of review shall proceed as provided in Paragraph 4 of Subsection L of 11.3.500.10 NMAC.

(4) Publication of decision: Copies of any decision issued by the board of review shall be promptly transmitted to all interested parties to the appeal.

[11.3.500.13 NMAC - N, 01-01-2003]

### **11.3.500.14 INSPECTION OF DECISIONS:**

Copies of all decisions of the cabinet secretary, board of review and appeal tribunal shall be kept on file in accordance with the state records center retention requirements at the department's office in Albuquerque, New Mexico. Such decisions shall be open for inspection but without in any manner revealing the names of the parties or witnesses involved. The redacted decisions shall be filed chronologically but, from time to time, may be indexed by topic and offered as a precedent manual.

[11.3.500.14 NMAC - N, 01-01-2003]

### **11.3.500.15 ADMINISTRATIVE ERROR:**

Clerical mistakes in decisions or parts of the record and errors arising from oversight or omission may be corrected by the department at any time on its own initiative or on the request of any party. During the pendency of an appeal to the judicial system, such mistakes may be corrected before the official record is transmitted to the district court, and, thereafter, while the appeal is pending, may be corrected with leave of the appellate court.

[11.3.500.15 NMAC - N, 01-01-2003]

### **11.3.500.501 - 11.3.500.512: [RESERVED]**

[11.3.500.501-512 NMAC - Repealed, 01-01-2003]

### **HISTORY OF 11.3.500 NMAC:**

PRE-NMAC REGULATORY FILING HISTORY: The material in this Part was derived from that previously filed with the State Records Center and Archives under ESD 74-1, Unemployment Compensation law of New Mexico and Rules and Regulations of the Commission, filed 10-1-74; Regulation 504, Presentation of Appeals to the Secretary from the Appeal Tribunal, amended and filed 5-25-90, Regulation 517, Opportunity for Fair Hearing, amended and filed 10-9-90; Regulation 518, Conduct of Adjudicatory Hearings, amended and filed 10-9-90; Regulation 519, Authority Over Conduct of Adjudicatory Hearings, amended and filed 10-9-90; Regulation 520, Transcript of Adjudicatory Hearings, amended and filed 10-9-90; Regulation 521,



Factual Information to Be Considered, amended and filed 10-9-90; Regulation 522, Submission of Briefs, amended and filed 10-9-90; Regulation 523, Official Notice, amended and filed 10-9-90; Regulation 524, Specialized Knowledge of Division, amended and filed 10-9-90; Regulation 525, Right to Representation, amended and filed 10-9-90; Regulation 526, Representation by Attorneys or Other Representatives, amended and filed 10-9-90; Regulation 527, The Adjudication of Appeals or Determinations by the Board of Review on Cases Ordered Removed to it by the Secretary, amended and filed 10-9-90; Regulation 528, Review of the Record by the Board of Review, amended and filed 10-9-90; Regulation 529, Remand by Board of Review to the Appeal Tribunal or Claims Examiner or Tax Section, amended and filed 10-9-90; Regulation 530, Appeals by the Secretary, amended and filed 10-9-90; Regulation 531, Ex Parte Communications, amended and filed 6-14-91; Regulation 532, Requirements for Hearing Evidence or Reviewing Record amended and filed 6-14-91; Regulation 533, Decision of Appeal Tribunal, amended and filed 6-14-91; Regulation 534, Decision of Board of Review, amended and filed 6-14-91; Regulation 534.1, Secretary Decisions, amended and filed 6-14-91; Regulation 535, Inspection of Decisions, amended and filed 6-14-91; Regulation 536, The Record in an Adjudicatory hearing shall include:, amended and filed 6-14-91; Regulation 537, Notice of Tax Determinations, amended and filed 5-04-90; Regulation 538, Request for Review and Redetermination, amended and filed 5-04-90; Regulation 539, Informal Conference Procedure and Decision, amended and filed 5-04-90; Regulation 540, Presenting Appeals, amended and filed 5-04-90.

HISTORY OF REPEALED MATERIAL:  
11 NMAC 3.500, ADJUDICATORY HEARINGS, FILING OF APPEALS AND NOTICE- Repealed 01-01-2003

## NEW MEXICO DEPARTMENT OF LABOR EMPLOYMENT SECURITY DIVISION

This is an amendment to 11.3.400 NMAC, Sections 1, 3, 7, 404, 407, 409, 413, 414, 415, 419, 420, 421, 422, 425.

**11.3.400.1 ISSUING AGENCY:**  
NM Department of Labor, Employment Security Division, [~~Unemployment Insurance Bureau~~], P.O. Box 1928 Albuquerque, NM 87103  
[7-15-98; 11.3.400.1 NMAC – Rn & A, 11

NMAC 3.400.1, 9-1-2001; A, 01-01-2003]

**11.3.400.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 51-1-1 to [~~51-1-58~~] 51-1-59.  
[7-15-98; 11.3.400.3 NMAC – Rn & A, 11 NMAC 3.400.3, 9-1-2001; A, 01-01-2003]

**11.3.400.7 DEFINITIONS:** [~~As used in 11.3.400 NMAC:~~

A. ~~“Department” means the New Mexico department of labor;~~

B. ~~“Secretary” means the cabinet secretary of the New Mexico department of labor or that person’s official designee as provided in the department’s internal policies and procedures;~~

C. ~~“Division” means the employment security division of the New Mexico department of labor, formerly known as the employment security commission and formerly known as the employment security department;~~

D. ~~“Bureau” means the unemployment insurance bureau of the employment security division of the New Mexico department of labor;~~

E. ~~“Tax section” means the tax administration section of the unemployment insurance bureau of the employment security division of the New Mexico department of labor;~~

F. ~~“The director of the employment security division” means that person or that person’s official designee as provided in the department’s internal policies and procedures;~~

G. ~~“The unemployment insurance bureau chief” means that person or that person’s official designee as provided in the department’s internal policies and procedures;~~

H. ~~“The assistant unemployment bureau chief for tax” means that person or that person’s official designee;~~

I. ~~“Contribution” means the state unemployment insurance tax imposed on employers pursuant to the Unemployment Compensation Law;~~

J. ~~“Signature” means any means of signature including, but not limited to, manual, facsimile, electronic, digital or other means permitted by law. —]~~

[RESERVED]

[11.3.400.7 NMAC – N, 9-1-2001; – Repealed 01-01-2003]

**11.3.400.404 WAGE AND CONTRIBUTION REPORTS BY EMPLOYING UNITS:**

A. **WAGE AND CONTRIBUTION REPORT FILING REQUIREMENTS:** An employer's wage and contribution report must be filed on a form prescribed by the department or a reasonable

facsimile of the prescribed form on or before the last day of the month immediately following the end of the calendar quarter. If the due date falls on a Saturday, Sunday or legal holiday, the report is due on the next department business day. A wage and contribution report must be filed even though no wages were paid or no contribution or tax is due for the quarter unless the employer's liability has been terminated or suspended pursuant to NMSA 1978 Section 51-1-18. Each wage and contribution report must include only wages, as the term is defined in NMSA 1978 Section 51-1-42(T), paid during the quarter being reported. Corrections of errors made on previously submitted reports must be submitted separately on a form prescribed by the department.

B. **SIGNATURE REQUIREMENTS ON WAGE AND CONTRIBUTION REPORTS:** Wage and contribution reports must [~~be signed~~] have an appropriate signature by the owner, partner, corporate officer or a designated representative of the employer. If the employer appoints a designated representative who is not an employee, a power of attorney authorizing the designated representative to sign the reports must be filed with the department. Unsigned or improperly signed reports that are returned to the employer for proper signature will not be considered valid or filed until they are properly signed and returned to the department.

C. **WAGE DETAIL REPORTING REQUIREMENTS:** Employers who are reporting two hundred fifty or more employees in any calendar quarter must file their quarterly wage and contribution report on magnetic media or other electronic means, using a format prescribed by the department. Employers reporting less than two hundred fifty employees in a calendar quarter may elect to use magnetic, or other means specified by the department, reporting. Reports that contain extraneous information, are incomplete or otherwise prepared improperly are not acceptable and will be returned to the employer and become subject to the penalties prescribed in NMSA 1978 Section 51-1-12.

D. **ESTIMATED WAGE AND CONTRIBUTION REPORTS:** If an employer fails or refuses to make reports showing what the employer claims for the amount of contributions which it believes to be due, the department's representative shall estimate the amount according to the process described in 11.3.401.404.E NMAC. After the estimated contribution is calculated, the department shall mail a notice to the employer advising it that the department is estimating the amount of con-



tribution due, providing the estimated amount and advising that ten days after the notice is given, the lien will be recorded. After the ten days provided in the notice has elapsed, the lien shall be recorded. Upon issuance, the department shall cause the warrant of levy and lien to be recorded in same manner as any other warrant issued by the department. If the employer does not make a showing to the satisfaction of the secretary that the estimated contribution is incorrect within thirty days after the warrant of levy and lien is filed with the county clerk, then the estimated amount shown in the warrant shall be and become the amount of the contribution due for the period stated in the warrant. If thereafter, the department should receive from the employer reports for the estimated quarters containing different amounts, the estimation of the contribution due shall not be altered, and the employer shall remain liable for the amount assessed. The information provided by the employer on the report, ES 903(B), as to individual employees shall be entered in the department's records.

**E. ESTIMATION PROCESS:** The estimated contribution shall be one and one-half times higher than the highest contribution reported in any quarter in the most recent two years or eight quarters in which wage reports were filed. If no wage and contribution report has been filed since the employer was determined liable or if the employer has never submitted a report to determine liability to the department, no estimations shall be done unless required to clear an unemployment insurance claim.

**F. ADMINISTRATIVE ERROR:** At any time, the department may correct any error the unemployment insurance assistant bureau chief for the tax section determines has been made even if notifications have been given, estimations made or contributions paid pursuant to the notifications. By way of example and not by limitation, such internal errors may be the result of an estimation that has been made after notice was mailed to an incorrect address, mailed to a deceased or incapacitated natural employer, estimations otherwise imposed without proper notice to the employer, estimations imposed due to misinformation in a wage claim which precipitated the establishment of an incorrect account, or other incidents of human or computer error or excusable neglect within the department. Estimations may be removed only pursuant to the written authorization of the unemployment insurance assistant bureau chief for the tax section.

[7-15-98; 11.3.400.404 NMAC - Rn & A, 11 NMAC 3.400.404, 9-1-2001; A, 01-01-

2003]

#### **11.3.400.407 FIRST PAYMENT OF CONTRIBUTIONS FOR NEW EMPLOYERS AND EMPLOYERS ELECTING COVERAGE:**

**A.** The first contribution payment of any employing unit which becomes an employer within any calendar quarter of any calendar year shall become due and payable on or before the last day of the month next following the quarter for which such contributions have accrued, and shall include contributions which have accrued during the whole of such calendar year.

**B.** Notwithstanding the provisions of Subsection A of 11.3.400.407 NMAC of this rule, the first contribution payment of any employing unit which elects to become an employer shall, upon the written or electronic approval of the department, become due and payable on or before the last day of the month next following the close of the calendar quarter in which the department's approval is given. Such first payment shall include contributions with respect to all wages for services covered by such election paid on or after the effective date and up to and including the last day of such calendar quarter. Interest and penalties shall be assessed from and after the due date.

[7-15-98; 11.3.400.407 NMAC - Rn & A, 11 NMAC 3.400.407, 9-1-2001; A, 01-01-2003]

#### **11.3.400.409 REPORT TO DETERMINE LIABILITY:**

**A. REGISTRATION:** Each employing unit or business entity engaged in doing business in the state of New Mexico, whether by succession to a business already being operated, by starting a new business, by change in partnership, or otherwise, shall file a report to determine liability with the department on a form supplied by the department. Each employing unit shall, within ten days, immediately after beginning such business, inform the department in writing of that fact and request the report to determine liability. The report to determine liability shall be filed within thirty days from the commencement of the business even if the employing unit or business entity does not have employees performing services subject to coverage under the New Mexico Unemployment Compensation Law.

#### **B. REPORT OF CHANGE IN STATUS:**

(1) Every subject employer who shall sell, convey or otherwise dispose of its business, or all or any substantial part of the assets thereof, or who shall cease business

for any reason, whether voluntarily or by being in bankruptcy shall, within five days, immediately report such fact, in writing or electronically, to the department, stating the name and address of the person, firm or corporation to whom such business, or all or any substantial part of the assets thereof, shall have been sold, conveyed or otherwise transferred.

(2) In cases of bankruptcy, receivership or similar situations, such employer shall report the name and address of the trustee, receiver or other official placed in charge of the business.

(3) Upon the death of any employer, the report shall be made by the employer's personal representative upon his appointment by the court. In the event no personal representative is appointed, the report shall be made by the heir or other person who succeeds to the interest of the employer.

(4) In the event of a dissolution of partnership or joint venture, such report shall be made by the former partners or joint venturers.

(5) For purposes of Paragraph 1 of Subsection [A] B of 11.3.400.409 NMAC of this rule, "substantial" part of a business, shall be any identifiable part which, if considered alone, would constitute an employing unit as defined in NMSA 1978 Section 51-1-42D.

[7-15-98; 11.3.400.409 NMAC - Rn & A, 11 NMAC 3.400.409, 9-1-2001; A, 01-01-2003]

#### **11.3.400.413 PROCEDURE FOR RELIEF FROM PENALTIES:**

**A.** An employer aggrieved by the imposition of penalties for late reports or late payment of contributions or payments in lieu of contributions may, within fifteen days following the mailing of notice thereof, file a written application for relief with the assistant unemployment insurance bureau chief for the tax section. A request for relief must state with particularity wherein the employer feels the imposition of penalties is in error and any facts or evidence in support of the request.

**B.** The assistant unemployment insurance bureau chief for the tax section may, at his discretion, review the application on the record and facts and evidence submitted, or may schedule an informal conference in accordance with Subsection C of 11.3.500.512 NMAC.

**C.** In any case where the employer is dissatisfied with the decision of the assistant unemployment insurance bureau chief for the tax section, the employer may, within fifteen calendar days from the date of mailing of the decision, file an appeal with the appeal tribunal for the

department in accordance with ~~[11.3.500.504]~~ 11.3.500.8 NMAC governing benefit determination appeals. 11.3.500 NMAC governing benefit appeals shall apply to and govern the adjudication of all such appeals.

D. The secretary shall not permit taxpayers and their representatives to bypass the normal procedures of the department to obtain relief from penalties directly from the secretary.

[7-15-98; 11.3.400.413 NMAC – Rn & A, 11 NMAC 3.400.413, 9-1-2001; A, 01-01-2003]

**11.3.400.415 EXPERIENCE RATING OF EMPLOYERS:** This rule shall govern the experience rating provisions of NMSA 1978 Section 51-1-11.

A. DEFINITIONS: For purposes of 11.3.400.415 NMAC, the following definitions shall apply:

(1) The "total assets in the fund" means all contributions collected, all payments in lieu of contributions collected or due from nonprofit organizations or governmental units and accounts receivable for federal shareable benefits for periods through the computation date of June 30.

(2) "Last annual payrolls" means the total payrolls as reported by all employers subject to contributions for the twelve-month period ending December 31 prior to the computation date.

(3) The "reserve" for each employer shall be the excess of employer's total contributions paid less total benefit charges computed as a percentage of the employer's "average payroll" reported for contributions. Each employer's reserve account percentage ("excess reserve ratio") shall be rounded to the nearest one-tenth of one percent.

B. ELIGIBILITY OF EMPLOYER'S ACCOUNT FOR COMPUTED RATE BASED ON BENEFIT EXPERIENCE. For purposes of the interpretation and application of NMSA 1978 Section 51-1-11E, no employer's experience rating account shall be deemed to have been chargeable with benefits throughout the preceding thirty-six consecutive calendar month period ending on a computation date as defined in NMSA 1978 Section 51-1-11H(3)(d), unless as of such computation date, the department finds that the employer paid wages in employment during any part of the first calendar quarter of the three and one-half year period ending on such computation date and that the payment of such wages was not interrupted for nine or more consecutive calendar quarters, or by termination of coverage under NMSA 1978 Section 51-1-18; provided, all quarterly wage and contribution reports received by

the department by July 31 following the computation date will be considered in computing the rate for the succeeding calendar year. ~~[Subsection B – rev. 9/94:]~~ [7-15-98; 11.3.400.415 NMAC – Rn & A, 11 NMAC 3.400.415, 9-1-2001; A, 01-01-2003]

**11.3.400.419 CHARGING OF BENEFITS:** Whenever a claimant files a new claim for benefits and is found by the department to have sufficient base period wages to entitle him to benefits if otherwise eligible, the department shall issue a "Notice to Employer of Claim Determination", Form ES-957, to each base period employer unless that employer was also the claimant's last employer and has been sent notice pursuant to 11.3.300.308 NMAC. The notice to each employer will give the name and social security account number of the claimant, the claim date and the amount of wages paid by that employer in each quarter of the base period.

A. NOTICE TO EMPLOYER OF CLAIM DETERMINATION -- RESPONSE REQUIRED: Notwithstanding the fact that a prior determination has been made by the department that benefits paid to the designated claimant during a benefit year with respect to which a contributing employer was either a last or base period employer will not be charged to the employer's account, benefits paid the claimant will be charged to the employer's account unless he responds to the "Notice to Employer of Claim Determination", Form ES-957, as directed within ~~[fifteen]~~ ten days from the date shown on the notice, setting forth:

(1) the date on which the claimant's employment with the employer was terminated;

(2) full particulars relating to the fact of the claimant's separation, showing that the claimant left the employment of the contributing employer voluntarily for a cause not attributable to the employer or was discharged from such employment for misconduct connected with his work;

(3) that a prior determination that the contributing employer's account would not be chargeable was made by the department at the time of the claimant's separation from employment with that employer;

(4) such other information as called for in the notice.

B. PRIOR DETERMINATION OF ELIGIBILITY FINAL: If a prior, final determination has been made by the department that the claimant did not voluntarily leave his employment with the employer for a cause not attributable to the employer, or that he was not discharged for misconduct connected with his work, or that

the employer is no longer an interested party to proceedings on the claim because of failure to respond within the time allowed to the "Notice to Employer of Claim for Benefits", Form ES-442, issued at the time of the claimant's separation, that determination will remain final and binding for purposes of making a determination in response to the "Notice to Employer of Claim Determination", Form ES-957, on the chargeability of the employer's account for benefits payable to the claimant.

C. MULTIPLE PERIODS OF EMPLOYMENT WITH SAME EMPLOYER: If the individual had more than one period of employment and termination of employment with the same base period employer during and after the current and past five quarters, the employer must include in the report:

(1) the date on which each period of employment terminated;

(2) full particulars as to the circumstances of the termination including the reason given by the individual for leaving the employment or the nature of the individual's actions for which he was discharged, or the reason the claimant was laid off, as the case may be.

D. CONCURRENT EMPLOYMENT WITH TWO OR MORE EMPLOYERS: Where an individual works concurrently for two or more employers and becomes unemployed from one or more, but one or more of the concurrent employers continues to furnish that individual substantially the same amount of work, benefits shall not be charged to that employer or those employers who continue to furnish the claimant substantially the same amount of employment during such period of unemployment as long as the individual is receiving benefits based on base period earnings, in whole or in part, from the former concurrent employers. Those employers who continue to furnish the claimant work must respond to the "Notice to Employer of Claim Determination", Form ES-957, within fifteen days from the date shown on the notice setting forth the number of hours per week the claimant worked during the current and two preceding quarters.

E. CHARGING UNDER COMBINED WAGES: Benefits paid to a claimant based on wage credits from one or more states combined with New Mexico shall not be charged to an employer's account when no benefits have been paid upon the sole basis of wage credits in New Mexico.

F. NOTICE OF DEPARTMENT'S DETERMINATION: Upon receipt of the employer's response to the "Notice to Employer of Claim Determination", Form ES-957, within the

time prescribed, the department shall make a determination with respect to relief from the charging of benefits, and shall promptly notify the employer if it is determined that the employer's account will be charged for benefits paid. The determination shall become final unless the employer files an application for appeal, setting forth the reasons therefore, within ~~[fifteen]~~ ten days from the date shown on the determination. [7-15-98; 11.3.400.419 NMAC – Rn & A, 11 NMAC 3.400.419, 9-1-2001; A, 01-01-2003]

### **11.3.400.420 EMPLOYER ELECTIONS TO COVER MULTI-STATE WORKERS:**

A. This rule shall govern the department in its administrative cooperation with other states subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the arrangement".

B. As used in 11.3.400.420 NMAC the following words and terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Agency": Any officer, board, commission, or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction.

(2) "Interested jurisdiction": Any participating jurisdiction to which an election submitted under this rule is sent for its approval; and "interested agency" means the agency of such jurisdiction.

(3) "Jurisdiction": Any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or, with respect to the federal government, the coverage of any federal unemployment compensation law.

(4) "Participating jurisdiction": A jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated.

(5) "Services customarily performed by an individual in more than one jurisdiction" are services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

C. Submission and approval of coverage elections under the arrangement.

(1) Any employing unit may file an election, on a form provided by the division, to cover under the law of a single par-

ticipating jurisdiction all of the services performed for him by any individual who customarily works for him in more than one participating jurisdiction.

(2) Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

(a) any part of the individual's services is performed;

(b) the individual resides; or

(c) the employing unit maintains a place of business to which the individual's services bear a reasonable relation.

(3) The agency of the elected jurisdiction ~~[, thus selected and determined,]~~ shall initially approve or disapprove the election.

(4) If such agency approves the election, it shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the absence of such election, be covered. Each such interested agency shall approve or disapprove the election, as promptly as practicable; and shall notify the agency of the elected jurisdiction accordingly.

(5) In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election.

(6) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reason therefore.

(7) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies.

(8) An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency.

(9) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

D. Effective Period of Elections.

(1) Commencement.

(a) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specified the beginning of a different calendar quarter.

(b) If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date may be

approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question.

(2) Termination.

(a) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected.

(b) Except as provided in Subparagraph a of Paragraph 2 of Subsection D of 11.3.400.420 NMAC, each approved election shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies.

(c) Whenever an election hereunder ceases to apply to any individual, under Subparagraph a of Paragraph 2 of Subsection D of 11.3.400.420 NMAC, the electing unit shall notify the affected individual accordingly.

E. Reports and notices by the electing unit.

(1) The electing unit shall promptly notify each individual affected by its approved election, on a form approved by the elected jurisdiction, and shall furnish the elected agency a copy of such notice.

(2) Whenever an individual covered by an election hereunder is separated from his employment, the electing unit shall again notify him, forthwith, as to the jurisdiction under whose unemployment compensation law his services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

(3) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires him to perform services in a new participating jurisdiction.

F. Approval of reciprocal coverage elections. The authority to approve or disapprove reciprocal coverage elections in accordance with this rule shall be exercised by the assistant unemployment



insurance bureau chief for the tax section. [7-15-98; 11.3.400.420 NMAC – Rn & A, 11 NMAC 3.400.420, 9-1-2001; A, 01-01-2003]

### **11.3.400.421 EMPLOYERS ELECTING COST BASIS FINANCING AND GROUP ACCOUNTS:**

A. DEFINITIONS. Where used in 11.3.400.421 NMAC words and phrases shall have the following meanings, unless otherwise indicated:

(1) "Account" means the employer account, identified by an account number, established and maintained for each employer, or employer member of a group account, for the purpose of determining liability for payments in lieu of contributions, and from which benefits to eligible claimants can be determined.

(2) "Group Account" means the account, identified by an account number, established for two or more employers whose application to become liable for payments in lieu of contributions and for sharing the cost of benefits paid by them, has been approved by the department in accordance with NMSA 1978 Section 51-1-13E.

(3) "Group Member" means any employer who has become associated with another or others to form a group account.

(4) "Taxable Year" means the calendar year beginning the first day of January and ending the thirty-first day of December.

B. CHARGING OF BENEFITS: Any benefits or any portion thereof, paid on the basis of wage credits earned within the claimant's base period with any employer who has elected to become liable for payments in lieu of contributions, shall be reimbursed by the employer in accordance with NMSA 1978 Section 51-1-13B(4), and any benefits or portion thereof, paid on the basis of wage credits earned within the claimant's base period with any employer while the employer was subject to contributions pursuant to NMSA 1978 Section 51-1-18A, shall be charged to the experience rating account of the employer as provided in NMSA 1978 Section 51-1-11B.

C. DUE DATES OF WAGE AND CONTRIBUTION REPORTS AND PAYMENTS IN LIEU OF CONTRIBUTIONS: Each employer who has elected to become liable for payments in lieu of contributions shall submit a wage and contribution report on Form ES-903A each calendar quarter with respect to wages paid in such quarter. Said wage and contribution report shall be submitted on or before the end of the month following the close of the calendar quarter to which the wage and contribution report applies. The wages so

reported shall not be used for computation of rates as provided for employers subject to contributions.

D. SUBMISSION OF WAGE AND CONTRIBUTION REPORTS FOR GROUP ACCOUNTS: The quarterly wage and contribution report required of each group member of a group account shall be ~~submitted~~ transmitted by the group representative with a statement listing each wage and contribution report and showing total wages paid by each group member. The payments in lieu of contributions required of each group member shall be ~~submitted~~ transmitted by the group representative, together with all amounts owing by all the group members, within thirty days after ~~mailing~~ transmission by the department of a statement showing the payments in lieu of contributions owing. Each report and any payments required of each employer or group member not ~~submitted~~ transmitted within the time specified will be delinquent and penalties and interest as provided by the Unemployment Compensation Law shall be assessed from and after the delinquent date.

E. EXTENSION OF TIME TO SUBMIT REPORTS: Upon written application, ~~submitted~~ transmitted prior to the due date, by an employer, group member, or group account representative establishing to the satisfaction of the department that good cause exists, excluding any dilatory act, negligence or lack of funds on the part of the employer, an extension, not to exceed thirty days, may be granted by the department with respect to the due date of the wage and contribution report or payment.

F. TERMINATION OF RIGHT TO MAKE PAYMENTS IN LIEU OF CONTRIBUTIONS: If, after due notice, any employer who has elected to become liable for payments in lieu of contributions remains delinquent for payments or interest or penalty, the department shall ~~notify~~ transmit a determination to said employer of pending termination of the organization's election to make payments in lieu of contributions for the next calendar year. If payment is not forthcoming within thirty days from the date of said notice, the department shall ~~notify~~ transmit a final determination to such employer that election has been terminated for the next calendar year.

G. REQUIREMENTS FOR SURETY BOND: At the discretion of the department, termination of an organization's election to make payments in lieu of contributions shall continue effective for any succeeding calendar year unless the employer provides a surety bond acceptable to the department and underwritten by a

corporate surety authorized to transact business in New Mexico; or an agreement of cash collateral assignment, executed with a state or national bank or federally insured savings association authorized to do business in New Mexico, as trustee, in a form prescribed by the department. Interest, if any, accumulating on the cash collateral assignment shall accrue to the employer. Said surety or cash bond shall be in the amount of not more than 2.7% of the taxable wages paid for employment subject to the Unemployment Compensation Law by the employer in the four quarter period immediately preceding the date of notice of termination was issued and shall be released by the department only when no further delinquency for payment in lieu of contributions of the employer exists.

H. ESTABLISHING ACCOUNTS, PROVIDING FOR ADDITIONS AND WITHDRAWALS OF GROUP MEMBERS: The department, upon receipt of properly completed Form ES-802, bearing the endorsement of each group member, accompanied by any forms enumerated therein or otherwise requested in writing, shall establish a group account and notify the group representative of the effective date as provided in NMSA 1978 Section 51-1-13E. The group account shall remain in effect for a period of not less than two calendar years, ending on December 31, and thereafter, until terminated at the discretion of the department, or by approval by the department, of an application from the group received on or before December 1, immediately preceding the calendar year in which termination is desired. Upon establishment and after termination of the group account, each group member, group account and group account representative shall be fully liable for:

(1) any payment in lieu of contributions, penalties or interest required under NMSA 1978 Section 51-1-13E, for the period during which any benefits or portion thereof are payable on the basis of wage credits earned during the period the claimant's base period employer was a group member; and

(2) the performance of the group representative.

I. ADDITIONS OF GROUP MEMBERS: Any nonprofit organization liable for payments in lieu of contributions which becomes subject to the Unemployment Compensation Law on or after January 1, 1972, may, with the approval of the department, be added to an existing group account if the department receives an application as called for in Subsection H of 11.3.400.421 NMAC not later than thirty days prior to the beginning of the calendar year for which the applica-

tion is to be effective.

J. **ACQUISITION OF GROUP MEMBERS:** Any nonprofit organization liable for payments in lieu of contributions which acquired the organization, trade or business, or substantially all the assets thereof, of a group member who because of the transaction no longer employs workers in employment will be a group member of the group account to which his predecessor belonged provided the department receives an application as called for in Subsection H of 11.3.400.421 NMAC not later than thirty days after the date of the transaction.

K. **WITHDRAWAL OF GROUP MEMBERS:** A member may withdraw or be removed from a group account only at the end of a calendar year provided written application for withdrawal or removal is received by the department not later than thirty days prior to the first day of the following calendar year. Such withdrawal or removal of a member from a group account shall not be effective until approved by the department. No group member may withdraw or be removed from a group account unless it has been a member of such group account for at least two calendar years as of the effective date of the withdrawal or removal; except that a member may withdraw or be removed from a group at any time if the group member:

(1) has permanently ceased to employ workers in employment, or

(2) has ceased to be an employer exempt under Section 3306 (c) (8) of the federal Unemployment Tax Act; or

(3) has, in accordance with NMSA 1978 Section 51-1-13A(2), terminated its election to be liable for payments in lieu of contributions; or

(4) has for a period of two successive quarters been delinquent in its payment of assessments under the group plan for benefits chargeable to its account.

[7-15-98; 11.3.400.421 NMAC – Rn & A, 11 NMAC 3.400.421, 9-1-2001; A, 01-01-2003]

#### **11.3.400.422 INDIAN TRIBES:**

##### **A. ELECTION OF TREATMENT:**

(1) An Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe ("electing entity") shall make its election to be a contributing employer or reimbursable employer on or before December 1, for previously registered Indian tribes, and 30 days after subjectivity is determined for newly subject Indian Tribes, except for the year 2001. Indian Tribes may make the election any time between July 1, 2001, and December 1, 2001. If the electing entity fails to make

an affirmative election in writing in the manner provided in 11.3.400 NMAC, the electing entity shall be deemed to have elected status as a contributing employer.

(2) If the Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe is currently registered with the department and desires to change its manner of treatment, the electing entity may change its election on or before the due date of the wage and contribution report for the fourth quarter of 2001, which report is due January 31, 2002. Such change in election shall be in writing in the manner provided in 11.3.400.422 NMAC

##### **B. MASTER CONTRIBUTORY ACCOUNTS:**

(1) Effective July 1, 2001, master contributory accounts for the Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe previously established with the department are discontinued. If the Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe elects to be a reimbursable employer, it may apply for group account treatment as provided in 11.3.400.421 NMAC.

(2) Upon the termination of a master account, all members of the master account will be assigned the then existing tax rate for the master account. Each member of the former master account will enjoy the former master account's tax rate for the remainder of the calendar year 2001. Thereafter, each former member of the former master account will be assigned an individual tax rate based on its individual experience history commencing July 1, 2001.

##### **C. ASSIGNMENT OF ACCOUNT NUMBERS:**

(1) Upon registration with the department, an Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe not previously registered will be assigned an employer account number.

(2) An Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe previously registered as part of a master account may be assigned a new account number.

[11.3.400.422 NMAC – N, 01-01-2003]

#### **11.3.400.425 NOTICE OF TAX DETERMINATIONS FINAL AND APPEALS:**

A. Finality of decision: The department shall give written notice to any employer, employing unit or claimant of every determination made by the tax section which could alter or affect the employer's or employing unit's tax liability or the

claimant's monetary eligibility under the law. Such determination shall be deemed to be the final decision of the department, unless a request for review and re-determination is initiated pursuant to Section B of 11.3.400.425 NMAC or an appeal is initiated pursuant Section B of 11.3.500.8 NMAC.

B. Request For Review and Redetermination: Any claimant, employer or employing unit aggrieved by a tax section determination may, within fifteen days following the transmission of the notice of determination, request a review and redetermination by the assistant unemployment insurance bureau chief for the tax section. A request for review must state with particularity the basis on which the party seeking review feels the determination is in error and any additional facts or evidence the party intends to raise in support of the request. The assistant unemployment insurance bureau chief for the tax section may, at his discretion, review the matter on the facts and evidence already submitted, may schedule a conference with the aggrieved party or parties or otherwise communicate seeking commentary or may refer the matter to the appeal tribunal for a hearing in accordance with the rules governing adjudicatory hearings.

C. Informal Conference Procedure and Decision: Any tax conference scheduled by the assistant unemployment insurance bureau chief for the tax section shall be conducted informally. Within twenty days after the conference, the assistant unemployment insurance bureau chief for the tax section shall issue a written decision, affirming, reversing or modifying the determination in question. The decision shall be transmitted to all parties and shall inform them that it will become final and binding if no appeal is filed within fifteen days of its transmittal in accordance with Section B of 11.3.500 NMAC.

D. Stay pending appeal: Legal action, including the issuance of 10-Day Notices and Warrants of Lien and Levy, shall not be taken on accounts who have an appeal pending within the department.

[11.3.400.425 NMAC – N, 01-01-2003]

### **NEW MEXICO DEPARTMENT OF LABOR EMPLOYMENT SECURITY DIVISION**

This is an amendment to 11.3.100. NMAC, Sections 1, 3, 5, 6, 7, and 102 - 112. The rule was also renumbered and reformatted from 11 NMAC 3.100 to comply with current NMAC requirements.

**11.3.100.1 ISSUING AGENCY:** New Mexico Department of Labor, Employment Security Division, ~~[Unemployment Insurance Bureau]~~ P.O. Box 1928, Albuquerque, NM 87103 [7-15-98; 11.3.100.1 NMAC – Rn & A, 11 NMAC 3.100.1, 01-01-2003]

**11.3.100.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 51-1-1 to ~~[51-1-58]~~ 51-1-59. [7-15-98; 11.3.100.3 NMAC – Rn & A, 11 NMAC 3.100.3, 01-01-2003]

**11.3.100.5 EFFECTIVE DATE:** July 15, 1998, unless a later date is cited at the end of a section ~~[or paragraph]~~. [7-15-98; 11.3.100.5 NMAC – Rn & A, 11 NMAC 3.100.5, 01-01-2003]

**11.3.100.6 OBJECTIVE:** To explain the general ~~[N.M. Department of Labor]~~ New Mexico department of labor rules and regulations addressing ~~[eligibility for unemployment compensation benefits]~~ the Unemployment Compensation Law. [7-15-98; 11.3.100.6 NMAC – Rn & A, 11 NMAC 3.100.6, 01-01-2003]

**11.3.100.7 DEFINITIONS:** In addition to the definitions found in the individual parts and sections, the following definitions apply in Parts 100 through 500 of Title 11, Chapter 3:

A. “Bureau” means the unemployment insurance bureau of the employment security division of the New Mexico department of labor.

B. “Claim” means a request for benefits pursuant to the Unemployment Compensation Law.

C. “Contribution” means the state unemployment insurance tax imposed on employers pursuant to the Unemployment Compensation Law.

D. “Department” means the New Mexico department of labor.

E. “Division” means the employment security division of the New Mexico department of labor, formerly known as the employment security commission and formerly known as the employment security department.

F. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, telephonic, optical, electromagnetic or similar capabilities;

G. “Electronic form” means body of information collected by electronic means, computer program or other automated means similar to the body of information collected by a paper document;

H. “E-mail” or “electronic mail” means communications similar to paper letters and memos transmitted elec-

tronically for the purpose of communication;

I. “Electronic signature” means electronic symbols or process attached to or logically associated with a record, adopted and executed by an individual with the intent to sign the record or electronic form.

J. “Good Cause” means a substantial reason, one that affords a legal excuse, a legally sufficient ground or reason.

K. “IVR” means the interactive voice response system used by the state office claims to process claims.

L. “Password” means a series of letters and numbers intended by the sender and receiver to provide additional security to electronic transmissions. Typically, the password is adopted by the sender and conveyed to the receiver prior to a series of communications. The password is used to verify the identity of the sender of the communications. The password, along with the sender’s “username” can constitute a signature for all legal purposes.

M. “Personal Identification Number” or “PIN” means a series of letters and numbers intended by the sender and receiver to provide additional security to electronic transmissions. The terms “password” and “PIN” are used interchangeably in the department’s rules, regulations and policies.

N. “Rule” and “regulation” are synonymous and refer to provisions of the New Mexico Administrative Code.

O. “Secretary” means the cabinet secretary of the New Mexico department of labor or that person’s official designee as provided in the department’s internal policies and procedures.

P. “Signature” means any means of signature including, but not limited to, manual, facsimile, electronic, digital or other means permitted by law.

Q. “Sole proprietorship” is a business operated by individual whose ownership interest is not held as shares in a corporation, limited liability company, general or limited partnership or limited liability partnership. The use of the terms “sole proprietor” or “sole proprietorship” do not exclude marital community ownership or a marital partnership.

R. “State office claims” means the claims section of the unemployment insurance bureau of the employment security division of the New Mexico department of labor.

S. “Tax section” means the tax administration section of the unemployment insurance bureau of the employment security division of the New Mexico department of labor.

T. “The assistant unemployment bureau chief for claims” means that person or that person’s official designee.

U. “The assistant unemployment bureau chief for tax” means that person or that person’s official designee.

V. “The director of the employment security division” means that person or that person’s official designee as provided in the department’s internal policies and procedures.

W. “The unemployment insurance bureau chief” means that person or that person’s official designee as provided in the department’s internal policies and procedures.

X. “Transmit” means any method of communication customary in the business community, including but not limited to U.S. Postal Service, private courier services, personal delivery and electronic communications such as telephone, facsimile, electronic mail and Internet. Unless specifically required by law or department rule, transmissions and communications do not require hard or paper documents. Unless specifically required by law or department rule, the date and time of the receipt of the transmittal by the appropriate department official is the received or filed date.

Y. “Unemployment Compensation Law” means NMSA 1978 Section 51-1-1 et seq. as amended from time to time.

Z. “Username” means the term as commonly used in electronic communication which is an abbreviation of the name of the sender of electronic communications. Typically, the username, which is less secure, is used in conjunction with a password or PIN to provide secure communications between a sender and receiver while allowing the receiver assurances and verification of the identity of the sender.

AA. “Wages” means all remuneration for employment except as provided in these rules or in state and federal statutes applicable to unemployment compensation.

(1) Borrowed monies, including monies borrowed from a 401(K) or other pension account, even if such borrowed money may create a taxable event, shall not be deemed remuneration or wages such as to disqualify the individual from unemployment benefits.

(2) 26 U.S. C. Section 3306(b)(13) of the Internal Revenue Code excludes from the definition of wages “any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit



from income under section 127 or 129." Under 26 U.S.C. Section 127 of the Internal Revenue Code, employer-paid education expenses are excludable from the gross income of and wages of an employee if provided under an educational assistance plan. This exclusion applies to both graduate and undergraduate courses and is effective with respect to courses beginning after December 31, 2001.

[11.3.100.7 NMAC – N, 01-01-2003]

**11.3.100.102 SERVICES PERFORMED FOR A "SCHOOL":** The term "school" as used in NMSA 1978 Section 51-1-42F(11)(I) means a public or private, nonprofit educational institution, except an institution of higher education as defined in NMSA 1978 Section 51-1-42F(11)(o):

A. In which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by, or under the guidance of an instructor or teacher; and

B. In which the courses of study or training which it offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation; and

C. Which is approved, licensed or permitted to operate as a school by the ~~[State Department of Education]~~ New Mexico department of education or other government agency that is authorized within the state to approve, license or permit the operation of a school.

[7-15-98; 11.3.100.102 NMAC – Rn, 11 NMAC 3.100.102, 01-01-2003]

**11.3.100.103 APPROVED TRAINING:**

A. Any claimant may request to receive benefits while attending school for training purposes. The claimant shall make a written application on a form prescribed by the department. The application shall include the following information:

(1) The claimant's work history for the prior two-year period, and a brief description of duties

(2) The reason for the claimant's unemployment;

(3) The proposed course of training, including a written description of the course of instruction;

(4) The establishment where the claimant will receive training, and

(5) The type of jobs for which the claimant will qualify upon completion of training.

B. ~~[Training under the Job Training Partnership Act, or its successor,~~

~~the Trade Adjustment Assistance Act, or its successor, the Trade Act of 1974 or its successor, or any other law]~~ Training under any program as provided by federal or state law required for approval as a condition for certification of the Unemployment Compensation Law by the United States Secretary of Labor, shall constitute approved training for purposes of this regulation and the provisions of NMSA 1978 Section 51-1-5E.

C. Other than those training programs identified in Subsection B of 11.3.100.103 NMAC ~~[of this regulation]~~, the department will only approve applications for training in vocational or technical schools or classes which have been approved by ~~[State Department of Education]~~ the New Mexico department of education or a similar department of another state. The department will not approve:

(1) applications for programs of instruction offered at community colleges, colleges or universities which are primarily intended to lead toward a baccalaureate or higher degree or that have as their purpose the preparation of participants for employment in occupations requiring a baccalaureate or higher degree from institutions of higher education, or

(2) programs of instruction as a regular full-time student, intended to lead toward a secondary diploma.

D. The department will, in addition to Subsection C of 11.3.100.103 NMAC ~~[of this regulation]~~, only approve training programs under the following conditions:

(1) Prospects for continuing employment in the labor market area in which the individual resides or is seeking work and for which the individual is presently suited by training and/or experience are minimal based upon current labor market information and are not likely to improve in the foreseeable future, making a change in occupation necessary for reemployment. Work for which the individual is presently suited by training or experience means "suitable work" as defined in NMSA 1978 Section 51-1-7C.

(2) The claimant must have the required qualifications or aptitudes to successfully complete the training program.

(3) The training program must relate to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the labor market area where the individual resides or intends to seek work.

(4) The training program must be attainable within fifty-two training weeks, and must result in a training certificate. In addition, there must be a reasonable assurance of successful completion of training

should the individual's unemployment insurance compensation benefits exhaust prior to completion of the training course

(5) The claimant's application for approval of training, as described Subsection A of 11.3.100.103 NMAC ~~[of this regulation]~~, was submitted and received at one of the ~~[labor service]~~ workforce development centers of the New Mexico department of labor or equivalent office in another state, prior to the commencement of the training.

E. A claimant whose application for training has been approved shall not be required to make an active search for work during participation in the training program and when between successive terms where the break from school is four weeks or less provided that the claimant submits bi-weekly written verification to the department from the training institution attesting to his attendance and satisfactory progress. Satisfactory progress means that the claimant is passing all of the classes with grades sufficient to qualify for graduation, licensing or certification as appropriate. Benefits shall not be paid for any week in which the claimant fails to timely submit a written verification.

F. At the time a course of training is approved, the department shall notify the training institution of the claimant's status. The notification shall direct the training institution to promptly notify the department in writing if the claimant's attendance or progress becomes unsatisfactory. Unsatisfactory progress means any indication of failure to obtain a passing grade, such as uncompleted work, unsatisfactory test scores or mid-term reports.

G. A claimant enrolled in an approved training program shall promptly notify the department in writing if he discontinues regular attendance of the training program or receives notice of unsatisfactory progress from the training institution. Unsatisfactory progress means any indication of failure to obtain a passing grade, such as uncompleted work, unsatisfactory test scores or mid-term reports.

H. Department approval for training shall automatically end if the claimant discontinues school attendance, drops or changes any classes or fails to maintain satisfactory progress.

I. A claimant enrolled in an approved training program shall have his weekly benefit amount reduced by the amount of any subsistence allowance received on account of participation in training. A subsistence allowance is a direct or indirect payment to the claimant which is made or usable for routine living expenses not directly associated with participation in

training, such as room, board, utilities or general transportation. It does not include reimbursements for any of the direct costs of training such as tuition, books, supplies, tools, transportation to training or the cost of child care during time spent in training. A lump sum payment of a subsistence allowance shall be prorated for the applicable training period.

[7-15-98; 11.3.100.103 NMAC – Rn & A, 11 NMAC 3.100.103, 01-01-2003]

**11.3.100.104 FILING DATE:** Any report, response or other document required to be filed by the Unemployment Compensation Law or these regulations rules, and any appeal, notice or other pleading required to be filed with the division department shall be deemed filed on the date it is received by the division department or, if mailed, as of the date of the postmark on the envelope. If it is postmarked at or prior to the deadline, it will be deemed filed timely if received by the department within a reasonable period of time. Unless otherwise specified in the Law or regulations rules, any such report, response document or appeal that is mailed but has no postmark date shall be considered timely if, on the basis of customary mail practice and the actual date of delivery, it may be presumed to have been mailed within the specified time period. If the final day for a report, response document or appeal falls on a date when the division department offices are closed, receipt on the first business day thereafter shall be considered timely.

[7-15-98; 11.3.100.104 NMAC – Rn & A, 11 NMAC 3.100.104, 01-01-2003]

**11.3.100.105 VALUATION OF REMUNERATION IN KIND:**

A. If an individual receives any part of his wages in a medium other than cash, the reasonable cash value of such remuneration other than cash shall be deemed for all purposes of the Unemployment Compensation Law to be either:

(1) The amount which is agreed upon between the employing unit and such individual if the terms of the agreement are reported to the division department and the division department agrees that such agreed amount or value is reasonable; or

(2) The cash value as shown to the satisfaction of the division department.

B. If the division department determines that the amount agreed is unreasonable, or if the employing unit and the individual fail to agree upon an amount, or if the employing unit fails to report the terms of an agreement to the division department and fails to show the cash value

of such ~~noncash~~ non-cash remuneration prior to the due date of contributions or payment in lieu of contributions with respect to such wages, the division department shall fix an amount or value after considering all available information or evidence; and such amount fixed by the division department shall be deemed for all purposes of the Unemployment Compensation Law to be the cash value of such wages received in any medium other than cash.

[7-15-98; 11.3.100.105 NMAC – Rn & A, 11 NMAC 3.100.105, 01-01-2003]

**11.3.100.106 AFFIRMATIONS UNDER PENALTY OF PERJURY:**

A. All information and statements required of an individual by the department in furtherance of the department's duties are deemed material.

B. All submissions to the department of information and statements are deemed made as an affirmation or oath under penalty of perjury pursuant to NMSA 1978 14-13-2 and 30-25-1.

C. All signatures or affirmations requests on department forms whether paper, electronic or voice submission shall carry the warning in substantially the following format: "I solemnly, sincerely and truly declare and affirm that the statements made herein and the information supplied by me are true and correct, with no material omissions, and I do so under the pains and penalties of perjury."

[11.3.100.106 NMAC – N, 01-01-2003]

**11.3.100.107 DE MINIMIS AMOUNTS:**

A. Amounts owed by the department to individuals or entities which amounts are equal to or less than the combined total amount of \$5.00 in any quarter shall be retained on the department's books as a credit to that individual, entity or account, but no check or payment shall be issued absence a specific request by the party to whom the credit is due.

B. Amounts which are equal to or less than the combined total amount of \$20.00 owed by individuals or entities to the department will not be billed or invoiced or liens issued, but the amounts due shall be retained on the department's books as a debit owing by that individual, entity or account.

[11.3.100.107 NMAC – N, 01-01-2003]

**11.3.100.108 VERIFICATION OF INFORMATION SUBMITTED: TAX IDENTIFICATION AND SOCIAL SECURITY NUMBER REQUIRED:**

The department requires employers and employing units and claimants to provide their federal tax identification numbers or

social security numbers as a means of verifying identity and eligibility for benefits under the Unemployment Compensation Law. The department may verify all information submitted with that in the possession of other state and federal agencies.

A. An employer or employing unit's failure or refusal to provide the required numbers will result in enforcement action.

B. A claimant's failure or refusal to provide the required numbers will result in a denial of benefits.

C. The provision of a false identification number or a false social number could result in criminal liability.

[11.3.100.108 NMAC – N, 01-01-2003]

**11.3.100.109 AVAILABILITY AND CONFIDENTIALITY OF DEPARTMENT RECORDS:**

A. Reconciliation of Public Records Act, NMSA 1978 Section 14-2-1 through 14-2-12 and the confidentiality provisions of NMSA 1978 Section 51-1-32: NMSA 1978 Section 14-2-6(E), defines "public records" as "all documents, papers, letters, books, maps, tapes, photographs, recordings and other materials, regardless of physical form or characteristics, that are used, created, received maintained or held by or on behalf of any public body and relate to public business, whether or not the records are required by law to be created or maintained." The Public Records Act permits the inspection of public records of this state "except as otherwise provided by law." NMSA 1978 Section 14-2-1(8). NMSA 1978 Section 51-1-32 requires that "information obtained from any employing unit or individual pursuant to the administration of the Unemployment Compensation Law and determinations as to the benefit rights of any individual are confidential and shall not be open to inspection in any manner revealing the individual's or employing unit's identity except that such information may be made available to those designated persons and agencies, and for the purposes specified in regulations issued by the secretary."

B. Consistent with the provisions of NMSA 1978 Section 51-1-32, department files and records, including but not limited to investigation reports, statements, memoranda, correspondence or other data, regardless of the media on which stored, pertaining to matters under consideration or scheduled for hearing, other departmental proceeding or judicial appeal shall be available for inspection and copying, at any reasonable time by the employing unit or individual who is a party to any proceeding before the department.

C. The contents of depart-



ment files and records shall not be released to any person except the employing unit or the individual to whom the file or record pertains or that employing unit or individual's authorized representative, and then, only upon a signed, written release, court order, grand jury subpoena or search warrant. Except in instances of court orders, grand jury subpoenas and search warrants, if more than one party, such as an employer and an employee, are named in the file or record sought, both parties must consent to the release of the file or record if it is sought for any purpose other than a proceeding before the department.

D. With the consent and approval of the secretary, upon advice of the department's general counsel, the contents of the department's files and records may be released to law enforcement agencies for the purpose of criminal investigations and child support proceedings.

E. From time to time, the department may enter into agreements to exchange information with other government agencies and with non-government providers of public assistance, which agreements may provide for the exchange of information otherwise confidential under NMSA 1978 Section 51-1-32. The conveyance of this information is for the purpose of obtaining information necessary for the department to provide services to its customers or so that other agencies can provide public assistance benefits to the individuals about whom the information pertains. In such instances, every reasonable effort shall be made to maintain the confidentiality of the information exchanged.

F. Unless otherwise provided by statute or a written agreement provided in Subsection E of 11.3.100.108, the department shall charge the indicated fees for copies of department files and records on the following media:

- (1) Audio tape, \$3.00 per tape;
- (2) Video tape, \$5.00 per tape;
- (3) Floppy disc, \$1.00 per disc;
- (4) CD or DVD disc, \$5.00 per disc;

(5) Printed paper copies, \$1.00 of first page of file or request; 50 cents per page thereafter up to 100 copies; 25 cents all copies thereafter within the same file or request;

(6) Staff research time, \$20.00 per hour for all time in excess of one hour spent in locating or reviewing a file prior to copying;

(7) Employment or income verification, whether or not copies are requested, \$6.00; and

(8) Any format not listed above shall be charged at a reasonable rate for the equipment, staff and other resources used to

provide the copies.

[11.3.100.109 NMAC – N, 01-01-2003]

#### **11.3.100.110 WEBSITE:**

A. For the convenience of the department, its employees, its customers and the general public, the department operates and maintains one or more websites to provide a portal to services offered by the department. The website contains original material pages and material developed by the department as well as commercially prepared software systems acquired to provide access to services that support the Workforce Investment Act and the Department's mission. The department website also features links to the websites of other providers who also offer services that are related or complementary to the services offered by the department.

B. Binding Agreement: Use of the department's website constitutes acceptance as a contract of the published terms and conditions as provided in this rule and as published on the website from time to time.

C. General Disclaimer: The department shall attempt to ensure that the information on the website is accurate by continuously updating the information. The department does not warrant or guarantee that the information is free from error. The website is a work in progress, under constant development in order to better serve the website users. The department accepts no liability for any loss or damage, direct, indirect, consequential or otherwise, incurred in the reliance on the material, information or programs provided on the website.

D. Public Information: Information on the website is public information pursuant to the Public Records Act, NMSA 1978 Section 14-2-1 through 14-2-12.

E. Property of the department: All the material, information or programs on the department website are the property of the department unless otherwise specified. The material, information or programs on the department website:

(1) Are provided as a public service for informational and educational purposes only.

(2) Are not intended as legal advice of any kind.

(3) May be used only for the purpose of gaining general information or for nonprofit purposes.

(4) May be copied or distributed only if credit is attributed to the department by using the proper trade mark, NMWORKS™.

(5) Is for public use and may be duplicated and disseminated for non-com-

mercial purposes so long as not subject to another's copyright. Any such duplication or dissemination must be accompanied by a citation acknowledging the department as the source of the information and the department's copyright and trademark notices.

(6) May not be used for commercial purposes of any kind without the written permission of a division director or higher officer of the department except that employment listings may be used by individual website users for obtaining employment.

F. Copyright Notice: All copyrightable text, graphics, design, selection and arrangement of information is protected by copyright (2000, New Mexico Department of Labor) and the department's trademark, NMWORKS™.

G. Trademark Notice: NMWORKS™ is a trademark of the department, which identifies the department, and in conjunction with the goodwill of the department, its reputation. The department trademark NMWORKS™ is the subjects of pending applications and may not be used without credit given by use of the proper mark. The trademark includes the word NMWORKS™ and the related logo. The trademarked name and logo may not be used without prior express written permission.

H. Third Party Links: The department website provides links to third party websites and vice versa as a courtesy and convenience to the department's website users. The department is not responsible for the content or condition of third party websites. The department has no responsibility or liability to users for the content or accuracy of websites linked from this page or websites that provide a link to this page. The department does not endorse the views, products or services of third party websites. The department has no responsibility for the privacy practices or internal content of linked sites. The provision of a link provides no assurance that the linked site has a privacy policy similar to the department's privacy policy.

I. Privacy: The department is committed to maintaining the privacy of the personal information of those persons who access and use the department's website. The department is committed to maintaining the security of its computer system.

(1) Monitoring: The department's computer system including the website is monitored to ensure proper operation, to verify the functioning of applicable security features and for similar purposes.

(2) Personally identifiable information: For the purpose of the website,

"personally identifiable information" means information collected on-line that could serve to identify an individual, including, but not limited to:

- (a) First and last name;
- (b) Physical address;
- (c) E-mail address;
- (d) Telephone number;
- (e) Social security number;
- (f) Tax identification number;
- (g) Credit card information;
- (h) Bank account information;
- (i) Any combination of information that could be used to determine identity.

(3) Except where specified, website users need not provide personally identifiable information to visit the department website or download information from the website.

(4) Any personally identifiable information provided to the department will be used solely by the department, its agents, contractor and employees, unless the information is designated as a public record under the Public Records Act.

(5) Unless the user chooses to provide the information for a specific purpose, personally identifiable information is not collected and maintained by the department.

(6) Personally identifiable information may be required to qualify or determine eligibility for certain government services.

(7) The department shall take reasonable precaution to protect the confidentiality of personally identifiable information from loss, misuse, alteration or disclosure to unauthorized persons.

(8) Unless otherwise prohibited by state or federal law or applicable rules and regulations, an individual may access and correct personally identifiable information whether or not the access was created by accident, unauthorized access or a change in circumstances.

(9) E-mail or other forms of information requests sent to the department website may be saved and used to respond to the request, to forward the request to the appropriate agency, communicate updates of information or to provide the department's webmaster with valuable customer feedback to assist in improving the website.

(10) Despite all precautions, the department does not guarantee or warrant users of the website against hardware failure, unauthorized intrusion or other technical problems that might affect privacy and confidentiality.

(11) To maintain the website user's privacy, the department requires the use of a password before accessing any personal or account information. The department shall provide methods for the assign-

ment of user names and passwords in a manner customary in the industry from time to time.

J. Trespass: The department shall use all legally available means to prevent, monitor and investigate any attempt to deface, delete, modify or misappropriate the department's website, server, database, information system or other department technology asset.

K. Finality: No information provided to the department through this electronic medium is final until the department transmits a confirmation to the website user.

L. Publication of and Amendment to Website policy: A copy of this rule shall be published on the website. From time to time, the department may heighten, but shall not decrease the privacy policy without amendment of this rule.

[11. 3.100.110 NMAC – N, 01-01-2003]

#### **11.3.100.111 DIGITIZED SIGNATURES: [RESERVED]**

[11.3.100.111 NMAC – N, 01-01-2003]

#### **11.3.100.112 ELECTRONIC TRANSACTIONS:**

Pursuant to the Uniform Electronic Transmission Act as adopted by the state of New Mexico, NMSA 1978 Sections 14-16-1 to 14-16-19 (2001), the department has developed procedures for communications by electronic means. Official communications with the department shall contain all material customarily found on paper forms. Additionally, electronic forms and records used by the department shall clearly indicate the purpose of the form, instructions for completion and submission electronically, information on receiving assistance by telephone or e-mail, require the submission of a valid e-mail address, telephone number or United States postal service address at which the sender can be contacted regarding the information submitted and the purpose underlying the submission of the information. A person choosing to communicate with the department electronically bears the responsibility of insuring that the information submitted and the methods by which he can be contacted are accurate. The use of a person's name, identifying information, username and password or PIN in electronic and other communications with the department is deemed a signature for all legal purposes. Persons using a means of electronic communication shall be advised that the submission of the information using the identifier is deemed a binding signature.

[11.3.100.112 NMAC – N, 01-01-2003]

## **NEW MEXICO DEPARTMENT OF LABOR EMPLOYMENT SECURITY DIVISION**

This is an amendment to 11.3.200 NMAC, Section 1, 3, 5, 6, 201 – 207. This rule was also renumbered and reformatted from 11 NMAC 3.200 to comply with current NMAC requirements.

### **PART 200 PROCEDURES AND REQUIREMENTS REGARDING PROMULGATION OF RULES AND REGULATIONS**

#### **11.3.200.1 ISSUING AGENCY:**

~~[NM] New Mexico~~ Department of Labor, Employment Security Division, ~~[Unemployment Insurance Bureau,]~~ P.O. Box 1928, Albuquerque, NM 87103 [7-15-98; 11.3.200.1 NMAC – Rn & A, 11 NMAC 3.200.1, 01-01-2003]

#### **11.3.200.3 STATUTORY AUTHORITY:**

~~[SECTIONS 51-1-1 TO 51-1-58 [NMSA 1978] NMSA 1978 Sections 51-1-1 to 51-1-59.~~

[7-15-98; 11.3.200.3 NMAC – Rn & A, 11 NMAC 3.200.3, 01-01-2003]

#### **11.3.200.5 EFFECTIVE DATE:**

July 15, 1998, unless a later date is cited at the end of a section ~~[or paragraph].~~

[7-15-98; 11.3.200.5 NMAC – Rn & A, 11 NMAC 3.200.5, 01-01-2003]

#### **11.3.200.6 OBJECTIVE:**

To explain the procedures and requirements governing promulgation, adoption, amendment and appeal of rules and regulations for the New Mexico department of labor, employment security division.

[7-15-98; 11.3.200.6 NMAC – Rn & A, 11 NMAC 3.200.6, 01-01-2003]

#### **11.3.200.201 [PROCEDURES AND REQUIREMENTS REGARDING PROMULGATION OF REGULATIONS] NOTICE REGARDING PROMULGATION OF RULES:**

A. ~~[NOTICE.]~~ Prior to the adoption, amendment or repeal of any rule or regulation, the secretary ~~[or his designee]~~ shall:

(1) Publish one notice of its proposed action at least thirty days prior thereto in the New Mexico Register ~~[and in a newspaper of general circulation in the state]~~ and on the department's website.

(2) Notify any person or group filing a written request, the request to be renewed yearly, for notice of any proposed action that may affect that person or group, notification being by mail to the last known

address of the person or group at least thirty days prior to the proposed action.

B. The notice in ~~[both Paragraphs 201.1 and 201.2 above]~~ contemplated by 11.3.200.201 NMAC shall give the time and place of the proposed action, describe the subject matter of the proposed action and state the manner in which interested persons may present their views and the method by which copies of the proposed rule or regulation, proposed amendment or repeal of an existing rule or regulation may be obtained.

[7-15-98; 11.3.200.201 NMAC – Rn & A, 11 NMAC 3.200.201, 01-01-2003]

**11.3.200.202 SUBMISSION BY INTERESTED PERSONS:** Prior to the adoption, amendment or repeal of any rule or regulation, the secretary ~~[or his designee]~~ shall conduct a public hearing and afford all interested persons a reasonable opportunity to submit data, views and arguments orally or in writing concerning the proposed action; however, if the secretary finds that oral presentation is unnecessary or impracticable, he may require submission to be made in writing.

[7-15-98; 11.3.200.202 NMAC – Rn & A, 11 NMAC 3.200.202, 01-01-2003]

**11.3.200.203 CONSIDERATION AND ADOPTION BY SECRETARY:** The secretary ~~[or his designee]~~ shall consider fully all written and oral submissions respecting the proposed regulatory action. All persons attending the public hearing ~~[and/or]~~ or making oral or written submissions to be considered in connection with the proposed action shall be given a copy of the final rule or regulation upon filing.

[7-15-98; 11.3.200.203 NMAC – Rn & A, 11 NMAC 3.200.203, 01-01-2003]

**11.3.200.204 EMERGENCY REGULATIONS:** If the secretary finds that immediate adoption, amendment or suspension of a rule or regulation is necessary for preservation of the public peace, safety or general welfare, the secretary may dispense with the requirements of notice and hearing and adopt, amend or suspend a regulation as an emergency. The secretary's findings and a brief statement of the reasons for its findings shall be incorporated in the emergency rule or regulation, amendment or suspension. If an emergency rule or regulation, amendment or suspension shall remain in effect for longer than sixty days, notice as required in 11.3.200.201 NMAC shall be given within seven days after the emergency action.

[7-15-98; 11.3.200.204 NMAC – Rn & A, 11 NMAC 3.200.204, 01-01-2003]

**11.3.200.205 FILING AND**

**EFFECTIVE DATE:** The secretary shall file each rule or regulation, amendment or repeal thereof in accordance with the State Rules Act, and each rule or regulation, amendment or repeal shall be effective as of the date of filing or as otherwise provided in the rules. The secretary shall publish in the New Mexico Register, in full or in part, all adopted rule or regulation, amendments or repeals.

[7-15-98; 11.3.200.205 NMAC – Rn & A, 11 NMAC 3.200.205, 01-01-2003]

#### **11.3.200.206 PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF RULES AND REGULATIONS:**

A. Any interested person may petition the secretary requesting the promulgation, amendment or repeal of any rule.

(1) Where the petition requests the promulgation of a rule, the requested or proposed rule must be set out in full. The petition must also include all of the reasons for the requested rule.

(2) Where the petition requests the amendment or repeal of a rule presently in effect, the rule or portion of a rule must be set out as well as a suggested amended form, if any. The petition must set out all of the reasons for the requested amendment or repeal of the rule.

B. All petitions shall be considered by the secretary who may, in his discretion, order a hearing for the further consideration and discussion of the requested promulgation, amendment, repeal or modification of any rule.

C. Within sixty days after submission of a petition, the secretary shall either deny the petition in writing, stating the reasons for the denial, or initiate rule making proceedings in accordance with Sections 11.3.200.201, 202 and 203 NMAC.

[7-15-98; 11.3.200.206 NMAC – Rn & A, 11 NMAC 3.200.206, 01-01-2003]

**11.3.200.207 DECLARATORY RULINGS:** Any person may petition the secretary for a declaratory ruling as to the applicability of any provision of the Unemployment Compensation Law or any rule or regulation promulgated thereunder to the petitioner whose interests, rights or privileges will be significantly affected thereby. The secretary shall consider the petition and within a reasonable time shall:

A. Issue a declaratory ruling; or

B. Notify the petitioner that no declaratory ruling is to be issued; or

C. Set a reasonable time and place for hearing argument upon the

matter and give reasonable notification to the petitioner and any other person or persons named as a party to the proceedings or affected by the declaration, of the time and place for such hearing and of the issue involved.

(1) If a hearing is conducted, the secretary shall, within a reasonable time, issue a declaratory ruling or notify the petitioner that no declaratory ruling is to be issued.

(2) No declaratory ruling shall prejudice the rights of persons not parties to the proceeding.

**D. Hearings on declaratory rulings shall be conducted in the manner provided in 11.3.500 NMAC.**

[7-15-98; 11.3.200.207 NMAC – Rn & A, 11 NMAC 3.200.207, 01-01-2003]

### **NEW MEXICO DEPARTMENT OF LABOR EMPLOYMENT SECURITY DIVISION**

This is an amendment to 11.3.300 NMAC, Sections 1, 3, 5, 6, 301 – 325. The rule was also renumbered and reformatted from 11 NMAC 3.300 to comply with current NMAC requirements.

**11.3.300.1 ISSUING AGENCY:** ~~[NM]~~ New Mexico Department of Labor, Employment Security Division, ~~[Unemployment Insurance Bureau]~~, P.O. Box 1928 Albuquerque, NM 87103.

[7-15-98; 11.3.300.1 NMAC – Rn & A, 11 NMAC 3.300.1, 01-01-2003]

**11.3.300.3 STATUTORY AUTHORITY:** NMSA 1978 Sections 51-1-1 to ~~[51-1-58]~~ 51-1-59.

[7-15-98; 11.3.300.3 NMAC – Rn & A, 11 NMAC 3.300.3, 01-01-2003]

**11.3.300.5 EFFECTIVE DATE:** July 15, 1998, unless a different date is cited at the end of a section ~~[or paragraph]~~.

[5-15-97, 7-15-98; 11.3.300.5 NMAC – Rn & A, 11 NMAC 3.300.5, 01-01-2003]

**11.3.300.6 OBJECTIVE:** ~~[The purpose of the claims administration regulations, Part 300, is to provide clarification and legal interpretation of the provisions of the unemployment compensation law of New Mexico].~~ The purpose of this rule is to provide clarification of the Unemployment Compensation Law. This rule assists claimants in better understanding how specific sections of the law are administered by the department. The rule assists claimant to better comply and better understand the department's procedures.



[5-15-97, 7-15-98; 11.3.300.6 NMAC – Rn & A, 11 NMAC 3.300.6, 01-01-2003]

### **11.3.300.301 FILING INITIAL, ADDITIONAL AND REOPENED CLAIMS:**

A. As used in 11.3.300.301 NMAC:

(1) "Claimant" means an individual who has filed an initial claim, additional claim or reopened claim for unemployment compensation benefits and this filing is within a benefit year or other eligibility period.

(2) An "initial claim" means a new claim ~~[which is an application]~~ application submitted by the claimant to establish a benefit year and to obtain a determination of weekly and maximum benefit amounts.

(3) An "additional claim" ~~[is]~~ means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a period of employment other than self-employment which occurred subsequent to the date of filing the last initial, additional or reopened claim.

(4) A "reopened claim" ~~[is]~~ means a claim application which reactivates a claim during an existing benefit year or other eligibility period and certifies to a continuous period of unemployment for which the claimant did not file timely continued claims and during which the claimant either remained unemployed or had a period of self-employment since last reporting on this claim.

(5) "A transitional claim" means a claim filed to request a determination of eligibility and establishment of a new benefit year having an effective date within a seven-day period immediately following the benefit year ending date and a week for which compensation or waiting week credit was claimed; i.e. continuous certification.

B. Unless otherwise prescribed, any claimant wishing to claim benefits shall ~~[report in person to a labor service center,]~~ register for work, file an initial, additional, transitional or reopened claim for benefits and provide the name and address of his last employer. For purposes of this section, "last employer" means:

(1) The most recent employer or employing unit from which the claimant separated for reasons other than lack of work; or

(2) In the event of a separation for lack of work, the employer or employing unit from which the claimant separated for reasons other than lack of work if the claimant, subsequent to his ~~[or her]~~ separation for reasons other than lack of work, has not worked and earned wages in insured

work or bona fide employment other than self-employment in an amount equal to or exceeding five times the claimant's weekly benefit amount.

C. The date of filing of any initial, additional or reopened claim shall be the Sunday of the week in which filed. Upon a showing of good cause, any initial claim or additional claim may be back-dated to the Sunday of the week immediately following the week in which the claimant was separated, and any reopened claim may be back-dated up to a maximum of twenty-one days from the preceding Sunday of the date of the request for back-dating. "Good cause," as used in this section, exists when it is established that factors or circumstances beyond the reasonable control of the claimant caused the delay in filing. All requests for back-dating ~~[shall be accompanied by a fact finding report from the labor service center]~~ or post-dating shall include a fact-finding report.

[7-15-98; 11.3.300.301 NMAC – Rn & A, 11 NMAC 3.300.301, 01-01-2003]

### **11.3.300.302 FILING CONTINUED CLAIMS:**

~~[In order to establish and maintain eligibility for benefits or for waiting period credit during a continuous period of unemployment the claimant shall continue to report weekly or bi-weekly as directed and file continued claims for benefits either in person or by mail through at the State Office Claims. Intrastate claimants may also file continued claims for benefits through the interactive telephone system at the state claims office in Albuquerque.] In order to establish and maintain eligibility for benefits or for waiting-period credit during a continuous period of unemployment a claimant shall continue to report weekly as directed and file continued claims for benefits through the interactive voice response (IVR) system, or through the Internet. The assistant unemployment bureau chief for claims may approve paper certification where that person deems necessary to provide prompt, appropriate, accurate, efficient service to a claimant.~~

[5-15-97; 11.3.300.302 NMAC – Rn & A, 11 NMAC 3.300.302, 01-01-2003]

### **11.3.300.303 TIMELY RESPONSE TO REQUEST FOR INFORMATION:**

A. ~~[Any response to a request for additional information mailed by the division prior to issuance of an initial determination must be received by the division at the State Claims office in Albuquerque within ten (10) calendar days from the date mailed, unless the division's request specifically requires that the response be made in person at a local labor service. The response may be in writing in~~

~~person, mail or by telephone directly to the State Claims office. Where the request specifically requires that the response be made in person at a local labor service center, the response will be considered timely if made by the date specified in the request.] Any response to a request for additional information from the department prior to issuance of an initial determination must be received by the department at the state office claims within ten calendar days from the date transmitted. The response may be transmitted in writing, by facsimile, by electronic mail or by telephone to the state office claims.~~

B. The ten calendar day period shall begin to run on the first day after the date the request was ~~[mailed]~~ transmitted to the claimant or to the employer. If the tenth calendar day falls on a date when the ~~[division]~~ department offices are closed, receipt on the first business day thereafter shall be timely.

[7-15-98; 11.3.300.303 NMAC – Rn & A, 11 NMAC 3.300.303, 01-01-2003]

### **11.3.300.304 LATE FILING OF CONTINUED CLAIMS:**

A. ~~[The division, for reasons found to constitute good cause for any individual's failure to file his or her continued claim (Form ES-408) at the time specified, may accept such claim certification effective as of the date regularly specified for its filing provided the continued claim certification is received by the State Claims office in Albuquerque no later than thirteen (13) calendar days following the week ending date of the last week of the certification form.] If the department finds good cause for a claimant's failure to timely file his continued claim, the claimant may file a late continued claim provided the certification is filed not later than the thirteenth day following the last day of the week requiring the certification.~~

B. ~~[Certifications returned to claimants for completion shall be considered timely if they are received by the State Claims office in Albuquerque no later than ten (10) calendar days after the certification is mailed to the claimant for correction.] A certification not processed due to a department request for additional information from the claimant shall be considered timely if the requested information is received by the state office claims no later than ten calendar days after the request for additional information is transmitted to the claimant.~~

[7-15-98; 11.3.300.304 NMAC – Rn & A, 11 NMAC 3.300.304, 01-01-2003]

### **11.3.300.305 [CLAIMS AND REGISTRATIONS FOR INDIVIDUALS IN**

**ISOLATED AREAS:** Notwithstanding Sections 301 through 304 of 11.3.300 NMAC, in order to claim benefits or waiting period credit, any individual located in an isolated area served only by a local adviser or itinerant service representative shall report in person to such local adviser or itinerant service representative as soon as such adviser or representative is available in the claimant's area. The claim may be back dated to the first week of unemployment as defined in 11.3.300.313 NMAC. Thereafter, in order to establish eligibility for benefits or for waiting period credit, the claimant shall continue to report to such local adviser or itinerant service representative as requested.]

[RESERVED]

[5-15-97; 11.3.300.305 NMAC – Rn, 11 NMAC 3.300.305, Repealed 01-01-2003]

**11.3.300.306 CLAIM REGISTRATION FORM:** [Unless otherwise prescribed, claims for regular benefits shall be made, Form ES-400, giving all information required thereby. Claimants shall also separately register for work with the job service, but no claimant shall be denied benefits for inadvertent failure to register for work.] Unless otherwise prescribed, claims for regular benefits shall be made on the claims application form, Form ES-400, giving all information required thereby. A claimant shall also separately register for work with the department within fourteen business days. If the claimant fails to register, his benefits may be temporarily withheld until he registers, and, after a further review, may be denied unless good cause for the failure to register is shown.

[7-15-98; 11.3.300.306 NMAC – Rn & A, 11 NMAC 3.300.306, 01-01-2003]

**11.3.300.307 WAITING PERIOD CREDIT AND CONTINUED CLAIM FORM:** Unless otherwise prescribed, waiting-period credit or continued claims for benefits for unemployment shall be made ~~[on]~~ through IVR, Internet, on paper or as otherwise provided by the department from time to time, providing the information is in substantially the same form as that on the certification form, Form ES-408, setting forth that:

A. The claimant continues his claim for benefits;

B. He is unemployed or partially unemployed;

C. He registers for work;

D. Since he last registered for work he has performed no services and earned no wages, except as indicated;

E. He is able to work, available for work and actively seeking work; and

F. Such other information as is required ~~[thereby]~~ by the department from time to time.

[7-15-98; 11.3.300.307 NMAC – Rn & A, 11 NMAC 3.300.307, 01-01-2003]

#### **11.3.300.308 SEPARATION REPORTS AND EMPLOYER NOTICE OF CLAIM:**

A. NOTICE TO EMPLOYER OF FILING OF CLAIM: ~~[Whenever an individual files an initial claim for benefits or an additional claim, the Department shall immediately furnish to his last known employer, at the address provided by the claimant, a dated notice of the filing of the claim. If the individual voluntarily left his work or was discharged by the employer, the employer must provide the Department with full and complete information concerning that separation. The employer must respond in writing, in person, or by telephone directly to State Claims Office within ten (10) calendar days from the date of mailing of the notice of claim. Form ES-442. If the employer responds by telephone within the ten (10) calendar day period, he shall immediately submit a written statement to State Office Claims setting forth the details of the claimant's separation from employment.] Whenever an individual files an initial claim for benefits or an additional claim, the department shall immediately transmit to his last known employer, at the address of the employer as registered with the department, if so registered, and, if not registered, to the address provided by the claimant, a dated notice of the filing of the claim. The employer shall provide the department with full and complete information in response to the inquiry. The employer shall transmit a response directly to state office claims within ten calendar days from the date of the transmittal of the notice of claim.~~

B. REQUEST FOR ADDITIONAL INFORMATION: ~~[Prior to issuance of a determination pursuant to Subsection C of 11.3.300.308 NMAC, the Department may request additional information from the employer, or the claimant by telephone, or in the form of a written report relative to the separation of the claimant from employment. Information obtained by telephone shall be fully documented by the Department's representative, and may be used as evidence in any determination or decision of such claim.] Prior to issuance of a determination pursuant to Subsection C of 11.3.300.308 NMAC, the department may request additional information from the employer, the claimant or witnesses by telephone, fax, electronic mail or other written report relative to the separation of the claimant from employment.~~

Information obtained by telephone shall be fully documented by the department's representative, and may be used as evidence in any determination or decision of such claim.

C. INITIAL DETERMINATION: When a ~~[separation]~~ non-monetary issue is not raised in an application for unemployment compensation benefits and ~~[an]~~ the employer's response is not received by the ~~[State Claims Office]~~ state office claims within ten calendar days after the ~~[mailing]~~ transmission of the notice of claim, a determination shall be ~~[deemed to be]~~ made based upon the information on the application. ~~[and]~~ Payment of benefits may be commenced without further notice.

(1) The ten-day period shall begin to run on the day after the notice of claim was ~~[mailed]~~ transmitted as indicated on the application ~~[by the ("claims taker")]~~. If the tenth calendar day shall fall on the weekend or on a holiday, the reply shall be timely if received at the ~~[State Claims Office]~~ state office claims on the following ~~[work]~~ business day.

(2) ~~[Failure on the part of the employer to notify the Department within the ten day period of its challenge to the claim shall be deemed an irrevocable waiver of the employer's rights to be heard before a determination is made, and benefits charged to the employer's account as a result of the determination shall remain so charged.] The employer's failure to transmit a substantive response to the notice of claim within the ten-day period shall be an irrevocable waiver of the employer's right to be heard before a determination is made, and benefits charged to the employer's account as a result of the determination shall remain charged, unless reversed on appeal upon a showing of good cause. If the claimant is subsequently disqualified from the receipt of benefits, the employer will remain liable for any benefit charges incurred to date of disqualification in the absence of a showing of good cause by the employer.~~

(3) ~~[When an employer contests the notice of claim after the ten day period has passed, the Department shall immediately notify the employer of the determination and the reason for it, and shall advise the employer of his right to appeal that determination pursuant to these regulations. A copy of that determination shall be issued to the claimant.] After the ten-day period has passed, the department shall immediately transmit to the parties the determination and the reason for it, and shall advise the parties of the right to appeal that determination pursuant to these rules.~~

(4) ~~[When a separation issue is timely raised, a determination shall issue~~

~~only after a deputy has adjudicated the claim.]~~ When a separation issue is timely raised, a determination shall be transmitted only after a department representative has adjudicated the claim.

**D. REDETERMINATION:** A redetermination of a non-monetary determination shall be made only by the department employee who made the initial determination. A redetermination may be issued only if all the following criteria are met:

(1) The adjudicator perceives the need for reconsideration either as a result of a protest by an interested party or on the adjudicator's own initiative due to new or additional information received. Examples of the type of errors which may prompt a redetermination are misapplication or misinterpretation of the law, mathematical miscalculation, an additional fact not available to the adjudicator at the time of the determination excluding those facts the employer and claimant had the opportunity to provide prior to the initial determination, a mailing of a notice to the wrong employer or address, an ES-442 discrepancy, a key punch or coding error. A "late protest" mean an untimely protest that is accepted based on good cause for the untimely presentation of the protest.

(2) All evidence and records must be re-examined.

(3) A written redetermination notice is issued to the claimant and any other interested party, and is documented in the department records.

(4) A redetermination can be issued no later than the twentieth calendar day from the original determination date or twenty days from the date of the first payment deriving from the original determination, whichever event occurs latest. The date of the first payment is deemed the original determination date when a late protest is received within twenty days of the first payment.

(5) All determinations must be approved by the assistant unemployment bureau chief for claims except in instances where the determination where payment has been made. In the event that the first payment date is deemed the original determination date, the adjudicator may issue a redetermination without the prior approval of the assistant unemployment bureau chief for claims, provided that the ES-442 was received with the statutory time limits and within less than twenty calendar days from the date of the first payment.

(6) If the claimant has begun collecting benefits and, as a result of redetermination, will be denied benefits, the claimant shall be advised of this fact prior to issuance of the redetermination.

**E. STOPPING PAYMENT DUE TO ADMINISTRATIVE ERROR:** Once an initial determination is made pursuant to this section and payment of benefits is begun, payments shall not be stopped without prior notice and an opportunity to be heard pursuant to Subsection A of 11.3.300.308 NMAC. When payments are made as a result of administrative error by the department and are clearly not authorized by law, rule or regulation or any determination made pursuant to Subsection C of 11.3.300.308 NMAC, ~~[of this Regulation]~~ such payment shall not be deemed to have been made pursuant to a determination of eligibility, and the department may stop such payments without prior notice and without an opportunity to be heard. For purpose of this section, "administrative error" refers solely to payments made as a result of handling or processing errors, mistakes or omissions by the department which are unrelated to or are inconsistent with specific eligibility determinations made in accordance with Subsection C of 11.3.300.308 NMAC of this ~~[Regulation]~~ rule.

**F. EMPLOYER'S NOTICE OF A LABOR DISPUTE:** When there is a strike, lock-out or other labor dispute, the employer shall file with the department after the commencement of such activity, and upon the demand of the department, a report of the existence and nature of the labor dispute, and the number of persons affected; and shall promptly provide the names, social security numbers and work classifications of all individuals unemployed due to the labor dispute, and whether and in what manner each ~~[of said individuals]~~ individual is participating in the dispute or has a direct interest in the outcome.

**G. TERMINATION OF CONTINUED CLAIMS:** Payment of continued benefits to any person who has been determined eligible to receive benefits on an initial claim in accordance with 11.3.300.308 NMAC shall not thereafter be terminated without notice and an opportunity for a fact-finding interview.

~~[(b) A claimant in a continued claim series shall be given notice, Form ES-413, if the Department receives any information which might affect the claimant's continued eligibility for benefits. Such notice shall include a concise statement of the relevant information and the reason the information may adversely affect the claimant's continued eligibility, including the specific section of the law or regulation involved in the eligibility issue, and shall inform the claimant of the following rights:~~

~~(i) That the claimant has the right to a fact-finding interview at~~

~~his area office with an ESD Field Representative;~~

~~(ii) That the claimant has a right to be represented at such fact-finding interview by an attorney or other personal representative of his choice;~~

~~(iii) That the claimant may bring witnesses, documents, affidavits or other evidence the claimant considers relevant to his continued eligibility; and that the claimant may request production of relevant documents in the Department's possession through the appropriate area office;~~

~~(iv) That the claimant has seven work days from the date the notice was mailed in which to request a fact-finding interview or to otherwise respond. If the claimant fails to respond within this period, a determination on the claimant's eligibility to receive continued benefits will be made on the information in the Department's possession.~~

~~F. The Department shall make all pertinent information or investigative reports in its possession available to the claimant and the claimant's representative at the time of the fact-finding interview or as otherwise requested.~~

~~G. The Department shall hold an interview within seven days after the claimant has responded in accordance with subparagraph i of 11.3.300.308.5.1.b of this Regulation. An extension of five days shall be granted only upon a showing of good cause by the claimant or the claimant's representative.~~

~~H. The Department shall notify interested persons, including employers, who have first hand information concerning the claimant's continued eligibility of the time and place of such fact-finding interview, and shall record in writing or by other means any statement of such party bearing on the claimant's continued eligibility.~~

~~I. The Department shall conduct the fact-finding interview in the area office at the time scheduled by the Department. The Department shall:~~

~~(1) Provide the claimant and his representative with all the information in the possession of the Department which is related to the claimant's continued eligibility, and make such evidence part of the record of the case.~~

~~(2) Take the claimant's statement and the statement of any witnesses and other interested persons as defined in Paragraph 308.8.~~

~~(3) Accept all documents, affidavits, and written statements or evidence submitted by the claimant, witnesses or other parties.~~

~~(4) Promptly transmit all information obtained at the fact-finding interview to~~



the State Claims Office Section for an eligibility determination by a Claims Examiner regarding continued eligibility.

J. The Claims Examiner will promptly issue a determination with respect to the claimant's continued eligibility for benefits. All determinations will relate to issues noticed on Form ES 413. If an interview is held, the determination will be based on evidence adduced at the interview. If the Department receives notice from the claimant that no interview is requested or if the time for requesting an interview expires, the determination will be based on evidence in the possession of the Department at the time of notice.

K. The claimant or an employer who has participated in the fact finding interview or determination and whose account is subject to charges for benefits paid to the claimant shall be entitled to appeal the determination of the Claims Examiner in accordance with NMSA 1978 Section 51-1-8 and related regulations of the Department governing administrative appeals. Any appeal taken in accordance with this Sub-section shall not stay the effect of the Claims Examiner's determination.

L. The effective date of the termination of continued weekly benefit payments shall be as stated in the determination and liability for an overpayment of benefits, if any, shall be as provided in NMSA 1978 Section 51-1-38 (as amended).

M. If the claimant cannot appear at an area office of the Department or for any reason, does not want to have a fact finding interview, the claimant may respond by mail to the Department's State Office in Albuquerque. The claimant should answer all questions attached to the notice of Unemployment Benefit Eligibility Inquiry and may submit with such answers any documents, sworn statements or other evidence supporting his or her eligibility. The State Office Claims Examiner may obtain additional information or explanation on the issues noticed by means of teleconferencing with the claimant and if requested, the claimant's representative. The claimant's mailed response must be received at the State Office in Albuquerque on or before the seventh work day after the date of mailing shown on the Notice. If the claimant fails to respond timely, a determination on the claimant's eligibility to receive continued benefits will be made on the information in the possession of the Department relating to the issues on Form ES 413.

N. Notwithstanding any other provision of this Regulation, a weekly benefit payment can be denied to a claimant without an opportunity for a fact finding

interview if the Department determines that:

(1) The claimant is not monetarily eligible for a weekly benefit amount or is not eligible for the same amount of payment in accordance with NMSA 1978 Section 51-1-4 V (as amended);

(2) The claimant is not eligible for benefits in accordance with the provisions of Paragraphs (1), (2), (4), and (5) of Subsection A, and Subsection B of NMSA 1978 Section 51-1-5 (as amended);

(3) The claimant has failed to affirmatively establish to the satisfaction of the Secretary that he or she meets the eligibility requirements for extended benefits pursuant to NMSA 1978 Section 51-1-48.1(A);

(4) The claimant submits a Form ES 408, or other Weekly Certification of Eligibility for Benefits, which expressly states that the claimant was not able to work, available to work, or was not making a search for work and also shows no search for work under employer contacts section of the certification; or

(5) Payments made solely as a result of administrative error as defined in Section 308.4.1 Paragraph

#### **O. NOTICE OF UNEMPLOYMENT BENEFIT ELIGIBILITY INQUIRY**

**READ THIS FORM CAREFULLY**

Date Mailed \_\_\_\_\_

SSA No.: \_\_\_\_\_

BYE: \_\_\_\_\_

Area Office: \_\_\_\_\_

The Department has received information which may make you ineligible for benefits: **YOU HAVE A RIGHT TO A FACT FINDING INTERVIEW BEFORE WE CHANGE OR STOP YOUR BENEFITS. BRING THIS NOTICE TO OR CALL YOUR AREA OFFICE WITHIN SEVEN (7) WORK DAYS FROM THE DATE THIS NOTICE WAS MAILED.** You may be represented by an attorney or other person of your choice at the Fact Finding Interview. You may bring witnesses, documents, sworn statements or other information supporting your eligibility. You may review the information regarding your claim at your area office. If you prefer to respond by mail please answer all of the attached questions in detail and send them to the address at the top of this Notice. You may attach any documents, sworn statements, or other information. **Return this notice with your response and include your Social Security number.**

**IF YOU DO NOT RESPOND, A DECISION WILL BE MADE ON OUR PRESENT INFORMATION AND YOU MAY**

**HAVE TO REPAY BENEFITS.**

~~SI NO COMPRENDE INGLES, PONGASE EN CONTACTO CON SU OFICINA DE EMPLEO PARA QUE LO ASISTA.]~~

[7-15-98; 11.3.300.308 NMAC - Rn & A, 11 NMAC 3.300.308, 01-01-2003]

#### **11.3.300.309 BENEFITS FOR PARTIAL UNEMPLOYMENT:**

A. **PARTIALLY UNEMPLOYED INDIVIDUAL:** An individual is partially unemployed in any week in which his usual full-time employment is reduced to less than the normal full-time hours customarily scheduled and prevailing in the establishment in which he is employed, and his wages fall below his weekly benefit amount, due to the employer having less than full-time work for him. For a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his pay period week, a calendar week or some other period designated by the [Commission] department

B. **NOTICE OF REDUCED EMPLOYMENT:** On the next payday after any week for which an employee's work has been reduced by the employer to less than four full days or the [equivalent] standard 32 hours hours, his employer shall notify him that he may file a claim [at the nearest employment office] by contacting the department for a week of partial unemployment. This notice, and similar notices required for weeks of reduced employment thereafter, [may be in such written form as the employer may select unless the Commission should some time disapprove the same as being insufficient] shall be posted prominently in the place of employment in a form as directed by the department. The first notice and each subsequent notice should show the employee's [total] gross wages for the week in order to establish what, if any, benefits may be due him. On notice from the [Commission] department, the employer shall furnish, as may be directed, such other information as may be necessary in any case to insure the proper payment of benefits. If the employer fails to notify the employee of his rights under the law regarding reduced employment, the employee may file for benefits at any time. Once the employee has received notice from the employer, he be may denied benefits if he has earned five times the weekly benefit amount after notification.

[C. **PERIOD FOR REGISTRATION AND FILING OF CLAIMS FOR PARTIAL UNEMPLOYMENT:** A claim filed in person at any employment office of the State of New Mexico or with

~~an authorized representative of the Commission on Form ES 400, "Initial Claim for Benefits", shall constitute the claimant's notice of unemployment registration for work and claim for benefits or waiting period credits, for the week of partial unemployment covered by the claim. Such claim shall not be valid if filed more than twenty-eight days after the individual has been furnished by his employer with a notice of reduced employment for such week as provided in Section 309.2.]~~

~~D. PERIOD FOR REGISTRATION AND FILING OF CLAIMS EXTENDED FOR GOOD CAUSE: Notwithstanding the provisions Paragraph 309.3 if the Commission finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time prescribed Paragraph 309.3 was due to failure on the part of the employer to comply with any of the provisions of Paragraph 309.2 or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the Commission to discharge its responsibilities promptly in connection with such partial unemployment, the Commission shall extend the period during which such claim may be filed to a date which shall not be less than one week after the individual has received adequate notice of his potential rights to benefits and his earnings for the period of such partial unemployment. Such period shall not be extended to a date which is more than thirteen weeks subsequent to the end of the benefit year during which the week of unemployment occurred.]~~

~~[E.] C. EMPLOYER RECORDS IN CONNECTION WITH PARTIAL UNEMPLOYMENT: In addition to the requirements set forth in 11.3.400.401 NMAC, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine for any employee who may be eligible for partial benefits;~~

~~(1) wages earned by weeks as described in Subsection A of 11.3.300.309 NMAC~~

~~(2) whether any week was in fact a week of less than full-time work; and~~

~~(3) time lost, if any, by each such worker due to his unavailability for work. [7-15-98; 11.3.300.309 NMAC - Rn & A, 11 NMAC 3.300.309, 01-01-2003]~~

**11.3.300.310 INTERSTATE CLAIMS:** This ~~[regulation shall govern the division] section governs the department~~ in its administrative cooperation with other states adopting a similar rule or regulation for the payment of benefits to interstate claimants, any provision of any other rule to the contrary notwithstanding.

A. DEFINITIONS: As used in 11.3.300.310 NMAC, unless the context clearly requires otherwise:

(1) "Agent state" means any state in which an individual files a claim for benefits from another state or states.

(2) "Benefits" means the compensation payable to an individual with respect to his unemployment, under the unemployment insurance law of any state.

(3) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies as approved by the United States Secretary of Labor under which benefits shall be payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(4) "Interstate claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the division finds that this exclusion would create undue hardship on such claimants in specified areas

(5) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(6) "State" ~~[includes]~~ means the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(7) "Week of unemployment" ~~[includes]~~ means any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed.

B. REGISTRATION FOR WORK:

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, rules, policies and procedures of the agent state. ~~[Such]~~ The registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall ~~[duty]~~ report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

C. BENEFIT RIGHTS OF INTERSTATE CLAIMANTS:

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims

against any other state in which there are available benefit credits.

(2) For purposes of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

D. CONTINUED CLAIMS FOR BENEFITS:

(1) ~~[Claims for benefits or waiting period credit shall be filed by interstate claimants on uniform interstate claim forms in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.] Any claim for benefits or for waiting period credit shall be filed by an interstate claimant on the IVR or Internet in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. The claim shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.]~~

(2) ~~[Claims shall be filed in accordance with the agent State's regulations for intrastate claims in local employment offices or at an itinerant service point or by mail] The claim shall be filed in accordance with the agent state's rules or regulations for intrastate claims.~~

(a) With respect to claims for weeks of unemployment in which an individual ~~[as]~~ is not working for his regular employer, the liable state shall, under circumstances which it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than ~~[one reporting period]~~ two weeks late, an initial interstate claim must be used to begin a claim series, and no continued claim for a past period shall be accepted.

(b) With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable state shall accept any claim which is filed within the time limit applicable to such claims under the law of the agent state.

E. DETERMINATIONS OF CLAIMS:

(1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state such facts relating to the claimant's availability for work and eligibil-



ity for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

#### F. APPELLATE PROCEDURES:

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state other than New Mexico, upon the filing of an appeal in connection with a disputed benefit claim, whether or not the appeal is timely shall be determined by the liable state by reference to that state's law, regulations, ~~or~~ rules, policies and procedures. In interstate appeals in which New Mexico is the liable state, whether or not the appeal is timely shall be determined by reference to relevant provisions of the New Mexico Unemployment Compensation Act and current ~~[division regulations]~~ department rules applicable to intrastate appeals.

G. EXTENSION OF INTERSTATE BENEFIT PAYMENTS TO INCLUDE CLAIMS TAKEN IN AND FOR CANADA: This rule shall apply in all its provisions to claims taken in and for Canada.

[7-15-98; 11.3.300.310 NMAC – Rn & A, 11 NMAC 3.300.310, 01-01-2003]

**11.3.300.311 COMBINED-WAGE CLAIMS:** This ~~[regulation shall govern the division]~~ section governs the department in its administrative cooperation with other states subscribing to the Interstate Arrangement Plan for Combining Employment and Wages as approved by the United States Secretary of Labor. All combined-wage claims shall be subject to the provisions of the Interstate Arrangement for Combining Employment and Wages, the Interstate Benefit Payment Plan, the regulations and guidelines prescribed by the United States Secretary of Labor, and the applicable provisions of the Unemployment Compensation Law and division regulations which apply to claims for and payment of regular unemployment compensation.

A. DEFINITIONS: As used in 11.3.300.311 NMAC,

(1) "Agent State" means any state in which an individual files a claim for benefits from another state or states.

(2) "Combined-Wage Claim" means a claim filed under this arrangement using wage credits from more than one

state.

(3) "Combined-Wage Claimant" means a claimant who uses wages from more than one state to establish monetary entitlement to benefits and who has filed a claim under this arrangement.

(4) "Paying State" means the state against which the claimant is filing that actually issues the benefit ~~[check(s)]~~ check.

(5) "State" ~~[includes]~~ means the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(6) "Transferring State" means a state in which the combined-wage claimant had covered employment and wages within the base period of the paying state which can be transferred to establish a claim. Wages from more than one transferring state can be used to establish a combined-wage claim.

(7) "Employment and Wages":

(a) ~~[employment refers to]~~ "Employment" means all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise.

(b) "Wages" ~~[refers to]~~ means all remuneration for such employment except as otherwise defined more fully in the statutes and clarified in these rules.

(8) "Base Period and Benefit Year" means the base period and benefit year applicable under the unemployment compensation law of the paying state.

#### B. FILING OF CLAIMS:

(1) The general rule: An unemployed individual who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which he could not otherwise qualify or will increase the benefits for which he qualifies in a single state. ~~[Such individual]~~ The claimant must file a combined-wage claim if he is eligible to do so rather than claim extended benefits. If he wishes, ~~[he]~~ the claimant has the right to reject a combined-wage and file against a state in which he is separately eligible or to cancel the combined-wage claim and file no claim.

(2) Restrictions on combined-wage claims:

(a) Any unemployed individual who has covered employment in two or more states may file a combined-wage claim unless:

(i) he has established a claim under any other state;

(ii) the benefit year has not ended; and

(iii) there are still unused benefit rights. A claimant will not be considered to have unused benefit rights

on a prior claim if all benefits have been exhausted or benefits have been denied by a seasonal restriction or benefits have been postponed for an indefinite period or for the remainder of the benefit year.

(b) If an individual files a combined-wage claim, all wages and employment in all states in which he worked during the base period of the paying state must be included except employment and wages which are not transferable under the provisions of Subsection C of 11.3.300.311 NMAC of this ~~[regulation]~~ rule.

#### C. RESPONSIBILITIES OF NEW MEXICO WHEN TRANSFERRING WAGES:

(1) Wages earned in New Mexico in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state.

(2) Wages earned in New Mexico will not be transferred if the employment and wages have been

(a) transferred to another paying state and have not been returned unused, or which have been previously used by New Mexico as the basis for a monetary determination which establishes a benefit year, or

(b) cancelled or are otherwise unavailable to the claimant as a result of a monetary determination by New Mexico prior to its receipt of the request for transfer, if such determination has become final or is the subject of a pending appeal. If the appeal is finally decided in favor of the combined-wage claimant, any employment and wages deemed eligible for use as wages in establishing monetary eligibility will be transferred to the paying state.

D. NON-MONETARY ELIGIBILITY DETERMINATION: When a combined-wage claim is filed, the law and eligibility requirements of the paying state apply even if an issue has been previously adjudicated by a transferring state.

E. CONDITIONS FOR WITHDRAWAL OF A COMBINED WAGE CLAIM: A combined-wage claimant may withdraw his or her combined-wage claim any time before the monetary determination of the paying state becomes final, provided that the combined-wage claimant:

(1) repays in full any benefits paid to him ~~[or her]~~, or

(2) authorizes the ~~[state(s)]~~ state against which he ~~[or she]~~ will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

F. RECOVERY OF PRIOR OVERPAYMENTS: If there is an overpayment outstanding in the transferring state, including New Mexico, and such transferring state so requests, the overpay-

ment shall be deducted from any benefits the paying state would otherwise pay to the combined-wage claimant on the combined-wage claim except to the extent prohibited by the law of the paying state. The paying state shall transmit the amount deducted to the transferring state or credit the transferring state's required reimbursement under the arrangement. This paragraph shall apply to overpayments only if the transferring state certifies to the paying state that the determination of overpayment was made within three years before the combined-wage claim was filed and that repayment is legally required and enforceable against the combined-wage claimant under the law of the transferring state.

#### G. NOTIFICATION AND APPEALS:

(1) A combined-wage claimant will receive a monetary determination notice from the paying state once the wage information from all states is received. The claimant has the right to appeal any aspect of his monetary entitlement. The appeal may be against either the paying state or the transferring state depending upon which agency issued the determination which the combined-wage claimant considers adverse to his ~~or her~~ interest. If the transferring state refused to transfer wages because the wage credits were cancelled under a disqualification or because the work was not covered, the combined-wage claimant will be sent an appealable determination by the transferring state.

(2) Except as provided in Subparagraph b of Paragraph 2 of Subsection G of 11.3.300.311 NMAC ~~[of this section]~~, where the claimant files his ~~or her~~ combined-wage claim in the paying state, any protest or appeal shall be in accordance with the law of such state.

(a) Where the combined-wage claimant files his ~~or her~~ combined-wage claim in a state other than the paying state or under the circumstances described in Subparagraph b of Paragraph 2 of Subsection G of 11.3.300.311 NMAC below, any protest or appeal shall be in accordance with the Interstate Benefit Payment Plan.

(b) To the extent that any protest or appeal involves a dispute as to the coverage of the employing unit or services in the transferring state or otherwise involves the amount of wages subject to transfer, the protest or appeal shall be decided by the transferring state in accordance with its law. [7-15-98; 11.3.300.311 NMAC – Rn & A, 11 NMAC 3.300.311, 01-01-2003]

#### 11.3.300.312 [A—REGULATION PERTAINING TO] EXTENDED BENEFIT CLAIMS AND PAYMENT:

##### A. APPLICATION OF

OTHER [REGULATIONS] RULES: The pertinent provisions of the law and ~~[regulations]~~ rules that apply to regular claimants apply also to claimants for extended claims insofar as such ~~[regulations]~~ rules pertaining to regular claimants are not inconsistent with the provisions of this ~~[regulation]~~ rule.

B. FILING CLAIMS: ~~[Unless otherwise prescribed, an "exhaustee" as defined in NMSA 1978 Section 51-1-48(H), may claim extended benefits by reporting in person at a public employment office or claims center, registering for work and filing a claim for extended benefits. If such an individual resides in an area in which the Commission does not maintain a public employment office or claims center, his claim for extended benefits may be filed by mail, if authorized by the Commission. Such claim shall become effective as of the Sunday of the week in which filed, provided that said claim may be back dated to the Sunday of the week immediately following the week which exhausted benefit entitlement if the failure to file is determined to be with good cause.] Unless otherwise prescribed, an "exhaustee" as defined in NMSA 1978 Section 51-1-48(H), may claim extended benefits by contacting a customer service representative, registering for work and filing a claim for extended benefits. The claim shall become effective as of the Sunday of the week in which filed, provided that the claim may be back-dated to the Sunday of the week immediately following the week which exhausted benefit entitlement if the failure to file is determined to be with good cause.]~~

C. CLAIM DETERMINATION AND NOTICE: Upon receipt of a claim for extended benefits the ~~[Commission]~~ department will issue a determination on ~~[rights]~~ the right to extended benefits and ~~[deliver or mail]~~ transmit a notice thereof to the claimant. ~~[Said]~~ The determination may be appealed in the manner prescribed for regular benefit determination appeals.

D. CONTINUED CLAIMS: Any individual, in order to claim weekly-extended benefits, shall ~~[mail the continued claim as directed and when instructed by the Commission representative shall report in person]~~ file the continued claim as directed and when instructed by the customer service representative when instructed to do so.

E. RELIEF FROM CERTAIN ELIGIBILITY REQUIREMENTS: An individual who claims extended benefits will not be required

(1) to be unemployed for a waiting-period of one week, or

(2) to perform services in employment as designated in NMSA 1978

Section 51-1-5(B), before extended benefits are paid.

F. REQUIREMENT FOR ADDITIONAL INITIAL CLAIMS: An individual whose benefit year expires within such an extended benefit period must file an initial claim for regular benefits at the end of his current benefit year and, ~~if a new benefit year is not established, at the beginning of each calendar quarter during [said period, if a new benefit year is not established,]~~ the period to determine if he has sufficient wage credits in covered employment to establish a new regular claim.

[7-15-98; 11.3.300.312 NMAC – Rn & A, 11 NMAC 3.300.312, 01-01-2003]

#### 11.3.300.313 "WEEK" DEFINED:

A. WEEK OF UNEMPLOYMENT. Weeks of unemployment and claims ~~[therefore]~~ therefore shall be on a calendar week basis, except as prescribed in the case of partial unemployment, or as the ~~[Commission]~~ department may direct otherwise in any case where it appears some other "week" may better secure the full payment of benefits when due.

B. CONDITIONS FOR ESTABLISHMENT: The calendar week within which an individual becomes unemployed and in which he earns less than his weekly benefit amount shall be credited as a week of unemployment. ~~[in the following cases.~~

~~(1) for an individual in an area served by a public employment office, if he registers in person at the office within such week;~~

~~(2) for an individual in an area served only by a local adviser or the itinerant service out of a public employment office, if he registers in person with such local adviser or itinerant service, within such week or at the first opportunity thereafter;~~

~~(3) for an individual who fails to register as in either (i) or (ii) above, if the Commission finds that his failure was for good cause and he registers in person at an employment office within fourteen days after such week.]~~

C. "WEEK" IN MORE THAN ONE BENEFIT YEAR: A week of unemployment shall be deemed to be within that benefit year which includes the greater part of such week.

~~[D. WEEK OF PART TOTAL UNEMPLOYMENT: The term "part total unemployment" as used in NMSA 1978 Section 51-1-4(B)(2), is hereby defined to mean unemployment which is total except for the performance of odd jobs or subsidiary work for which, with respect to any week, as defined herein, the individual's earnings are in excess of twenty per-~~

cent of, but less than his weekly benefit amount. Paragraph 313.1 and 313.2 shall apply to weeks of part total unemployment.]

[E] D. WEEK OF DISQUALIFICATION: With respect to acts and periods of disqualification under NMSA 1978 Section 51-1-7, which occur or commence before the commencement of any week of unemployment as defined in this Section and Subsection A of 11.3.300.309 NMAC, "week" means the calendar week in which the disqualifying act or event occurs. [7-15-98; 11.3.300.313 NMAC – Rn & A, 11 NMAC 3.300.313, 01-01-2003]

### 11.3.300.314 FRAUDULENT CLAIMS:

A. NMSA 1978 Section 51-1-38(D) of the Unemployment Compensation Law provides: "Notwithstanding any other provision of the Unemployment Compensation Law, including the provisions of NMSA 1978 Section 51-1-8(I), if any individual claiming benefits or waiting period credits shall, in connection with such claim, make any false statement or representation, in writing or otherwise, knowing it to be false or shall knowingly fail to disclose any material fact in order to obtain or increase the amount of a benefit payment, such claim shall not constitute a valid claim for benefits in any amount or for waiting period credits but shall be void and of no effect for all purposes. In addition to any other penalties provided herein, the entire amount of the benefits obtained by means of such claim shall be subject to recoupment by deduction from the claimant's future benefits or it may be recovered as provided for the collection of past due contributions in accordance with NMSA 1978 Section 51-1-36(B)." The terms used in NMSA 1978 Section 51-1-38(D) mean:

(1) "False" [~~A statement or representation is false if it is~~] means a statement contrary to fact.

(2) "Knowingly" [~~A statement or representation is made knowingly if the person making it is aware that it is untrue or that person has no reasonable basis for believing that it is true;~~] means the person making the statement, at the time it was made, knew the statement to be false or should have known it to be false because he had no reasonable basis for believing it to be true.

(3) [~~A claimant knowingly fails to disclose a fact if he or she~~] "Knowingly fails to disclose any material fact" means the claimant deliberately withholds information which he [or she] knows should be disclosed to the [division] department.

(4) "Material fact" [~~A fact is~~

~~material if in some way it~~] means the fact affects the eventual outcome of a transaction. A fact which, if known, would result in a determination adverse to the claimant is a material fact. A fact is not material if the failure to disclose it or the intentional misstatement of it would not cause injury. A fact which, if known, would not cause a denial or reduction of benefits or disqualification from receipt of benefits is not a material fact.

(5) "With intent to obtain benefits" [~~This statement refers to the claimant's purpose in knowingly making a false statement or representation or in knowingly failing to disclose a material fact.~~] means the claimant intended the statement to assist the claimant to obtain benefits. In the absence of facts to indicate otherwise, when concealment of a material fact by willful misstatement or nondisclosure occurs in connection with a claim for benefits, it is assumed that the claimant's intent was to obtain or increase the amount of a benefit payment. When facts are established which indicate a different intent, the conclusions as to the claimant's intent shall be based on consideration of all the facts and not merely an assumption.

B. A claimant who inadvertently makes a mistake or omission or who does not understand his [~~or her~~] responsibility or the questions asked of him [~~or her~~], and, on the basis of information previously given him [~~or her~~] by the [~~division~~] department, cannot reasonably be expected to understand his [~~or her~~] responsibility shall not be subject to the provisions of NMSA 1978 Section 51-1-38(D).

C. The [~~division~~] department shall impose an administrative penalty pursuant to NMSA 1978 Section 51-1-38(A) for each week that a claimant knowingly makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase the amount of a benefit payment. Administrative penalties shall be imposed as follows:

(1) For each week of unreported or underreported earnings, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of fifty-two weeks;

(2) For each false statement on separation, eligibility, refusal of work and other issues, the claimant shall forfeit all benefit rights for a period of four weeks, up to a maximum of fifty-two weeks; and

(3) A claimant shall forfeit all benefit rights for fifty-two weeks from the date of the determination or the date he is next determined entitled to benefits, whichever comes latest in any case where he [~~or she~~] fraudulently obtained or

increased benefits in two or more separate [~~benefit years~~] offenses.

D. [~~The division shall demand immediate repayment of any overpayment established pursuant to NMSA 1978 Section 51-1-38(D). A warrant of levy and lien shall be filed in all cases where the overpayment is not repaid immediately unless the claimant executes a repayment agreement within thirty (30) days of the date of the initial overpayment determination. Recovery of the overpayment may also include the filing of a civil action.~~] The department shall demand immediate repayment of any overpayment established pursuant to NMSA 1978 Section 51-1-38(D). A warrant of levy and lien shall be filed in all cases where the overpayment is not repaid immediately. Recovery of the overpayment may be by any means permitted by law. Recovery of fraudulent overpayments may include court awarded costs. The court costs awarded by the court shall be added to the overpayment and shall be collected in the same manner as the underlying overpayment.

E. Restitution of an amount overpaid to a claimant due to fraudulent misrepresentation or failure to disclose a material fact shall not preclude the [~~division~~] department from instituting criminal proceedings against such claimant. [7-15-98; 11.3.300.314 NMAC – Rn & A, 11 NMAC 3.300.314, 01-01-2003]

### 11.3.300.315 RETIREMENT INCOME:

A. Each eligible individual receiving a periodic retirement income financed in whole or in part by a base period employer shall have his weekly benefit amount reduced by the prorated amount of the base period employer's contribution to the periodic pension or retirement payment. The maximum benefit amount payable shall also be reduced to an amount not more than twenty-six times the reduced weekly benefit amount. For purposes of this section, periodic retirement income is not deemed "received", if, under the time period allowed by the Internal Revenue Code, 26 U.S.C. Section 3405 and related provisions, that amount is placed in a non-taxable qualifying retirement account.

B. An individual's monthly pension or retirement payment shall be multiplied by 12, then divided by 52 to determine the amount of pension or retirement income attributed to a week.

C. A lump-sum pension or retirement payment shall be considered a periodic payment and the amount divided by 52 and allocated on a weekly basis beginning with the last week worked prior to retirement. [(Rev. 9/94)]



[7-15-98; 11.3.300.315 NMAC – Rn & A, 11 NMAC 3.300.315, 01-01-2003]

**11.3.300.316 [AVAILABILITY OF] DETERMINATION OF ELIGIBILITY FULL-TIME STUDENTS:**

A. The availability of full-time students, except for students in approved training in accordance with NMSA 1978 Section 51-1-5(E) and 11.3.100.103 NMAC, shall be determined in accordance with the provisions of NMSA 1978 Section 51-1-5(H) and the provisions of this [regulation] section.

B. ~~[General Rule]~~ The General Requirement: Any claimant enrolled in an educational or training institution or program in a course of study providing instruction of twelve or more hours per week, or the equivalent thereof, is denied from receiving benefits or waiting-period credit. The period of denial shall begin with the first week of instruction and shall include between terms that will resume in four weeks or less unless the claimant provides a written statement from the education or training institution or program that he has withdrawn from school or that he has not registered for next school term.

C. Full-Time Students To Whom Denial Does Not Apply: Time spent attending classes and doing homework are restrictions on availability for full-time, permanent work which must be overcome to establish eligibility for benefits. Any claimant enrolled in an educational or training institution or program on a full-time basis who can demonstrate by substantial and compelling evidence that he is unequivocally attached to the labor force and available for full-time, permanent work for which he is presently qualified without regard to the hours spent in attending classes or doing homework will not be subject to denial if all of the following requirements are met:

(1) While working full-time and attending school, he became unemployed for reasons not attributable to the schooling and the hours of school attendance have not changed substantially since becoming unemployed, or he began attending school after becoming unemployed and no rearrangement of his school hours would be required to accommodate his normal and customary working hours;

(2) For school terms commencing after the filing of the unemployment claim, the claimant ~~[has submitted]~~ is required to submit to the department a student questionnaire, a schedule of classes and, if required by the department, an authorization for release of school records prior to the commencement of each school term. For

school terms commencing prior to the filing of the unemployment claim, a student questionnaire, a schedule of classes and an authorization for the release of school records shall be submitted ~~[at the Eligibility Benefit Rights Review Interview or at the State Office]~~ to the state office claims no later than ten calendar days after the date the claim is filed. The information on the student questionnaire and schedule of classes may be verified by the department prior to issuance of a determination that the claimant is available for full-time, permanent work for the school term covered on the student questionnaire notwithstanding his status as a full-time student.

D. A determination of eligibility made in accordance with Subsection C of 11.3.300.316 NMAC of this [regulation] rule shall apply only to the semester or period covered on the student questionnaire.

E. ~~[A claimant who receives a determination pursuant to Subsection C of 11.3.300.316 NMAC of this regulation shall promptly notify the department in writing, if he adds or changes any classes during the school term. If the claimant adds or changes any classes during the school term, his eligibility shall be subject to redetermination pursuant to Subsection C of 11.3.300.316 NMAC of this regulation and Subsection A of 11.3.300.308 NMAC.]~~ A claimant who receives a determination pursuant to Subsection C of 11.3.300.316 NMAC of this rule shall promptly transmit to the department any changes to class schedule during the school term. If the claimant adds or changes any classes his eligibility shall be subject to redetermination pursuant to Subsection C of 11.3.300.316 NMAC of this rule and Subsection A of 11.3.300.308 NMAC.

F. Definitions: As used in NMSA 1978 Section 51-1-5(H) and this [regulation] rule:

(1) "Full-time student" means any individual enrolled in twelve or more hours of instruction per week or the equivalent thereof;

(2) "Educational or training institution or program" means any primary school, secondary school or institution of higher education, public or private, which offers instruction, either for a fee or without charge, and which requires attendance at classroom instruction to receive the instruction, and

(3) "Instruction" means all teaching or opportunity for learning whether of a vocational or academic nature.

[7-15-98; 11.3.300.316 NMAC – Rn & A, 11 NMAC 3.300.316, 01-01-2003]

**11.3.300.317 WAGES IN LIEU OF NOTICE, BACK PAY FOR LOSS OF EMPLOYMENT, OR VACATION PAY AND BENEFIT RIGHTS:**

Except for payments through a court for time spent in jury service, all remuneration for services actually performed in any week for which benefits are claimed [except for payments through a court for time spent in jury service,] including wages in lieu of notice, back pay for loss of employment and vacation pay and wages as defined in NMSA 1978 Section 51-1-42(T) for any period for which the individual has a definite return-to-work date are deductible in accordance with NMSA 1978 Section 51-1-4(B)(2) from any benefits otherwise payable to a claimant for the week or weeks covered by such payments; a claimant who receives such payments cannot establish a waiting period credit or receive benefits for the week or weeks covered by such payments, if such payments equal or exceed the individual's weekly benefit amount. When a claimant leaves work voluntarily without good cause connected with work or is discharged for misconduct connected with work or fails without good cause to apply for or accept an offer of suitable work and receives remuneration for services actually performed in any week for which benefits are claimed, wages in lieu of notice, back pay for loss of employment or vacation pay for any period for which the individual has a definite return-to-work date covering a period of time subsequent to the week in which the separation from employment occurs or the offer of suitable work was made, such payments cannot be used to meet the requirement of remuneration in employment equal to or exceeding five times the weekly benefit amount of the claim to restore eligibility following a disqualification from benefits under the provisions of NMSA 1978 Sections 51-1-7(A), 51-1-7(B) or 51-1-7(C). [7-15-98; 11.3.300.317 NMAC – Rn & A, 11 NMAC 3.300.317, 01-01-2003]

**11.3.300.318 BENEFITS DUE DECEASED PERSONS:**

A. ~~[Benefits due and payable to a deceased claimant shall be paid to the executor, administrator or next of kin of the deceased if, prior to his or her death, the decedent had executed a weekly certification card (Form 408) for the benefits claimed. If there is an executor, or administrator payments must be made to said executor or administrator. If it is shown to the satisfaction of the secretary that there is no executor and no administrator has been appointed, and in all probability no administrator will be appointed, payment may be made to the next of kin with due regard being given to the following order of pref-~~

~~ereence-]~~ If prior to his death, a claimant had filed a weekly certification, for benefits which were unpaid at the time of his death, the benefits shall be paid to the deceased claimant's court-appointed executor, administrator or personal representative. If the deceased claimant's next of kin demonstrates, to the secretary's satisfaction, that the court appointment of a fiduciary is impractical or legally unnecessary, then the benefits shall be paid to the next of kin. The order of priority for such payment shall be:

(1) ~~[surviving spouse]~~ one-half to the surviving spouse, if residing with the deceased claimant at the time of death, and one-half to the natural parent or physical custodian of any minor children or any dependent disabled adult children of the deceased claimant (if more than one, per capita by children and not per stirpes);

(2) ~~[children]~~ if no minor children and no dependent disabled adult children of the deceased claimant, all to the surviving spouse; if no surviving spouse, all equally

(3) ~~[parents]~~ to the surviving adult children; if no surviving adult children, all equally

(4) ~~[brothers and sisters]~~ to the surviving parents; if no surviving parents, all equally

(5) ~~[other relatives]~~ to the surviving brothers and sisters; if no surviving parents, all

(6) to the deceased claimant's heirs at law as provided in the New Mexico Probate Code, NMSA 1978 Sections 45-2-101 through 45-2-114.

B. ~~[The secretary, however, is not bound to follow such order of preference if the same shall appear inequitable.]~~ The secretary is not bound to follow such order of priority if to do so appears inequitable. Whenever there is more than one legal heir in any of the above classes, payment may be made to any one of such group as agent for the others upon submission of proper evidence of authority and identification.

C. Application for payment of benefits must be made in writing and on the prescribed form within six months of the death of the decedent and must be accompanied by a certified copy of the death certificate. The application form shall set forth that the individual died intestate, that no ~~[administrator or executor]~~ executor, administrator or personal representative has been appointed to administer ~~[said]~~ the deceased claimant's estate, and the relationship of the person to the deceased. Any ~~[warrant or warrants]~~ outstanding warrants representing benefits claimed must accompany the application for payment for re-issuance.

D. Unless, within the time prescribed herein a claim is made for benefits due a deceased claimant by one of the parties herein authorized to make such claim, any warrants issued directly to the deceased claimant shall be canceled, and any additional benefit payments due to the deceased claimant for weeks of unemployment prior to his ~~[or her]~~ death shall be canceled, and all sums represented by benefits payable to the deceased claimant prior to his ~~[or her]~~ death shall remain a part of the unemployment compensation fund. [7-15-98; 11.3.300.318 NMAC – Rn & A, 11 NMAC 3.300.318, 01-01-2003]

**11.3.300.319 STANDARDS FOR WAGES ELIGIBLE TO PURGE BENEFIT DISQUALIFICATION; BONA FIDE EMPLOYMENT:** In determining whether a claimant has earned wages to requalify for benefits after imposition of a disqualification under the provisions of NMSA 1978 Section 51-1-7, the following shall apply:

A. Wages required to requalify will include both insured and non-insured wages, but will not include earnings from self-employment or earnings excluded under the provisions of 11.3.300.317.NMAC.

B. The wages must have been earned for work performed subsequent to the effective date of the disqualification.

C. The proof required to establish wages for requalification may consist of check stubs or other payment records, employer statement or W-2 form if the W-2 establishes that the wages were paid after the effective date of the disqualification. When employers' quarterly wage reports available in the division show the contended wage items, the department may accept the ~~[report(s)]~~ report as proof of wages. If necessary for a determination under Subsection B of 11.3.300.319 ~~[above]~~, the period during which the wages were earned shall be established by other proof.

D. Except for wages of which the division has knowledge through employers' quarterly wage reports, the burden of establishing requalifying wages shall rest on the claimant. The ~~[division]~~ department may, as it deems appropriate, assist the claimant in the verification of wages which the claimant states he or she has earned but of which he or she has no proof or insufficient proof, by contacting the ~~[employer(s)]~~ either by telephone or in writing employers.

E. The wages must have been earned in "bona fide" employment. The basic test to determine whether employment is "bona fide" to purge a dis-

qualification is whether the total facts lead ~~[reasonably to a conclusion]~~ a reasonable person to conclude that the individual was in good faith genuinely attached to the labor market as opposed to bogus employment or the performance of some inconsequential service entirely unrelated to any valid job search. An individual is not engaged in bona fide employment when ~~[#]~~ the service is performed for the purpose of purging a disqualification. No fixed rule can govern when employment is "bona fide," but the following factors shall be considered by the ~~[division]~~ department:

(1) Whether a valid, arms-length employer-employee relationship exists; this excludes self-employment and incidental cash payments for services reportedly performed for relatives and friends;

(2) Whether the work is of the type of which the claimant would accept referral on a full-time basis or for repeated temporary durations;

(3) Whether the work bears any relation to the claimant's main occupational skills;

(4) Whether the work is of the type that employers generally offer in the job market;

(5) Whether the work is related to the particular employer's normal activity and customarily offered to the working public by this employer;

(6) Whether the employer is registered for employment purposes with appropriate taxing and licensing authorities;

(7) The nature of the work, concerning hours to be worked, where the work is performed, and rate of pay;

(8) Whether the employer can produce payroll records to substantiate the amount of payment and appropriate tax withholding information;

(9) Whether the wages for the employment were equivalent to the claimant's wages in his or her usual occupation or last preceding employment; and

(10) The manner in which the work was obtained, and the nature and extent of the claimant's search for work.

[7-15-98; 11.3.300.319 NMAC – Rn & A, 11 NMAC 3.300.319, 01-01-2003]

### **11.3.300.320 WORK SEARCH REQUIREMENT:**

~~[WORK SEARCH PLAN: To meet the eligibility requirements for benefits, a claimant must be actively seeking permanent and substantially full time work in accordance with the terms, conditions and hours common in the occupation or business in which the individual is seeking work. NMSA 1978 Section 51-1-5(A)(3). Claimants must comply with all requirements stated on the UI Work Search Plan,~~

ES 444, which he/she must complete when filing an initial, additional, or renewal claim for benefits. Work search requirements are determined, in part, by the claimant's residence; therefore, claimants should report to the local workforce development center to complete a new work search plan anytime they move to a new location in a different area of the state.]

A. WORK SEARCH CONTACTS: [In order to ] To qualify for continued benefits, an intrastate [claimants] claimant must:

(1) Actively seek work by contacting a minimum number of different employers each week [as stated on the work search plan] as directed by department representatives. A claimant may contact the same employer more than one time during a given week, but it will be considered as only one of the minimum number of contacts required. [Claimants] A claimant may list the New Mexico Department of Labor workforce development centers, [and/or] the New Mexico State Personnel Office (SPO), America's Job Bank, Workforce Investment Act (WIA) partners and similar programs as approved from time to time by the department as valid work search contacts for each week of claim certification. [If the claimant is required to make only one or two contacts per week, these contacts may include the WDC and/or SPO contacts;

(2) Seek work by the method prescribed on the work search plan. Methods of contact are in person, by telephone, and by letter. Resumes may be substituted for in person contacts if they are the customary means to secure employment in the claimant's profession. The work search plan should indicate the claimant's approval allowing the claimant's use of resumes as an acceptable method of seeking work;]

(2) Seek work on days within the week for which benefits are being claimed. Claimants must seek work with a minimum number of different employers each week but it is not mandatory that they seek work on different days of the week; or

(3) Be a member of a union with a hiring hall and meet the union requirements for job [referral/placement] referral or placement. A union with a hiring hall is one that actively seeks to place its members in employment.

(4) In order to qualify for continued benefits, interstate, if New Mexico is the liable state, claimants must:

(a) Seek work within the week for which benefits are being claimed; and

(b) Actively seek work by contacting a minimum of two different employers each week, or if a union member, actively seek work by contacting the union as

required by the union in order to be eligible for job referral/placement. Interstate claimants are not required to sign a work search plan.

[(c) A claimant must indicate the name and address and/or telephone number of each employer contacted. The claimant must provide adequate information to allow verification of the contact. Failure to provide an adequate address and/or, telephone number may delay benefits or result in a denial. A certification shall be returned to the claimant for this information, if incomplete. Certifications returned for completion shall be considered timely if received by the state claims office in Albuquerque no later than ten (10) calendar days after the certification is mailed to the claimant for correction or if it is returned with the claimant's next timely regular certification.]

(c) Claimants filing through the interactive telephone system (IVR) or Internet must keep a record of the name, address and [for] telephone number or electronic mail address of each employer contacted. This information must be provided to department representatives upon request. Failure to provide the required information may delay benefits or result in a denial. The claimant must provide adequate information to allow verification of the contact. If a denial is imposed, the effective period may include weeks for which the claimant has already been paid benefits. Such benefits would constitute an overpayment which would be recouped pursuant to NMSA 1978 Section 51-1-38.

(d) [Claimants filing through the interactive telephone system may be told their continued claims cannot be processed further until they talk with a State Office Claims representative about an eligibility issue. If a department representative is not available at the time of the claimant's initial telephone call, the claimant must contact a State Office Claims representative at the telephone number given within 5 work days in order to resolve the potential issue. Failure to contact the State Office Claims representative as instructed may delay benefits or result in a denial. In addition, the claimant will not be permitted to file continued claims by telephone until the issue is resolved.] A claimant filing through the interactive telephone system or Internet may be told his continued claim cannot be processed further until he talks with a department representative. If a department representative is not available at the time of the claimant's initial telephone call, the claimant must contact a department representative at the telephone number given within 5 work days in order to resolve the potential issue. Failure to contact the department representative as instructed may

delay benefits or result in a denial. In addition, the claimant will not be permitted to file continued claims by telephone until the issue is resolved.

C. WORK SEARCH WARNING. A claimant shall be warned in writing by the department regarding an inadequate or invalid work search prior to a denial of benefits, except where no work search is performed, a denial will be issued to the claimant. One warning notice will be allowed for each type of infraction. An infraction which occurs in two different weeks but on the same biweekly certification will be considered as one infraction. If the claimant fails to meet a work search requirement on a subsequent certification following a prior warning, a denial will be issued.]

B. WORK SEARCH WARNING. Prior to the denial of benefits, a documented warning shall be transmitted to the claimant whose work search is deemed inadequate or invalid. One warning shall be allowed for each type of infraction. An infraction, which occurs in two different weeks but on the same certification, will be considered as one infraction. If the claimant fails to meet a work search requirement on a subsequent certification following a prior documented warning, a denial will be issued. An "infraction" is a violation of the applicable rule.

C. WORK SEARCH WAIVER. NMSA 1978 Section 51-1-5(A)(3) requires that an unemployed individual shall be eligible to receive benefits in a particular week only if able and available for work and actively seeking permanent and substantially full-time work in accordance with the terms, conditions, and hours common in that occupation or business. The secretary may waive this requirement for individuals who are on temporary lay-off status from their regular full-time employment [with] upon receipt of an assurance from [their] the employer that the lay-off shall not exceed four weeks or [who have] upon receipt of an express offer in writing of substantially full-time work which will begin within a period not exceeding four weeks. A waiver made in accordance with this [regulation] rule shall apply only to the four-week period covered on the determination. [A claimant who receives a determination granting a waiver for the four-week period shall promptly report to his or her local workforce development center and report any change in his or her recall date or start date.] A claimant who receives a determination granting a waiver for the four-week period shall promptly transmit any change to his recall date or start date to state office claims. The claimant's eligibility shall then be subject to



redetermination pursuant to Subsection A of 11.3.300.308 NMAC.

[5-15-97; 7-15-98; 11.3.300.320 NMAC – Rn & A, 11 NMAC 3.300.320, 01-01-2003]

### 11.3.300.321 REEMPLOYMENT

**SERVICES:** Effective November 24, 1994, an unemployed individual shall be eligible to receive benefits with respect to any week only if he ~~or she~~ participates in reemployment services such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits, and needs reemployment services pursuant to a profiling system established by the ~~[division] department~~, unless the ~~[division] department~~ determines that:

A. This individual has completed such services; or

B. There is justifiable cause for the claimant's failure to participate in such services; and

C. The claimant is able, available and actively seeking permanent, full-time work. ~~[(Rev. 9/94)]~~  
[7-15-98; 11.3.300.321 NMAC – Rn & A, 11 NMAC 3.300.321, 01-01-2003]

### 11.3.300.322 CLAIM CANCELLATIONS:

A. An initial or amended monetary determination, Form ES-405, Notice of Initial Determination of Benefits, may be canceled by the claimant at any time even though final, provided that no disqualification has been issued nor any benefits paid on the claim. Requests for cancellation must be made ~~[in writing and]~~ by the claimant or his authorized representative in the manner prescribed by the department and signed by the claimant or the authorized representative of the claimant.

B. A request to change the date of a claim is deemed a request to cancel a claim and file a new claim. Subsection A of 11.3.300.322 NMAC applies to situations where a claimant desires to change the date of a claim.

(1) In some situations where claims are filed near the end of a quarter, the delay in the of filing a claim for a week or two may increase the claimant's weekly benefits. If this is the situation, the customer service representative will not suggest or accept a request for monetary reconsideration.

(2) Base periods will not be shifted to permit claimants to have 4 full quarters on which to base a claim. The claimant must either use the remaining 3 quarters or wait the additional week or two to file his claim so as to pick up the new base period.

(3) In situations where claimants might be benefited by a delayed filing, the

customer service representative will advise the claimant that the claim determination will not show any wages for the first quarter and that this is not an error. If using the new base period will cause an increase in the weekly benefit amount, the customer service representative will make an effort to advise the claimant of his option to file a post-dated claim.

C. Notwithstanding the provisions of Subsection A of 11.3.300.322 NMAC ~~[of this regulation]~~, claimants who are eligible to file a combined wage claim may cancel such claim when New Mexico is the paying state if benefits have been paid on the combined wage claim. Cancellation will be authorized only if the claimant agrees ~~[in writing]~~ in the manner prescribed by the department to reimburse all benefits paid by cash or by authorizing any other state to deduct the amount due from any benefit payments to which the claimant is entitled. Requests for cancellation must be made ~~[in writing and]~~ in the manner prescribed by the department signed by the claimant or the authorized representative of the claimant. ~~[(Rev. 9/94)]~~  
[7-15-98; 11.3.300.322 NMAC – Rn & A, 11 NMAC 3.300.322, 01-01-2003]

### 11.3.300.323 VOLUNTARY WITHHOLDING OF FEDERAL INCOME TAX:

A. The ~~[division] department~~ shall provide each individual filing a new claim for unemployment compensation on or after January 1, 1997, with the following information in documented form:

(1) Unemployment compensation is subject to federal, state and local income tax;

(2) Requirements exist under federal law pertaining to estimated tax payments;

(3) The individual may elect to have federal income tax deducted and withheld from the individual's unemployment compensation payments ~~[at the rate of 15 percent, as specified in Section 3402(p)(3) of the Internal Revenue Code of 1986, as amended and]~~ at the amount specified in the federal Internal Revenue Code, 26 U.S.C. Section 3402(p)(2); and

(4) The individual is permitted to change a previously elected withholding status one time during each benefit year.

B. Amounts deducted and withheld from unemployment compensation benefits shall remain in the unemployment compensation fund until transferred to the ~~[federal]~~ Internal Revenue Service as a payment of income tax.

C. The ~~[division] department~~ shall follow all procedures specified by the United States Department of Labor

and the ~~[federal]~~ Internal Revenue Service pertaining to the deducting and withholding of federal income tax.

D. Amounts shall be deducted and withheld for the purpose of federal income tax payments only after amounts are deducted and withheld for any overpayments of unemployment compensation benefits, child support obligations and food stamp over-issuances required to be deducted and withheld under the Unemployment Compensation Law. ~~;~~ NMSA Sections 51-1-1 et seq.

[5-15-97; 7-15-98; 11.3.300.323 NMAC – Rn & A, 11 NMAC 3.300.323, 01-01-2003]

### 11.3.300.324 OVERPAYMENTS:

A. Uncollectible overpayments:

(1) Stale overpayments: The department may, at its sole option, determine that is it not economically efficient to actively pursue collection of overpayments which are more than 10 years old or less than \$50 and more than 7 years old; however, to the extent required by law, these debts will remain on the department's books as debts owing the department.

(2) Otherwise uncollectible debts: From time to time, the department may, at its discretion determine that is it not economically efficient to actively pursue collection of certain overpayments due to the claimant's situation or the department's resources. The overpayment remain an obligation owed by the claimant to the department. The department may cease or forbear active collection activities for either finite period or an indefinite period depending on the circumstances. The department's discretion in this matter is final.

B. "Double Affirmation" means a situation in which a claimant has received benefits through a decision which was subsequently affirmed by either the appeal tribunal or the board of review. If either the appeal tribunal or the board of review affirmed or approved the payment of benefits, even if such determination is later reversed, no action shall be taken to recover the benefits paid to the claimant. Double affirmation does not mean a situation in which the claimant appeals the initial determination denying benefits; the appeal tribunal approves benefits; the employer appeals; the board of review remands to the appeal tribunal where the employer then fails to appear.

[11.3.300.324 NMAC – N, 01-01-2003]

### 11.3.300.325 OVERPAYMENTS AND WAIVER OF OVERPAYMENTS PURSUANT TO THE TRADE ACTS:

A. In accordance with the provisions of 20 CFR 617.55, as amended

from time to time, the department authorizes the waiver of overpayments paid under the Trade Acts, the Trade Adjustment Assistance (TAA) or Trade Readjustment Assistance (TRA), under the following circumstances:

(1) The individual seeking a waiver of an overpayment must apply in the form prescribed by the department within 14 calendar days after the issuance and transmission by the department of the overpayment determination.

(2) The application for waiver will be approved if the department determines that

(a) The application was made timely;

(b) Payment was made without the fault of the individual seeking the waiver; and

(c) Requiring repayment would be contrary to equity and good conscience.

(3) The department's affirmative finding of any one of the following factors of fault precludes a waiver:

(a) That the individual knowingly made a material misrepresentation, which misrepresentation resulted in the overpayment; or

(b) That the individual knowingly failed to disclose a material fact, which failure to disclose resulted in the overpayment; or

(c) That the individual knew or should have known that he was not entitled to the payment; or

(d) That the department has previously issued a determination of fraud in regards to the overpayment.

(4) The department shall consider the following factors in determining whether, in equity and good conscience, the department should require repayment:

(a) Whether the overpayment was the result of a decision on appeal;

(b) Whether the individual was given notice that repayment would be required in the event of reversal on appeal;

(c) Whether the recovery of the overpayment would cause an extraordinary and lasting financial hardship to the individual, resulting in the individual's inability to obtain minimal necessities of food, medicine and shelter for at least 30 days and period of financial hardship lasting at least 3 months; and

(d) Whether, if recoupment from other benefits is proposed, the length of time of extraordinary and lasting financial hardship shall be the longest potential period of benefit entitlement as seen at the time of the request for waiver of determination.

(5) In determining whether fraud has occurred, the department shall consider the following factors:

(a) Whether the individual knowingly made, or cause another to make, a false statement or representation of a material fact resulting in the overpayment.

(b) Whether the applicant knowingly failed, or caused another to fail, to disclose a material fact resulting in the overpayment.

B. If a determination of fraud is made, the individual shall be ineligible for any further TAA or TRA benefits and shall be ineligible for waiver of any overpayment.

C. A finding that the overpayment was not the result of a decision on appeal or that the recovery would not cause extraordinary and lasting financial hardship shall preclude a waiver.

D. If an individual fails, without good cause, to complete training, a job search or a relocation, any payment to such individual that is not properly and necessarily expended in attempting to complete the activity shall constitute an overpayment. Such overpayments shall be recovered or waived according to the standards of fault, equity and good conscience contained in this section.

E. In any event, no repayment shall be required or deduction made until a notice and an opportunity for fair hearing have been provided to the applicant, a determination has been issued by the department, and the determination has become final.

[11.3.300.325 NMAC – N, 01-01-2003]

## NEW MEXICO STATE LAND OFFICE

### Notice of Renumbered Rules

Ray Powell, New Mexico Commissioner of Public Lands, hereby gives notice that the following rules were renumbered and reformatted to comply with current NMAC requirements effective December 13, 2002:

FROM	TO
SLO Rule 1	19.2.100 NMAC
SLO Rule 15	19.2.15 NMAC

## NEW MEXICO BOARD OF PHARMACY

16 NMAC 19.11, Occupational and Professional Licensing, Pharmacists, Nursing Home Drug Control, filed March 9, 1998, is being repealed and replaced with the new part 16.19.11 NMAC to conform

with current NMAC requirements, effective 12-15-2002.

## NEW MEXICO BOARD OF PHARMACY

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 11 NURSING HOME DRUG CONTROL

**16.19.11.1 ISSUING AGENCY:** Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM, (505) 841-9102.  
[16.19.11.1 NMAC - Rp 16 NMAC 19.11.1, 12-15-02]

**16.19.11.2 SCOPE:** All nursing homes and custodial care facilities; all health care professionals who provide pharmaceutical products or services, including the ordering and administration of drugs, to patients in nursing homes and custodial care facilities. Hospital based Skilled Nursing Facilities are not subject to this regulation - See Part 7.  
[16.19.11.2 NMAC - Rp 16 NMAC 19.11.2, 12-15-02]

**16.19.11.3 STATUTORY AUTHORITY:** Section 61-11-6.A(6) NMSA 1978 authorizes the Board of Pharmacy to license nursing home drug facilities and all places where dangerous drugs are dispensed or administered and to provide for the inspection of their facilities and activities. Section 61-11-14.B(9) NMSA 1978 directs the Board to issue drug custodial licenses for licensed nursing homes and to adopt regulations that define and limit those licenses.  
[16.19.11.3 NMAC - Rp 16 NMAC 19.11.3, 12-15-02]

**16.19.11.4 DURATION:** Permanent  
[16.19.11.4 NMAC - Rp 16 NMAC 19.11.4, 12-15-02]

**16.19.11.5 EFFECTIVE DATE:** December 15, 2002, unless a later date is cited at the end of a Section.  
[16.19.11.5 NMAC - Rp 16 NMAC 19.11.5, 12-15-02]

**16.19.11.6 OBJECTIVE:** The objective of Part 11 of Chapter 19 is to establish standards for the ordering, administration, maintenance and disposal of drugs for patients in nursing homes, skilled nursing facilities, and long-term care and custodial care facilities and to ensure that the



facilities' pharmaceutical services are organized and carried out for the benefit and safety of the patients.

[16.19.11.6 NMAC - Rp 16 NMAC 19.11.6, 12-15-02]

#### 16.19.11.7 DEFINITIONS:

A. Licensed Facility - Any facility, skilled nursing facility, intermediate care or any other upper level of care facility as defined by Health and Human Services Department that is required to maintain custody of patients drugs in a drug room, and such drugs are administered by the facilities' designated personnel.

B. Licensed Custodial Care Facility - Any facility or business, including non-profit entity which provides care and services on a continuing basis, for two or more in-house residents, not related to the operator, and which maintains custody of the residents' drugs.

C. Consultant Pharmacist - means a pharmacist who is responsible to the administrator of the facility and the Board of Pharmacy for the development of the drug storage and distribution and record keeping requirements of a licensed nursing home facility, and as further defined in 16.19.4.11 NMAC.

D. Designated Agent - A licensed nurse, certified nurse practitioner, physician assistant, pharmacist or pharmacist clinician authorized by a practitioner and employed in a facility to whom the practitioner communicates a prescription drug order.

E. Prescription Drug Order - An order from a practitioner or a practitioner's designated agent to a pharmacist for a drug or device to be dispensed. [16.19.11.7 NMAC - Rp 16 NMAC 19.11.7, 12-15-02]

#### 16.19.11.8 MINIMUM STANDARDS:

A. MINIMUM STANDARDS FOR THE DISTRIBUTION, STORAGE, HANDLING AND RECORD KEEPING OF DRUGS:

(1) The pharmaceutical service shall be organized and maintained primarily for the benefit and safety of the patient.

(2) All medications administered to patients shall be by direct order of a physician, or other licensed practitioner, as defined in the Pharmacy Act, 61-11-2P.

(3) The pharmaceutical service shall be under the direction of a registered pharmacist, who may be on a part-time or consultant basis.

(4) Policies relating to the control, distribution and administration of medications shall be developed by the pharmacist. Preparation of a written procedures manual

shall be the responsibility of the pharmacist.

(5) An automatic stop-order policy shall be adopted to provide guidance in these instances where medications ordered are not specifically limited as to time or number of doses.

(6) Adequate facilities to be provided for storage of medications. Proper labeling is required on each patient's medication container.

(7) Complete records - In addition to those records specifically required by federal and state laws, records shall be maintained of the receipt, use, or disposition of medications. The receipt and destruction journal shall show:

- (a) date;
- (b) patient's name;
- (c) pharmacy's name;
- (d) name of drug;
- (e) strength and dosage form;
- (f) prescription number;
- (g) quantity;
- (h) initials of person accepting delivery; and
- (i) inventory of drugs to be destroyed.

(8) Appropriate current drug reference sources shall be provided at the facility.

(9) In licensed nursing homes an emergency drug supply shall be maintained to be used in a medical emergency situation, contents and quantity to be determined by a physician, nursing director and the pharmacist of each institution. In licensed custodial care facilities a emergency drug supply may be used. This emergency drug supply shall be assessed only when licensed personnel are on duty. In licensed custodial care facilities only, the emergency drug tray shall not contain any controlled substances. A list of the contents of the emergency drug supply shall be attached to the outside of the tray.

(10) Medication errors and drug reactions should be documented and a method of reporting shall be addressed in the Pharmacy Procedure Manual.

#### B. POLICY AND PROCEDURES MANUAL:

(1) The pharmacist shall be responsible for the preparation of a written procedures manual, the aim of which shall be:

- (a) To improve communications with the facility;
  - (b) To improve patient care;
  - (c) To aid in personnel training;
  - (d) To increase legal protection;
  - (e) To aid in evaluating performance;
  - (f) To promote consistency and continuity.
- (2) There shall be a copy of the

policy and procedure manual at each facility location. This copy must be read and initialed by all personnel responsible for the procurement, administration or control of the patient's medication.

(3) The consultant pharmacist shall make an annual review of the procedures manual. Findings of which shall be reported to the facility administration.

(4) Guidelines for developing a pharmaceutical procedures manual;

(a) Drug Policy: A written policy concerning methods and procedures for the pharmaceutical services stating the appropriate methods and procedures for obtaining, dispensing and administering drugs and biologicals.

(b) Prescription Drug Orders: The designated agent of the facility may transcribe prescription drug orders from a licensed practitioner and transmit those orders via telephone or facsimile to the pharmacy.

(c) Licensed practitioners will identify the designated agents of a facility by written authorization according to the facility's policy and procedures manual.

(d) The facility shall have a Medication Administration Record (MAR) documenting medications administered to residents, including over-the-counter medications. This documentation shall include:

- (i) Name of resident;
- (ii) Date given;
- (iii) Drug product name;
- (iv) Dosage and form;
- (v) Strength of drug;
- (vi) Route of administration;
- (vii) How often medication is to be taken;
- (viii) Time taken and staff initials;
- (ix) Dates when the medication is discontinued or changed;
- (x) The name and initials of all staff administering medications.

(e) Any medications removed from the pharmacy container or blister pack must be given immediately and documented by the person assisting.

(f) All PRN medications shall have complete detail instructions regarding the administering of the medication. This shall include:

- (i) Symptoms that indicate the use of the medication;
- (ii) Exact dosage to be used;
- (iii) The exact amount to be used in a 24 hour period.

(g) Describe medication storage, procedures, and function at the nursing stations.

(h) Describe the medication administration system used with means of verifying accuracy of delivered dosage. Describe the procedure for recording missed or refused doses and the procedure followed for missed or refused doses.

(i) State that medications prescribed for one patient shall not be administered to any other patient.

(j) Describe policy concerning self-administration of medications by patients. A physician's order shall be required before any resident is allowed to self-administer medications.

(k) State procedures for documenting medication errors and drug reactions;

(i) Should a staff member of the facility notice an error, possible overdose, or any discrepancy in any of the prescriptions filled by the pharmacy, they will immediately contact the pharmacy. If necessary, the pharmacy will contact the physician.

(ii) In the event of a adverse drug reaction the facility will immediately contact the physician.

(l) List labeling and storage requirements of medications in conformity with the official compendium (USP/NF).

#### (5) OTHER INFORMATION

(a) Emergency Drug Tray - use, inventory control, replacement of drugs, security when licensed staff is not on duty.

(b) Location of Emergency Drug Tray.

(c) 24-hour emergency pharmaceutical services.

(d) Part-time or consultant pharmacist hours on premises.

(e) In-service training.

(f) Drug information service.

(g) Automatic stop orders.

(h) Controlled substances - inventory, security and control.

(i) Renewal of physician's orders.

(j) A policy concerning "PASS" medications.

(k) Discontinued medication.

(l) Records and standards of storage of over-the-counter drugs.

(m) Drug receipt and disposition records.

#### (6) DRUG DISTRIBUTION

(a) All dangerous drugs will be obtained from a properly licensed facility. Stock dangerous drugs acquired, maintained and administered by the nursing home shall be listed in the nursing home policy and procedure manual and approved by the Board of Pharmacy. The stock dangerous drugs shall be used when a licensed nurse (LPN or RN) is on duty. The following is the approved list of stock dangerous drugs:

(i) Sterile normal saline and water - injectable;

(ii) Sterile normal saline and water - irrigation;

(iii) Tuberculin testing solution;

(iv) Hepatitis B vaccine;

(v) Flu vaccine.; Any additional dangerous drugs must be defined and listed in the policy and procedure manual and must be approved by the Board of Pharmacy prior to obtaining or using.

(b) No drugs will be compounded by other than a pharmacist unless done in accordance with that exemption in the State Pharmacy Act - Section 61-11-22.

(c) The pharmacist shall be responsible for the proper removal and destruction of unused, discontinued, outdated or recalled drugs.

(d) The pharmacist shall require the person receiving a patient's drugs from the pharmacist or his agent to sign a drug receipt record listing those prescriptions received from the pharmacy.

(e) The pharmacist shall provide the staff with a receipt listing those prescriptions removed from the facility.

(f) Medications will be released to patients on discharge from the facility only upon the authorization of the physician.

#### (7) DRUG CONTROL

(a) All state and federal laws relating to storage, administration and disposal of controlled substances and dangerous drugs shall be complied with.

(b) Separate sheets shall be maintained for controlled substances records indicating the following information for each type and strength of controlled substances: date, time administered, name of patient, dose, physician's name, signature of person administering dose, and balance of controlled substance in the container.

(c) All drugs shall be stored in locked cabinets, locked drug rooms, or state of the art locked medication carts.

(d) Medication requiring refrigeration shall be kept in a secure locked area of the refrigerator or in the locked drug room.

(e) All refrigerated medications will be kept in separate refrigerator or compartment from food items.

(f) Medications for each patient shall be kept and stored in their originally received containers, and stored in separate compartments. Transfer between containers is forbidden, waiver shall be allowed for oversize containers and controlled substances at the discretion of the drug inspector.

(g) Prescription medications for external use shall be kept in a locked cabi-

net separate from other medications.

(h) No drug samples shall be stocked in the licensed facility.

(i) All drugs shall be properly labeled with the following information:

(i) Patient's full name;

(ii) Physician's name;

(iii) Name, address and phone number of pharmacy;

(iv) Prescription number;

(v) Name of the drug and quantity;

(vi) Strength of drug and quantity;

(vii) Directions for use, route of administration;

(viii) Date of prescription (date of refill in case of a prescription renewal);

(ix) Expiration date where applicable: The dispenser shall place on the label a suitable beyond-use date to limit the patient's use of the medication. Such beyond-use date shall be not later than (a) the expiration date on the manufacturer's container, or (b) one year from the date the drug is dispensed, whichever is earlier;

(x) Auxiliary labels where applicable;

(xi) The Manufacturer's name;

(xii) State of the art drug delivery systems using unit of use packaging require items i and ii above, provided that any additional information is readily available at the nursing station.

(j) Customized Patient Medication Packages: In lieu of dispensing one, two, or more prescribed drug products in separate containers or standard vial containers, a pharmacist may, with the consent of the patient, the patient's care-giver, the prescriber, or the institution caring for the patient, provide a customized patient medication package. The pharmacist preparing a patient medication package must abide by the guidelines as set forth in the current edition of the U. S. Pharmacopoeia for labeling, packaging and record keeping.

(k) Repackaging of Patient Medication Packages: In the event a drug is added to or discontinued from a patient's drug regimen, when a container within the patient medication package has more than one drug within it, the pharmacist may repackage the patient's patient medication package and either add to or remove from the patient medication packaged as ordered by the physician. The same drugs returned by the patient for repackaging must be reused by the pharmacist in the design of the new patient medication package for the new regimen, and any drug removed must either be destroyed, returned to the DEA or

returned to the patient properly labeled. Under no circumstances may a drug within a container of a patient medication package which contains more than one drug be returned to the pharmacy stock.

(l) Return of Patient Medication Package Drugs : Patient medication packages with more than one drug within a container may not under any circumstances be returned to a pharmacy stock.

(m) Patient Medication Packages with only one drug within a container:

(i) Non-Institutional: A patient medication package stored in a non-institutional setting where there is no assurance of storage standards may not be returned to pharmacy stock;

(ii) Institutional: A patient medication package stored in an institutional setting where the storage and handling of the drugs are assured and are consistent with the compendia standards may be returned to the pharmacy stock provided the following guidelines are followed: (1) the drug is to be kept within the patient medication package and is to remain sealed and labeled until dispensed; (2) the expiration date of drug shall become 50% of the time left of the expiration for the drug; (3) no Schedule II drugs may be returned to inventory; and (4) proper record keeping for the addition of other scheduled drugs into inventory must be done.

#### (8) DRUG INFORMATION

(a) The pharmacist shall be accessible for providing drug information.

(b) A current reference books shall be located in each nursing station.

(c) Each nursing station shall have poison control information and phone number and a conversion chart for pharmaceutical weights and measures, and as a part of the drug procedures manual.

#### (9) EMERGENCY DRUG SUPPLY

(a) There shall be an accountability record indicating the following:

(i) Name of drug, strength, and amount of medication used;

(ii) Date used;

(iii) Time;

(iv) Patient's name;

(v) Physician's name;

(vi) Nurse administering drug;

(vii) Nature of emergency.

(b) Pharmacist shall make notation of date and time medication replacement is made on the line following that line containing withdrawal information and sign his name, unless the pharmacy chooses to change out the complete emergency box each time it is used. The pharmacy shall keep a record of each time the box is

changed and a list of all drugs that were replaced in the box.

(10) Destruction of dispensed drugs for patients in health care facilities or institutions:

(a) The drugs are inventoried and such inventory is verified by the consultant pharmacist. The following information shall be included on this inventory:

(i) name and address of the facility or institution;

(ii) name and pharmacist license number of the consultant pharmacist;

(iii) date of drug destruction;

(iv) date the prescription was dispensed;

(v) unique identification number assigned to the prescription by the pharmacy;

(vi) name of dispensing pharmacy;

(vii) name, strength, and quantity of drug;

(viii) signature of consultant pharmacist destroying drugs;

(ix) signature of witness(es); and

(x) method of destruction.

(b) The drugs are destroyed in a manner to render the drugs unfit for human consumption and disposed of in compliance with all applicable state and federal requirements.

(c) The actual destruction of the drug is witnessed by the consultant pharmacist and one of the following:

(i) An agent of the New Mexico Board of Pharmacy;

(ii) Facility administrator;

(iii) The director of nursing.

(11) A consultant pharmacist may utilize a waste disposal service or reverse distributor to destroy dangerous drugs and controlled substances in health care facilities, boarding homes or institutions provided the following conditions are met:

(a) The inventory of drugs is verified by the consultant pharmacist. The following information must be included on this inventory:

(i) Name and address of the facility or institution;

(ii) Name and pharmacist license number of the consultant pharmacist;

(iii) Date of packaging and sealing of the container;

(iv) Date the prescription was dispensed;

(v) Unique identifica-

tion number assigned to the prescription by the pharmacy;

(vi) Name of dispensing pharmacy;

(vii) Name, strength and quantity of drug;

(viii) Signature of consultant pharmacist packaging and sealing container; and

(ix) Signature of the witness.

(b) The consultant pharmacist seals the container or drugs in the presence of the facility administrator, the director of nurses or an agent of the Board of Pharmacy.

(c) The sealed container is maintained in a secure area at the facility or pharmacy until transferred to the waste disposal service or the reverse distributor by the consultant pharmacist, facility administrator, director of nursing or agent of the Board of Pharmacy.

(d) A record of the transfer to the waste disposal service or reverse distributor is maintained and attached to the inventory of drugs. Such records shall contain the following information:

(i) Date of the transfer;

(ii) Signature of the person who transferred the drugs to the waste disposal service or reverse distributor;

(iii) Name and address of the waste disposal service or reverse distributor;

(iv) Signature of the employee of the waste disposal service or the reverse distributor who receives the container; and

(v) The waste disposal service or reverse distributor shall provide the facility with proof of destruction of the sealed container.

(12) Record Retention: All records required above shall be maintained by the consultant pharmacist and the health care facility or institution for three years from the date of destruction.

[16.19.11.8 NMAC - Rp 16.19.11.8, 12-15-02]

#### HISTORY OF 16.19.11 NMAC:

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center and Archives: Regulation No. 11, Nursing Home Drug Control Regulation, 2-7-80.

Regulation No. 11, Nursing Home Drug Control Regulations, 10-24-85.

Regulation No. 11, Nursing Home Drug Control Regulations, 12-17-85.

Regulation No. 11, Nursing Home Drug Control Regulations, 2-2-87.

Regulation No. 11, Nursing Home Drug



Control Regulations, 7-27-90.

History of Repealed Material:

16 NMAC 19.11, Nursing Home Drug Control, filed 3-9-98 was repealed effective 12-15-02.

Other History: Regulation No. 11, Nursing Home Drug Control Regulations, filed 7-27-90 was **renumbered** and **reformatted** into first version of the New Mexico Administrative Code as 16 NMAC 19.11, Nursing Home Drug Control, filed 2-2-96. 16 NMAC 19.11, Nursing Home Drug Control, filed 2-2-96 was **replaced** by 16 NMAC 19.11, Nursing Home Drug Control, filed 3-9-98.

16 NMAC 19.11, Nursing Home Drug Control, filed 3-9-98 was **replaced** by 16.19.11 NMAC, Nursing Home Drug Control, effective 12-15-02.

## NEW MEXICO BOARD OF PHARMACY

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 13 TEMPORARY BUSINESS LICENSES

**16.19.13.1 ISSUING AGENCY:** Regulation and Licensing Department Board of Pharmacy, 1650 University Blvd, NE - Ste. 400B, Albuquerque, NM 87102, (505) 841-9102.

[16.19.13.1 NMAC - Rp, 16 NMAC 19.13.1, 12-15-02]

**16.19.13.2 SCOPE:** All business entities that possess, administer, dispense and/or distribute prescription drugs and/or devices for the purpose of providing pharmaceutical products and services.

[16.19.13.2 NMAC - Rp, 16 NMAC 19.13.2, 12-15-02]

**16.19.13.3 STATUTORY AUTHORITY:** Section 61-11-6.B.(1) NMSA 1978 authorizes the Board to delegate its authority to the Executive Director to issue temporary licenses as provided in Section 61-11-14.H. NMSA 1978.

[16.19.13.3 NMAC - Rp, 16 NMAC 19.13.3, 12-15-02]

**16.19.13.4 DURATION:** Permanent

[16.19.13.4 NMAC - Rp, 16 NMAC 19.13.4, 12-15-02]

**16.19.13.5 EFFECTIVE DATE:** December 15, 2002, unless a later date is cited at the end of a Section.

[12-15-97; 16.19.13.5 NMAC - Rp, 16 NMAC 19.13.5, 12-15-02]

**16.19.13.6 OBJECTIVE:** To expedite the licensure of business entities providing pharmaceutical products and services. Temporary licenses shall only be issued after the applicant has completed a deficiency free facility inspection.

[16.19.13.16 NMAC - Rp, 16 NMAC 19.13.6, 12-15-02]

**16.19.13.7 DEFINITIONS:** All terms defined in the Pharmacy Act or elsewhere in the Board regulations shall have the same meaning in this regulation unless otherwise defined below:

A. Deficiency Free Inspection means compliance with all Board pre-licensing inspection requirements.

B. [Reserved]

[16.19.13.7 NMAC - Rp, 16 NMAC 19.13.7, 12-15-02]

**16.19.13.8 PROCEDURE FOR TEMPORARY LICENSURE OF BUSINESS ENTITIES THAT POSSESS, ADMINISTER, DISPENSE AND/OR DISTRIBUTE PRESCRIPTION DRUGS AND/OR DEVICES:**

A. Prior to issuance of a permanent license, an applicant may apply once, for each location, for a temporary license. The applicant shall submit required application and fee to the Board office.

B. After preliminary approval of the application, the applicant shall submit a "Request for Inspection" and the inspection fee, where applicable, a minimum of fourteen days in advance of the requested date for inspection.

C. Upon receipt of a deficiency free inspection report the Executive Director may issue a temporary facility license for this location.

D. The Board shall review the license application and the inspection report at its next meeting and shall cause a license to be issued or denied in accordance with the Uniform Licensing Act 61-1-1 to 61-1-33 NMSA 1978.

E. The temporary license shall expire at the close of business on the last day of the next regular Board meeting.

[16.19.13.8 NMAC - Rp, 16 NMAC 19.13.8, 12-15-02]

**HISTORY OF 16.19.13 NMAC:**

**Pre NMAC History:** None.

**History of Repealed Material:** 16 NMAC 19.13, Temporary Business Licenses, filed 12-01-97, expired on 06-30-99.

**Other History:**

16.19.13 NMAC, Temporary Business Licenses, effective 12-15-02.

## NEW MEXICO BOARD OF PHARMACY

### TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING CHAPTER 19 PHARMACISTS PART 26 PHARMACIST PRESCRIPTIVE AUTHORITY

**16.19.26.1 ISSUING AGENCY:** Regulation and Licensing Department - Board of Pharmacy, Albuquerque, NM, (505) 841-9102.

[16.19.26.1 NMAC - N, 12-15-02]

**16.19.26.2 SCOPE:** All pharmacists that intend to exercise the authority to prescribe dangerous drugs based on written protocols approved by the Board.

[16.19.26.2 NMAC - N, 12-15-02]

**16.19.26.3 STATUTORY AUTHORITY:** Section 61-11-6.A.(1) NMSA 1978 authorizes the Board of Pharmacy to adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the Pharmacy Act. Section 61-11-6.A.(7) gives the Board authority to enforce the provisions of all laws of the state pertaining to the distribution of drugs. Under the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 to 61-11B-3 NMSA 1978, the Board is required to establish regulations governing certification as a pharmacist clinician. Section 61-11-6.A.(19) authorizes the Board to adopt rules and protocols for the prescribing of dangerous drug therapy.

[16.19.26.3 NMAC - N, 12-15-02]

**16.19.26.4 DURATION:** Permanent.

[16.19.26.4 NMAC - N, 12-15-02]

**16.19.26.5 EFFECTIVE DATE:** 12-15-02, unless a later date is cited at the end of a section.

[16.19.26.5 NMAC - N, 12-15-02]

**16.19.26.6 OBJECTIVE:** The objective of Part 26 of Chapter 19 is to protect the health and safety of New Mexico citizens by regulating the prescriptive authority of pharmacists.

[16.19.26.6 NMAC - N, 12-15-02]

**16.19.26.7 DEFINITIONS:**  
A. "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific



antibodies directed against it.

**B.** "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen.

**C.** "Immunization" means the act of inducing antibody formation, thus leading to immunity.

**D.** "Vaccine" means a specially prepared antigen, which upon administration to a person, will result in immunity.

**E.** "Vaccination" means the administration of any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.

**F.** "Written Protocol" means a physician's order, standing delegation order, or other order or protocol as defined by rule of the New Mexico Board of Pharmacy.

**G.** "Emergency Contraception Drug Therapy" means the use of a drug to prevent pregnancy after intercourse.

[16.19.26.7 NMAC - N, 12-15-02]

#### **16.19.26.8 VACCINES:**

##### **A. PROTOCOL:**

(1) Prescriptive authority for vaccines shall be exercised solely in accordance with the written protocol for vaccine prescriptive authority approved by the Board;

(2) Any pharmacist exercising prescriptive authority for vaccines must maintain a current copy of the protocol for vaccine prescriptive authority approved by the Board.

##### **B. EDUCATION AND TRAINING:**

(1) The pharmacist must successfully complete a course of training provided by: a) the Centers for Disease Control and Prevention (CDC); or b) a similar health authority or professional body accredited by the American Council on Pharmaceutical Education (ACPE) approved by the Board.

(2) Training must include study materials, hands-on training and techniques for administering vaccines, comply with current CDC guidelines, and provide instruction and experiential training in the following content areas:

(a) Mechanisms of action for vaccines, contraindication, drug interaction, and monitoring after vaccine administration;

(b) Standards for pediatric, adolescent, and adult immunization practices;

(c) Basic immunology and vaccine protection;

(d) Vaccine-preventable diseases;

(e) Recommended pediatric, ado-

lescent, and adult immunization schedule;

(f) Vaccine storage management;

(g) Biohazard waste disposal and sterile techniques;

(h) Informed consent;

(i) Physiology and techniques for vaccine administration;

(j) Pre and post-vaccine assessment and counseling;

(k) Immunization record management;

(l) Management of adverse events, including identification, appropriate response, documentation and reporting;

(m) Reimbursement procedures and vaccine coverage by federal, state and local entities.

(3) Continuing Education: Any pharmacist exercising prescriptive authority for vaccines shall complete a minimum of 0.2 CEU of live ACPE approved vaccine related continuing education every two years. Such continuing education shall be in addition to requirements in 16 NMAC 19.4.10.

##### **C. AUTHORIZED DRUGS:**

(1) Prescriptive authority shall be limited to those drugs and vaccines delineated in the written protocol for vaccine prescriptive authority approved by the Board and;

(2) Other vaccines as determined by the CDC or New Mexico Department of Health that may be required to protect the public health and safety in an established emergency.

##### **D. RECORDS:**

(1) The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized;

(2) Informed consent must be documented in accordance with the written protocol for vaccine prescriptive authority approved by the Board and a record of such consent maintained in the pharmacy for a period of at least three years.

##### **E. NOTIFICATION:**

(1) Upon signed consent of the patient or guardian, the pharmacist shall notify the New Mexico Department of Health Immunization Program of any vaccine administered;

(2) Upon signed consent of the patient or guardian, the pharmacist shall notify the patient's designated physician or primary care provider within 15 days of any vaccine prescribed.

[16.19.26.8 NMAC - N, 12-15-02]

#### **16.19.26.9 EMERGENCY CONTRACEPTION DRUG THERAPY:**

##### **A. PROTOCOL:**

(1) Prescriptive authority for

emergency contraception drug therapy shall be exercised solely in accordance with the written protocol for emergency contraception drug therapy approved by the Board;

(2) Any pharmacist exercising prescriptive authority for emergency contraception drug therapy must maintain a current copy of the written protocol for emergency contraception drug therapy approved by the Board.

##### **B. EDUCATION AND TRAINING:**

(1) The pharmacist must successfully complete a course of training in the subject area of emergency contraception drug therapy provided by: a) the Department of Health; or b) Planned Parenthood or c) a similar health authority or professional body accredited by the American Council on Pharmaceutical Education (ACPE) approved by the Board.

(2) Training must include study materials and instruction in the following content areas:

(a) Mechanisms of action for vaccines, contraindication, drug interaction, and monitoring after vaccine administration;

(b) Current standards for prescribing emergency contraception drug therapy;

(c) Identifying indications for the use of emergency contraception drug therapy;

(d) Interviewing patient to establish need for emergency contraception drug therapy;

(e) Counseling patient regarding the safety, efficacy and potential adverse effects of drug products for emergency contraception;

(f) Evaluating patient's medical profile for drug interaction;

(g) Referring patient follow-up care with primary healthcare provider;

(h) Informed consent;

(i) Record management;

(j) Management of adverse events, including identification, appropriate response, documentation and reporting.

(3) Continuing Education: Any pharmacist exercising prescriptive authority for emergency contraception drug therapy shall complete a minimum of 0.2 CEU of live ACPE approved emergency contraception drug therapy related continuing education every two years. Such continuing education shall be in addition to requirements in 16.19.4.10 NMAC.

##### **C. AUTHORIZED DRUGS:**

(1) Prescriptive authority shall be limited to emergency contraception drug therapy and shall exclude any device intended to prevent pregnancy after inter-

course.

(2) Prescriptive authority for emergency contraception drug therapy shall be limited to those drugs delineated in the written protocol for emergency contraception drug therapy approved by the Board.

#### D. RECORDS:

(1) The prescribing pharmacist must generate a written or electronic prescription for any dangerous drug authorized;

(2) Informed consent must be documented in accordance with the approved protocol for emergency contraception drug therapy and a record of such consent maintained in the pharmacy for a period of at least three years.

#### E. NOTIFICATION:

Upon signed consent of the patient or guardian, the pharmacist shall notify the patient's designated physician or primary care provider of emergency contraception drug therapy prescribed

[16.19.26.9 NMAC - N, 12-15-02]

**History of 16.19.26 NMAC:**  
[RESERVED]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.4 NMAC Sections 1, 10, 14, 15 (Repealed), and 16 through 18 renumbered.

#### 16.19.4.1 ISSUING AGENCY:

Regulation and Licensing Department - Board of Pharmacy, ~~[1650 University Blvd, NE Ste. 400B]~~ Albuquerque, NM, (505) 841-9102.

[02-15-96; 16.19.4.1 NMAC - Rn, 16 NMAC 19.4.1, 03-30-02; A, 12-15-02]

#### 16.19.4.10 CONTINUING EDUCATION REQUIREMENTS:

##### A. DEFINITIONS:

(1) Continuing Education shall include study in one or more of the general areas of socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; etiology; characteristics and therapeutics of the disease state, or such other subjects as the Board may from time to time approve. ~~[A planned learning experience designed to promote the continued development of knowledge, skills and attitudes on the part of the pharmacist.]~~ Continuing education approved in New Mexico shall be limited to programs and activities offered by an ACPE approved provider or pharmacy law programs offered by the N.M. Board

#### of Pharmacy.

[ ~~(2)~~ ] Continuing education approved in New Mexico shall be limited to programs and activities offered by an ACPE approved provider or pharmacy law programs offered by the N.M. Board of Pharmacy.

[ ~~(3)~~ ] (2) Approved provider: ~~[means]~~ an institution, organization or agency that has been recognized by the American Council on Pharmaceutical Education (ACPE) as having met its criteria indicative of the ability to provide quality continuing pharmaceutical education, and is listed in the ACPE annual publication of approved providers.

[ ~~(4)~~ ] (3) A Continuing Education ~~[Units]~~ Unit (CEU): ~~[means]~~ ten contact hours of participation or its' equivalent in an organized continuing education activity sponsored by an approved provider.

[ ~~(5)~~ ] (4) Contact hour: ~~[means]~~ a unit of measure equivalent to approximately 50 minutes of participation in an approved organized learning experience or activity.

[ ~~(6)~~ ] (5) Activity, as used in the ACPE Criteria for Quality and these regulations, the term refers to an individual educational experience or program such as a lecture, home study course, workshop, seminar, symposium, etc.

[ ~~(7)~~ ] (6) Criteria for Quality: ~~[means]~~ the continuing education provider shall show evidence of adherence to the criteria adopted by the American Council on Pharmaceutical Education as indicative of the ability to provide continuing pharmaceutical education activities; Areas include: Administration & Organization; Budget & Resources; Teaching Staff; Educational Content Management of Activity; Method of Delivery; Facilities; Evaluation Mechanism

[ ~~(8)~~ ] (7) Mediated forms: ~~[-]~~ learning transmitted via intermediate mechanism such as audio and/or visual tape, telephonic transmission, etc.

(8) A "year": begins with the first day of the pharmacist's birth month and ends the last day of the pharmacist's birth month the following year.

(9) Renewal period: Continuing education programs or activities must be completed during the 24 month time period occurring between the first day of the pharmacist's birth month and the last day of his/her birth month 2 years later.

(10) Initial pharmacist licensure: The license issued shall be valid for not less than 24 months. The license will expire the last date of his/her birth month that immediately follows the minimum 24 month time period.

B. Effective Date.

Continuing Education, certified as completed by an approved provider will be required of a registered pharmacist who applies for renewal of New Mexico registration as follows: ~~[Lic. Ren. for 7/1/79 - .5 CEU or 5 cont. hrs.; Lic. Ren. for 7/1/80 - 1. CEU or 10 cont. hrs.; Lic. Ren. Thereafter - 1.5 CEU or 15 cont. hrs. ]~~ 3.0 CEU (30 contact hours) every two years. Effective date January 1, 2003.

C. The number of CEU's to be awarded for successful completion shall be determined by the approved provider in advance of the offering of the activity.

D. The Board of Pharmacy will accept any continuing education units for programs or activities completed outside the state; provided, the provider has been approved by the American Council on Pharmaceutical Education under its' Criteria for Quality at the time the program was offered.

E. Continuing Education will be required of all registrants holding an in-state status and out-of- state active status license. (61-11-13D). Pharmacists granted New Mexico initial licensure are exempt from C.E. requirements until the first full year renewal period. Inactive status licensees will be required to furnish continuing education, for the current licensing period, 0.15 CEU for each year the licensee was inactive, only for the purpose of reinstating to active status.

F. Not less than 10% of the registrants will be randomly selected each year by the Board of Pharmacy for audit of certificates by the state drug inspectors.

G. In the event a pharmacist makes an application for renewal and does not furnish necessary proof of compliance upon request, the Board will afford the applicant opportunity for hearing pursuant to the Uniform Licensing Act.

H. ~~[A maximum of 1.5 CEU's or one year credit may be accrued as excess and carried forward to the succeeding licensee's year.]~~ [RESERVED]

I. ~~[No credit will be given for continuing education program prior to the effective date of this regulation (2/8/78).]~~ [RESERVED]

J. PHARMACY LAW REQUIREMENT FOR:

(1) ~~[INSTATE]~~ ACTIVE STATUS:

[ ~~(a)~~ ] A minimum of ~~[0.1 CEU (1 contact hour), of the 1.5 CEU (15 contact hours)]~~ 0.2 CEU (2 contact hours) of the 3.0 CEU (30 contact hours) required for ~~[annual]~~ registration renewal, shall be in the subject area pharmacy law as offered by the N.M. Board of Pharmacy. In lieu of a

**Board program, pharmacists not residing and not practicing pharmacy in New Mexico may complete an A.C.P.E. accredited course, in the subject area pharmacy law, meeting the CEU requirements of this paragraph.**

~~[(b)](2)~~ Effective date. Registration renewals due June 1996 and thereafter.

**(2) NONRESIDENT ACTIVE STATUS**

~~(a) A minimum of 0.1 CEU (1 contact hour), of the 1.5 CEU (15 contact hours), required for annual registration renewal, shall be in the subject area pharmacy law.~~

~~(b) Effective date. Registration renewals due June 1996 and thereafter.~~

**(3) Licensees may obtain 0.1 CEU (1 contact hour) per year, in the subject area pharmacy law, by attending one full day of a regularly scheduled New Mexico Board of Pharmacy Board meeting.**

**(4) Licensees who successfully complete an open book test, administered by the Board, shall receive credit for 0.2 CEU (2 contact hours) in the subject area pharmacy law.**

**BOARD OF PHARMACY LAW PROGRAMS**

(1) Pharmacy law programs shall be offered in each of the five pharmacy districts, as defined in NMSA 61-11-4.E, a minimum of once every calendar year (January through December).

(2) Pharmacy law programs shall offer 0.2 CEU and be two contact hours in length.

[02-26-95; 16.19.4.10 NMAC - Rn, 16 NMAC 19.4.10, 03-30-02; A, 12-15-02]

**16.19.4.14 ACTIVE STATUS:**

Any pharmacist substantiating an annual aggregate of ~~[not less than]~~ eighty hours **or more** in the practice of pharmacy shall be issued an active ~~[resident or non-resident]~~ license. The following individuals are exempt the 80 hour requirement:

**A.** Pharmacists who are regularly engaged in teaching, shall be those who hold a full-time position with any accredited college of pharmacy in the state.

**B.** Pharmacists who are regularly engaged in servicing, shall be those who hold full-time positions with licensed pharmaceutical manufacturers or wholesalers and whose duties require regular periodical calls upon those who are licensed to maintain or operate a pharmacy in the state.

**C.** Pharmacists who are regularly engaged in manufacturing shall be those who have full-time personal and direct supervision or responsibility in the

manufacture and production of dangerous drugs or devices in this state.

**D.** Pharmacists who are regularly engaged in inspecting shall be those who are employed on a full-time basis, in this state, to insure the proper and strict compliance of laws pertaining to the practice of pharmacy and submit reports of such activity to public agencies or supervisory personnel.

**E.** Pharmacists who are regularly engaged in other phases of the pharmaceutical profession shall include those who hold full-time positions in research of investigational or dangerous drugs, or those who hold full-time positions in functions that relate directly to the administrative, advisory or executive responsibilities pursuant to the practice of pharmacy in this state.

[08-27-90; 16.19.4.14 NMAC - Rn, 16 NMAC 19.4.14, 03-30-02; A, 12-15-02]

**16.19.4.15 NON-RESIDENT: Non-resident pharmacists practicing pharmacy outside the State of New Mexico will be issued a non-resident active status license. Upon his return to New Mexico, he shall submit a request to the Board of Pharmacy for an active status, resident license, and pay the difference in license fee. A pharmacist may not practice in this state until a pharmacist resident license has been issued.**

**16.19.4.~~14~~15 INACTIVE STATUS:**

**A.** A pharmacist not engaged or ceasing to be engaged in the practice of pharmacy for more than one year shall be issued an inactive status license upon proper application and payment of fees.

**B.** Pursuant to Section 61-11-13.B, an inactive status pharmacist applying for an active status license, who has not been actively engaged in pharmacy for over one year, may be required to serve ~~[not less than 520 hours in the]~~ an internship training program and submit evidence of continuing education relating to the practice of pharmacy, as required by Section 61-11-6 and Section 61-11-13 and the Board regulations.

[08-27-90; 16.19.4.15 NMAC - Rn, 16 NMAC 19.4.15, 03-30-02; Repealed, 12-15-02; 16.19.4.15 NMAC - Rn, 16.19.4.16 NMAC, 12-15-02]

**16.19.4.~~17~~16 RESPONSIBILITIES OF PHARMACIST AND PHARMACIST INTERN:**

**A.** The following responsibilities require the use of professional judgment and shall therefore only be performed by a pharmacist or pharmacist intern:

(1) Receipt of all new verbal prescription orders and reduction to writing;

(2) Initial identification, evaluation and interpretation of the prescription order and any necessary clarification prior to dispensing;

(3) Professional consultation with a patient or his agent regarding a prescription;

(4) Evaluation of available clinical data in patient medication record system.

(5) Oral communication to the patient or patient's agent of information, as defined in this section under patient counseling, in order to improve therapy by ensuring proper use of drugs and devices;

(6) Professional consultation with the prescriber, the prescriber's agent, or any other health care professional or authorized agent regarding a patient and any medical information pertaining to the prescription; and

(7) Preparation of prescription drug orders for total parenteral nutrition or cancer chemotherapy solutions.

**B. ONLY A PHARMACIST SHALL PERFORM THE FOLLOWING DUTIES:**

(1) Final check on all aspects of the completed prescription, verification of all electronic entries and assumption of the responsibility for the filled prescription, including, but not limited to, appropriateness of dose, accuracy of drug, strength, labeling, verification of ingredients and proper container;

(2) Evaluation of pharmaceuticals for formulary selection within the facility;

(3) Supervision of all supportive personnel activities including preparation, mixing, assembling, packaging, labeling and storage of medications;

(4) Ensure that supportive personnel have been properly trained for the duties they may perform.

(5) Any other duty required of a pharmacist by any federal or state law.

**C. PATIENT RECORDS:**

(1) A reasonable effort must be made to obtain, record and maintain at least the following information:

(a) Name, address, telephone number, date of birth (or age) and gender of the patient;

(b) Individual medical history, if significant, including disease state or states, known allergies and drug reactions and a comprehensive list of medications and relevant devices; and

(c) Pharmacists comments relevant to the individuals drug therapy.

(2) Such information contained in the patient record should be considered by the pharmacist or pharmacist intern in the



exercise of their professional judgment concerning both the offer to counsel and the content of counseling.

#### **D. PROSPECTIVE**

##### **DRUG REVIEW:**

(1) A pharmacist or pharmacist intern shall review the patient record for:

- (a) clinical abuse/misuse;
- (b) therapeutic duplication;
- (c) drug-disease contraindications;
- (d) drug-drug interactions;
- (e) incorrect drug dosage;
- (f) incorrect duration of drug treatment;
- (g) drug-allergy interactions;
- (h) appropriate medication indication.

(2) Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem which shall, if necessary, include consultation with the prescriber.

#### **E. COUNSELING:**

(1) Upon receipt of a new prescription drug order and following a review of the patient's record, a pharmacist or pharmacist intern shall personally offer to counsel on matters which will enhance or optimize drug therapy with each patient or the patient's agent. Upon receipt of a refill prescription drug order a pharmacy technician may query the patient or patient's agent regarding counseling by the pharmacist or pharmacist intern concerning drug therapy. Such counseling shall be in person, whenever practicable, or by telephone, and shall include appropriate elements of patient counseling which may include, in their professional judgment, one or more of the following:

- (a) the name and description of the drug;
- (b) the dosage form, dosage, route of administration, and duration of drug therapy;
- (c) intended use of the drug and expected action;
- (d) special directions and precautions for preparation, administration and use by the patient;
- (e) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance and the action required if they occur;
- (f) techniques for self-monitoring drug therapy;
- (g) proper storage;
- (h) prescriptions refill information;
- (i) action to be taken in the event of a missed dose;
- (j) the need to check with the pharmacist or practitioner before taking

other medication; and

(k) pharmacist comments relevant to the individual's drug therapy, including any other information peculiar to the specific patient or drug.

#### **(2) [REPEALED]**

(3) Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include, but not limited to, written information leaflets, pictogram labels and video programs.

(4) Patient counseling, as described above and defined in this regulation shall not be required for in-patients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).

(5) A pharmacist shall in no way attempt to circumvent or willfully discourage a patient or patient's agent from receiving counseling. However, a pharmacist shall not be required to counsel a patient or patient's agent when the patient or patient's agent refuses such consultation.

(6) When the patient or agent is not present when the prescription is dispensed, including but not limited to a prescription that was shipped by the mail, the pharmacist shall ensure that the patient receives written notice of available counseling. Such notice shall include days and hours of availability, and: (1) of his or her right to request counseling; and (2) a toll-free telephone number in which the patient or patient's agent may obtain oral counseling from a pharmacist who has ready access to the patient's record. For pharmacies delivering more than 50% of their prescriptions by mail or other common carrier, the hours of availability shall be a minimum of 60 hours per week and not less than 6 days per week. The facility must have sufficient toll-free phone lines and personnel to provide counseling within 15 minutes.

(7) In every pharmacy there shall be prominently posted in a place conspicuous to and readable by prescription drug consumers a notice concerning available counseling.

#### **F. [REPEALED]**

#### **G. REGULATORY**

**ASSESSMENT:** Profiles, either electronic or hard copy, shall be available for inspection, and shall provide the capability of storing the described historical information. The profiles must demonstrate that an effort is being made to fulfill the requirements by the completion of the detail required. A patient record shall be maintained for a period of not less than three (3) years from the date of the last entry in the profile record. [08-27-90; 16.19.4.16 NMAC - Rn, 16 NMAC 19.4.16, 03-30-02; 16.19.4.16 NMAC - Rn, 16.19.4.17 NMAC, 12-15-02]

#### **16.19.4.[48]17 PHARMACIST CLINICIAN:**

**A. PURPOSE:** The purpose of these regulations is to implement the Pharmacist Prescriptive Authority Act, Sections 61-11B-1 through 61-11B-3 NMSA 1978 by providing minimum standards, terms and conditions for the certification, practice, and supervision of pharmacist clinicians. These regulations are adopted pursuant to Section 61-11B-3 of the Pharmacist Prescriptive Authority Act.

#### **B. DEFINITIONS:**

(1) Board means the New Mexico Board of Pharmacy.

(2) "dangerous drug" means a drug that, because of any potentiality for harmful effect or the methods of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and the drug prior to dispensing is required by federal law and state law to bear the manufacturer's legend "Caution: Federal law prohibits dispensing without a prescription".

(3) "guidelines or protocol" means a written agreement between a pharmacist clinician or group of pharmacist clinicians and a practitioner or group of practitioners that delegates prescriptive authority.

(4) "monitor dangerous drug therapy" means to review the dangerous drug therapy regimen of patients by a pharmacist clinician for the purpose of evaluating and rendering advice to the prescribing practitioner regarding adjustment of the regimen. "Monitor dangerous drug therapy" includes:

- (a) collecting and reviewing patient dangerous drug histories;
- (b) measuring and reviewing routine patient vital signs including pulse, temperature, blood pressure and respiration;
- (c) ordering and evaluating the results of laboratory tests relating to dangerous drug therapy, including blood chemistries and cell counts, controlled substance therapy levels, blood, urine, tissue or other body fluids, culture and sensitivity tests when performed in accordance with guidelines or protocols applicable to the practice setting; and
- (d) evaluating situations that require the immediate attention of a physician and instituting or modifying treatment procedures when necessary.

(5) "oversight committee" means a joint committee made up of four (4) members to hear issues regarding pharmacist clinicians' prescriptive authority activities and supervising practitioners' direction of these activities.

(6) "pharmacist" means a person duly licensed by the Board to engage in the

(6) "pharmacist" means a person duly licensed by the Board to engage in the



practice of pharmacy pursuant to the Pharmacy Act, Sections 61-11-1, 61-11-2, 61-11-4 to 61-11-28 NMSA 1978.

(7) "pharmacist clinician" means a pharmacist with additional training required by regulations adopted by the Board in consultation with the New Mexico Board of Medical Examiners and the New Mexico Academy of Physician Assistants, who exercises prescriptive authority in accordance with guidelines or protocol.

(8) "practitioner" means a physician duly authorized by law in New Mexico to prescribe dangerous drugs including controlled substances in Schedules II through V.

(9) "prescriptive authority" means the authority to prescribe, administer, monitor or modify dangerous drug therapy.

(10) "supervising practitioner" means a doctor, or group of doctors, of medicine or osteopathy approved by the respective Board to supervise a pharmacist clinician; "supervising practitioner" includes a practitioner approved by the respective Board as an alternate supervising practitioner.

(11) "scope of practice" means those duties and limitations of duties placed upon a pharmacist clinician by the supervising practitioner, the Board, and applicable law, and includes the limitations implied by the specialty practiced by the supervising practitioner.

#### C. INITIAL CERTIFICATION:

(1) The Board may certify a pharmacist as a pharmacist clinician upon completion of an application for certification and satisfaction of the requirements set forth in these regulations.

(2) A pharmacist who applies for certification as a pharmacist clinician shall complete application forms as required by the Board and shall pay a fee. The fee shall be set by the Board to defray the cost of processing the application, which fee is not returnable.

(3) To obtain initial certification as a pharmacist clinician, an applicant must provide proof that the applicant has satisfied one of the following:

(a) if the applicant is an actively licensed pharmacist, achievement of national certification as a physician assistant; or

(b) satisfactory completion of an academic curriculum which includes a minimum of sixty (60) hours of physical assessment training followed by nine (9) months of supervised clinical experience involving assessment skills; or

(c) satisfactory completion of a 60-hour physical assessment course approved by the Board and a 150-hour, 300 patient contact preceptorship supervised by

a physician and approved by the Board, and achievement of a passing score as defined by the Board on an appropriate exam approved by the Board, or

(d) if the applicant is certified by the Indian Health Service's Pharmacist Practitioner Program, documentation of 600 patient contacts within the past two years as a pharmacist practitioner, accompanied by a supporting affidavit from the supervising physician.

(4) The Board shall issue a document of certification to each pharmacist certified as a pharmacist clinician. A copy of the document of certification shall at all times be maintained at each place of practice of the pharmacist clinician.

(5) Upon certification by the Board, the name and address of the pharmacist clinician, name of the supervising practitioner, and other pertinent information shall be enrolled by the Board on a roster of pharmacist clinicians.

(6) No person shall represent that he or she is certified as a pharmacist clinician without maintaining current certification with the Board.

#### D. ANNUAL RENEWAL OF CERTIFICATION:

(1) Every pharmacist clinician certified to practice in New Mexico shall apply during the month of his or her birth each year to the Board for renewal of certification as a pharmacist clinician for the ensuing year.

(2) Applications for renewal must include:

(a) statement of the pharmacist clinician's name and current address;

(b) guidelines or protocol, if the pharmacist clinician seeks to exercise prescriptive authority;

(c) annual documentation of continuing education hours, including proof of completion of ten (10) hours of American Council of Pharmaceutical Education approved (ACPE) or Category I of the American Medical Association approved live continuing education (meeting, seminar, workshop, symposium), beyond the required hours in 16.19.4.10 NMAC (as amended), as required by the Board; and

(d) other additional information as requested by the Board.

#### E. PRESCRIPTIVE AUTHORITY, GUIDELINES OR PROTOCOL:

(1) No pharmacist clinician may exercise prescriptive authority unless guidelines or protocol from the current supervising practitioner are on file with the Board.

(2) A certified pharmacist clinician seeking to exercise prescriptive authority shall submit an application to the Board. The application must include the supervis-

ing practitioner's name and current medical license, guidelines or protocol and other information requested by the Board. A pharmacist may submit the application with the initial application for certification or as a separate application after becoming certified as a pharmacist clinician.

(3) The guidelines or protocol will be established and approved by the supervising practitioner as set forth in these regulations and will be kept on file at each practice site of the pharmacist clinician and with the Board.

(4) The guidelines or protocol must include:

(a) name of the practitioner authorized to prescribe dangerous drugs and name of the pharmacist clinician;

(b) statement of the types of prescriptive authority decisions the pharmacist clinician is authorized to make, including, but not limited to:

(i) types of diseases, dangerous drugs or dangerous drug categories involved and the type of prescriptive authority authorized in each case;

(ii) procedures, decision criteria or plan the pharmacist clinician is to follow when exercising prescriptive authority;

(c) activities to be followed by the pharmacist clinician while exercising prescriptive authority, including documentation of feedback to the authorizing practitioner concerning specific decisions made; documentation may be made on the prescriptive record, patient profile, patient medical chart or in a separate log book;

(d) description of appropriate mechanisms for reporting to the supervising practitioner; and

(e) description of the scope of practice of the pharmacist clinician.

#### F. SCOPE OF PRACTICE:

(1) A pharmacist clinician shall perform only those services that are delineated in the guidelines or protocol and are within the scope of practice of the supervising practitioner.

(2) A pharmacist clinician may practice in a health care institution within the policies of that institution.

(3) A pharmacist clinician may prescribe controlled substances provided that the pharmacist clinician (i) has obtained a New Mexico Controlled Substances registration and a Drug Enforcement Agency registration, and (ii) prescribes controlled substances within the parameters of written guidelines or protocols established under these regulations and Section 3, A. of the Pharmacist Prescriptive Authority Act.

(4) The Board may, in its discretion after investigation and evaluation,

place limitations on the tasks a pharmacist clinician may perform under the authority and direction of a supervising practitioner.

**G. RELATIONSHIP OF PHARMACIST CLINICIANS TO DESIGNATED SUPERVISING PRACTITIONERS:**

(1) The direction and supervision of pharmacist clinicians may be rendered by approved supervising practitioners and not through intermediaries.

(2) A pharmacist clinician must meet in person with the supervising practitioner or the supervising practitioner's Board-approved alternate at least once every two (2) weeks to discuss patient management. Supervising practitioners must provide direction to pharmacist clinicians to specify the pharmacotherapeutic services to be provided under the circumstances in each case. This may be done by written guidelines or protocol or by oral communications in person, over the phone or by other electronic means. It is the responsibility of the supervising practitioner to assure that the appropriate directions are given and understood.

(3) The supervising practitioner must visit the premises of the pharmacist clinician's practice at least once every sixty (60) days in a nursing home setting and once every fourteen (14) days in the primary place of practice of the pharmacist clinician, and evaluate the quality of all pharmacotherapeutic services rendered by the pharmacist clinician by reviewing not less than twenty percent (20%) of all medical records to assure compliance with the guidelines or protocol and directions.

(4) If the supervising practitioner is of the opinion that circumstances warrant exceptions to the requirements set forth in paragraphs A, B or C [1, 2 or 3] above, the supervising practitioner must specify the circumstances in writing and deliver the same to the Secretary of the State of New Mexico Board of Medical Examiners or the State of New Mexico Board of Osteopathic Medical Examiners. The respective Board will review, grant or deny requests for exceptions or waivers, in the Board's discretion.

(5) Documentation of the supervising practitioner's reviews must be retained by the pharmacist clinician and be available for Board inspection for a period of not less than five (5) years from the date of review.

(6) The pharmacist clinician must function in reasonable proximity to the supervising practitioner and must have prompt access to the practitioner by telephone or two-way radio or two-way television or other electronic means for advice and direction. "Reasonable proximity"

means a location not more than 120 miles or two hours, whichever is greater, from the supervising practitioner.

(7) If the supervising practitioner plans to be or is absent from his or her practice for any reason, the supervising practitioner cannot designate a pharmacist clinician to take over those duties or cover the practice during such absence. The supervising practitioner may designate an alternate supervising practitioner, approved by the respective Board, to cover the practice and perform the duties of supervising practitioner. The alternate supervising practitioner will then supervise the pharmacist clinician and will be responsible for the pharmacist clinician's actions or omissions in exercising prescriptive authority or other duties as a pharmacist clinician.

(8) Upon any change in supervising practitioner between annual renewals of certification, a pharmacist clinician shall submit to the Board within ten (10) working days, the new supervising practitioner's name, current medical license, and guidelines or protocol. This notice requirement does not apply to an alternate supervising practitioner who is designated to cover during the absence of the supervising practitioner.

(9) The Chair of the Board will appoint two (2) members of the Board, and the President of the supervising practitioner's respective Board will appoint two (2) members of the respective Board to the oversight committee. The oversight committee will make a report that may include non-binding recommendations to both the Board and respective Board regarding disciplinary action. Each Board can accept or reject the recommendations.

**H. APPEALS;** Any applicant for certification or any certified pharmacist clinician may appeal a decision of the Board in accordance with the provisions of the Uniform Licensing Act, Sections 61-1-1 to 61-1-33 NMSA 1978.

[03-14-98; 16.19.4.17 NMAC - Rn, 16 NMAC 19.4.17, 03-30-02; 16.19.4.17 NMAC - Rn, 16.19.4.18 NMAC, 12-15-02]

**16.19.4.18 [Reserved]**

[03-14-98; 16.19.4.18 NMAC - Rn, 16 NMAC 19.4.18, 03-30-02; Reserved, 12-15-02]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.12 NMAC Sections 1, 9, and 12.

**16.19.12.1 ISSUING AGENCY:** Regulation and Licensing Department, Board of Pharmacy, ~~1650 University Blvd, NE Ste. 400B,~~ Albuquerque, NM, ~~(87102)~~ (505) 841-9102.

[02-15-1889...02-15-96; 16.19.12.1 NMAC - Rn, 16 NMAC 19.12.1, 03-30-02; A, 12-15-02]

**16.19.12.9 REGISTRATION FEES:**

A. Registration by Examination ~~+\$100.00~~  
**\$200.00**

B. Registration by Reciprocity ~~+\$100.00~~  
**\$200.00**

C. Registration as an Intern \$15.00

D. Registration as a Pharmacy Technician \$15.00

[03-07-80...08-27-90; A, 07-15-97; A, 07-31-98; 16.19.12.9 NMAC - Rn, 16 NMAC 19.12.6, 03-30-02; A, 12-15-02]

**16.19.12.12 LICENSE/REGISTRATION RENEWAL:**

A. Pharmacist license renewal for ~~an~~ Active ~~Resident and Active Non-Resident~~ ~~\$100.00~~  
**\$200.00**

B. Pharmacist license renewal for In-Active ~~\$35.00~~ **\$70.00**

C. Intern Renewal \$10.00

D. Duplicate License for Interns and Pharmacists \$10.00

E. Controlled Substance Registration \$60.00

F. Duplicate License for Controlled Substance \$10.00

G. Pharmacy Technician Renewal \$5.00

[03-07-80...08-27-90; A, 07-31-98; A, 11-14-98; 16.19.12.12 NMAC - Rn, 16 NMAC 19.12.12, 03-30-02; A, 12-15-02]

## NEW MEXICO BOARD OF PHARMACY

This is an amendment to 16.19.20 NMAC Sections 1 and 8.

**16.19.20.1 ISSUING AGENCY:** Regulation and Licensing Department -

Board of Pharmacy, ~~[1650 University Blvd, NE - Ste. 400B]~~ Albuquerque, NM, ~~[87102]~~ (505) 841-9102.

[16.19.20.1 NMAC - Rp 16 NMAC 19.20.1, 07-15-02; A, 12-15-02]

#### 16.19.20.8 REGISTRATION REQUIREMENTS: Persons required to register:

A. Manufacture - term includes repackagers;

B. Distributors - term includes wholesale drug distributors;

C. Dispensers - pharmacies, hospital pharmacies, clinics (both health and veterinarian);

D. Practitioners - includes ~~[physicians (medical and osteopathic), veterinarians, dentists and podiatrists, licensed in the state and authorized by applicable state laws to prescribe controlled substances for legitimate medical purposes when acting in the usual course of his professional practice or treatment a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian, pharmacist, pharmacist clinician, certified registered nurse anesthetists, psychologists or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;~~

E. Scientific investigators or researchers;

F. Analytical laboratories and chemical analysis laboratories;

G. Teaching institutes;

H. Special projects and demonstrations which bear directly on misuse or abuse of controlled substances - may include public agencies, institutions of higher education and private organizations. [16.19.20.8 NMAC - Rp 16 NMAC 19.20.8, 07-15-02; A, 12-15-02]

### NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.17.244 NMAC JRRDS, BERNALILLO COUNTY METROPOLITAN COURT

**1.17.244.1 ISSUING AGENCY:** New Mexico Commission of Public Records - State Records Center and Archives in conjunction with Bernalillo County Metropolitan Court.

[5-25-95; 1.17.244.1 NMAC - Rn, 1 NMAC 3.2.92.1, 7/22/2002; A, 12/22/2002]

**1.17.244.2 SCOPE:** ~~[All courts—judicial]~~ Bernalillo county metropolitan

court.

[5-25-95; 1.17.244.2 NMAC - Rn, 1 NMAC 3.2.92.2, 7/22/2002; A, 12/22/2002]

#### 1.17.244.6 OBJECTIVE:

~~[A. To establish a records management program for the application of efficient and economical management methods to the creation, utilization, maintenance, retention, preservation and disposal of official records (Section 14-3-6 NMSA 1978).~~

~~B. To establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the Public Records Act (Section 14-3-6 NMSA 1978).]~~ To establish records disposal schedules for the orderly retirement of records necessary for carrying out the Public Records Act, per Section 14-3-6 NMSA 1978.

[5-25-95, 5-19-97; 1.17.244.6 NMAC - Rn, 1 NMAC 3.2.92.6, 7/22/2002; A, 12/22/2002]

#### 1.17.244.8 ACRONYMS:

A. "DUP" stands for driving under the influence.

B. "DV" stands for domestic violence.

C. "DWI" also stands for driving while impaired.

D. "ECS" stands for educational and community services

E. "MVD" stands for Motor Vehicle Division of the New Mexico Taxation and Revenue Department.

[1.17.244.8 NMAC - N, 12/22/2002]

#### 1.17.244.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the Records Retention and Disposition Schedule for the General Administrative Records, 1.15.2 NMAC.

B. For records of a financial nature, refer to the Records Retention and Disposition Schedule for General Financial Records, 1.15.4 NMAC.

C. For records of a personnel nature, refer to the Records Retention and Disposition Schedule for the General Personnel Records, 1.15.6 NMAC.

D. For records of medical nature, refer to the Records Retention and Disposition Schedule for the General Medical Records, 1.15.8 NMAC.

E. Retention periods shall be extended until six months after all current or pending litigation, current claims, audit exceptions or court orders involving a record have been resolved or concluded.

F. The descriptions of files are intended to be evocative, not complete; for example, there will always be

some documents that are filed in a file that are not listed in the description, and similarly, not every file will contain an example of each document listed in the description.

~~G. [Confidentiality is denoted as "C". Not all materials in a file may be confidential. Refer to NOTE. Where portions of file may be confidential, refer to legal counsel for agency.] Confidentiality is denoted for files likely to contain confidential materials, but files without a confidentiality note nonetheless may contain confidential or privileged materials and failure to include an express confidentiality note in the description of a file does not waive the confidential or privileged nature of those materials. Refer questions concerning the confidentiality of a file or portions of a file to legal counsel for the agency.~~

H. Access to confidential documents and or confidential files shall be only by authorization of agency or Attorney General and or by court order, unless otherwise provided by statute. Release of confidential documents to law enforcement and other government agencies, shall only be upon specific statutory authorization or court order.

I. All records, papers or documents may be photographed, micro-filmed, micro-photographed or reproduced on film. Such photographs, microfilms, photographic film or microphotographs shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. (Section 14-1-5, 14-1-6 NMSA 1978)

J. Data processing and other machine readable records. Many paper records are being eliminated when the information has been placed on magnetic tapes, disks, or other data processing media. In these cases, the information on the data processing medium should be retained for the length of time specified in records retention & disposition schedules for paper records and should be subject to the same confidentiality and access restrictions as paper records. When the destruction of a record is required, all versions of said record shall be electronically over-written on machine readable media on which it is stored (or media destroyed). See also 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

[5-25-95, 5-19-97; 1.17.244.9 NMAC - Rn, 1 NMAC 3.2.92.8, 7/22/2002; A, 12/22/2002]

#### 1.17.244.111 CIVIL CASE FILES:

A. **Program:** ~~[civil division departmental files]~~ civil matters

B. **Maintenance:**



~~[chronological, numerical]~~ alphabetical by case type, chronological by calendar year, numerical by case number

**C. Description:** ~~[contains complaint, answer, judgment, pleadings to motion, orders, judges case history notes, appeals, correspondence, memoranda, etc.]~~ record of civil proceedings before the court. File may contain complaint, answer, judgment, pleadings to motion, orders, judges' case history notes, appeals, correspondence, memoranda, etc.

**D. Retention:**

(1) cases with judgment entered. 14 years after date of judgment or one year after full satisfaction of judgement whichever is less

(2) cases dismissed. one year after date dismissed  
[7-13-98; 1.17.244.111 NMAC - Rn, 1 NMAC 3.2.92.244.151, 7/22/2002; A, 12/22/2002]

**1.17.244.112 CIVIL CASE DOCKET CARDS:**

**A. Program:** ~~[civil division departmental files]~~ civil matters

**B. Maintenance:** ~~[numerical]~~ chronological by date of filing or action

**C. Description:** ~~[shows plaintiff name and address, defendant name and address, judge, civil case number, case type, document type and date filed, name and address of attorney for plaintiff, name and address of attorney for defendant, etc.]~~ record of documents and events in a civil case. Record may show plaintiff name and address, defendant name and address, judge, civil case number, case type, document type and date filed, name and address of attorney for plaintiff, name and address of attorney for defendant, etc.

**D. Retention:** ~~[14 years after date of judgment or date of dismissal]~~

(1) cases with judgment entered. 14 years after date of judgment or one year after full satisfaction of judgement whichever is less

(2) cases dismissed. one year after date dismissed

[7-13-98; 1.17.244.112 NMAC - Rn, 1 NMAC 3.2.92.244.152, 7/22/2002; A, 12/22/2002]

**1.17.244.113 CIVIL CASE TAPE RECORDING OF PROCEEDINGS:**

**A. Program:** ~~[civil division departmental files]~~ civil matters

**B. Maintenance:** ~~[numerical]~~ alphabetical by case type, chronological by calendar year, numerical by case number

**C. Description:** recorded transcript of official proceedings.

**D. Retention:**

(1) No appeal: ~~[30]~~ 90 days after final judgment per 3.708B NMRA 1999

(2) Appeal (tape transferred to district court): 60 days after returned from district court with final disposition  
[7-13-98; 1.17.244.113 NMAC - Rn, 1 NMAC 3.2.92.244.153, 7/22/2002; A, 12/22/2002]

**1.17.244.114 [PLAINTIFF, DEFENDANT INDEX] CIVIL CASE INQUIRY:**

**A. Program:** ~~[civil division departmental files]~~ civil matters

**B. Maintenance:** ~~[chronological, numerical]~~ alphabetical by case type, chronological by calendar year, numerical case number

**C. Description:** ~~[shows date, attorney case, case number, case type, amount, plaintiff name, defendant name, judge, etc.]~~ index of plaintiffs and defendants involved in civil matters. Record may show date, attorney case, case number, case type, amount of bond or judgement, plaintiff name, defendant name, judge, etc.

**D. Retention:** 14 years after close of calendar year in which created  
[7-13-98; 1.17.244.114 NMAC - Rn, 1 NMAC 3.2.92.244.154, 7/22/2002; A, 12/22/2002]

**1.17.244.115 MONTHLY STATISTICAL FILE:**

**A. Program:** ~~[civil division departmental files]~~ civil matters

**B. Maintenance:** chronological by month

**C. Description:** contains civil division monthly statistics cases disposed by disposition code, monthly report, etc.

**D. Retention:** until judicial branch annual report released

[7-13-98; 1.17.244.115 NMAC - Rn, 1 NMAC 3.2.92.244.155, 7/22/2002; A, 12/22/2002]

**1.17.244.116 CIVIL EXHIBITS AND DEPOSITIONS:**

**A. Program:** ~~[civil division departmental files]~~ civil matters

**B. Maintenance:** ~~[none]~~ alpha-numerical by corresponding civil case file

**C. Description:** ~~[none]~~ materials introduced at trial as evidence in court cases. Materials may include documents, depositions, reports, etc.

**D. Retention:**

(1) Appeal or bound over to district court: until transferred to district court

(2) No appeal or remanded

from district court: ~~[30]~~ 60 days after judgment date

**E. Confidentiality:**

**F. Note Bene:** Bernalillo Metropolitan Court shall notify parties by letter or by publication prior to destruction of exhibit.

[7-13-98; 1.17.244.116 NMAC - Rn, 1 NMAC 3.2.92.244.156, 7/22/2002; A, 12/22/2002]

**1.17.244.117 [CIVIL DIVISION MONTHLY STATISTICS CASES DISPOSED BY DISPOSITION CODE:**

**A. Program:** ~~[civil division departmental files]~~

**B. Maintenance:** ~~chronological~~

**C. Description:** ~~[shows month ending date, disposition code, description, count, total cases disposed, etc.]~~

**D. Retention:** ~~[none]~~  
[RESERVED]

[7-13-98; 1.17.244.117 NMAC - Rn, 1 NMAC 3.2.92.244.157, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): CIVIL DIVISION MONTHLY STATISTICS CASED DISPOSED BY DESPOSITION CODE]

**1.17.244.221 [EDUCATIONAL SERVICES REFERRAL LETTER, COPY:**

**A. Program:** ~~educational and community services departmental files~~

**B. Maintenance:** ~~alphabetical~~

**C. Description:** ~~[shows school, agency, program request to provide services, services listed, name of defendant, date of birth, address, criminal or traffic, court date, judge, drivers license number, date to comply with court order, etc.]~~

**D. Retention:** ~~[until program completed or no show letter issued]~~  
[RESERVED]

[7-13-98; 1.17.244.221 NMAC - Rn, 1 NMAC 3.2.92.244.701, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): EDUCATIONAL SERVICES REFERRAL LETTER, COPY]

**1.17.244.222 [STATUS LETTER:**

**A. Program:** ~~educational and community services departmental files~~

**B. Maintenance:** ~~alphabetical~~

**C. Description:** ~~[shows defendant name, case number, non compliant, reinstated on summons, bench warrant, date to contact program or agency, etc.]~~

**D. Retention:** ~~[until program completed]~~ [RESERVED]



[7-13-98; 1.17.244.222 NMAC - Rn, 1 NMAC 3.2.92.244.702, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): STATUS LETTER]

**1.17.244.223 [NO SHOW LETTER FOR EDUCATIONAL SERVICES AND COMMUNITY SERVICES:**

**A. Program:** educational and community services departmental files

**B. Maintenance:** alphabetical

**C. Description:** shows defendant name and address, date, date to appear, condition of non compliance, etc.

**D. Retention:** none]

[RESERVED]

[7-13-98; 1.17.244.223 NMAC - Rn, 1 NMAC 3.2.92.244.703, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): NO SHOW LETTER FOR EDUCATIONAL SERVICES & COMMUNITY SERVICE]

**1.17.244.224 [DWI FIRST OFFENDER PROGRAM CARD] ECS PROGRAM FILE:**

**A. Program:** educational and community services [departmental files]

**B. Maintenance:** alphabetical by program type then client name

**C. Description:** [shows fee payment deadline, client name, address, social security number, date of birth, phone number, judge, court date, docket number, class numbers and dates, attendance, remarks, blood and alcohol content count, etc.] record of sentenced referrals to education and community service. File may contain the following program information: needs answer sheet; community service incident reports, release of information consent form; defendant treatment progress reports; alcohol and drug screening reports; medical statements (excusals); educational and service program or community service placement entity information; etc.

**D. Retention:** [until proofed]

(1) needs answer sheet. six years after close of state fiscal year in which created

(2) all other documentation. until program completed and ECS Program File closed

**E. Confidentiality:** some information may be confidential per Article six NMSA 1978 (health and hospital records); Part II of Title 42 of the Code of Federal Regulations (CFR) governing confidential and/or privileged information of alcohol and drug abuse patient records, or

any other applicable statute, administrative rule, case law decision or confidentiality agreement.

**E. Note Bene:** Closing of ECS Program File is based on completion of program or death of defendant.

[7-13-98; 1.17.244.224 NMAC - Rn, 1 NMAC 3.2.92.244.704, 7/22/2002; A, 12/22/2002]

**1.17.244.225 [PETTY LARCENY REHABILITATION PROGRAM CARD:**

**A. Program:** educational and community services departmental files

**B. Maintenance:** alphabetical

**C. Description:** shows fee payment deadline, client name, address, social security number, judge, court date, registration date, docket number, class number and date, attendance, instructions, etc.

**D. Retention:** until proofed]

[7-13-98; 1.17.244.225 NMAC - Rn, 1 NMAC 3.2.92.244.705, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): PETTY LARCENY REHABILITATION PROGRAM CARD]

**1.17.244.226 [TRAFFIC SCHOOL CARD:**

**A. Program:** educational and community services departmental files

**B. Maintenance:** none

**C. Description:** document shows client name, docket number, date, referred by judge, schedule, sex, class day and time, date of birth, social security number, violation, citation number, session, remarks, registration date.

**D. Retention:** until proofed]

[7-13-98; 1.17.244.226 NMAC - Rn, 1 NMAC 3.2.92.244.706, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): TRAFFIC SCHOOL CARD]

**1.17.244.227 [RESCHEDULING AND MAKE-UP FORM:**

**A. Program:** educational and community services departmental files

**B. Maintenance:** alphabetical

**C. Description:** shows amount due, client name, date, school type, make up schedule, instructions, session check in, etc.

**D. Retention:** until proofed]

[7-13-98; 1.17.244.227 NMAC - Rn, 1 NMAC 3.2.92.244.707, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): RESCHEDULING AND MAKE UP FORM]

**1.17.244.228 [COMMUNITY SERVICE CARD:**

**A. Program:** educational and community services departmental files

**B. Maintenance:** chronological, alphabetical

**C. Description:** shows number of hours to work, agency, to be completed by date, contacted by, address, client name and address, telephone number, age, docket number, court date, set up date, date of birth, social security number, occupation, community service number, judge, clients signature, etc.

**D. Retention:** until proofed]

[7-13-98; 1.17.244.228 NMAC - Rn, 1 NMAC 3.2.92.244.708, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): COMMUNITY SERVICE CARD]

**1.17.244.229 [PROGRAM TIME SHEET] NON-PROFIT AGENCY SIGN IN/OUT FORM:**

**A. Program:** [educational and community services departmental files] community services

**B. Maintenance:** [none] alphabetical by defendant name then by program name

**C. Description:** [program type; (document shows date, program, name of client, time reported, total amount of hours worked, etc.) input documents to metro court's mainframe court management system. Form is used by non-profit community service entities to report compliance of community service hours by participants (defendants). Form shows community service program name; agency name, supervisor name and phone number; address; client name; docket number; program participation date; start time; end time; hours worked; client's initials; agency contact initials; etc.

**D. Retention:** [Until proofed] until filed in corresponding case file when program is completed

[7-13-98; 1.17.244.229 NMAC - Rn, 1 NMAC 3.2.92.244.709, 7/22/2002; A, 12/22/2002]

**1.17.244.230 [LOVELACE SCIEN-TIFIC RESOURCES COMPREHENSIVE SCREENING PROGRAM/NON-COMPLIANCE REPORT:**

**A. Program:** educational and community services departmental files

**B. Maintenance:** none

**C. Description:** docu-

~~ment shows docket number, date, social security number, date of birth, name, address, reason(s) for non compliance, comment(s), signature, etc.~~

~~D. Retention: none~~

[RESERVED]

[7-13-98; 1.17.244.230 NMAC - Rn, 1 NMAC 3.2.92.244.710, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): LOVELACE SCIENTIFIC RESOURCES-COMPREHENSIVE SCREENING PROGRAM/NON-COMPLIANCE REPORT]

**1.17.244.231 [AFFIDAVIT AND BENCH WARRANT REQUEST:**

~~A. Program: educational and community services departmental files~~

~~B. Maintenance: none~~

~~C. Description: The document shows defendant name and address, docket number, date of birth, social security number, citation number, charges, compliance failure, affiants name and signature, notary public statement, etc~~

~~D. Retention: none~~

[RESERVED]

[7-13-98; 1.17.244.231 NMAC - Rn, 1 NMAC 3.2.92.244.711, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): AFFIDAVIT AND BENCH WARRANT REQUEST]

**1.17.244.232 [BENCH WARRANT:**

~~A. Program: educational and community services departmental files~~

~~B. Maintenance: none~~

~~C. Description: Document shows defendant name and address, warrant number, citation number, charges, date of birth, social security number, compliance failure, judge, bond amount, date of issue, return information and signature, etc.~~

~~D. Retention: none~~

[RESERVED]

[7-13-98; 1.17.244.232 NMAC - Rn, 1 NMAC 3.2.92.244.712, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): BENCH WARRANT]

**1.17.244.233 [CRIMINAL SUMMONS:**

~~A. Program: educational and community services departmental files~~

~~B. Maintenance: none~~

~~C. Description: Document shows defendant name and address, criminal case number, noncompliance information, order information, non-response consequence information, certificate of mailing, signature and title, date, etc.~~

~~D. Retention: none~~

[RESERVED]

[7-13-98; 1.17.244.233 NMAC - Rn, 1 NMAC 3.2.92.244.713, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): CRIMINAL SUMMONS]

**1.17.244.234 [DRIVER HISTORY:**

~~A. Program: educational and community services departmental files~~

~~B. Maintenance: none~~

~~C. Description: Document shows license number, name, address, city, eye color, height, sex, date of birth, social security number, license status, renewal status, DWI status, expiration date, eligibility class, DWI, limited license, organ donor, violation date and code, court date, points, citation number, fine amount, date posted, etc.~~

~~D. Retention: none~~

[RESERVED]

[7-13-98; 1.17.244.234 NMAC - Rn, 1 NMAC 3.2.92.244.714, 7/22/2002; repealed, 12/22/2002]

[Repealed section (records series name): DRIVER HISTORY]

**1.17.244.235 [FIRST OFFENDER] PROGRAM ATTENDANCE ROSTER:**

~~A. Program: educational and community services [departmental files]~~

~~B. Maintenance: chronological [numerical] by fiscal year~~

~~C. Description: listing of defendants scheduled for educational or community service that is provided to program entity and returned with participant signatures or initials. Listing shows program type, class number, day, time, dates, instructor or driver, client name, case number, date of birth, social security number, initials, dates open and closed, [make up] rescheduled students, etc.~~

~~D. Retention: [until instructor copy returned] two years after close of state fiscal year in which created~~

[7-13-98; 1.17.244.235 NMAC - Rn, 1 NMAC 3.2.92.244.715, 7/22/2002; A, 12/22/2002]

[copy of roster forwarded to program entity for signature by participants]

**1.17.244.236 [LICENSE SUSPENSION NOTICE/RV7] NOTICE OF FAILURE TO APPEAR IN COURT:**

~~A. Program: educational and community services [departmental files]~~

~~B. Maintenance: none~~

~~C. Description: [Document shows defendant name, date of birth, social security number, license number, etc.] Output document from metro~~

court's mainframe computer court management system that is used to inform MVD to suspend a defendant's driver license. Document is also used for clearing a defendant's driver license suspension. Notice shows reporting agency information, citation information, violator's information, signature of authorized court representative, complaint date, etc.

**D. Retention: none**

[7-13-98; 1.17.244.236 NMAC - Rn, 1 NMAC 3.2.92.244.716, 7/22/2002; A, 12/22/2002]

[Original forwarded to NM taxation and revenue department (motor vehicle division). Copy forwarded to defendant]

## NEW MEXICO REGULATION AND LICENSING DEPARTMENT MANUFACTURED HOUSING DIVISION

This is an amendment to 14.12.2.16 NMAC; 14.12.2.30 NMAC; 14.12.2.32 NMAC:

**14.12.2.16 BROKERS:**

**A.** A manufactured home broker's license entitles its holder to engage in the functions authorized for brokers in the Act. A manufactured home broker's functions are strictly limited to only pre-owned manufactured homes. Any person who in any manner engages in brokerage activities for more than one manufactured home in any consecutive 12-month period is required to be licensed as a manufactured home broker.

**B.** A manufactured home broker cannot negotiate any transaction involving the sale, exchange, renting or leasing of real estate unless he is licensed under the Real Estate Act of New Mexico.

**C.** Each manufactured home broker shall be individually licensed.

**D.** A manufactured home broker's role is that of a fiduciary to his principal.

**E.** In all transactions which require the transfer of title to a manufactured home and in which a manufactured home broker is involved the manufactured home broker must determine the status of title, including all recorded liens and security interests, of the manufactured home according to the title records of the Motor Vehicle Division, and disclose in writing to all parties in the transaction the status of title of the home as shown by such records.

**F.** A manufactured home

broker shall maintain a place of business, which is an actual physically, established location from which business can be conducted and where accounts and records shall be available for inspection during normal business hours by a representative of the Division. Each branch office shall also maintain copies of adequate records for this same inspection purpose of all transactions handled within the branch office.

**G.** A manufactured home broker shall fully disclose to the consumer any ownership interest of the manufactured home broker, either direct or indirect, in the manufactured home prior to the consumer's entering into any agreement for the purchase of the home.

**H.** All listing agreements entered into by a manufactured home broker shall disclose the percentage amount or fee to be received by the manufactured home broker upon the completion of a transaction under the terms of the listing agreement.

**I.** A manufactured home broker shall not enter into a net listing agreement.

**J.** Upon receipt of a written offer to purchase, a manufactured home broker shall promptly deliver the written offer to purchase to the seller. Upon obtaining written acceptance of the offer to purchase, the manufactured home broker shall promptly deliver true copies to the purchaser and seller. All terms of the transaction must be included in the written offer to purchase.

**K.** Before receiving a customer deposit, a manufactured home broker shall give to a purchaser an itemized statement of all approximate costs relevant to the transaction.

**L.** A manufactured home broker shall initiate the transfer of title on a manufactured home no later than 30 days from the completion of the transaction. A manufactured home broker shall not be responsible for title transfer if it is the responsibility of the purchaser's lienholder.

**M.** Prior to the closing between the buyer and seller, the manufactured home broker shall deliver to both the buyer and seller a closing statement which shall contain, but is not limited to, the following information:

- (1) the purchase price;
- (2) all funds paid and to be paid by the buyer;
- (3) all funds received and to be received by the seller;
- (4) receipt and disposition of all other funds relevant to the transaction;
- (5) the method of assumption, disposition or other treatment of existing loans on the home and liens on or security interest in the home.

**N.** A manufactured home broker shall not operate or provide a lot or other location where manufactured homes are displayed for consumers.

**O.** Each manufactured home broker branch location shall have as qualifying party, a licensed and bonded associate manufactured home broker.

[14.12.2.16 NMAC – Rp, 14 NMAC 12.2.16, 9-14-00; A, 12-13-02]

#### **14.12.2.30 DEALER'S CONSUMER PROTECTION BOND:**

**A.** Each dealer shall maintain consumer protection bonds with the Division equal to the number of locations at which the dealer does business. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the Division, with a minimum amount of ~~[twenty five thousand dollars (\$25,000.00)]~~ fifty thousand dollars (\$50,000.00) for each location. Each surety in the form of cash consumer protection bond shall be posted with a financial institution located in New Mexico. Out of state dealers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the Act

**B.** Each bond shall be indemnity for any loss sustained by the consumer as a result of:

(1) a violation by the dealer of any provision of the Act or of these regulations;

(2) fraud by the dealer in the execution or in the performance of a contract;

(3) the misrepresentation or making a false promise through the advertising, the agents, or the salespersons or the dealer;

(4) a violation of the dealer's written warranty;

(5) refusal, failure or inability of the dealer to transfer good and sufficient legal title to the consumer.

[14.12.2.30 NMAC – Rp, 14 NMAC 12.2.30, 9-14-00; A, 12-13-02]

#### **14.12.2.32 BROKER'S CONSUMER PROTECTION BOND:**

**A.** Each broker shall maintain a consumer protection bond with the Division. Each bond may be satisfied by a surety bond or other security in the form and in the amount prescribed by the Division, with a minimum amount of ~~[five thousand dollars (\$5,000.00)]~~ fifty thousand dollars (\$50,000.00). Each branch office shall have an associate broker with a proper license and ~~[two thousand five hundred dollars (\$2,500.00)]~~ fifty thousand dollars (\$50,000.00) consumer protection bond. Each surety in the form of a cash consumer protection bond must be posted with a

financial institution located in New Mexico. Out of state brokers shall submit an affidavit consenting to service of process in New Mexico in connection with all claims filed pursuant to the provisions of the Act.

**B.** Each bond shall be indemnity for any loss sustained by a consumer as a result of:

(1) a violation by the broker of any provision of the Act or these regulations;

(2) fraud by the broker in the execution or performance of a contract;

(3) the misrepresentation or the making of a false promise by the broker or through the advertising of the broker;

[14.12.2.32 NMAC – Rp, 14 NMAC 12.2.32, 9-14-00; A, 12-13-02]

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### **End of Adopted Rules and Regulations Section**

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## SUBMITTAL DEADLINES AND PUBLICATION DATES

### 2002

<b>Volume XIII</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 17	September 3	September 16
Issue Number 18	September 17	September 30
Issue Number 19	October 1	October 15
Issue Number 20	October 16	October 31
Issue Number 21	November 1	November 14
Issue Number 22	November 15	November 27
Issue Number 23	December 2	December 13
Issue Number 24	December 16	December 30

### 2003

<b>Volume XIV</b>	<b>Submittal Deadline</b>	<b>Publication Date</b>
Issue Number 1	January 2	January 15
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Issue Number 3	February 3	February 14
Issue Number 4	February 17	February 28
Issue Number 5	March 3	March 14
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