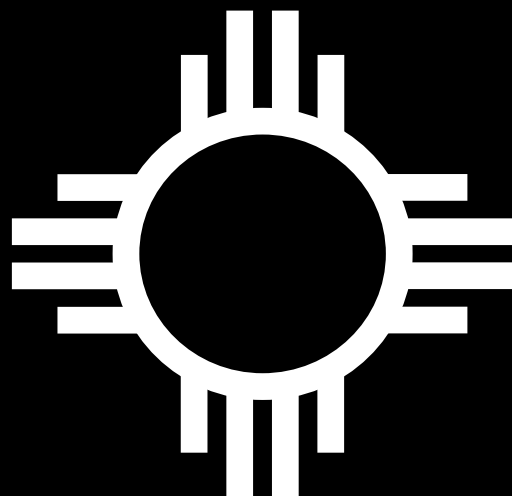


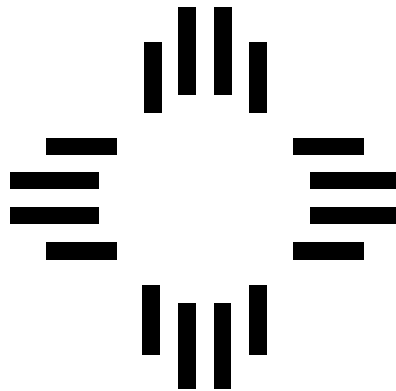
**NEW
MEXICO
REGISTER**



Volume XIV
Issue Number 10
May 30, 2003

New Mexico Register

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May 30, 2003



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

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Administrative Law Division
Santa Fe, New Mexico
2003

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New Mexico Register

Volume XIV, Number 10

May 30, 2003

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Effective Date and Validity of Rule Filings

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

A=Amended, E=Emergency, N=New, R=Repealed, Rn=Renumbered

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

Notices of Rulemaking and Proposed Rules

NEW MEXICO BOARD OF EDUCATION

NEW MEXICO STATE BOARD OF EDUCATION NOTICE OF PROPOSED RULEMAKING

The New Mexico State Board of Education ("State Board") will convene on Monday, June 16, 2003. The State Board will hold a retreat on Monday, June 16, 2003. Committees will meet on Tuesday, June 17, 2003. Final actions on the proposed rulemaking will be taken at the regular meeting of the State Board on Wednesday, June 18, 2003. The committee meetings and the regular meeting will be held in Mabry Hall, State Education Building, 300 Don Gaspar, Santa Fe, New Mexico. Information regarding any change in the location of the meetings, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Administrative Assistant to the State Board and on the State Board's web page of the State Department of Public Education's website (<http://sde.state.nm.us/>).

The State Board may consider the following items of rulemaking at the meeting:

Rule Number	Rule Name	Proposed Action
6.19.2 NMAC	PUBLIC SCHOOL ACCOUNTABILITY SYSTEM FOR SCHOOLS RATED PROBATIONARY	Amend rule@
6.20.2 NMAC	GOVERNING BUDGETING AND ACCOUNTING FOR NEW MEXICO PUBLIC SCHOOLS AND SCHOOL DISTRICTS	Amend rule*
6.21.2 NMAC	AUDIT RESOLUTION PROCESS, APPLICATION HEARING PROCESS, ENFORCEMENT PROCESS	Amend rule*
6.22.2 NMAC (filed as 6 NMAC 8.2.1)	ALLOCATION AND DISTRIBUTION OF THE ADULT BASIC EDUCATION FUND	Repeal rule^ (Laws 2003, Chapter 394 transfers the authority from the State Board to the Commission on Higher Education to establish an equitable formula for distribution of the adult basic education fund and to distribute the fund pursuant to the formula.)
6.40.2 NMAC	NM SCHOOL BUS STANDARDS AND SCHOOL BUS PHASE-OUT	Amend rule+
6.60.4 NMAC	LICENSURE RECIPROCITY	Amend rule (Technical amendment to conform to provisions of No Child Left Behind Act. The proposed amendment has not been disseminated for public comment.)#
6.62.2 NMAC	LICENSURE FOR EDUCATIONAL ADMINISTRATION, GRADES K-12	Amend rule#
6.63.13 NMAC (Proposed NMAC No.)	LICENSURE OF TEACHERS OF BLIND AND VISUALLY IMPAIRED	Adopt new rule#
6.63.14 NMAC (Proposed NMAC No.)	LICENSURE IN NATIVE LANGUAGE AND CULTURE	Adopt new rule#

@ Accountability Committee

* Finance, Transportation and Administration Interest Committee. These rules have been previously noticed and disseminated for public comment. A public hearing was previously held to obtain public comments regarding the proposed amendments.

^ Vocational Rehabilitation, Career Education & Adult Services Committee

+ Finance, Transportation and Administration Interest Committee

Quality Educators Committee

Unless otherwise noted above, the rules listed above have been disseminated for public comment and public hearings have been noticed and held to afford the public the opportunity to provide input.

Copies of the proposed rule changes identified with (#) may be obtained from Ms. Linda Olivas or may be accessed on the State Department of Public Education's website (<http://sde.state.nm.us/>). Written comments concerning the rules identified with (#) should be submitted to James Ball, Director, Professional Licensure, State Department of Education, 300 Don Gaspar, Santa Fe, New Mexico 87501-2786. Comments may also be telefaxed to Mr. Ball at (505) 827-4148 or submitted electronically to <mailto:jball@sde.state.nm.us>. Comments will be accepted until 5 p.m. on June 13, 2003; however, submission of written comments as soon as possible is encouraged.

Copies of the proposed rule changes identified with (*) may be obtained from Logan Martin at (505) 827-6626. Written comments concerning the rules identified with (*) should be submitted to Logan Martin, School Budget & Finance Analysis Unit, State Department of Education, 300 Don Gaspar, Santa Fe, NM 87501-2786. Comments may also be telefaxed to Mr. Martin at (505) 827-9931 or submitted electronically to lmartin@sde.state.nm.us. Comments will be accepted until 5 p.m. on March 26, 2003; however, submission of written comments as soon as possible is encouraged.

Copies of the proposed rule change identified with (@) may be obtained from Ms. Barbara Trujillo at (505) 827-6683. Written comments concerning the rules identified with (@) should be submitted to Dr. Mel Morgan, Assistant Superintendent for Accountability and Information Services, State Department of Education, 300 Don Gaspar, Santa Fe, NM 87501-2786. Comments may also be telefaxed to Dr. Morgan at (505) 827-6689 or submitted electronically to mmorgan@sde.state.nm.us. Comments will be accepted until 5 p.m. on June 13, 2003; however, submission of written comments as soon as possible is encouraged.

Copies of the proposed rule change identified with (+) may be obtained from Mr. Tito Ortiz at (505) 827-6640 or accessed at http://sde.state.nm.us/div/fin/trans/memos/current_events/html. Written comments should be submitted to Mr. Ortiz, Assistant State Transportation Director, School Transportation Unit, State Department of Education, 300 Don Gaspar, Santa Fe, NM 87501-2786. Comments may also be telefaxed to Mr. Ortiz at (505) 827-5802 or submitted electronically to tortiz@sde.state.nm.us. Comments will be accepted until 5 p.m. on June 13, 2003; however, submission of written comments

as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the State Board of Education Office at (505) 827-6571 as soon as possible.

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

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

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER PROPOSED REVISIONS TO 20.2.72 NMAC (Construction Permits)

The New Mexico Environmental Improvement Board will hold a public hearing on August 5, 2003 at 9:30 a.m. at the New Mexico State Capitol Building, Room 317, Santa Fe, New Mexico, to consider revisions to 20.2.72 NMAC (Construction Permits).

The proponent of this regulatory change is the New Mexico Environment Department.

Proposed Revisions to 20.2.72 NMAC (Construction Permits)

The proposed revisions would allow the Department to require owners and operators of air pollution sources of volatile organic compounds exceeding 10 pounds per hour or 25 tons per year to obtain a construction permit. Volatile organic compounds react with nitrogen oxides in the presence of sunlight to create ground-level ozone. Ozone at ground level can irritate the respiratory system, reduce lung function, and aggravate asthma, along with other health effects.

The U.S. Environmental Protection Agency (EPA) has adopted National Ambient Air Quality Standards for ozone in order to protect human health. In order to ensure that

these ozone standards are met throughout New Mexico, as required by the federal Clean Air Act, the state must be able to regulate volatile organic compounds under the construction permitting program established in Part 72 and approved as part of the State Implementation Plan by the EPA.

Before 1995 many volatile organic compounds were subject to the construction permit program because the Air Quality Control Regulations contained a New Mexico Ambient Air Quality Standard for Non-Methane Hydrocarbons (NMHCs). In 1995, at the Department's request, the Board determined that the NMHC standard was obsolete and deleted it from the Air Quality Control Regulations. However, the Department neglected to concurrently request that the Board retain all other volatile organic compounds as a pollutant requiring a construction permit. The proposed revisions are intended to correct this oversight.

The proposed revisions may be reviewed during regular business hours at the office of the Environmental Improvement Board, Harold Runnels Building, 1190 St. Francis Drive, Room S-2054, Santa Fe, NM. Copies of the proposed revisions may be obtained by contacting Rita Trujillo at (505) 955-8024 or by visiting the Department's web site at www.nmenv.state.nm.us. Follow the links to the Air Quality Bureau's page. Questions about the proposed revisions may be addressed to: Rita Trujillo, Manager, Control Strategies Section, Air Quality Bureau, 2044 Galisteo Street, Santa Fe, NM, 87505, telephone number (505) 955-8024. Questions and comments about the proposed revisions should be submitted to Ms. Trujillo by July 11, 2003, in order to be considered by the Department prior to the hearing.

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

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

- identify the person for whom the witness(es) will testify;
- identify each technical witness

the person intends to present and state the qualifications of that witness, including a description of their educational and work background;

- summarize or include a copy of the direct testimony of each technical witness and state the anticipated duration;
- include the text of any recommended modifications to the proposed regulatory change; and
- list and describe, or attach, all exhibits anticipated to be offered by that person at the hearing.

Notices of intent for the hearing must be received in the Office of the Environmental Improvement Board not later than 5:00 pm on July 25, 2003, and should reference the name of the regulation and the date of the hearing. Notices of intent to present technical testimony should be submitted to:

Geraldine Madrid-Chavez
Office of the Environmental Improvement Board
Harold Runnels Building
1190 St. Francis Drive, Room N-2150
Santa Fe, NM 87502

Any person who wishes to submit a non-technical written statement in lieu of oral testimony may do so at or before the hearing.

If you are an individual with a disability and you require assistance or an auxiliary aid, e.g. sign language interpreter, to participate in any aspect of this process, please contact Cliff Hawley by July 5, 2003. Mr. Hawley's telephone number is (505) 827-2844. He is Chief of the Program Support Bureau, New Mexico Environment Department, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, NM, 87502. (TDD or TDY users please access his number via the New Mexico Relay Network. Albuquerque TDD users: (505) 275-7333. Outside of Albuquerque: 1-800-659-1779.)

Copies of the agenda and the proposed revisions will be provided in alternative forms, e.g. audiotape, if requested by July 5, 2003.

The Board may make a decision on the proposed regulatory change at the conclusion of the hearing, or the Board may convene a meeting after the hearing to consider action on the proposal.

ss/Gay Dillingham, Chair

**NEW MEXICO
DEPARTMENT OF
FINANCE AND
ADMINISTRATION**
FINANCIAL CONTROL DIVISION

Notice of Rule Making

New Mexico Department of
Finance and Administration

The Department of Finance and Administration (DFA) hereby gives notice that DFA will conduct a public hearing at 10 a.m. on June 30, 2003 in the Old Senate Chambers, second floor, Bataan Memorial Building, Santa Fe, New Mexico, 87501 concerning the proposed promulgation of two new rules by the Financial Control Division of the Department of Finance and Administration. The two new rules are entitled, "Authority to Issue Warrants" and "Accountability for Accounting Function." The two new rules are proposed due to amendments to sections 6-5-1 through 6-5-11 NMSA 1978 and other statutory amendments, effective July 1, 2003, which impose certain requirements and grant new authority to the Financial Control Division. Interested individuals may testify at the public hearing or submit written comments no later than 5:00 p.m., June 27, 2003 to DFA, Bataan Memorial Building, Room 180, Santa Fe, New Mexico, 87501. All written and oral testimony will be considered prior to adoption of the amendments. Copies of the text of the proposed rules are available from Ms. Sharon Rivera, Room 180, Bataan Memorial Building, Santa Fe, New Mexico, 87504 or at 505-827-4985 or from the DFA intranet website <http://www.state.nm.us/clients/dfa/index.html>.

If you are an individual with a disability who needs auxiliary aid or service in order to attend or participate in the hearing, please contact Ms. Sharon Rivera, DFA at 505-827-4985 or writing to the above address or through the New Mexico Relay Network, 1-800-659-1779. DFA requests at least 10 days advance notice to provide requested alternative formats and special accommodations.

James C. Jimenez
Cabinet Secretary

**NEW MEXICO
DEPARTMENT OF HEALTH
OFFICE OF EPIDEMIOLOGY**

NOTICE OF PUBLIC HEARING

The New Mexico Department of Health will hold a public hearing on 7.4.3 NMAC "Control of Disease and Conditions of Public Health Significance". The Hearing will be held at 1:00 PM on Monday June 30, 2003 in the Harold Runnels Building Auditorium, located at 1190 St. Francis Drive, Santa Fe, New Mexico 87502.

The public hearing will be conducted to add or remove certain diseases or conditions from the index of notifiable conditions, add patient occupation to the required reporting elements, designate the New Mexico Occupational Health Registry as the official occupational illness and injury reporting agency, and make certain clarifications and modifications to the existing regulation.

A copy of the proposed regulation can be obtained from:

Cecelia Herrera
Office of Epidemiology
New Mexico Department of Health
1190 St. Francis Drive
P.O. Box 26110
Santa Fe, New Mexico 87502-6110
505-827-0006

Please submit any written comments regarding the proposed regulation to the attention of Cecelia Herrera at the above address prior to the hearing.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aide or service to attend or participate in the hearing, please contact Cecelia Herrera by telephone at 505-827-0006. The Department requests at least ten (10) days advance notice to provide requested special accommodations.

**NEW MEXICO
COMMISSION ON
HIGHER EDUCATION**

**NOTICE OF PROPOSED
RULEMAKING**

The New Mexico Commission on Higher Education ("Commission") will convene on Wednesday, June 11, 2003, Thursday, June 12, 2003 and Friday, June 13, 2003. Final actions on the proposed rulemaking will be taken at the regular meeting of the Commission on Friday, June 13, 2003,

which will be held in Albuquerque, New Mexico at University of New Mexico, Hodgkin Hall. Information regarding the location of the meetings, the addition or change of meeting days, and the agenda for the meeting, will be available at least twenty-four hours prior to the meeting from the Commission staff at 505-476-6500. The Commission may consider the following items of rulemaking at the meeting:

Rule Number	Rule Name	Proposed Action
5.3.13 NMAC	ALLOCATION AND DISTRIBUTION OF THE ADULT BASIC EDUCATION FUND ACT	New rule #
5.7.16 NMAC	VIETNAM VETERANS' SCHOLARSHIP	Amend rule #
5.7.20 NMAC	SUCCESS SCHOLARSHIP PROGRAM	Amend rule #
5.100.2 NMAC	PRIVATE POST-SECONDARY INSTITUTIONS OPERATING UNDER THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT	Amend rule #

A public hearing on the proposed rulemaking will be held on Friday, June 13, 2003, in Albuquerque, at a time and place to be determined at least ten days before. Please contact the Commission at 505-476-6500 for additional information.

Copies of the proposed rule changes identified with (#) may be obtained from the Commission. Written comments concerning the rules identified with (#) should be submitted to Lisa Roybal, Liaison Officer, 1068 Cerrillos Road, Santa Fe, NM 87505, by facsimile at (505) 476-6511, or via electronic mail at lroybal@che.state.nm.us. Comments will be accepted until 5 p.m. on June 9, 2003; however, submission of written comments as soon as possible is encouraged.

Individuals with disabilities who require this information in an alternative format or need any form of auxiliary aid to attend or participate in this meeting, please contact the Commission at (505) 476-6500 at least one week prior to the meeting, or as soon as possible.

Comments, questions, or requests for copies of the Agenda should be directed to the Commission on Higher Education, 1068 Cerrillos Road, Santa Fe, NM 87505, Tel. 505-476-6500.

NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION

NOTICE OF PUBLIC HEARING

The Human Services Department will hold a public hearing to consider adopting revised rules in the NMW Cash Assistance Program. The hearing will be held at 9:00 am on Thursday, July 3, 2003. The hearing will be held in the Law Library for the Office of General Counsel for the Human Services Department. The Law Library is located in room 101 on the ground level of the Pollon Plaza building, 2009 S. Pacheco

St., Santa Fe, NM 87505.

Governor Bill Richardson signed into law House Bill 122 on April 2, 2003. Senate Bill 289 was signed into law by Governor Richardson on April 8, 2003. Both bills contained an emergency clause that requires the Department to issue emergency rules to make the amendments effective as state regulations for the NMW Cash Assistance Program. The Department issued interim emergency rules to implement the amendments to the New Mexico Works Act made by the 2003 Legislature as they are contained in House Bill 122 and Senate Bill 289. The emergency rules were effective on May 15, 2003.

The Department proposes to finalize the following interim emergency rules effective August 1, 2003:

The definition of dependent child will be revised to include a student who has reached the age of 18 and is under the age of 22 and is receiving special education services regulated by the State Board of Education. This change allows such a student to remain part of the NMW benefit group as long as the student meets school attendance requirements for the NMW Cash Assistance Program. Applicable Rule Citations: **8.102.100.7A(17) NMAC**; **8.102.420.8A NMAC**; **8.102.420.9A(1) NMAC**

A new definition is added to NMW rules. The term "vehicle" is defined for the purposes of identifying those vehicles that will no longer be counted to determine eligibility of the NMW benefit group to receive NMW cash assistance. As a result of this amendment, the vehicles owned by the benefit group that are used for transportation to work, work activities or daily living requirements will no longer be considered to determine NMW eligibility. Applicable Rule Citations: **8.102.100.7B NMAC**; **8.102.510.10B(1) NMAC**

A benefit group may receive an extension of

NMW cash assistance after the 60-month term limit if the adult in the benefit group who has reached 60 months has an application for Supplemental Security Income (SSI) pending or in the appeals process and has also been waived from NMW work requirements because of a temporary or permanent disability, or has such a work waiver in the previous twenty-four months. Applicable Rule Citations: **8.102.410.17E(5) NMAC**

Current regulations allow a parent to be sanctioned, and the cash assistance payment to be reduced when a parent fails to report a child's failure to attend school within fourteen days. The amendment in the NMWA no longer allows a parent to be sanctioned or the payment to be reduced for the parent's failure to report that a dependent child has failed to attend school. Applicable Rule Citations: **8.102.420.9B(4) NMAC**

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 the public hearing, please contact the Department toll free at 1-800-432-6217, TDD 1-800-609-4TDD (4833), or through the New Mexico Relay System toll free at 1-800-659-8331. The Department requests at least a 10-day advance notice to provide requested alternative formats and special accommodations.

Individuals wishing to testify or who would like a copy of the proposed regulation should contact the Income Support Division, P.O. Box 2348, Pollon Plaza, Santa Fe, NM 87505-2348, or by calling toll free 1-800-432-6217.

Individuals who do not wish to attend the hearing may submit written or recorded comments. Written or recorded comments must be received by 5:00 PM on the date of the hearing. Please send comments to:

Pamela S. Hyde, J.D., Secretary
 Human Services Department

P.O. Box 2348 Pollon Plaza
Santa Fe, NM 87504-2348

You may send comments electronically to:
Sharon.Regensberg@state.nm.us

NEW MEXICO LIVESTOCK BOARD

NOTICE OF RULE MAKING HEARING AND REGULAR BOARD MEETING

NOTICE IS HEREBY GIVEN that a regular Board meeting will be held on Friday June 20, 2003, at Ruidoso Convention Center, 111 Sierra Blanca Dr., Ruidoso, New Mexico, at 9:00 a.m. The Board will set the mill rates, they will address the bovine tuberculosis plan, and cover matters of general business.

Anyone who requires special accommodations is requested to notify the New Mexico Livestock Board office at (505) 841-6161 of such needs at least five days prior to the meeting.

NEW MEXICO COMMISSION OF PUBLIC RECORDS

Notice of Public Hearing

The New Mexico Commission of Public Records will hold a public hearing at 9 a.m. on June 19, 2003 at the State Library Archives and Records Center building, Room 2012, 1209 Camino Carlos Rey, Santa Fe New Mexico 87507. The public hearing will be held to solicit comments on the following proposed amendments to:

- 1.13.2 NMAC Fees
- 1.13.5 NMAC New Mexico Historical Records Grant Program
- 1.13.11 NMAC Research in the New Mexico Archives
- 1.14.2 NMAC Microphotography Standards
- 1.24.11 NMAC New Mexico Administrative Code Revisions
- 1.24.15 NMAC New Mexico Register

The Commission of Public Records is also soliciting comments on a new rule, 1.13.3 NMAC, Management of Electronic Records. If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any form of auxiliary aid or service to attend or participate in the hearing, please contact Elizabeth Bachicha at 476-7902 by

June 13, 2003. Proposed rules can be viewed at <http://www.nmcpr.state.nm.us> and can also be provided in various accessible formats. For additional assistance please contact Elizabeth Bachicha at 476-7902 or by e-mail at ebachicha@rain.state.nm.us.

End of Notices and Proposed Rules Section

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Adopted Rules and Regulations

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

The following rule was renumbered and reformatted to comply with current NMAC requirements and will become effective on May 30, 2003: New Mexico Mine Registration and Reporting was renumbered from 19 NMAC 7.1 to 19.7.1 NMAC.

NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

The following rule was renumbered and reformatted to comply with current NMAC requirements and will become effective on May 30, 2003: New Mexico Mine Safeguarding was renumbered from 19 NMAC 7.2 to 19.7.2 NMAC.

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.77 NMAC, sections 2 and 9, to be effective June 13, 2003.

20.2.77.2 SCOPE: Any stationary source constructing or modifying and which is subject to the requirements of 40 CFR Part 60, as amended through [~~September 1, 2001~~] September 1, 2002. [06/16/95, 11/19/97, 9/8/99; 20.2.77.2 NMAC - Rn 20 NMAC 2.77.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03]

20.2.77.9 ADOPTION OF 40 CFR PART 60: Except as otherwise provided, the new source performance standards as promulgated by the United States environmental protection agency, 40 CFR Part 60, as amended in the Federal Register through [~~September 1, 2001~~] September 1, 2002 are hereby incorporated into this part [20.2.77 NMAC]. [06/16/95, 08/02/96, 11/19/97, 09/08/99; 20.2.77.9 NMAC - Rn 20 NMAC 2.77.107 & A, 06/02/00; A, 02/18/02; A, 06/13/03]

NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD

This is an amendment to 20.2.82 NMAC,

sections 2 and 8, to be effective June 13, 2003.

20.2.82.2 SCOPE: All sources emitting hazardous air pollutants, which are subject to the requirements of 40 CFR Part 63, as amended through [~~September 1, 2001~~] September 1, 2002.

[Rn, 20 NMAC 2.82.2, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.2 NMAC - Rn 20 NMAC 2.82.101 & A, 06/23/00; A, 02/18/02; A, 06/13/03]

20.2.82.8 ADOPTION OF 40 CFR PART 63: Except as otherwise provided in section 20.2.82.10 NMAC (below), the national emission standards for hazardous air pollutants for source categories as promulgated by the US EPA, 40 CFR Part 63, as amended in the Federal Register through [~~September 1, 2001~~] September 1, 2002 are hereby incorporated into this part [20.2.82 NMAC].

[Rn, 20 NMAC 2.82.7, 08/14/98; A, 08/14/98, 09/08/99; 20.2.82.8 NMAC - Rn 20 NMAC 2.82.106 & A, 06/23/00; A, 02/18/02; A, 06/13/03]

NEW MEXICO DEPARTMENT OF HEALTH OFFICE OF EPIDEMIOLOGY

This is an amendment to 7.4.2.3 NMAC, 7.4.2.5 NMAC, 7.4.2.7 NMAC, 7.4.2.8 NMAC, 7.4.2.9 NMAC, and 7.4.2.11 NMAC, effective 5/30/2003

7.4.2.3 STATUTORY AUTHORITY: These regulations are promulgated by the secretary of the department of health pursuant to sections 77-1-3 and 9-7-6 (E) NMSA 1978.

7.4.2.5 EFFECTIVE DATE: October 31, 1996, unless a later date is cited at the end of a section [~~or paragraph~~].

7.4.2.7 DEFINITIONS:

A. "Animal" means any vertebrate member of the animal kingdom excluding man.

B. "Animal destroyed" means the administration of an agent which shall cause the death of an animal. Such method shall not destroy brain tissue necessary for laboratory examination for rabies.

C. "Bite" means the puncture or tear of the skin inflicted by the teeth of an animal.

D. "Confined" means restriction of an animal at all times by an owner or keeper to an escape proof building or other enclosure away from other animals

and the public.

E. "Department" means the department of health of the state of New Mexico.

F. "District health officer" means the person designated by the director of the public health division to be responsible for district health operations in a district organized by the public health division.

G. "Division" means the [~~division of epidemiology, evaluation and planning~~] office of epidemiology of the department of health of the state of New Mexico.

H. "Exposure to rabies" means the exposure resulting from a bite by an animal susceptible to rabies or from contact of the saliva of such animal with any break or abrasion of the skin.

I. "Field health office" means the health office(s) located in each county and administered by the public health division of the department of health.

J. "Impounding facilities" means any animal control center, pound, animal shelter, kennel, veterinary hospital, lot premise or building maintained or contracted by a municipality or county for the care and custody of animals.

K. "Isolation" means the confinement of an animal in an escape proof run or cage so that there is no possibility of direct contact with other animals or humans.

L. "Laboratory" means the scientific laboratory division (SLD) of the New Mexico department of health, 700 Camino de Salud, Albuquerque, New Mexico, 87106.

M. "Livestock" means all domestic animals of the following genera: equine, bovine, ovine, caprine and porcine.

N. "Owner" means a person who owns, harbors, keeps, or knowingly permits an animal to be harbored or kept, or permits an animal to remain on his premises.

O. "Person" means any individual, household, firm, partnership, corporation, society, association and every officer, agent or employee thereof.

P. "Premises" means any parcel of land and structure(s) thereon.

Q. "Quarantine" means the strict containment of all animals specified in the order of the district health officer upon the private premises of the owner, or under restraint by leash, or within a closed cage or paddock and shall include other measures ordered by the district health officer to control the spread of rabies.

R. "Running at large" means to be free of physical restraint beyond the premises of the owner or keep-

er.

S. "Stray animal" means any animal running at large.

T. "Vaccination against rabies" means the injection of an approved rabies vaccine by or under the supervision of a licensed veterinarian.

U. "Veterinarian" means a person with a doctor of veterinary medicine degree licensed to practice veterinary medicine in the state of New Mexico.

V. "Vicious animal" means any animal which at any time without provocation shall bite, attack or injure any person who was peacefully conducting himself where he lawfully may be.

7.4.2.8 VACCINATION OF DOGS AND CATS REQUIRED:

A. Dogs and cats over the age of three months shall be vaccinated against rabies ~~[annually with a vaccine approved by the director of the division].~~ The animal shall receive a booster within the 12-month interval following the initial vaccination. Every domestic dog and cat shall be revaccinated against rabies within 12 months if a 1-year vaccine is administered or within 36 months if a 3-year vaccine is administered with a rabies vaccine licensed by the United States Department of Agriculture and administered according to label recommendations. The "compendium of animal rabies control (CARC)," published by the national association of public health veterinarians, Inc., shall be the reference for the route of inoculation ~~(IM)~~ and the type of vaccine. Copies are available upon request from the ~~[division]~~ department.

B. Rabies vaccine shall not be distributed except to a veterinarian.

C. The veterinarian who administers rabies vaccine to a dog or cat shall issue to the owner a serially numbered vaccination certificate containing the name of the veterinarian, the type of vaccine used, the initials of the producer of the vaccine, the name and address of the owner, a description of the dog or cat vaccinated, the date of vaccination, and the expiration date for the period of immunity. The veterinarian shall also furnish the owner with a tag bearing the certificate number and the year of the vaccination. The tag shall be affixed to the vaccinated dog or cat and shall be worn at all times the animal is not on the premises of the owner or otherwise confined. A combination rabies vaccination certificate and city/county license shall be permitted providing the certificate/license contains at least the above required information.

D. Approved rabies vaccine shall be administered to the species, by the route and in the amount recommended

by the producer of the vaccine and the latest CARC.

E. Nothing herein shall prohibit the acceptance and recognition for purpose of compliance with this section of the administration of an approved rabies vaccine by a veterinarian licensed in another state.

7.4.2.9 HUMAN EXPOSURE; ANIMALS WITH SYMPTOMS OF RABIES:

A. When any person is bitten by an animal, it is the duty of such person or his parent or guardian, or any person having knowledge of the whereabouts of the animal, to immediately notify the animal control officer or the field office of the public health division.

B. Any dog ~~[or cat], cat or ferret~~ which bites or otherwise exposes a person to rabies shall be either destroyed and the head sent to the laboratory for rabies testing or confined immediately at the owner's expense at a place and in a manner designated by the animal control officer and approved by the field health office. If the dog ~~[or cat], cat or ferret~~ shows signs or symptoms of rabies during the ten (10) day confinement and observation period, it shall be destroyed and the head sent to the laboratory for rabies testing.

C. Any skunk, bat, ~~[ferret,]~~ raccoon, coyote, bobcat or other wild animal not born or reared in captivity, with the exception of rodents (order rodentia) or rabbits (order lagomorpha), which bites or otherwise exposes a person to rabies shall be destroyed immediately and the head sent to the laboratory for testing. Rabbits and rodents do not normally transmit rabies.

D. Except for rodents and rabbits, the head of a susceptible animal suspected of having rabies, which bites or otherwise exposes a person to rabies and either dies or is destroyed within ten (10) days following the exposure shall be immediately sent to the laboratory for rabies testing. Rodent and rabbit specimens may be submitted with the consent of the state epidemiologist of the division of epidemiology, evaluation and planning division. A rabies submission form and instructions for shipping are available upon request from the scientific laboratory division, department of health.

7.4.2.11 **A N I M A L S EXPOSED TO RABIES:** When circumstances indicate an animal has been bitten by a known rabid animal, the following procedures shall apply:

A. Dogs ~~[or cats], cats or ferrets~~ bitten by a known rabid animal should be destroyed immediately. If the owner is unwilling to have this done, the

~~[unvaccinated animal shall be vaccinated immediately with an approved rabies vaccine and placed in strict confinement and isolation] animal should be vaccinated and quarantined according to the recommendations of the latest edition of the "compendium of animal rabies control (CARC)," published by the national association of public health veterinarians, Inc., at the owner's expense in a manner directed by the animal control officer and approved by the district health officer [for a six (6) month period. It shall be re-vaccinated with an approved rabies vaccine one month before being released. If the dog or cat has been previously vaccinated with an approved rabies vaccine and is within the recognized period of immunity for the vaccine, it shall be re-vaccinated immediately and confined and isolated at the owner's expense for at least 60 days in a manner directed by the animal control officer and approved by the district health officer].~~

B. Domestic livestock known to have been bitten by a rabid animal shall be destroyed immediately. If the owner is unwilling to have this done, the animal ~~[shall be vaccinated with a rabies vaccine approved for use in the particular species of animal and must be confined and isolated]~~ should be vaccinated and quarantined according to the recommendations of the latest edition of the "compendium of animal rabies control (CARC)," published by the national association of public health veterinarians, Inc., in a manner approved by the district health officer [for a six (6) month period]. The exposed animal may be killed and its tissues eaten if the animal is slaughtered within seven (7) days after being bitten. Persons who slaughter an exposed domestic animal shall wear gloves. No animal tissue shall be retained for consumption from areas proximate to the bite. Neither tissues nor milk from a rabid animal should be used for human or animal consumption.

C. Other animals susceptible to rabies known to have been bitten by a rabid animal shall be destroyed immediately as directed by the district health officer.

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an interim emergency rule to implement the statutory provisions of the New Mexico Works Act, as amended by House Bill 122 and Senate Bill 289 in the 2003 Legislative Session. The Senate and House bills were signed into law by Governor Bill Richardson with an emergency clause.

8.102.100.7 DEFINITIONS

A. Definitions A-L:

(1) Application: Means a written request, on the appropriate ISD form, signed by or on behalf of an individual or family, for assistance.

(2) Attendant: Means an individual needed in the home for medical, housekeeping, or child care reasons.

(3) Authorized representative: Means an adult who is designated in writing by the applicant who is sufficiently knowledgeable about the applicant/ benefit group's circumstances to complete the application form correctly and represent the benefit group.

(4) Basic needs: Include food, clothing, shelter, utilities, personal requirements and the individual's share of household supplies.

(5) Beginning month: Means the first month for which a benefit group is certified after a lapse in certification of at least one calendar month in any project area. A benefit group is budgeted prospectively in a beginning month. A beginning month is also an initial month.

(6) Benefit group: Means a pregnant woman or a group of people that includes a dependant child, all of that dependent child's full, half, step- or adopted siblings living with the dependant child's parent or relative within the fifth degree of relationship and the parent with whom the children live.

(7) Benefit month: Means the month for which cash assistance benefits have been issued. This term is synonymous with issuance month defined below.

(8) Budget month: Means the calendar month for which income and other circumstances of the benefit group shall be determined in order to calculate the cash assistance amount.

(9) Capital gains: Means proceeds from the sale of capital goods or equipment.

(10) Cash assistance: Means cash payments funded by the Temporary Assistance for Needy Families (TANF) block grant pursuant to the federal act and by state funds; or state funded cash assistance in the General Assistance program.

(11) Certification: Means the authorization of eligibility of a benefit group for the issuance of cash assistance benefits.

(12) Certification period: Means the time period assigned to a benefit group that is approved to receive cash assistance benefits. The certification period shall conform to calendar months.

(13) Collateral contact: Means an individual or agency designated by the benefit group to provide information concerning eligibility.

(14) Conciliation process:

Means a 30- day process during which the department and the individual have the opportunity to address barriers to compliance or to correct whatever failure has generated the noncompliance determination. Prior to imposing the first sanction, if the department determines that a participant is not complying with the work participation requirement or child support requirements, the participant shall be required to enter into a conciliation process established by the department to address the noncompliance and to identify good cause for noncompliance or barriers to compliance. The conciliation process shall occur only once prior to the imposition of the sanction.

(15) Date of entry/admission: Means the date established by the Immigration and Naturalization Service (INS) as the date an alien (or sponsored alien) was admitted for permanent residence.

(16) Department: Means the human services department.

(17) Dependent child: Means a natural child, adopted child, stepchild or ward who is: ~~[17 years of age or younger or who is 18 and is enrolled in high school.]~~

(a) seventeen years of age or younger;

(b) eighteen years of age and is enrolled in high school; or

(c) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education (SDE).

(18) Director: Means the director of the income support division.

(19) Diversion payment: Means a lump sum payment, which will enable the applicant to keep job or to accept a bona fide offer of employment.

(20) Documentation: Means a written statement entered in the case record regarding the type of verification used and a summary of the information obtained to determine eligibility.

(21) Earned income: Means cash or payment in-kind that is received as wages from employment or payment in lieu of wages; and earnings from self-employment or earnings acquired from the direct provision of services, goods or property, production of goods, management of property or supervision of services.

(22) Education Works Program (EWP): Provides state-funded cash assistance to a benefit group where at least one individual is enrolled in a post secondary institution. The applicant or recipient benefit group must be otherwise eligible for NMW cash assistance, but chooses to participate in the Education Works Cash Assistance Program.

(23) Emancipated: Means an individual under the age of 18 years who is

legally recognized as no longer under parental control due to marriage or by a decision of a court.

(24) Encumbrance: Means debt owed on property.

(25) Equity value: Means the fair market value of property, less any encumbrances owed on the property.

(26) Expedited services: The process by which benefit groups reporting little or no income or resources will be provided an opportunity to participate in the FSP.

(27) Fair hearing: An administrative proceeding which a claimant and/or his representative may request if:

(a) an application is not acted on within a reasonable time after the filing of the application;

(b) an application is denied in whole or in part; or

(c) the cash assistance or services are modified, terminated or not provided.

(28) Fair market value (FMV): Means the amount an item can be expected to sell for on the open market at the prevailing rate of return. For vehicles, the term FMV means the amount a dealer would buy a vehicle for wholesale or offer as a trade-in. It is not the amount the dealer would sell the vehicle for at retail.

(29) Federal Act: Means the federal Social Security Act and rules promulgated pursuant to the Social Security Act.

(30) Federal fiscal year: October 1 through September 30 of the calendar year.

(31) Federal poverty guidelines: Means the level of income defining poverty by family size published annually in the Federal Register by the United States Department of Health and Human Services.

(32) Food Stamp Act: The Food Stamp Act of 1977 (P.L. 95-113), and subsequent amendments.

(33) General Assistance (GA) benefit group: Means a benefit group in which all members receive cash assistance financed by state or local funds.

(34) Government entity: Includes any federal, state, tribal or local unit of government as well as any non-government entity which receives public funds for the purpose of meeting the housing needs of its clientele.

(35) Gross income: The total amount of income that a benefit group is entitled to receive before any voluntary or involuntary deductions are made, such as, but not limited to, federal and state taxes, FICA, garnishments, insurance premiums (including medicare), and monies due and owing the benefit group, but diverted by the provider. Gross income does not include specific income exclusions, such as but not limited to, the cost of producing self-

employment income, and income excluded by federal law.

(36) Gross income test (85% test): For the benefit group to be eligible, the gross earned income of the benefit group must be less than 85% of the federal poverty guidelines as determined in 8.102.500.8 NMAC.

(37) Head of household: The payee who is the responsible case head for the benefit group. The payee may be the parent, guardian, sole adult member, specified relative, pregnant woman, a GA recipient, or caretaker.

(38) Immigrant: Means alien as defined in the federal act.

(39) Immigration and naturalization service (INS): A division of the U.S. Department of Justice.

(40) Impairment: Means a condition resulting from anatomical, physiological, or psychological abnormalities evidenced by medically acceptable clinical and laboratory diagnostic techniques. Impairment has to do only with the medical and/or psychiatric process. To evaluate physical and/or mental impairment, medical evidence consisting of signs, symptoms and objective findings must be obtained.

(41) Ineligible alien: Means an individual who does not meet the eligible alien requirements or who is not admitted for permanent residence.

(42) Initial month: Means the first month for which a benefit group is certified for participation in the cash assistance program. An initial month is also a month in which a benefit group is certified following a break in participation of one calendar month or longer.

(43) Inquiry: Means a request for information about eligibility requirements for a financial, medical, or food assistance program that is not an application.

(44) Institution of higher education: Means any education institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities, and vocational or technical schools at the post-high school level.

(45) Institution of post-secondary education: Means an institution of post-secondary education, any public or private educational institution that normally requires a high school diploma or equivalency certificate for enrollment, or that admits persons who are beyond the age of compulsory school attendance in the state in which the institution is located, regardless of the high school prerequisite, provided that the institution is legally authorized or recognized by the state to provide an educational program beyond secondary education in the state or a program of training to pre-

pare students for gainful employment.

(46) Irrevocable trust funds: Means an arrangement to have monies held by one person for the benefit of another that cannot be revoked.

(47) Issuance month: Means the calendar month for which cash assistance is issued. In prospective budgeting, the budget and issuance months are the same.

B. Definitions M-Z:

(1) Medicaid: Medical assistance under title XIX of the Social Security Act, as amended.

(2) Minor unmarried parent: Means an unmarried parent under the age of 18 years or is age 18 and enrolled in high school.

(3) Month of approval: Means the month the action to approve a benefit group for cash assistance is taken.

(4) Net income tests: Means for the benefit group to be eligible, the benefit group's net earned income must be less than the standard of need applicable to the benefit group after allowable deductions have been made to the earned and unearned income.

(5) Net monthly income: Means gross non-exempt income minus the allowable deductions. It is the income figure used to determine eligibility and cash assistance benefit amount.

(6) Non-benefit group members: Means persons residing with a benefit group who are specifically excluded by regulation from being included in the benefit group certification.

(7) Notice of adverse action (NOAA): Means a written notice that includes a statement of the action the Department has taken or intends to take, the reason for the action, the benefit group's right to a fair hearing, who to contact for additional information, the availability of continued benefits, and liability of the benefit group for any overissuance received if the hearing decision is adverse to the benefit group. This notice may be received prior to an action to reduce benefits, or at the time reduced benefits will be received, or if benefits are terminated, at the time benefits would have been received if they had not been terminated. Participants have 13 days from the mailing date of the notice to request a fair hearing and to have benefits restored to their previous level.

(8) Overissuance: Means the amount by which cash assistance benefits issued to a benefit group exceed the amount the benefit group was eligible to receive.

(9) Parent: Means natural parent, adoptive parent, stepparent or legal guardian.

(10) Participant: Means a recipient of cash assistance or services or a member of a benefit group who has reached the

age of majority.

(11) Payment standard: Means the amount of the cash assistance payment, after the countable net earned and unearned income of the benefit group has been subtracted from the benefit group's standard of need, and prior to reduction by sanction and/or recoupment.

(12) Permanent total disability: Means an individual must have a physical or mental impairment, expected to last at least 12 months, that prevents gainful employment in any employment position within the individual's current employment capacity.

(13) Person: Means an individual.

(14) Project area: Means the geographic area designated to a county office that is responsible for the administration of the department's programs.

(15) Prospective budgeting: Means the computation of a benefit group's eligibility and benefit amount based on a reasonable estimate of income and circumstances that will exist in the current month and future months.

(16) Quarterly reporting: Means a reporting requirement that allows a 12-month certification period and requires a benefit group to submit a report form every third month during a certification period.

(17) Real property: Means land, affixed improvements, and structures which include mobile homes. Grazing permits are also considered real property.

(18) Recertification: Means a complete review of all conditions of eligibility which are subject to change and a redetermination of the amount of assistance payment for an additional period of time.

(19) Recipient: Means a person receiving cash assistance benefits (same as a participant).

(20) Refugee: Means a lawfully admitted individual granted conditional entry into the United States.

(21) Regular reporting: Means a reporting requirement in which a benefit group is not required to meet quarterly reporting requirements, and must report changes within 10 days of the date the change becomes known.

(22) Resource standard: Means the financial standard with respect to resources and property, \$2,000 for non-liquid resources and \$1500 for liquid resources.

(23) Retrospective budgeting: Means the computation of a benefit group's benefits for an issuance month based on actual income and circumstances that existed in the previous month.

(24) Resource planning session: Means a planning session to ascertain the applicant's immediate needs and to assess

the applicant's financial and non-financial options.

(25) Secretary: Means the secretary of the department.

(26) Self-employed: Means an individual who engages in a self-managed enterprise for the purpose of providing support and income and who does not have the usual withholding deducted from this income.

(27) Services: Means child-care assistance; payment for employment-related transportation costs; job search assistance; employment counseling; employment; education and job training placement; one-time payment for necessary employment-related costs; case management; or other activities whose purpose is to assist transition into employment.

(28) Shelter for battered women and children: Means a public or private nonprofit residential facility that serves battered women and their children. If such a facility serves other individuals, a portion of the facility must be set aside on a long-term basis to serve only battered women and children.

(29) Single-parent benefit group: Means any benefit group which does not include both parents of a child included in the benefit group and thus includes families in which there is only one parent or in which there are no parents.

(30) Sponsor: Means a person who executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry or admission to the United States as a permanent resident.

(31) Sponsored alien: Means an alien lawfully admitted for permanent residence in the United States as an immigrant, as defined in Sections 101(a)(15) and 101(a)(2) of the Immigration and Nationality Act.

(32) Standard of need: Means an amount which is based on the number of individuals included in the benefit group and allows for financial standard and basic needs.

(33) State-funded alien eligible: Means an alien who entered the United States on or after August 22, 1996, as one of the classes of aliens described in Subsection B of 8.102.410.10 NMAC, is eligible with respect to citizenship requirements for state-funded assistance under NMW and GA without regard to how long the alien has been residing in the United States.

(34) Supplemental security income (SSI): Means monthly cash payments made under the authority of:

(a) Title XVI of the Social Security Act, as amended, to the aged, blind and disabled;

(b) Section 1616(a) of the Social Security Act; or

(c) Section 212(a) of P.L. 93-66.

(35) Temporary total disability: Means a physical or mental impairment, expected to last at least 30 days from date of determination, but less than one year from the date of application, that prevents gainful employment in any employment position within the individual's current employment capacity.

(36) Two-parent benefit group: Means a benefit group which is considered to exist when both parents of any child included in the benefit group live in the home with the child and are included in the benefit group.

(37) Term limits: Means NMW assistance (cash benefits and supportive services) is not provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime.

(38) Unearned income: Means old age, survivors, and disability insurance payments (social security), railroad retirement benefits, veterans administration compensation or pension payments, military retirement and allotments, pensions, annuities and retirement benefits; lodge or fraternal benefits, any other public or private disability or retirement benefit or pension, shared shelter payments, Individual Indian Money (IIM); royalty or lease payments for land or property owned by a benefit group member; settlement payments resulting from insurance or litigation; worker's compensation benefits; child support; unemployment compensation benefits; union benefits paid in cash; gifts and contributions; and real property income.

(39) Vehicle: Means a conveyance used for the transportation of individuals to or from employment, for the activities of daily living or for the transportation of goods; vehicle does not mean boats, trailers or a mobile home used as the principal place of residence.

~~[(39)]~~ **(40) Verification:** Means the use of third-party information or documentation to establish the accuracy of statements on the application.

~~[(40)]~~ **(41) Wage Subsidy Program:** Means a subsidized employment opportunity through which a TANF cash assistance recipient is hired into full-time employment.

[8.102.100.7 NMAC - N, 07/01/2001; A, 02/14/2002, A, 05/15/2003]

**NEW MEXICO HUMAN
SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an interim emergency rule to implement the statutory provisions of the New Mexico Works Act, as amended by House Bill 122 and Senate Bill 289 in the

2003 Legislative Session. Both the Senate and House bills were signed into law by Governor Bill Richardson with an emergency clause. The amendment provides for clarification of the hardship extension of the 60-month term limit when an adult has filed an application for Supplemental Security Income.

8.102.410.17 TERM LIMITS

A. TANF cash assistance:

(1) TANF cash assistance shall not be provided to or for an adult or a minor head of household for more than 60 months during the individual's lifetime. The benefit group shall be ineligible if the benefit group contains at least one adult, minor head of household or spouse of the minor head of household who has received 60 or more months of TANF cash assistance, unless the term limit has been waived pursuant to Subsection E of 8.102.410.17 NMAC.

(2) For purposes of determining the 60-month term limit, the count of months of TANF assistance begins on July 1, 1997 and thereafter, and includes assistance received under PROGRESS, or the court-ordered AFDC program in effect until March 31, 1998, or NMW.

(3) Any month in which an adult, a minor head of household, or the spouse of a minor head of household, has received full, partial, prorated, or retroactive TANF cash assistance shall be considered a month of receipt and shall be counted towards the 60-month term limit for the benefit group in which that individual resides.

(4) The count of months of TANF assistance shall include cash benefits, supportive services reimbursements, or other forms of benefits designed to meet a family's ongoing basic needs (for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses). TANF cash assistance shall include supportive services such as transportation and childcare provided to a family who is unemployed.

(5) Receipt of TANF assistance from another state after July 1997, or from a tribal entity (that does not meet the exclusion criteria as described below) is counted as a month of receipt of TANF assistance for purposes of the term limit regulation.

B. Non-countable assistance:

(1) The department shall not count a month of receipt of TANF cash assistance or services toward the 60-month term limit if the recipient was a minor who was not the head of household or the spouse of the head of household.

(2) Support services, transportation reimbursements, or child care assistance received by a benefit group with earned income shall not be considered as a

month of TANF assistance against the 60-month term limit, as long as the benefit group does not also receive TANF cash assistance to meet ongoing basic needs.

(3) Assistance shall not be considered a month of TANF assistance if the assistance is a:

(a) non-recurrent short term benefit that will not extend beyond four months, is not intended to meet ongoing basic needs, and is designed to meet a specific crisis situation or episode of need;

(b) work subsidy to an employer to cover the cost of employee wages, benefits, supervision and training;

(c) refundable earned income tax credit;

(d) contribution to or distribution from an individual development account;

(e) service such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, or other employment related services that do not provide basic income support; and

(f) transportation benefit provided under a job access or reverse commute project to an individual who is not receiving TANF assistance.

(4) Under federal law, TANF funds may be transferred into the Social Services Block Grant and the Child Care Development Block Grant. Benefits provided to individuals from these transferred funds are no longer characterized as TANF funds and do not count against the term limits.

C. Excluded from the term limit count: Any month in which an adult or minor head of household receives NMW or tribal TANF cash assistance or services while residing in Indian country, as the term is defined in 18 U.S.C. Subsection 1151, and where at least 50% of the adults are not working, shall not be counted toward the term limit.

D. Extension of the term limit due to hardship: Up to twenty percent (20%) of the population of TANF recipients to whom the term limit applies may be waived from the 60-month term limit based on hardship or being battered or subjected to extreme cruelty.

(1) An extension of TANF cash assistance shall not be granted to a benefit group prior to exhausting the 60-month term limit.

(2) The term limit extension will end if the condition or situation allowing the extension ceases to exist.

E. Hardship extension types: For purposes of establishing a hardship and eligibility for an extension of TANF cash assistance, an individual to whom the term limit applies must demonstrate through reliable medical, psychologi-

cal or mental reports, social security administration (SSA) records, court orders, department records or police reports that the individual:

(1) is barred from engaging in a work activity because of a temporary or complete disability;

(2) is the sole provider of home care to an ill or disabled family member;

(3) does not have the ability to be gainfully employed because the individual is affected by domestic violence;

(4) has been battered or subjected to extreme cruelty;

(5) has an application for supplemental security income (SSI) pending in the application or appeals ~~process; or~~ process and:

(a) is currently fully waived from NMW work requirements because of a temporary or complete disability; or

(b) was granted a waiver of the work requirement because of a temporary or complete disability in the previous twenty-four months.

(6) has reached the age of 60 by the end of the last month of his or her term limit.

F. Determining hardship and eligibility for an extension:

(1) The Incapacity Review Unit shall make a determination of hardship based on a temporary or complete disability or being the sole provider of home care to an ill or disabled family member based on criteria set forth at 8.102.420.11, 8.102.420.12 and 8.102.420.13 NMAC.

(2) The Incapacity Review Unit may determine contingency requirements or conditions for continued participation of the individual under the applicable hardship type(s).

(3) Hardship based on domestic violence, battery, or extreme cruelty: A certification that an individual cannot be gainfully employed due to domestic violence, or has been battered or subject to extreme cruelty shall be made by a trained domestic violence counselor and shall be part of the case record.

(a) Supporting documentation shall be provided to the department and made part of the individual's case record. For purposes of determining a hardship, an individual has been battered or subjected to extreme cruelty if the individual can demonstrate by reliable medical, psychological or mental reports, court orders, department records or police reports that the individual has been subjected to and currently is affected by:

(i) physical acts that result in physical injury;

(ii) sexual abuse;

(iii) being forced to engage in non-consensual sex acts;

(iv) threats or attempts at physical or sexual abuse;

(v) mental abuse; or

(vi) neglect or deprivation of medical care except when the deprivation is based by mutual consent on religious grounds.

(b) The incapacity review unit shall review the documentation provided to demonstrate a hardship type related to domestic violence, battery, or extreme cruelty, shall ensure that the documentation supports a finding of hardship, and shall determine review periods and contingency requirements if applicable.

(4) The department shall determine the eligibility of the individual for a hardship extension based on age or whether an application for SSI is pending or in the appeals process by reviewing department records or SSA files.

G. Participating benefit group:

(1) A NMW benefit group in active status at the time the benefit group reaches the 60-month term limit may ask for an extension of TANF cash assistance under hardship provisions. The benefit group must provide supporting documentation by the 15th day of the 60th month. If otherwise eligible and a hardship type is determined, the benefit group shall be authorized cash assistance from the first day of the 61st month.

(2) A NMW benefit group whose certification period expires in the 60th month of the term limit may be recertified, if otherwise eligible, under hardship provisions, but must provide supporting documentation by the end of the benefit group's certification period.

H. Closed benefit group: A benefit group shall be required to file an application for NMW cash assistance based on hardship under the following conditions:

(1) a NMW benefit group in active status does not submit supporting documentation by the 15th day of the 60th month of receipt of cash assistance; or

(2) a NMW case closes upon reaching the term limit.

(3) A benefit group may file an application on the first day of the 61st month, or at anytime after, and if eligible, benefits shall be approved effective the date of authorization or 30 days from the date of application, whichever is earlier.

I. Automatic extension of cash assistance: A NMW benefit group shall be automatically extended TANF cash assistance based on hardship when the benefit group member who has received 60 months of cash assistance is:

(1) an adult age 60 or over; or

(2) an adult or minor head of household with an application for SSI pend-

ing or in the appeals process; or based on verification in the case record that is not older than three months, the benefit group member is:

(3) waived from participation in work activities due to a complete disability, either permanently or temporarily; or

(4) the sole provider of home care to an ill or disabled family member; or

(5) unable to be gainfully employed because the benefit group member has been battered or subjected to extreme cruelty, or affected by domestic violence.

[8.102.410.17 NMAC - Rp 8.102.410.17 NMAC, 07/01/2001, A, 01/01/2003, A, 05/15/2003]

NEW MEXICO HUMAN SERVICES DEPARTMENT INCOME SUPPORT DIVISION

This is an interim emergency rule to implement the statutory provisions of the New Mexico Works Act, as amended by House Bill 122 and Senate Bill 289 in the 2003 Legislative Session. The Senate and House bills were signed into law by Governor Bill Richardson with an emergency clause. The definition of dependent child is expanded to allow certain individuals age eighteen through age twenty-one to continue to receive cash assistance. A parent who fails to report that a dependent child is not in school or has three unexcused absences cannot be sanctioned for the failure to report.

8.102.420.8 AGE - NMW, GA CHILD AND REFUGEE RESETTLEMENT: To be eligible for inclusion in the benefit group, a dependent child is:

A. NMW definition of a dependent child: ~~[A natural or adopted child who is seventeen years of age or younger, or a household group member who is 18 years of age and is enrolled in high school.]~~ A natural child, adopted child, stepchild or ward who is:

(1) seventeen years of age or younger;

(2) eighteen years of age and is enrolled in high school; or

(3) between eighteen and twenty-two years of age and is receiving special education services regulated by the state board of education (SDE).

B. GA child and refugee resettlement assistance: An individual who is seventeen years of age or younger. [8.102.420.8 NMAC - Rp 8.102.420.8 NMAC, 07/01/2001, A, 05/15/2003]

8.102.420.9 SCHOOL ATTENDANCE

A. Requirement:

(1) Children:

(a) A dependent child age 6 through age 17 must be a full-time student at a certified educational facility or participating and fully complying with a home-schooling program approved by the New Mexico state department of education.

(b) An individual who is age 18 may be included in the NMW benefit group if the individual is enrolled in high school, or the high school equivalent level of vocational or technical training. Such an individual may be eligible to be included in the NMW benefit group until the end of the month in which the individual graduates or until the end of the month in which the individual turns 19, whichever occurs first.

(c) A student who is age 18 and under age 22 may be included in the NMW benefit group as long as the student is enrolled in high school and is receiving special education services regulated by the SDE. There must be a current valid individual education plan for the student to verify the special education services.

~~(c)~~ (d) A dependent child age 17 or younger who has graduated from high school or has obtained a GED shall be deemed to be a full-time student and to be fulfilling attendance requirements.

~~(d)~~ (e) The parent or specified relative of a dependent child who is participating in a home-schooling program must provide a certification from the public school system that a home-schooling curriculum has been approved for the dependent child. The certification must be submitted at the beginning of each school year or when a home schooling program begins.

(2) **Minor parent:** To be eligible for inclusion in the NMW benefit group, a minor unmarried parent, who does not have a child under the age of 12 weeks, must attend school full time to obtain a high school diploma, or must participate in a GED program full time or participate in approved alternate schooling unless the minor unmarried parent has already graduated from high school or obtained a GED.

(3) **Full-time attendance:** Whether a child is considered a full-time student and meeting full-time attendance requirements is based on the standards of the educational facility or program in which the child is enrolled.

(4) **Vacations and other interruptions:** A child enrolled in and attending classes is considered in attendance during:

(a) regularly scheduled vacations and breaks, including summer vacation, provided:

(i) the child has not been removed for non attendance; and

(ii) that the child resumes attendance when classes start

again;

(b) periods of personal illness or convalescence;

(c) family emergencies, for a period not to exceed 30 days;

(d) participation in or attendance at cultural and religious activities as long as the child has parental consent.

B. Determining whether the requirement is met:

(1) The school attendance requirement is not applicable during the initial application process. For purposes of the school attendance requirement, an initial application is defined as a new application for assistance, when:

(a) an applicant has been never known to ISD;

(b) an application to add a new member to the benefit group never known to ISD; or

(c) an application for an individual or case which has been closed for six months or more.

(2) A child has failed to comply with school attendance requirements, and the child's needs shall be removed from the benefit group's standard of need, if the child:

(a) is not enrolled in school; or

(b) has accumulated three unexcused absences in a grading period, but not on the same day; or

(c) has dropped out of school during the current grading period; or

(d) has completed a school attendance plan and has one or more unexcused absences during the time period covered by the plan.

(3) **School attendance verification:** The caseworker shall verify school attendance for school days occurring after the NMW initial application has been approved. School attendance verification is mandatory at each certification, or when the caseworker becomes aware that the child may not be in compliance with school attendance requirements.

(4) **Responsibility to report:** Within 14 days of the date it becomes known, the parent, specified relative, or caretaker must report to ISD if a child is not enrolled in school, has accumulated three unexcused absences during the current grading period, or has dropped out of school. Failure to report that a child has not met school attendance requirements shall not result in a non-reporting sanction for the parent, or the specified relative or caretaker if included in the benefit group.

(5) **Failure to comply with school attendance requirements:**

(a) **Conciliation:** Prior to removing the child's needs from the benefit group's standard of need, the parent, specified relative or caretaker shall have a 10

working day compliance period to address school non-attendance.

(i) The compliance period is ten working day period affording an opportunity for the parent, child, and the school to develop a plan to ensure regular attendance by the child.

(ii) If the school confirms that satisfactory arrangements have been made to ensure regular attendance by the child, the child shall remain eligible.

(b) Conciliation process:

(i) Within 10 days of determining that a child has not met school attendance requirements, the caseworker shall take action to initiate a compliance period.

(ii) A compliance period is initiated by the caseworker issuing a notice of action.

(iii) The benefit group shall have 10 working days from the date of issuance of the notice to provide a school attendance plan.

(iv) If a benefit group fails to provide a school attendance plan, a notice of adverse action shall be sent on the next working day.

(c) Benefit reduction:

(i) The child shall be removed from the benefit group effective the month following the month the notice of adverse action expires.

(ii) If there is one (or more) unexcused absence following successful submission of a school attendance plan (the school's confirmation of satisfactory arrangements), ISD shall remove the child from the benefit group the month following the month the adverse action notice expires.

(d) **Case closure:** If the child is the only child included in the benefit group, the cash assistance case shall be closed.

(6) Regaining eligibility:

(a) Once a child has been removed from the benefit group due to failure to comply with school attendance requirements, the child cannot be considered a member of the benefit group until the child has attended school with no unexcused absences for a period of 30 calendar days. The child shall regain eligibility effective the month following the month the 30-day attendance requirement is verified.

(b) A child may regain eligibility by attending summer school or its equivalent.

(c) A child may not regain eligibility by moving from one benefit group to another.

[8.102.420.9 NMAC - Rp 8.102.420.9 NMAC, 07/01/2001, A, 05/15/2003]

**NEW MEXICO HUMAN SERVICES DEPARTMENT
INCOME SUPPORT DIVISION**

This is an interim emergency rule to implement the statutory provisions of the New Mexico Works Act, as amended by House Bill 122 and Senate Bill 289 in the 2003 Legislative Session. The Senate and House bills were signed into law by Governor Bill Richardson with an emergency clause. Those vehicles owned by the benefit group that are used for transportation to or from work or work activities, for daily living activities or for transportation of goods or services will no longer be considered to determine the resource level for the benefit group.

8.102.510.10 R E S O U R C E EXCLUSIONS

A. Real property:

(1) **The home:** The value of the benefit group's home and certain other property, as defined below, is not considered in determining eligibility. The "home" is the dwelling place occupied by the benefit group. The home is considered to be occupied by the benefit group during a temporary absence from the home when there is a definite plan to return to the home and no one else is occupying it. "Home" includes, in addition to the residence building and the land upon which it is constructed, the following:

(a) a reasonable amount of land within reasonable proximity to the residence building if that land is currently used by and useful to the client;

(b) outbuildings within reasonable proximity to the residence building, such as barn, garage and well, if the well is a principal source of water;

(c) buildings used for rental purposes if located on land contiguous to the land upon which the residence building is constructed and if these buildings cannot be divided from the residence land and sold separately;

(d) grazing permits currently being used to graze livestock owned by the client;

(e) furniture, equipment and household goods necessary for the operation and maintenance of the home;

(2) **Other real property - burial plots:** One burial plot for each person included in the benefit group; a burial plot shall consist of the space needed to bury members of the immediate family.

B. Exempt personal

property: The value of the following items of personal property shall not be considered in determining eligibility for financial assistance.

(1) Vehicles:

~~[(a) Areas with Public Transportation: For benefit groups residing in areas in which public transportation is available, the equity value of one motor vehicle used for transportation shall be disregarded in its entirety. The vehicle with the greatest equity value shall be disregarded. The equity value of any additional vehicles owned by the benefit group shall be counted toward the \$2,000 non-liquid resource limit.~~

~~[(b) Areas without Public Transportation:~~

~~(i) For benefit groups residing in areas in which public transportation is not available, the equity value of one motor vehicle used for transportation shall be disregarded in its entirety, or the equity value of one motor vehicle used for transportation shall be disregarded in its entirety for each participant engaged in a work activity. The equity value of any additional vehicles owned by the benefit group shall be counted toward the \$2,000 non-liquid resource limit.~~

~~(ii) An area is considered to be without public transportation if there is no bus service within three miles of the benefit group's residence. If the work schedule precludes another benefit member from transporting an individual to a bus stop, the mileage requirement may be lowered to one mile.~~

~~(iii) An individual shall be considered to be engaged in a work activity if the individual is participating in an approved work activity listed under 8.102.460 NMAC and is meeting applicable work program participation standards. No person shall have more than one vehicle exempted.~~

~~(c) **Specially Equipped Vehicles:** If the benefit group owns a vehicle that is specially equipped for the handicapped, and the specially equipped vehicle is not the vehicle designated by the applicant/recipient as the vehicle whose value is to be disregarded, the additional value added by installation of apparatus for the handicapped is disregarded, when computing its equity value.~~

~~(a) **Transportation to or from work/daily living:** Vehicles used for transportation of benefit group members to or from work or work activities, for daily living activities, or for transportation of goods or services shall not be considered in the determination of resources attributed to the benefit group.~~

~~(b) **Specially equipped vehicles:** A vehicle that is specially equipped for the handicapped shall not be considered in the determination of resources attributed to the benefit group.~~

~~(2) **Exempt income:** Any~~

income which is exempt under income provisions is also exempt from consideration as a resource. To maintain its exempt status, exempt income which is accumulated must be kept separately from non-exempt savings.

(3) Individual Development Account (IDA): Subject to the limitations set forth below, funds in an IDA are exempt from consideration as resources in determining benefit group eligibility.

(a) To be disregarded, the IDA must be designated for:

(i) post-secondary education of a dependent child included in the benefit group;

(ii) purchase of a principal residence for a first-time home-buyer;

(iii) business capitalization.

(b) To be disregarded, the IDA must meet the following requirements:

(i) The benefit group member must first establish and maintain a savings account with a balance of \$1,500;

(ii) The benefit group member must establish the IDA for one of the three purposes listed above.

(iii) In order for such accounts to be excludable, the IDA must be a trust created or organized in the United States, with trust language restricting use of account funds to the purposes as designated in this section; and

(iv) The IDA must be funded exclusively with income earned by a benefit group member or by contributions made by a non-benefit group member.

(v) Funds withdrawn from the account and used for any purpose other than those specified under this section, will cause the account to lose its status as an excluded resource, starting with the month in which the funds are so used. The amounts withdrawn also constitute an overpayment of assistance, and must be reported and shall be recouped.

(c) Post-secondary education expenses: In order to be considered used for the qualified purpose, the post-secondary education funds must be paid from an IDA directly to an eligible education institution, as set forth in this section. For purposes of this regulation, post-secondary education expenses include:

(i) tuition and fees required for the enrollment or attendance of a student at an eligible education institution. An eligible institution is an institution described in section 481(a)(1) or 1201(a) of the Higher Education Act of 1965 (20 USC 1088(a)(1) or 1141(a)); an area vocational education school (as defined in section 521(4) of the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2471(4)) which is in any state; or

(ii) books, fees, supplies, and equipment required for courses of instruction at an eligible educational institution.

(d) Business capitalization: In order to be considered used for the qualified purpose, for business capitalization, the funds have to be paid directly from the IDA to a business capitalization account established in a federally insured financial institution that is restricted to use solely for qualified business capitalization expenses. A qualified business means any business that does not contravene any law or public policy. Qualified business capitalization expenses include capital, plant, equipment, working capital, and inventory expenses. To be a qualified business, there must be a business-plan which:

(i) is approved by a financial institution, or by a nonprofit loan fund having demonstrated fiduciary integrity;

(ii) includes a description of services or goods to be sold, a marketing plan, and projected financial statements; and

(iii) may require the eligible individual to obtain the assistance of an experienced entrepreneurial advisor.

(e) First-time home purchase by a qualified buyer: The purpose of the IDA is to assist a qualified first-time home buyer to accumulate part of the cash necessary to initiate purchase of the individual's first home.

(i) Only IDA's established by qualified first-time home buyers shall be disregarded; A qualified first-time home buyer is one who has never had an ownership interest in a principal residence.

(ii) The IDA may be used only for the purchase of a qualified principal residence. A qualified principal residence is one which qualifies as the principal home under Subsection 1034 the federal Internal Revenue Services Code, and the costs for which do not exceed 100% of the average area purchase price applicable to such residence, determined in accordance with paragraphs (2) and (3) of Subsection 143(e) of the Internal Revenue Services Code.

(iii) No more than \$1500 may be accumulated in an IDA for first-time home purchase. Any amount in excess of \$1500 is considered in determining whether the benefit group meets the cash resource limit.

(4) Funeral agreements: The equity value of funeral agreements owned by an benefit group member. Funeral agreements include any arrangement under which prepaid funeral services are provided or cash benefits which are intended to pay for funeral services are paid upon the death

of the person. Included as such agreements are contracts with funeral homes, life or burial insurance, or trust or escrow accounts in financial institutions or banks, provided that the trust or escrow accounts contain provisions making the funds payable only upon the death of a named individual. There is no limit on the amount which can be disregarded.

(5) Contingent and unliquidated claims: A "contingent and unliquidated claim" is an as yet undetermined right of the client to receive, at some future time, a resource such as an interest in an estate not probated or damages or compensation resulting from an accident or injury. Such a claim is not considered a resource to meet requirements if the client can demonstrate that the client has consulted an attorney, or that under the circumstances, it is reasonable not to have consulted an attorney, and that the client is making every reasonable effort to prosecute the client's claim or to proceed with the probate. If the client can demonstrate that the client's share in an estate not probated would be less than the expense of the proceedings to probate the estate, the value is not considered a resource.

(6) Work-related equipment exclusion: Work-related equipment, such as the tools of a trades person or the machinery of a farmer, which are essential to the employment or self-employment of a benefit group member, are excluded, in an amount not to exceed \$1000 per individual, and remain excludable, if the trades person becomes disabled. Farm machinery retains this exclusion for one year if the farmer ends self-employment.

(7) Livestock: The value of livestock is an excluded non-liquid resource.

C. Federally excluded resources: Certain resources are excluded pursuant to federal law. For a listing of federally excluded resources see 8.139.527 NMAC.

[8.102.510.10 NMAC - Rp 8.102.510.10 NMAC, 07/01/2001, A, 05/15/2003]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.310.5 NMAC, Sections 9, 10 and 15 that will be effective on June 1, 2003. The Medical Assistance Division amended the above sections by adding language to recognize Anesthesiologist Assistants as eligible Medicaid providers. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.714 to comply with the NMAC requirements.

8.310.5.9 ANESTHESIA SERVICES: The New Mexico medicaid program (medicaid) pays for medically necessary health services furnished to eligible recipients. To help New Mexico medicaid recipients receive medically necessary services, the New Mexico medical assistance division (MAD) pays for covered anesthesia services. This part describes eligible providers, covered services, service limitations, and general reimbursement methodology. [2/1/95; 8.310.5.9 NMAC - Rn, 8 NMAC 4.MAD.714 & A, 6/1/03]

8.310.5.10 ELIGIBLE PROVIDERS: Upon approval of [~~New Mexico~~] medical assistance division program provider participation agreements by MAD, the following providers are eligible to be reimbursed for providing anesthesia services:

A. Individuals licensed to practice medicine or osteopathy who [~~meet one of the following criteria:~~] are [~~(1)~~] certified or eligible to be certified by the American board of anesthesiology [~~or~~].

[~~(2)~~] engaged in the specialty practice of anesthesiology.

[~~(3)~~] Payments are made to [~~individuals~~] individual providers or the group practices [~~which they form~~] to which they belong.

B. Nurse anesthetists certified by the American association of nurse anesthetists council of certification and licensed as registered nurses, within the scope of their practice and specialty as defined by state law.

C. Anesthesiologist assistants certified by the national commission on the certification of anesthesiologists assistants (NCCAA) and licensed as anesthesiologist assistants within the scope of their practice and specialty as defined by state law.

D. Once enrolled, providers receive a packet of information, including medicaid program policies, billing instructions, utilization review instructions, and other pertinent material from MAD. Providers are responsible for ensuring that they have received these materials and for updating them as new materials are received from MAD.

[2/1/95; 8.310.5.10 NMAC - Rn, 8 NMAC 4.MAD.714.1 & A, 6/1/03]

8.310.5.15 REIMBURSEMENT:

A. Anesthesia providers must submit claims for reimbursement on the HCFA-1500 claim form or its successor. See Section MAD-702 [8.302.2 NMAC], Billing for Medicaid Services. Once enrolled, providers receive instructions on

documentation, billing and claims processing. Reimbursement for anesthesia services is made at the lesser of the following:

(1) the provider's billed charge; or

(2) the maximum allowed by MAD for the specific service or procedure.

(a) The provider's billed charge must be their usual and customary charge for services.

(b) "Usual and customary charge" refers to the amount which the provider charges the general public in the majority of cases for a specific procedure or service.

B. **Reimbursement units:** Reimbursement for anesthesia services is calculated using anesthesia "base units", units for time and units for risk.

(1) Each surgical anesthesia procedure is assigned a specific number of relative value units which becomes the "base unit" for the procedure. Units of time and units for risk are also allowed for the procedure. Reimbursement is calculated by multiplying the total number of units by the dollar amount allowed for each unit.

(2) The dollar amounts allowed per anesthesia unit vary depending on who furnishes the service. Separate rates are established for a physician anesthesiologist, a medically-directed certified registered nurse anesthesiologist (CRNA), [~~and~~] anesthesiologist assistant (AA) and a non-directed CRNA.

(3) Time units vary, depending on the service. For anesthesia provided directly by a physician anesthesiologist [~~or a~~] CRNA, or an anesthesiologist assistant, one (1) time unit is allowed for each fifteen (15) minute period a recipient is under anesthesia. For medical direction, one (1) time unit is allowed for each thirty (30) minute period.

(4) Risk factor modifiers are used to describe the relative risk associated with general anesthesia to a particular recipient. Performing anesthesia providers are reimbursed for additional units only if risk factor modifiers are indicated on the claim.

C. **Medical direction:** Medical direction by a physician [~~other than~~] anesthesiologist, not the surgeon or assistant surgeon, to a certified registered nurse anesthetist (CRNA) or an anesthesiologist assistant (AA) is payable using the following methodologies:

(1) For medical direction of two (2) nurse anesthetists or AA's performing two (2) concurrent procedures, the base units are reduced by ten percent (10%);

(2) For medical direction of three (3) nurse anesthetists performing three (3) concurrent procedures, the base units are reduced by twenty-five percent (25%); and

(3) For medical direction of four (4) nurse anesthetists performing four (4)

concurrent procedures, the base units are reduced by forty percent (40%).

(a) Time units for medical direction are allowed at one (1) time unit for each thirty (30) minute interval.

(b) All the following requirements must be met before anesthesiologists are reimbursed for medical direction:

(i) the anesthesiologist does not perform any other service during the same period of time;

(ii) the anesthesiologist cannot furnish anesthesia and provide medical direction concurrently;

(iii) the anesthesiologist provides pre-anesthesia examinations or evaluations;

(iv) the anesthesiologist participates in the anesthesia plan, including induction and emergence;

(v) the anesthesiologist monitors the course of anesthesia administration at frequent intervals;

(vi) the anesthesiologist remains physically present and available in the operating suite for immediate diagnosis and treatment of emergencies; and

(vii) the anesthesiologist provides any indicated post-anesthesia care.

(c) Anesthesia claims are not payable if the surgery is not a medicaid benefit or if any required documentation was not obtained.

D. **Monitored anesthesia care:** Medically necessary monitored anesthesia care services are reimbursed at base units plus time units.

(1) "Monitored anesthesia care" as defined by the American society of anesthesiologists, includes:

(a) performance of a preanesthetic examination and evaluation;

(b) prescription of the anesthetic care required;

(c) continuous intraoperative monitoring by a physician anesthesiologist or qualified certified registered nurse anesthetist of the patient's physiological signs;

(d) administration of medication or other pharmacologic therapy as can be required for the diagnosis and treatment of emergencies; and

(e) provision of indicated postoperative anesthesia care.

(2) Medical direction for monitored anesthesia is reimbursed if it meets the medical direction requirements.

E. **Epidural rates:** Reimbursement for an initial epidural is paid using the base units for the procedure plus time units required to perform the initial procedure. No additional units for risk factors or time can be billed for epidural anesthesia. All subsequent epidural injections are paid at one (1) unit per injection.

F. **Performance of standard procedures:** If an anesthesiologist performs procedures which are generally performed by other physicians without specific anesthesia training, such as local anesthesia or an injection, the anesthesiologist is reimbursed the fee schedule amount for performance of the procedure. Reimbursement is not made for base units, units for time or units for risk.
[2/1/95; 8.310.5.15 NMAC - Rn, 8 NMAC 4.MAD.714.6 & A, 6/1/03]

NEW MEXICO HUMAN SERVICES DEPARTMENT MEDICAL ASSISTANCE DIVISION

This is an amendment to 8.325.6 NMAC, Sections 9 through 12 and 14 which will be effective on June 1, 2003. The Medical Assistance Division amended language to include the reimbursement of routine patient care costs incurred as a result of the patient's participation in a Phase I, II, III, or IV cancer trial that meets certain criteria. This rule was also renumbered and reformatted from 8 NMAC 4.MAD.765.

8.325.6.9 EXPERIMENTAL OR INVESTIGATIONAL PROCEDURES, TECHNOLOGIES OR THERAPIES: The New Mexico medicaid program (medicaid) pays only for medically necessary services furnished by medicaid providers to eligible recipients. Medicaid does not cover experimental or investigational medical, surgical, or other health care procedures or treatments, including the use of drugs, biological products, other products or devices, except for the following: Medicaid covers routine patient care costs associated with certain Phase I, II, III, and IV cancer clinical trials. [~~This part describes~~] The following sections describe the process used to assess the nature of these procedures, technologies or therapies [and the review process].
[2/1/95; 12/1/99; 8.325.6.9 NMAC - Rn, 8 NMAC 4.MAD.765 & A, 6-1-03]

8.325.6.10 NON COVERED SERVICES: Except as specified in sections 11 and 14 of this part, medicaid does not cover experimental or investigational medical, surgical, or other health care procedures or treatments, including the use of drugs, biological products, other products or devices. Medicaid does not reimburse providers for furnishing these experimental or investigational services and products.
[2/1/95; 12/1/99; 8.325.6.10 NMAC - Rn, 8 NMAC 4.MAD.765.1 & A, 6-1-03]

8.325.6.11 COVERED SERVICES: Medicaid provides coverage for

routine patient care costs incurred as a result of the patient's participation in a Phase I, II, III, or IV cancer trial that meets the following criteria. The clinical trials can only be performed in New Mexico.

A. The clinical trial is being conducted with approval of at least one of the following:

(1) one of the federal national institutes of health;

(2) a federal national institutes of health cooperative group or center;

(3) the federal department of defense;

(4) the federal food and drug administration in the form of an investigational new drug application;

(5) the federal department of veteran affairs; or

(6) a qualified research entity that meets the criteria established by the federal national institutes of health for grant eligibility.

B. The clinical trial has been reviewed and approved by an institutional review board that has a multiple project assurance contract approved by the office of protection from research risks of the federal national institutes of health.
[8.325.6.11 NMAC - N, 6-1-03]

8.325.6.12 EXPERIMENTAL OR INVESTIGATIONAL INTERVENTIONS: Any medical, surgical, or other healthcare procedure or treatment, including the use of drug(s), biological product(s), other product(s) or device(s), is considered experimental or investigational if it meets any of the following conditions:

A. Current, authoritative medical and scientific evidence regarding the medical, surgical, or other health care procedure or treatment, including the use of drug(s), biological product(s), other product(s) or device(s) for a specific condition shows that further studies or clinical trials are necessary to determine benefits, safety, efficacy and risks, especially as compared with standard or established methods or alternatives for diagnosis and/or treatment outside an investigational setting;

B. The drug, biological product, other product, device, procedure or treatment (the "technology") lacks final approval from the food and drug administration (FDA) or any other governmental body having authority to regulate the technology;

C. The medical, surgical, other health care procedure or treatment, including the use of drug(s), biological product(s), other product(s) or device(s) is the subject of ongoing phase I, II, or III clinical trials or under study to determine safety, efficacy, maximum tolerated dose or tox-

icity, especially as compared with standard or established methods or alternatives for diagnosis and/or treatment outside an investigational setting.

[2/1/95; 12/1/99; 8.325.6.12 NMAC - Rn, 8 NMAC 4.MAD.765.2 & A, 6-1-03]

8.325.6.14 REIMBURSEMENT:

A. Except as specified below in subsection B, medicaid does not reimburse for medical, surgical, other health care procedures or treatments, including the use of drugs, biological products, other products or devices that are considered experimental or investigational. [~~Providers are not reimbursed for furnishing any service that meets any of the conditions listed in 765.2-~~]

B. Medicaid will reimburse providers for routine patient care services, which are those medically necessary services that would be covered if the patient were receiving standard cancer treatment, rendered during the patient's participation in Phase I, II, III, or IV cancer clinical trials.

[2/1/95; 12/1/99; 8.325.6.14 NMAC - Rn, 8 NMAC 4.MAD.765.4 & A, 6-1-03]

NEW MEXICO DEPARTMENT OF LABOR EMPLOYMENT SECURITY DIVISION

This is an amendment to 11.3.300 NMAC, Sections 305, 312, 316, 320, 322, 326 and 327. This amendment is effective July 1, 2003.

11.3.300.305 ALTERNATE BASE PERIOD:

A. "Base period", also called the "regular base period", means the first four of the last five completed quarters as provided in NMSA 1978 Section 51-1-42 A or the alternate base period.

B. "Alternate base period" means the last four completed quarters immediately preceding the first day of the individual's benefit year.

C. Application of alternate base period: If a claimant is determined ineligible because the individual does not have sufficient wages during the base period to qualify for benefits and the claimant's work history reflects that the claimant may qualify using the alternate base period, the department will advise the claimant that he may elect to file a reconsideration of the wages regarding the wages in the "regular base period" or he may elect to utilize the "alternate base period" by affirmatively declining reconsideration or failing to apply for reconsideration within the time limits provided in Subsection C of 11.3.500.8

NMAC. If the department applies the "alternate base period" and the wages for the most recent quarter have not yet been reported by the employer or processed by the department, the claimant will be required to provide proof of wages consisting of payroll check ("check stubs"), W-2s or an appropriate affidavit. If the employer's reported wages are available for the most recent quarter, proof is not required from the claimant. On its own initiative and within its own discretion, if and when the department receives new or additional information regarding wages, it may initiate a reconsideration of the regular base period.

D. Reconsideration of regular base period: If the claimant elects to file a request for reconsideration of the base period and is determined monetarily ineligible, the claimant will then be provided with the option to file under the "alternate base period".

E. Election final: If the claimant elects to use the alternate base period, once elected, the claimant may not change his election to the primary or regular base period regardless of whether such a change would provide higher or lower benefits.

E. Effect of election: Wages that fall within the regular base period or the alternate base period established pursuant to this section are not available for reuse in qualifying for a subsequent benefit year.

G. Procedure:

(1) Upon receipt of the claimant's documentary evidence of wages, wages will be processed by the department and used on the claim.

(2) Upon processing of the most recent quarter's wages, a "Notice of Initial Determination of Benefits" will be issued utilizing the wage information provided by the claimant for the alternate base period.

(3) Employers will be notified of the wages used for the alternate base period on the "Notice to Employer of Claim Determination", which may include wages based upon proof provided by the claimant. The employer will have 15 calendar days from date of transmission of determination to provide the actual wages or to object to the wages being used on the claim, and may also protest charges based upon the reason for separation pursuant to Sections A and C of 11.3.500.8 NMAC.

H. The provisions of this section apply to all claims filed on or after January 1, 2004.

[5-15-97; 11.3.300.305 NMAC - Rn, 11 NMAC 3.300.305, Repealed 01-01-2003; N, 7-1-2003]

11.3.300.312 EXTENDED BENEFIT CLAIMS AND PAYMENT:

A. APPLICATION OF OTHER RULES: The pertinent provisions of the law and rules that apply to regular claimants apply also to claimants for extended claims insofar as such rules pertaining to regular claimants are not inconsistent with the provisions of this rule.

B. FILING CLAIMS: Unless otherwise prescribed, an "exhaustee" as defined in NMSA 1978 Section [51-1-48(H)] 51-1-48(H)(5), 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 department will issue a determination on the right to extended benefits and transmit a notice thereof to the claimant. 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 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 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; A, 7-1-2003]

11.3.300.316 DETERMINATION OF ELIGIBILITY OF 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)] NMSA 1978 Section 51-1-5(E) and the provisions of this section.

B. 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.]~~ Any claimant enrolled in an educational or training institution or program in a course of study providing instruction of twelve or more classroom hours per week, or the equivalent thereof, and is able to work and is available for work and is actively seeking permanent full-time work or part-time work in accordance with Subsection I of Section 51-1-42 NMSA 1978, will not be denied from receiving benefits or waiting period credit.

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:]~~ Time spent attending classes and doing homework may be restrictions on availability for full-time or part 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 credible evidence that he is unequivocally attached to the labor force and available for full-time or part 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 or part-time and attending school, he became unemployed for reasons not attributable to the schooling and the hours of school atten-

dance 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 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 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.] For school terms commencing after the filing of the unemployment claim, the claimant is required to submit to the department a student questionnaire, a schedule of classes and, if required by the department, an authorization of 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 and schedule of classes may be verified by the department prior to issuance of a determination that the claimant is available for full-time or part-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 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 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 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.

G. A contributing employer's account will not be charged any portion of benefits paid for a claimant who is attending school on a full-time basis.

[7-15-98; 11.3.300.316 NMAC - Rn & A, 11 NMAC 3.300.316, 01-01-2003; A, 7-1-2003]

11.3.300.320 WORK SEARCH REQUIREMENT:

A. WORK SEARCH CONTACTS: To qualify for continued benefits, an intrastate claimant must:

(1) Actively seek work by contacting a minimum number of different employers each week 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. A claimant may list the New Mexico Department of Labor workforce development centers, 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.

(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 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) Claimants filing through the

interactive telephone system (IVR) or Internet must keep a record of the name, address and 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) 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.

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 or part 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 upon receipt of an assurance from the employer that the lay-off shall not exceed four weeks or 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 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 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; A, 7-1-2003]

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 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 filing of 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.] Only if the claimant does not qualify for benefits using the base period consisting of the first four of the last five completed quarters will base periods be changed pursuant to 11.3.300.305 NMAC.

(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, 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 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 the manner prescribed by the department signed by the claimant or the authorized representative of the claimant.

[7-15-98; 11.3.300.322 NMAC - Rn & A, 11 NMAC 3.300.322, 01-01-2003; A, 7-1-2003]

11.3.300.326 DOMESTIC ABUSE:

A. Voluntary leaving as protection from domestic abuse:

(1) An individual is eligible for waiting period credit or benefits if that individual voluntarily leaves work due to circumstances directly resulting from domestic abuse:

(2) For purposes of this section, "domestic abuse" means abuse as defined in NMSA 1978 Section 40-13-2 (1995), and includes but is not limited to any incident by a household member against another household member resulting in:

- (a) physical harm;
- (b) severe emotional distress;
- (c) bodily injury or assault;
- (d) a threat causing imminent fear of bodily injury by any household member;
- (e) criminal trespass;
- (f) criminal damage to property;
- (g) repeatedly driving by a residence or work place;
- (h) telephone harassment;
- (i) stalking;
- (j) harassment, or
- (k) harm or threatened harm to children.

(3) For purposes of this section, "household member" means a spouse, former spouse, family member, including relative, parent, present or former stepparent, present or former in-law, child or co-parent of a child, intimate partner or a person with whom the claimant has had a continuing personal relationship. Cohabitation is not necessary to be deemed a household member for purposes of this section.

(4) Factors to be considered in determining if claimant voluntarily leaves work as a result of domestic violence include but are not limited to whether:

- (a) claimant reasonably fears domestic abuse at or en route to or from claimant's place of employment; or
- (b) claimant reasonably is required to relocate to another geographic area to avoid future domestic abuse; or
- (c) claimant reasonably believes

that leaving employment is necessary for the future safety of the claimant or the claimant's family due to the domestic abuse; or

(d) the abuse itself interfered with claimant's ability to work, travel or prepare for work; or

(e) claimant reasonably left the labor market to escape such abuse; or

(f) the abuse occurred at claimant's place of employment; or

(g) the abuser's relatives or friends or the abuser were co-workers of claimant or otherwise present at the work-site; or

(h) claimant informed the employer and gave the employer the opportunity to ameliorate the domestic abuse within a reasonable period of time, but the employer would not or could not do so; or

(i) claimant has filed a civil or criminal proceeding against an alleged abuser; however nothing in this provision shall not be construed as requiring the filing of a civil or criminal proceeding as a prerequisite to establishing the existence of domestic violence.

(5) When determining whether an individual has experienced domestic abuse for purposes of unemployment insurance benefits, the claimant shall provide legal and medical documentation and a sworn statement by the claimant regarding the situation satisfactory to the department. The documentation shall be of a competent nature, reasonably susceptible to verification and bearing an indicia of credibility, including but not limited to police or court records or other documentation from a shelter worker, attorney at law, member of the clergy, physician or other medical or mental health practitioner from whom claimant has sought assistance for the domestic abuse. Upon review of the claimant's documentation, the department may require additional supporting documentation if the department representative reviewing the claim believes the claimant's initial documentation is lacking credibility or warrants verification.

B. Procedure:

(1) The existence of domestic violence shall be established by a preponderance of the evidence.

(2) To be eligible for benefits as a result of domestic violence, claimant must have been determined to be monetarily eligible for unemployment insurance compensation benefits.

(3) Claimant must indicate at the time of filing the claim that the reason for leaving employment was as a result of qualifying domestic abuse.

(4) Claimant must provide evidence tending to prove the existence of qualifying domestic abuse within 10 days of the filing of the claim.

(5) Claimant will be entitled to receive benefits retroactively to the date of filing if adequate documentation is received within this time period.

(6) Only an alleged victim of domestic violence may obtain benefits under this provision; an alleged perpetrator may not.

(7) If no documentation is received within the specified period, an initial determination will be issued denying the claim on the basis of domestic abuse.

(8) If claimant subsequently submits documentation tending to demonstrate the existence of domestic abuse, a determination will be made on the basis of the documentation submitted. Claimant will not be entitled to receive benefits retroactively to the date of filing but will be entitled to receive benefits retroactively to the date of submission of the documentation supporting domestic violence.

(9) If proven, an initial determination will be issued identifying domestic abuse as the reason for the separation.

C. A contributing employer's account will not be charged any portion of benefits paid as a result of a separation determined to have been as a result of domestic abuse.

[11.3.300.326 NMAC - N, 7-1-2003]

11.3.300.327 DEPENDENTS' ALLOWANCE:

A. The dependents' allowance: As provided in NMSA 1978 Section 51-1-4 (2003), A claimant is entitled to receive benefits in the amount of \$15.00 for each unemancipated child, up to a maximum of four children, and not to exceed fifty percent of the claimant's weekly benefit amount.

B. Asserting the dependents allowance claim: To be eligible for dependents' allowance, the claimant shall declare the dependents' allowance on the date that the claimant files an initial claim for the benefit year. The time for declaration may not be extended except for good cause.

C. Eligibility: Within 14 days of an application for the dependant allowance, the claimant must supply verification that, for each person for whom the allowance is claimed, that

(1) the person is the claimant's child; and

(2) is under the age of 18, and

(3) the person is unemancipated,

and

(4) the child is

(a) in fact dependent on and wholly or mainly supported by the claimant; or

(b) in the legal custody of the claimant pending adjudication of a petition for adoption filed in a court of competent

jurisdiction; or

(c) the subject of a decree or order from a court of competent jurisdiction requiring the claimant to contribute to the dependent's support; and no other individual is receiving benefits for that child.

D. Definitions for purposes of this section:

(1) "Child" means a person

(a) who is related to the claimant within the third degree of consanguinity; or

(b) who is a stepchild of the claimant

(i) by virtue of the claimant's marriage to the child's biological or legal parent;

(ii) which biological or legal parent has sole or primary legal and physical custody of the child,

(iii) which child physically resides with the claimant or

(c) who is in the claimant's legal or physical custody pursuant to a decree or order from a court of competent jurisdiction including but not limited to orders of custody, guardianship, conservatorship, trusteeship or foster care.

(2) "Wholly or mainly supporting" means that the claimant who is applying for the dependents' allowance is in fact furnishing contemporaneously more than 50% of the actual cost of support for the dependent regardless of the legal obligation of another to provide such support. "Cost of support" includes but is not limited to a reasonable pro-ration of the expenses of shelter (including but not limited to household grocery, toiletries, household cleaning products, rent or mortgage payments, customary utilities such as water, sewer, gas, electricity and basic telephone), school expenses of the child (including but not limited to tuition, books, clothing and supplies for special school or educational activities), medical and dental expenses including actual payments and payments of insurance premiums; payment of expenses related to any special needs of the child.

E. The claimant has the burden of establishing to the satisfaction of the department that the claimant is actually furnishing more than one-half of the cost of support of the child.

E. No fixed dollar amount shall be used to make the determination regarding support.

(1) The department may consider the cost of food, clothing, education, medical care and the proportionate share of fixed expenses including but not limited to shelter and other related expenses for the support of the dependent child.

(2) The department may also use any child support worksheets utilized by a court of competent jurisdiction in determining the amount of child support due each

parent.

G. Verification:

(1) Claimant shall not be eligible to claim a dependents' allowance for any person unless the dependent has been issued a social security number or other federal identification sufficient for purposes of verification.

(2) A claimant who is otherwise eligible for benefits and who has not yet submitted the required dependents' allowance verification shall not be paid the dependents' allowance unless and until verification satisfactory to the department is presented within the applicable time period

(3) Upon receipt of verification, the dependents' allowance shall be paid retroactively.

H. Changes in eligibility:

(1) During the life of the claim, should claimant become entitled to a dependents' allowance, claimant may request from the department that the dependents' allowance be granted. Claimant will be required to provide proof that the dependent for whom the benefit is being sought was not a dependent at the time of the filing of the initial claim. The department will issue a written determination whether claimant is granted or denied the dependents' allowance.

(2) During the life of the claim, should claimant no longer be entitled to claim a dependents' benefit for one or more of the dependents for whom claimant is receiving the dependents' allowance, claimant is required to report to the department within five days any such change in circumstances. A claimant who fails to report such change in circumstances may be assessed an overpayment.

(3) Should the circumstances of who provides support for the dependent change during the life of the claim, the claimant shall inform the department within 5 days of the change of circumstances.

I. One allowance per dependent:

(1) Only one claimant may receive a dependents' allowance for any specific dependent.

(2) Multiple claims:

(a) In the event two claimants each assert entitlement to receive the dependents' allowance for the same child, upon notification of the dispute, the department shall continue making payments to the claimant who initially demonstrated entitlement to receive benefits for the dependent.

(b) A later claimant may demonstrate superior entitlement to claim the dependents' allowance for a child by producing documentation showing that the later claimant has a paramount right to claim the dependents' allowance, including

but not limited to:

(i) A custody decree or from a court of competent jurisdiction finding that the dependent child is or should be in the primary physical custody of the later claimant or that the later claimant is obligated to provide more than 50% of the dependent child's support; and that

(ii) The later claimant is in fact the primary physical custodian of the dependent child or is in fact providing more than 50% of the dependent child's support.

(iii) A custody decree or from a court of competent jurisdiction or similar document including, but not limited to IRS form 8332, finding that the later claimant is entitled to claim the child as a dependent for official purposes.

(c) An initial determination of eligibility for supplemental weekly benefits for dependents will be made as soon as possible after the request for such benefits is filed. A written determination will be rendered granting or denying benefits for dependents and identifying the amount.

(d) Once a claimant has been determined to be entitled to the dependents' allowance, that determination will remain in effect for the life of the claim, subject to the provisions of Subsection G of 11.3.300.327 NMAC.

J. Payment of regular benefits will not be delayed due to any delay in processing the application for dependent benefits.

K. A contributing employer's account will not be charged any portion of benefits paid for the dependents' allowance.

L. The provisions of this section apply to all claims filed on or after January 1, 2004.

[11.3.300.327 NMAC - N, 7-1-2003]

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

This is an amendment to 11.3.400 NMAC, Section 417. This amendment is effective July 1, 2003.

11.3.400.417 EXPERIENCE HISTORY TRANSFERS:

A. TOTAL EXPERIENCE HISTORY TRANSFERS:

(1) ACQUISITION OF ALL EMPLOYING ENTERPRISES [AND TREATMENT OF LIQUIDATION WAGES:

~~(a) It is deemed that the successor has acquired all of the predecessor's employing enterprises only where the predecessor, immediately after the business~~

~~transfer, as defined in 11.3.400.416 NMAC, ceases operating the same enterprises except for liquidation purposes.~~

~~(b) Liquidation wages reported by the predecessor and contributions paid by the predecessor for liquidation wages shall be credited to the successor's account for experience rating purposes.~~

~~(c) If the predecessor operates a new business enterprise upon or after the business transfer, the predecessor shall be assigned a new account number and a standard rate in accordance with the provisions of NMSA 1978 Section 51-1-11E.] A total experience history transfer is available to a successor enterprise only in the situation where the successor has acquired all of the predecessor's business enterprise and, where the predecessor, immediately after the business transfer as defined in 11.3.400.416 NMAC, ceases operating the same enterprise except for liquidation purposes.~~

~~(a) In the sale of a business enterprise, the phrase "all assets" includes the transfer of a favorable experience history.~~

~~(b) In the sale of a business enterprise, the phrase assumption of "all liabilities" includes an unfavorable experience history and any unpaid contributions.~~

(2) **NOTIFICATION BY SUCCESSOR:** A successor who has acquired all of the predecessor's employing enterprises shall notify the department of such acquisition, in writing, on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise or enterprises. Upon receipt of such notification, the department shall furnish a statement of account to the predecessor and the successor, if the predecessor is delinquent in either submitting wage and contribution reports or the payment of contributions.

(a) A successor who has acquired all of the predecessor's employing enterprises shall notify the department of such acquisition, in writing, on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise or enterprises.

(b) If the successor employer fails to notify the department on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition, when the department receives actual notice of the transfer, the department shall effect the transfer and shall impose a penalty of \$50.00 upon the successor.

(c) Only transfers for which a notice of transfer was received by the department within four years will be processed by the department. Notice of the transfer must be given within four years of

the transaction transferring the employing enterprises or within four years of the actual date of transfer of control and operation of the employing

(3) LIQUIDATION WAGES: Liquidation wages reported by the predecessor and contributions paid by the predecessor for liquidation wages shall be credited to the successor's account for experience rating purposes.

~~(3) (4) WRITTEN DETERMINATION TO SUCCESSOR AND PREDECESSOR:~~ The department shall issue a written determination to the successor and predecessor approving or disapproving the total history transfer. All such determinations shall be subject to the provisions of 11.3.500.512 NMAC governing appeals of contribution or tax determinations.

(a) Failure to timely dispute or appeal a determination approving a transfer without good cause will deprive the predecessor of the previous favorable experience history.

(b) Failure to timely notify the department or dispute or appeal a denial of the transfer of a favorable experience transfer without good cause will deprive the successor business of the opportunity for the transfer of the favorable experience history transfer.

(5) Predecessor resumes or continues in business: If the predecessor owner operates a new or different business enterprise upon or after the business transfer, the predecessor shall be assigned a new account number and a standard rate in accordance with the provisions of NMSA 1978 Section 51-1-11E.

B. OUT-OF-STATE EXPERIENCE HISTORY TRANSFERS, PROCEDURE:

(1) An employing enterprise moving a business into New Mexico; the "out-of-state entity" may seek a transfer of the enterprise's experience history from the predecessor state.

(2) At any time during the application process, until the close of the 15 day appeal period after determination, the employing enterprise may withdraw its application for an out-of-state history transfer and accept New Mexico rate for new businesses.

(3) Upon making application for an out-of-state experience rate transfer, the employing enterprise will temporarily be issued a standard rate in accordance with the provisions of NMSA 1978 Section 51-1-11E until the out-of-state experience history transfer is completed.

(4) The initial registration must specify that the employing enterprise seeks an out-of-state experience history transfer. No retroactive requests will be entertained.

(5) The initial registration and

application must be made within 30 days of commencing business within the state of New Mexico.

(6) To be eligible for the out-of-state transfer, the employing enterprise must have been in operation for at least three full calendar years in the predecessor state.

(7) The out-of-state employing enterprise must physically close its operation in entirety in the predecessor state and complete all liquidation within six months of opening the New Mexico operation.

(8) The business enterprise opened in New Mexico must be of the same type and nature as the enterprise operated in the predecessor state.

(9) If the entity owning the business enterprise maintains other businesses in the predecessor state, only the experience history attributable to the enterprise actually relocated to New Mexico may be transferred.

(10) Within 20 days of submitting the application for an out-of-state experience history transfer, the employing enterprise shall submit a full and complete account history for at least the immediate three calendar years. This history must include:

(a) The number of workers laid off at the time the out-of-state entity closed its operation in the predecessor state;

(b) The nature of the business being transferred including a statement demonstrating that the out-of-state enterprise and the proposed New Mexico enterprise are of the same nature and type.

(c) Copies of the periodic wage reports submitted to the predecessor state for at least three full calendar years plus the current year immediately preceding the transfer application.

(11) The account history must be validated, certified and exemplified by the monitoring agency of the predecessor state where the wages were reported; it shall include certified copies of tax rate notices from the predecessor state for each of the last four years in which the employing enterprise was in business in the predecessor state.

(12) The account history shall include benefits paid and charged or non-charged and be based on wages paid prior to the transfer. The charges and non-charges shall be transferred to the New Mexico account history.

(13) The out-of-state employing enterprise must provide documentation, verified by counterpart agency in the predecessor state, comparable to the New Mexico department of labor, that the employing enterprise has no taxes, interest, penalties or other fees due.

(14) When transferring from a non-reserve ratio state, the out-of-state

employing enterprise transferring must provide entire history record.

(15) From the department's approved list, the employing enterprise shall engage an independent accounting firm to convert the transferred history into the factors used to measure experience in New Mexico.

(16) The transferred and converted experience history may be accepted by the department but is subject to audit by the department either before the transfer is approved or up to one year after the transfer is approved.

(17) To be eligible for a reduced rate, a employing enterprise must have been in operation for at least four complete calendar years plus the current year. If an out-of-state employing enterprise applying for a transfer has been in operation for at least three, but not four full calendar years, in the predecessor state, the record from the predecessor state may be transferred, but a reduced rate will not be available until the employing enterprise has been in business for four full calendar years, combining the time in business in the predecessor state and in New Mexico.

(18) Notification To The Other State And Treatment of Account History: Upon acceptance of the transfer application, the department will notify its counterpart agency in the predecessor state of the acceptance of the transfer application.

(19) Upon approval of the experience history transfer, the employing entity's contribution rate will be adjusted retroactively to the appropriate rate.

(20) After receiving notification of the approved transfer, the employing enterprise must submit an updated status report in the form designated by the department within 30 days.

(21) The provisions of this subsection apply to all out-of-state transfer requests filed on or after January 1, 2004.

~~[B-]~~ C. PARTIAL EXPERIENCE HISTORY TRANSFERS:

(1) NOTIFICATION BY SUCCESSOR AND SUBMISSION OF JOINT APPLICATION FORM: A successor entity acquiring one or more, but less than all of the employing enterprises of a predecessor entity, shall notify the department of such acquisition, in writing, on or before the due date of the successor's first quarterly wage and contribution report after the effective date of the acquisition of the employing enterprise. Upon receipt of such notification, the department shall furnish the prescribed application form. The application shall be endorsed by the predecessor. The endorsed application and quarterly wage and contribution reports for each calendar quarter involved in the transfer must be filed with the department within thirty days

from the date of delivery or mailing of the application by the department. Upon a showing of good cause, the assistant unemployment insurance bureau chief for the tax section may extend the due date for the filing of the endorsed application and quarterly wage and contribution reports for an additional thirty days provided that the request for an extension of time is filed in writing on or before the regular due date. Information with respect to the predecessor and successor employing enterprises necessary to a department determination of the existence of all of the facts requisite to department approval or disapproval shall be given as prescribed by such forms or as requested by the department. Employers shall have the right to a seated interview at the local workforce development center or the state office where they will be provided assistance as necessary to complete the application.

(2) WRITTEN DETERMINATION TO SUCCESSOR: The department shall issue a written determination to the successor approving or disapproving the partial history transfer. All determinations disapproving the partial history transfer shall be subject to the provisions of 11.3.500.512 NMAC governing appeals of contribution or tax determinations.

~~[C-]~~ D. DETERMINATION OF CONTRIBUTION RATES AFTER TOTAL OR PARTIAL EXPERIENCE HISTORY TRANSFER: For the period from the effective date of the transfer to the following January 1, the rate shall be determined as follows:

(1) If the successor is a liable employer and rated for the calendar year on the effective date of the transfer, there will be no change in rate determined for the successor's account as a result of the transfer.

(2) If the successor is a liable employer and has not been rated during the calendar year in which the transfer occurred, the rate shall be computed from the successor's prior history combined with the acquired total or partial history.

(3) If the successor is not a liable employer on the effective date and a new account is established:

(a) the rate of the predecessor or combined predecessors will apply to the new account in the case of a total experience transfer, and

(b) a rate based on experience of the separate schedule of employment and related benefits charged will apply to the new account in the case of a partial experience transfer.

(4) A new rate based on experience of the remaining schedule of employment and related benefits charged will apply to the predecessor account from the effective date of the transfer to current year in the

case of a partial experience transfer.

~~D.~~ E. CHARGING OF BENEFITS AFTER TRANSFER: Benefits paid subsequent to the effective date of a partial or total experience history transfer shall be charged to the successor's account if the base period wages were transferred to the successor.

[7-15-98; 11.3.400.417 NMAC - Rn, 11 NMAC 3.400.417, 9-1-2001; A, 7-1-03]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

TITLE 1 GENERAL GOVERNMENT ADMINISTRATION CHAPTER 13 PUBLIC RECORDS PART 1 GENERAL PROVISIONS

1.13.1.1 ISSUING AGENCY: Commission of Public Records – State Records Center and Archives

[1.13.1.1 NMAC – N, 05/30/03]

1.13.1.2 SCOPE: state commission of public records

[1.13.1.2 NMAC – N, 05/30/03]

1.13.1.3 STATUTORY AUTHORITY: Section 10-15-1 NMSA 1978 stipulates that, except as otherwise provided in the constitution of New Mexico or the Open Meetings Act, all meetings of a quorum of members of any board, council, commission or other public body held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within its authority or its delegated authority shall be open to the public at all times. The same section further permits a member of the public body to participate by telephone in a meeting of the body under certain circumstances. And, further, Section 10-15-1 NMSA 1978 also requires public bodies to determine at least annually what constitutes reasonable notice of its public meetings.

[1.13.1.3 NMAC – N, 05/30/03]

1.13.1.4 DURATION: Permanent.

[1.13.1.4 NMAC – N, 05/30/03]

1.13.1.5 EFFECTIVE DATE: May 30, 2003, unless a later date is cited at the end of a section.

[1.13.1.5 NMAC – N, 05/30/03]

1.13.1.6 OBJECTIVE: To establish, and to provide public disclosure of, the process and procedures for conducting the meetings of the state commission of public records.

[1.13.1.6 NMAC – N, 05/30/03]

1.13.1.7 DEFINITIONS: "Commission" means the state commission of public records.

[1.13.1.7 NMAC – N, 05/30/03]

1.13.1.8 MEETINGS:

A. Regular meetings of the commission shall be held at least four times a year.

B. Special meetings of the commission may be called by the chair or a majority of the members upon a minimum of three days notice.

C. Emergency meetings shall be called only under unforeseen circumstances, which demand immediate action to protect the health, safety and property of citizens of New Mexico, including the staff of the commission or the collections the commission holds in trust, or to protect the public body from substantial financial loss.

(1) The commission shall avoid emergency meetings whenever possible.

(2) Emergency meetings may be called by the chair or a majority of the members of the commission upon 24 hours notice, unless threat of personal injury or property damage requires less notice.

[1.13.1.8 NMAC – N, 05/30/03]

1.13.1.9 NOTICE REQUIREMENTS: All meetings shall be held at the times and places indicated in the meeting notice.

A. Regular meetings. Notice requirements for any regular meeting as described in Subsection A of 1.13.1.8 NMAC shall be met if notice is given at least ten days in advance of the meeting. The notice shall include the date, time and place of the meeting and information about how to obtain copies of the agenda.

(1) Notices of regular meetings shall be published in at least one newspaper of general circulation and in the New Mexico register and posted at the New Mexico state records center and archives in Santa Fe, NM.

(2) Notices shall also be mailed to those broadcast stations licensed by the federal communications commission and those newspapers of general circulation that have made a written request for notices of public meetings.

B. Special and emergency meetings. Notice requirements for any special or emergency meeting as described in Subsections B and C of 1.13.1.8 NMAC shall be met if notice is given at least 24 hours in advance of the meeting, unless in the case of an emergency meeting, threat of personal injury or property damage requires less notice. The notice shall include the

date, time and place of the meeting and information about how to obtain copies of the agenda.

(1) Notices of special or emergency meetings shall be provided by telephone to at least one newspaper of general circulation and posted at the New Mexico state records center and archives in Santa Fe, NM.

(2) Notices shall also be provided by telephone to those broadcast stations licensed by the federal communications commission and those newspapers of general circulation that have made a written request for notices of public meetings.

C. In addition to the other information specified in this section (1.13.1.9 NMAC), all notices shall include language providing information about whom an individual with a disability and in need of a reader, amplifier, qualified sign language interpreter or any other form of auxiliary aid or service may contact to obtain such aid or service. The notices shall further direct the individual with the disability to contact the named person at least one week prior to the meeting or as soon as possible. The notice shall also state that public documents, including the agenda and minutes, can be provided in various accessible formats and shall provide the name and telephone number of the person to contact for a summary or other accessible format.

[1.13.1.9 NMAC – N, 05/30/03]

1.13.1.10 AGENDA: The agenda for any regular, special or emergency meeting shall be available in the office of the state records administrator, located in the state records center and archives in Santa Fe, New Mexico, at least 24 hours in advance of the meeting, unless in the case of an emergency meeting, threat of personal injury or property damage requires less notice. The agenda shall also be posted at the state records center and archives in Santa Fe, NM.

[1.13.1.10 NMAC – N, 05/30/03]

1.13.1.11 PARTICIPATION BY TELEPHONE: A members of the commission may participate in a meeting by means of a conference telephone or other similar communications device when it is otherwise impossible or difficult for the member to attend the meeting in person, provided that the member participating by telephone can be identified when speaking and all meeting participants and members of the public attending the meetings are able to hear each other at the same time.

[1.13.1.11 NMAC – N, 05/30/03]

1.13.1.12 CLOSED MEETINGS: The commission may close a meeting to the public only if the subject matter of

the discussion or action is exempted from the open meeting requirement under Subsection H of Section 10-15-1 of the Open Meetings Act (Chapter 10, Article 15 NMSA 1978).

A. If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the commission. The authority for the closure and the subjects to be discussed shall be stated with reasonable specificity in the motion for closure, and the vote on closure of each individual member shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in the close meeting.

B. If the decision to hold a closed meeting is made when the commission is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity is given to the members and to the general public.

C. Following completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

D. Except as provided in Subsection H of Section 10-15-1 of the Open Meetings Act (Chapter 10, Article 15 NMSA 1978), any action taken as a result of discussions in a closed meeting shall be made by a vote of the commission in an open public meeting.

[1.13.1.12 NMAC - N, 05/30/03]

1.13.1.13 REASONABLE NOTICE DETERMINATION: Pursuant to Subsection D of Section 10-15-1 NMSA 1978, the commission shall review annually the notice provisions of 1.13.1 NMAC and determine whether they constitute reasonable public notice. The review and determination shall be conducted at the first regular meeting in the calendar year.

[1.13.1.13 NMAC - N, 05/30/03]

HISTORY OF 1.13.1 NMAC:
[RESERVED]

NEW MEXICO COMMISSION OF PUBLIC RECORDS

This is an amendment to 1.18.760 NMAC, Sections 1, 3, 5, 6, 8, 9, 101-104.

1.18.760.1 ISSUING AGENCY:

New Mexico Commission of Public Records - State Records Center and Archives

[5-25-95; 1.18.760.1 NMAC - Rn, 1 NMAC 3.2.93.1, 7/22/2002; A, 6/9/2003]

1.18.760.3 STATUTORY

AUTHORITY: ~~[Section 14-3-6 NMSA 1978. Administrator: duties. The administrator shall 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. The administrator shall establish records disposal schedules for the orderly retirement of records and adopt regulations necessary for the carrying out of the Public Records Act. Records disposal schedules shall be filed with the librarian of the supreme court library, and shall not become effective until thirty days after the date of filing.] Section 14-3-1 NMSA 1978. The administrator shall establish a records management program for the application of efficient and economical management methods for the creation, utilization, maintenance, retention, preservation and disposal of public records.~~

[5-25-95, 5-19-97; 1.18.760.3 NMAC - Rn, 1 NMAC 3.2.93.3, 7/22/2002; A, 6/9/2003]

1.18.760.5 EFFECTIVE DATE:

July 30, 1997, unless a different date is cited at the end of a section ~~[or paragraph.]~~

[5-25-95, 5-19-97; 1.18.760.5 NMAC - Rn, 1 NMAC 3.2.93.5, 7/22/2002; A, 6/9/2003]

1.18.760.6 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 a records disposal schedules for the orderly retirement of records necessary for carrying out the Public Records Act per 14-3-6 NMSA 1978.

[5-25-95, 5-19-97; 1.18.760.6 NMAC - Rn, 1 NMAC 3.2.93.6, 7/22/2002; A, 6/9/2003]

1.18.760.8 ABBREVIATIONS AND ACRONYMS:

A. "DNA" stands for deoxyribonucleic acid.

B. "NMAC" stands for New Mexico Administrative Code.

C. "NMSA" stands for New Mexico Statutes Annotated.

[1.18.760.8 NMAC - N, 6/9/2003]

1.18.760.9 INSTRUCTIONS:

A. For records of a general administrative nature, refer to the General Administrative Records Retention and Disposition Schedule, 1.15.2 NMAC.

B. For records of a financial nature, refer to the General Financial Records Retention and Disposition Schedule, 1.15.4 NMAC.

C. For records of a personnel nature, refer to the General Personnel Records Retention and Disposition Schedule, 1.15.6 NMAC.

D. For records of medical nature, refer to the General Medical Records Retention and Disposition Schedule, 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. Some or all materials in a file may be confidential. 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 confidential files shall be only by authorization of agency or attorney general 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 (Sections 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 and 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 [~~+~~ NMAC 3.2.70.1 (1.13.70 NMAC)] 1.13.70 NMAC: Performance Guidelines for the Legal Acceptance of Public Records Produced by Information Technology Systems.

[5-25-95, 5-19-97; 1.18.760.9 NMAC - Rn, 1 NMAC 3.2.93.8, 7/22/2002; A, 6/9/2003]

1.18.760.101 ADULT PAROLE CASE FILES:

A. Program: [~~adult patrol board~~] adult parole

B. Maintenance system: alphabetical by inmate's surname

C. Description: [~~contains parole board hearing actions, notice of actions, parole violation motion hearing, certificate of parole, notice of revocation hearing, parole board correspondence, employment offers, parole progress report, petitions for parole, parole conditions, parole board memos, waivers of parole hearing, etc.~~] record of inmate's case history and activities acquired by the board for determination of parole, revocation of parole, or pardon. File may contain admission summary, good time figuring sheet, plea and disposition agreement, judgment and sentence, progress report, certificates of achievements, DNA collection record, mug shots, diagnostic evaluations, certificate of parole, report of violation, memoranda, correspondence, etc.

D. Retention: [~~50 years from date of discharge from parole~~] permanent

E. Confidentiality: record is confidential per Section 31-21-6 NMSA 1978

[7-30-97; 1.18.760.101 NMAC - Rn, 1 NMAC 3.2.93.760.101, 7/22/2002; A, 6/9/2003]

1.18.760.102 [PAROLE CONTROL CARDS:

A. Program: ~~adult patrol board~~

B. Maintenance system: alphabetical

C. Description: ~~shows~~

~~name, PNM number, aliases, crime, sentence, parole date, previous record, age, date of birth, education, race, etc.~~

D. Retention: ~~50 years from date of discharge from parole~~ **[RESERVED]**

[7-30-97; 1.18.760.102 NMAC - Rn, 1 NMAC 3.2.93.760.102, 7/22/2002; Repealed, 6/9/2003]

[Repealed section (record series name): *parole control cards*, for information now refer to 1.15.2.149 *finding aids (indexes)*]

1.18.760.103 PARDON LOG:

A. Program: [~~adult patrol board~~] adult parole

B. Maintenance system: [~~chronological~~] numerical by primary key

C. Description: [~~shows name of parolee, date of request for pardon, and pardon date.~~] electronic index record of inmate's pardon information. Log may show name of inmate, penitentiary of New Mexico inmate identification number, date of birth, social security number, federal bureau of investigation inmate identification number, action taken by governor, date of action, name of governor, etc.

D. Retention: [~~until purpose is served~~] permanent

E. Confidentiality: record is confidential per Section 31-21-6 NMSA 1978

[7-30-97; 1.18.760.103 NMAC - Rn, 1 NMAC 3.2.93.760.103, 7/22/2002; A, 6/9/2003]

1.18.760.104 [ADULT PAROLE BOARD HEARINGS:] PAROLE BOARD ACTION AND MINUTES FILE:

A. Program: [~~adult patrol board~~] adult parole

B. Maintenance system: chronological by hearing date

C. Description: [~~shows name of individual scheduled for parole, parole violation, or release, parole board members present and the decision of the members.~~] record is a compilation of actions taken by the board on all inmates' cases heard at the parole hearings. Record may show inmate's name, case worker's name, New Mexico correction department number, case record number, decision of board, authorizing board members' signature, inmate's signature, witness's signature, signature dates, special conditions of parole, etc.

D. Retention: [~~three years from date of hearing~~] five years after date of hearing

E. Confidentiality: record is confidential per Section 31-21-6 NMSA 1978

[7-30-97; 1.18.760.104 NMAC - Rn, 1

NMAC 3.2.93.760.104, 7/22/2002; A, 6/9/2003]

History of Repealed Material:

1.18.760.102 *parole control cards* - Repealed, 6/9/2003

**NEW MEXICO
PUBLIC REGULATION
COMMISSION
INSURANCE DIVISION**

13.14.8 NMAC is amended to add 3 new sections, effective July 1, 2003, as follows:

13.14.8.21 FIRST LOSS ENDORSEMENT: The First Loss Endorsement, NM Form 58, may be attached to Loan Policies, provided the premium in 13.14.10.41 NMAC is paid and provided other property not described in the Mortgagee Policy is encumbered to secure payment of the indebtedness secured by the insured mortgage. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.21 NMAC - N, 7-1-03]

13.14.8.22 LAST DOLLAR ENDORSEMENT: The Last Dollar Endorsement, NM Form 59, may be attached to Loan Policies, provided the premium in 13.14.10.42 NMAC is paid and provided other property not described in the Mortgagee Policy is encumbered to secure payment of the indebtedness secured by the insured mortgage. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.22 NMAC - N, 7-1-03]

13.14.8.23 LOAN POLICY AGGREGATION ENDORSEMENT: The Loan Policy Aggregation Endorsement, NM Form 60, may be attached to Loan Policies, provided the premium in 13.14.10.43 NMAC is paid and provided multiple policies are simultaneously issued covering separate mortgages securing the same indebtedness or loan. This endorsement may not be attached to policies insuring residential property containing four or fewer dwelling units. Each insurer shall establish written instructions and underwriting standards concerning the use of this endorsement.

[13.14.8.23 NMAC - N, 7-1-03]

**NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

13.14.9.18 NMAC is amended effective July 1, 2003, as follows:

13.14.9.18 PREMIUM RATES FOR ORIGINAL OWNER'S POLICIES: The following schedule of premium rates for original owner's policies shall be in effect from ~~[March 1, 2002]~~ July 1, 2003 until modified by the Superintendent:

Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:	Liability Charge Up to:	Total Charge:
10,000	[196]194	24,000	[322]319	38,000	[428]424
11,000	[205]203	25,000	[330]327	39,000	[435]431
12,000	[212]210	26,000	[337]334	40,000	[443]439
13,000	[222]220	27,000	[348]345	41,000	[449]445
14,000	[231]229	28,000	[353]349	42,000	[458]453
15,000	[241]239	29,000	[360]356	43,000	[465]460
16,000	[249]247	30,000	[368]364	44,000	[472]467
17,000	[259]256	31,000	[375]371	45,000	[480]475
18,000	[267]264	32,000	[384]380	46,000	[487]482
19,000	[276]273	33,000	[390]386	47,000	[496]491
20,000	[285]282	34,000	[397]393	48,000	[503]498
21,000	[294]291	35,000	[405]401	49,000	[509]504
22,000	[303]300	36,000	[412]408	50,000	[517]512
23,000	[313]310	37,000	[421]417		

For amounts of insurance (in thousands)	Portion of rate (per thousand) subject to agent commission add	Agent retention percentage	Additional rate per \$1000 to be collected on policy amounts in excess of \$10 million (solely for underwriter)	Total Charged to Consumer
over \$50 to \$100	\$ [6.28]6.22	78-80%		\$ [6.28]6.22
over \$100 to \$500	\$ [4.95]4.90	78-80%		\$ [4.95]4.90
over \$500 to \$2,000	\$ [3.89]3.85	78-80%		\$ [3.89]3.85
over \$2,000 to \$5,000	\$ [3.12]3.09	75%		\$ [3.12]3.09
over \$5,000 to \$10,000	\$ [2.60]2.57	70%		\$ [2.60]2.57
Over \$10,000 to \$25,000	\$ [2.22]2.20	65%	\$ 0.25	\$ [2.47]2.45
over \$25,000 to \$50,000	\$ [1.94]1.92	60%	\$ 0.25	\$ [2.19]2.17
over \$50,000	\$ [1.55]1.53	50%	\$ 0.25	\$ [1.80]1.78

**NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

13.14.10 NMAC is amended to add 3 new sections, effective July 1, 2003, as follows:

13.14.10.41 FIRST LOSS ENDORSEMENT: When a First Loss Endorsement, NM Form 58, is issued pursuant to 13.14.8.21 NMAC, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.41 NMAC - N, 7-1-03]

13.14.10.42 LAST DOLLAR ENDORSEMENT: When a Last Dollar Endorsement, NM Form 59, is issued pursuant to 13.14.8.22 NMAC, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.42 NMAC - N, 7-1-03]

13.14.10.43 LOAN POLICY AGGREGATION ENDORSEMENT: When a Loan Policy Aggregation Endorsement, NM Form 60, is issued pursuant to 13.14.8.23 NMAC, the premium for each endorsement shall be twenty-five dollars (\$25.00) in addition to the premium charged for the policy.
[13.14.10.43 NMAC - N, 7-1-03]

**NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

Explanatory paragraph: 13.14.17.29 NMAC is amended to add 3 new endorsements, effective July 1, 2003, as follows:

13.14.17.29 FORM 6 - TRANSACTION REPORT:

UNDERWRITERS EXPERIENCE REPORT FORM 6 - TRANSACTION REPORT For Calendar Year Ending December 31, 20__ New Mexico Experience Only					
Name of Underwriter:					
NM Form No.	Transaction code	Transaction Type	NMAC Rate Provision	No. of Transactions (1)	Premiums (2)
<u>58</u>	<u>5800</u>	<u>First Loss Endorsement</u>	<u>13.14.10.41</u>		
<u>59</u>	<u>5900</u>	<u>Last Dollar Endorsement</u>	<u>13.14.10.42</u>		
<u>60</u>	<u>6000</u>	<u>Loan Policy Aggregation Endorsement</u>	<u>13.14.10.43</u>		

[7-1-97; 13.14.17.29 NMAC - Rn, 13 NMAC 14.3.D.30 & A, 5-15-00; A, 5-31-00; A, 7-15-02; A, 7-1-03]

**NEW MEXICO
PUBLIC REGULATION COMMISSION
INSURANCE DIVISION**

Explanatory paragraph: 13.14.18 NMAC is amended as follows effective July 1, 2003: 3 new endorsement forms are added as sections 71, 72, and 73, and the form numbers and names of the 3 new endorsement forms are added to the section 13 list of approved forms.

13.14.18.13 APPROVED FORMS: The following are the only title insurance forms promulgated for use in New Mexico:

NM FORM NO.	ALTA FORM NO. & DATE	NAME OF FORM	NMAC NO.
<u>58</u>		<u>First Loss Endorsement</u>	<u>13.14.18.71</u>
<u>59</u>		<u>Last Dollar Endorsement</u>	<u>13.14.18.72</u>
<u>60</u>		<u>Loan Policy Aggregation Endorsement</u>	<u>13.14.18.73</u>

13.14.18.71 NM FORM 58: FIRST LOSS ENDORSEMENT:

First Loss Endorsement
Attached to Policy No. _____
Issued by Blank Title Insurance Company
[NM Form 58]

In the event that a defect, lien, encumbrance, or other matter insured against by this Policy results in loss as determined under the Policy which exceeds ten percent (10%) of the Amount of Insurance stated in Schedule A, the amount which the Company shall be liable to pay under the Policy shall be determined without requiring maturity of the indebtedness by acceleration or otherwise and without requiring the insured to pursue its remedies against other collateral securing the indebtedness.

In the event a loss is determined to exist under the Policy in accordance with the terms of this Endorsement, Company shall be subrogated to the rights, if any, of the insured at that time (other than maturity of the indebtedness) for any breach of warranty by reason of the defect, lien, encumbrance or other matter insured against.

In all other respects, Company agrees that its rights of subrogation shall be subordinate to the rights and remedies which the insured has or may have in accordance with Section 12 of the Conditions and Stipulations of the Policy.

This Endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the Effective Date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____

13.14.18.72 NM FORM 59: LAST DOLLAR ENDORSEMENT:

Last Dollar Endorsement
Attached To Policy Number _____
Issued By Blank Title Insurance Company
[NM Form 59]

The liability of the Company under this policy will not be reduced under Section 9(b) of the Conditions and Stipulations as the result of payment on the indebtedness secured by the insured mortgage, except to the extent such payments reduce the total indebtedness secured by the insured mortgage below the Amount of Insurance stated in Schedule A.

This Endorsement is made a part of the Policy and is subject to all the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the Effective Date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____

13.14.18.73 NM FORM 60: LOAN POLICY AGGREGATION ENDORSEMENT:

Loan Policy Aggregation Endorsement
Attached to Policy No. _____
Issued By Blank Title Insurance Company
[NM Form 60]

The following policies are issued in conjunction with one another:

Policy Number:	County:	State:	Amount:
_____	_____	_____	_____
_____	_____	_____	_____

Notwithstanding the provisions of Section 7(a)(i) of the Conditions and Stipulations of this policy, the Amount of Insurance available to cover the Company's liability for loss or damage under this policy at the time of Payment of Loss hereunder shall be the aggregate of the Amount of Insurance under this policy and the other policies identified above. At no time shall the Amount of Insurance under this policy and the other policies identified above exceed in the aggregate \$ _____. Subject to the provisions of Section 9(a) of the Conditions and Stipulations of the policies, all payments made by the Company under this policy or any of the other policies identified above, except the payments made for costs, attorney's fees and expenses, shall reduce the aggregate Amount of Insurance pro tanto.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements.

[Witness clause optional]

BLANK TITLE INSURANCE COMPANY

BY: _____

NEW MEXICO BOARD OF VETERINARY MEDICINE

This is an amendment to 16.25.9 NMAC section 7, and adding section 22. This amendment is effective 6/16/2003.

16.25.9.7 DEFINITIONS:

A. "mobile veterinary practice" means providing a wide range of medical or surgical services in a movable trailer, pick-up, motor home, or other vehicle designed or modified to function as a veterinary practice facility.

B. "clean surgery" means the performance of a surgical operation for the treatment of a condition and under circumstances which, consistent with the standards of good veterinary medicine, do not warrant the use of aseptic surgical procedures.

C. "facility" means a building, kennel, mobile unit, vehicle, animal shelter, pet shop, or animal supply store where "the practice of veterinary medicine" as defined in the Veterinary Practice Act (to include regularly scheduled vaccination clinics or any other veterinary services) regularly occurs.

D. "small animal mobile facility" means a trailer or mobile unit established to function as a veterinary premises which concentrates in providing veterinary services to common domestic household pets.

E. "infectious waste" means those solid wastes contaminated with organisms, which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms, or may pose a threat or potential hazard to human health. In terms of veterinary medicine, this includes, but is not limited to the following: animal tissue, bedding and other wastes

from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or other waste may act as a vehicle of transmission to humans.

F. "sterilization" means the complete destruction of micro organisms by heat, bactericidal chemical compound, radiation or desiccation.

G. "disinfection" means the destruction of pathogenic microorganisms.

H. "sharps" means any discarded article that may cause punctures or cuts. Such wastes may include, but are not limited to needles, scalpel blades, glass slides, glassware, suture needles and trocars.

16.25.9.22 MANAGEMENT OF WASTE:

A. A veterinarian shall handle, treat and dispose of infectious waste (including, but not limited to carcasses, anatomical body parts, excretions, blood-soiled articles, bedding) that are generated from an animal that the veterinarian knows, or has reason to suspect has a disease that is capable of being transmitted to humans as provided under this section:

(1) All infectious waste will be sterilized or disinfected by heat, steam, chemical disinfection, radiation, or desiccation.

(2) Infectious waste held for disposal shall be collected in sanitary leak resistant bags clearly labeled for biohazard disposal. The bag shall contain the gloves worn while collecting the waste and those used in treatment and post mortem examinations of suspect animals.

B. All sharps shall be disposed of in appropriately labeled sharps containers. Such containers shall be rigid-

sided, solidly sealed containers that are highly resistant to puncture. These containers shall be incinerated or disposed of in an environmentally safe manner by a duly licensed disposer or an approved medical sharps incineration facility or shall be disposed of in such a way as to render the sharps harmless. This disposal shall not apply to infectious waste sharps, which, contained in a puncture resistant container, should be disposed of as described in infectious waste disposal. Due to the small volume of sharps generated in a veterinary clinic, transportation of the filled, sealed containers shall not be mandated by nor limited to commercial haulers.

C. Drug disposal.

(1) When feasible, unused or outdated drugs shall be returned to the manufacturer for disposal in accordance with the policies and procedures of the manufacturer.

(2) Those controlled substances, all schedules, which cannot be returned to the manufacturer, shall be disposed of at one of the approved controlled drug disposers as approved by the board of pharmacy. A list of these disposers will be provided by the board of pharmacy and/or the board of veterinary medicine.

(3) Those drugs which do not pose a problem for environmental hazard or are not controlled drugs may be disposed of in a sanitary, non-offensive manner by means of regular solid waste disposal methods.

D. A veterinarian shall handle waste materials that are generated from an animal that does not have a disease transmissible to humans or suspected of being contaminated with an agent capable of infecting humans as provided under this section:

(1) Animal carcasses.

(a) An animal carcass shall be dis-

posed of promptly by release to owner, burial, cremation, incineration, commercial rendering, or if permitted by local ordinance, placed in a public landfill.

(b) If prompt disposal of an animal carcass is not possible, it shall be contained in a freezer or stored in a sanitary, non-offensive manner until such time as it can be disposed of as provided above.

(c) All remains stored at a veterinary clinic shall be duly identified with the case number, and/or the owner's name and the name of the animal to prevent improper final disposal.

(2) Tissues, specimens, bedding, animal waste and extraneous materials, not suspected of harboring pathogens infectious to humans, shall be disposed of by approved city or county disposal methods.

E. In the event of the occurrence of a suspect foreign animal disease or disease of potential concern to state or national security, the veterinarian will immediately contact the state department of agriculture, the U. S. department of agriculture, and other departments necessary that would pertain to such an occurrence. The veterinarian shall handle all tissues, laboratory samples, and biomedical waste associated with such cases in accordance with the recommendations made by the department of agriculture, and other departments and agencies, which are deemed necessary and appropriate in such cases.

NEW MEXICO WORKERS' COMPENSATION ADMINISTRATION

This is an amendment to 11.4.11 NMAC, Sections 2, 6, 7 and 8. This rule was also renumbered and reformatted to comply with current NMAC requirements.

11.4.11.2 SCOPE: ~~[All insurers writing workers' compensation coverage in the state of New Mexico and those employers or entities who provide leased workers or lease workers within the state of New Mexico.] This rule applies to all insurers issuing workers' compensation coverage in the state of New Mexico, all self-insured groups issuing workers' compensation coverage in the state of New Mexico and all vendors submitting proof of coverage (POC) information either on behalf of themselves or for others who are required to report such coverage.~~

[8/1/96; 11.4.11.2 NMAC – Rn & A, 11 NMAC 4.11.2, 8/1/03]

11.4.11.6 OBJECTIVE: The purpose of this rule is to establish requirements governing workers' compensation insurance [coverage for employers who

lease employees to or from other employers and to set the procedures for filing of] proof of coverage [fees].

[8/1/96; 11.4.11.6 NMAC – Rn & A, 11 NMAC 4.11.6, 8/1/03]

11.4.11.7 DEFINITIONS:

~~A. "Client" means an employer which obtains workers through an employee leasing arrangement.~~

~~B. "Employee leasing arrangement" means any arrangement whereby an employee contracts with a leasing contractor to provide all or some of the employer's workers, provided, that the term does not include the provision of temporary workers.~~

~~C. "Leased worker" means a worker provided to a client through an employee leasing arrangement, provided that, if a worker has been previously employed by the client prior to working for a leasing contractor, it shall be presumed that the worker is a leased worker, not a temporary worker, and further provided that, if a worker works and should be classified in any construction class, or in any oil and gas well service or drilling class, the worker shall be presumed to be a leased worker.~~

~~D. "Leasing contractor" means any person or entity which provides all or any part of a client's New Mexico workers through an employee leasing arrangement.~~

~~E. "Temporary worker" means a worker hired and employed by an employer to support or supplement another's work force in special work situations such as employee absences, temporary skill shortages, seasonal workloads and special temporary assignments such as temporary work for the production of a motion picture.]~~

A. "Certified vendor" (also referred to as a "vendor") means a company or business which electronically transmits proof of coverage insurance information to the workers' compensation administration either for itself or for others and certified by the WCA as being qualified to submit POC data using the IAIABC format. The terms "certified vendor" and "vendor" are used interchangeably within this rule and carry the same meaning. A vendor's identity is not considered a record of the workers' compensation administration and is therefore not protected by the confidentiality provision.

B. "Filed" means that the policy information required under these rules has successfully passed all edits and has been accepted, date and time stamped and uploaded into the workers' compensation administration's database.

C. "IAIABC" means the

International Association of Industrial Accident Boards and Commissions.

D. "Insurer" means any insurance carrier or self-insured group or other entity that issues a workers' compensation insurance policy or provides workers' compensation coverage for itself or subsidiaries by any other means.

E. "POC flat file" or "POC flat file format" means the IAIABC defined standard in which proof of coverage (POC) data is electronically submitted to the WCA.

F. "WCA certified" or "WCA certification" means a vendor has received approval from the WCA to submit POC data electronically. WCA certification is required prior to submitting POC data.

[8/1/96; 11.4.11.7 NMAC – Rn & A, 11 NMAC 4.11.7, 8/1/03]

11.4.11.8 PROOF OF COVERAGE:

A. Filing requirements:

(1) Every insurer shall file proof of coverage with the [national council on compensation insurance (NCCI)] workers' compensation administration within thirty (30) days of the effective date of [the issuance of] any workers' compensation policy or within thirty (30) days of the date of extension, renewal, reinstatement or amendment to such policy.

(2) [In the event of an insurance policy cancellation, the insurer shall file notice with the NCCI] Every insurer shall, in the event of a policy cancellation, file a notice of cancellation with the workers' compensation administration within 10 days of such cancellation.

[3] Every insurer shall file monthly a proof of coverage roster with the workers' compensation administration showing the effective date of the issuance, extension, renewal, reinstatement, amendment or cancellation of any workers' compensation policy providing coverage to an employee leasing contractor or employee leasing arrangement issued through the voluntary market.

(a) The proof of coverage roster shall reflect the name and address of the employee leasing contractor, the name and address of all clients, the effective date of the client's contract with the employee leasing contractor, and the date of modification of the client's contract.

(b) In the event of the cancellation of a workers' compensation policy providing coverage to an employee leasing contractor or an employee leasing arrangement, the insurer shall file notice with NCCI within 10 days of such cancellation.

B. Filing fees:

(1) Every insurer who files a proof of coverage pursuant to Paragraph

10.1 of this rule shall submit to the WCA, at least monthly, a roster of policy activity, with a filing fee of \$5.00 per entry as required by, Section 52-1-4.1 NMSA 1978 (Repl. Pamp. 1991).

(2) Every amendment, including election and exemption information, not included with the initial proof of coverage filing, requires an additional five dollars (\$5.00) filing fee.]

(3) Vendor certification

(a) In order to be certified as a vendor for submission of POC data with the workers' compensation administration, an entity must receive certification from the workers' compensation administration.

(b) In order to maintain certified vendor status, the vendor must maintain certification with the workers' compensation administration, which includes continuous compliance with the workers' compensation administration POC business plan.

B. POC submission procedures and requirements

(1) POC data must be submitted in the IAIABC POC flat file format.

(2) A vendor must provide optional ways for insurers to submit POC data to the vendor such as hard copy, mag tape, web page form or IAIABC flat file.

(3) Once certified, vendors must notify the workers' compensation administration of any changes they make in hardware or software and complete re-certification with the workers' compensation administration prior to using such changed or new hardware or software to submit POC data. Vendors must also comply with IAIABC requirements pertaining to hardware and software changes.

(4) A current information form and sender/vendor information form must be on file with the workers' compensation administration before electronic filings will be accepted.

(5) All POC data is the property of the New Mexico workers' compensation administration and such data cannot be used for any purpose other than that designated by the workers' compensation administration.

(6) Failure to file POC data in accordance with the act and these rules will subject the insurer to penalties and fines permitted by the act and the rules.

(7) After notice and opportunity to be heard, the director may decertify a vendor for good cause shown.

C. Exempt entities:

(1) The legislatively mandated pools governed by 11 NMAC 4.10 are required to provide membership information to the workers' compensation administration through the self-insurance bureau and may exempt themselves from the electronic filing requirements at their option.

(2) Self-insurance groups, authorized to provide workers' compensation insurance to their members based upon a valid and active certificate of self-insurance issued by the director of the workers' compensation administration and whose membership roster does not exceed seventy-five (75) members are required to provide membership information to the workers' compensation administration through the self-insurance bureau and may exempt themselves from the electronic filing requirements at their option.

(3) Individual self-insurers in possession of a valid and active certificate of self-insurance issued by the director of the workers' compensation administration and those subsidiaries listed on such certificate are exempt from the filing requirements.

[8/1/96; 11.4.11.8 NMAC – Rn & A, 11 NMAC 4.11.8, 8/1/03]

End of Adopted Rules Section

SUBMITTAL DEADLINES AND PUBLICATION DATES

2003

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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
Issue Number 6	March 17	March 31
Issue Number 7	April 1	April 15
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Issue Number 23	December 1	December 15
Issue Number 24	December 16	December 30

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